

**Airtel's counter comments to TRAI's Consultation on the Framework for Service Authorisations for provision of Broadcasting Services under the Telecommunications Act, 2023**



TRAI/FY24-25/060

Dated: 04 December 2024

To,

**Shri Deepak Sharma,**  
**Advisor (B&CS) – II, Telecom Regulatory Authority of India,**  
4th, 5th, 6th & 7th Floor, Tower-F,  
World Trade Centre, Nauroji Nagar,  
New Delhi: 110029

**Subject: Airtel's counter comments on TRAI's Consultation on the "Framework for Service Authorisations for provision of Broadcasting Services under the Telecommunications Act, 2023"**

**Ref:**

1. Airtel's Comments to CP vide letter bearing no. TRAI/FY 24-25/059 dated 27 November 2024.

Dear Sir,

This is in reference to TRAI's Consultation Paper on "*Framework for Service Authorisations for provision of Broadcasting Services under the Telecommunications Act, 2023*" dated 30 October 2024.

In this regard, please find enclosed our **counter comments** for your kind consideration.

Thanking You,

Yours' Sincerely,

**For Bharti Airtel Limited**

A handwritten signature in black ink, appearing to read 'Rahul Vatts', written over a light blue rectangular background.

**Rahul Vatts**

**Chief Regulatory Officer**

Encl: a.a

**Copy to:**

1. Chairman, TRAI
2. Secretary, TRAI

3. Principal Advisor (B&CS), TRAI

**Executive Summary**

Airtel thanks the Authority for the opportunity to provide its counter comments to responses received on the Consultation Paper on the *Framework for Service Authorisations for provision of Broadcasting Services under the Telecommunications Act, 2023*. These counter comments are an extension of the arguments previously presented in the main response to the paper. For the sake of continuity, an overview of the key submissions made earlier are as under:

- Digital Platform (OTT) delivering broadcast content through broadband / mobile should be brought under the authorisation/licensing framework
- Any platform which offers similar content as offered by the regulated distribution platform, should equally be brought under a similar regulatory regime – irrespective of technology – as per the principle of ‘**Same Service – Same Rules**’
- Prasar Bharti should be brought within the authorisation / licensing framework and the Broadcasting (Television Programming, Television Distribution and Radio) Services Rules should extend to Prasar Bharti’s DTH operations as well as their OTT Platform Service – WAVES.
- The new authorisation / licensing framework must preserve the contractual nature of the license to retain and boost regulatory certainty while ushering in ease of doing business and other simplified processes.
- Migration to the new licensing / authorisation regime should only be on a voluntary basis and existing players should not be placed in a worse-off situation if they choose not to migrate.
- Financial levies should be treated as under:
  - DTH License Fee should be done away with in its entirety. In the interim, DTH license fee should be reduced from 8% to 3% immediately and then to zero by FY 2026-27.
  - GR, ApGR and AGR for DTH licensees should be defined on the same lines as prescribed by Cabinet for telecom sector.
  - Reduce Bank Guarantee exposure for DTH Industry.
  - License Fee levied on content revenue and presently charged to DTH operators should be payable at the hands of the Broadcaster who is the ultimate beneficiary of such content revenue.
- The DoT should be assigned as the single department for all licensing requirements across access cum carriage platforms (Mobile, Broadband, Cable and DTH) while the MIB should be retained as an umbrella body for all content regulation, management and appropriate censorship across all mediums with these platforms being covered under orderly rules to carry the same content.

- The proposed changes to the authorisation framework should help reduce compliance burdens on the sector, lower financial obligations (such as LF and BGs), and streamline processes.
- The requirement for security clearance of company directors by the MHA (under the Grant of Authorisation Rules) should be reconsidered, as it is a time-consuming process. [Intimation to the Central Government to be completed within 15 days of the change taking effect].
- Ease of Doing Business should be enabled in case of Teleports by bringing operational efficiency. Requirement of uniform commercial principle cannot be viable across 'Teleport' customers. Similarly, commercials should be governed by the Teleport Service Provider only.
- The terms and conditions that existed during the assignment of spectrum should remain unchanged for the period of MIB permission.
- Infrastructure sharing between DTH/ Teleport/Telecom Operators should also be permitted in order to synergize the resources for effective utilization.
- Requirement of high net worth as a tighter financial norm should not be kept for service authorisations.

**In the following section, Airtel submits its counter comments on certain assertions made by some of the stakeholders in their submissions to the captioned consultation paper:**

1. Broadcasting services have deliberately been excluded from the regulatory ambit of the Telecommunications Act, 2023.
2. DTH License fee should not be reduced or abolished to avoid regulatory arbitrage in favour of DTH.

The aforementioned assertions are misconceived. We strongly oppose these arguments and seek to set the record straight. In this regard, please find our detailed response addressing each of these misguided concerns and substantiating our position.

## **1. Broadcasting services have deliberately been excluded from the regulatory ambit of the Telecommunications Act, 2023**

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### **Airtel's Response**

Airtel maintains that broadcasting services are encompassed within the scope of the Telecommunications Act, 2023. To support this position, the key definitions relevant to this conclusion are presented below:

The definition of '**telecommunication**' under the Telecommunications Act, 2023 is as under:

*(p) "telecommunication" means transmission, emission or reception of any messages, by wire, radio, optical or other electro-magnetic systems, whether or not such messages have been subjected to rearrangement, computation or other processes by any means in the course of their transmission, emission or reception;*

Further, the term "**message**" is defined as under:

*(g) "message" means any sign, signal, writing, text, image, sound, video, data stream, intelligence or information sent through telecommunication*

It is evident from the terms outlined above that they are sufficiently broad to encompass broadcasting within the definition of telecommunication. **Notably, the Telegraph Act, 1885 which previously governed broadcasting services and is set to be replaced by the Telecommunication Act, 2023 did not explicitly use the term "broadcasting" in its text, yet, its wide definition of "telegraph" covered the essential elements of what constitutes the fundamentals of broadcasting technology.**

The definition of "**telegraph**" under the Telegraph Act, 1885 is reproduced hereunder for ease of reference:

*"telegraph" means any appliance, instrument, material or apparatus used or capable of use for transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature by wire, visual or other electro-magnetic emissions, Radio waves or Hertzian waves, galvanic, electric or magnetic means;*

Much like the definition of "**telegraph**" in the Telegraph Act, 1885, the definition of "**telecommunication**" and "**message**" in the Telecommunications Act, 2023 is also expansive and inclusive in nature. This was deliberately done with the intent to provide a flexible definition that can accommodate the rapid advancements of technology. This approach allows for a comprehensive regulatory environment that is both forward-looking and grounded in historical precedence.

Additionally, the Government of India issued a Notification No. 39 dated 09 January 2004 whereby the scope of the expression '**telecommunication services**' (defined in Section 2(k) of the Telecom Regulatory Authority of India Act, 1997, as amended) was expanded to include the broadcasting services and cable services also.

It may also be noted that 'Broadcasting' has been categorized as a form of communication under *Entry 31 of List I of 7th Schedule of the Constitution of India*. This is also reflected in the definition of "broadcast" under the Copyright Act, 1957<sup>1</sup> and the Prasar Bharti (Broadcasting Corporation of India) Act, 1990<sup>2</sup>.

In light of the above, Airtel believes that broadcasting services fall under the definition of telecommunications, under the Telecommunications Act, 2023 given their extensive scope. While Airtel supports the concept of a unified legislative framework that encompasses both telecommunications and broadcasting services, we urge the Authority to carefully consider the following recommendations. These considerations are crucial not only for ensuring a level playing field but also for fostering a sustainable and thriving broadcasting sector:

**A. Digital Platforms (OTT) delivering broadcast content through broadband / mobile should be brought within the authorisation / licensing framework**

Digital Platform (OTT) delivering broadcast content through broadband / mobile provide the same content as provided by DTH operators to subscribers with no commensurate obligations of any kind. This results in the same content being made available on the same screen through a broadband pipe at unregulated prices and differential regulatory treatment. This approach against the basic premise of TRAI's endeavor to have a balanced regulatory framework.

These anomalies lead to risks such as exclusionary and discriminatory impact for subscribers who may not be able to access the same broadcast content on their choice of delivery medium. Therefore, to cope with the competitive constraint from unregulated platforms, there is a pressing need to bring about 'Regulatory parity' among all delivery platform operators. The Authority has recognized this issue, but no concrete steps have been taken till date. It is thus high time that these services were brought within the legal and regulatory framework.

As the digital landscape continues to evolve, a well-structured regulatory framework that includes Digital Platform (OTT) delivering broadcast content through broadband / mobile could help address future challenges more effectively. By proactively incorporating Digital Platform (OTT) delivering broadcast content through broadband / mobile provide into the authorisation regime, the government can ensure that the law remains adaptable and responsive to technological advancements as well as address the non-level playing field that has emerged between them and traditional distribution platform operators.

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<sup>1</sup> Section 2(dd) of Copyright Act, 1957

<sup>2</sup> Section 2 (c) Prasar Bharti (Broadcasting Corporation of India) Act, 1990

**Therefore, Airtel recommends the following:**

- (i) **Digital Platform (OTT) delivering broadcast content through broadband / mobile should be brought under the authorisation/licensing framework.**
- (ii) **Any platform which offers similar content as offered by the regulated distribution platform, should equally be brought under a similar regulatory regime – irrespective of technology – as per the principle of ‘Same Service – Same Rules’**

**B. Prasar Bharti's Traditional broadcasting and its OTT platform services – WAVES should be brought within the purview of the authorisation / licensing framework**

Today, DD Free Dish offers traditional linear broadcasting services similar to other DTH operators and also directly competes with them through its newly launched OTT platform, WAVES. Registered DPOs have consistently raised concerns about the anomalies in the licensing and regulatory treatment, which has created an anti-competitive environment and a non-level playing field for DTH operators.

**The Authority should seize the present opportunity to address these regulatory gaps by bringing Prasar Bharti within the ambit of the Authorisation / licensing framework in so far as the Broadcasting (Television Programming, Television Distribution and Radio) Service Rules should apply to them. This approach will promote a vibrant and inclusive broadcasting sector and ensure that the industry evolves in harmony with technological advancements and changing consumer preferences.**

**C. DoT should be designated the Nodal Ministry for all licensing requirements across access cum carriage platforms**

Today, access technologies are distributed under two ministries viz. MIB (DTH/Cable) and DoT (wireless and wireline broadband) This fragmented regulatory structure can lead to policy inconsistencies, increased compliance burdens for businesses, and ultimately, higher costs for consumers. A more unified approach would reduce duplication, streamline compliance, and ensure a more efficient regulatory environment for both operators and consumers.

**Therefore, Airtel recommends that:**

- (i) **The DoT should be assigned as the single department for all licensing requirements across access cum carriage platforms – Mobile, Broadband, Cable and DTH.**

- (ii) **The MIB should be retained as an umbrella body for all content regulation, management and appropriate censorship across all mediums with these platforms being covered under orderly rules to carry the same content.**

## **2. DTH License fee should not be reduced or abolished to avoid regulatory arbitrage in favour of DTH.**

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### **Airtel's Response**

Certain stakeholders have attempted to mislead the Authority by basing their entire argument on the false premise that fixed-line and mobile services are direct competitors of DTH operators. They argue that reducing or eliminating the DTH license fee would give DTH operators an unfair competitive advantage over fixed-line and mobile service providers, based solely on the isolated premise that spectrum for DTH is assigned administratively, while for the others, it is auctioned.

We submit that both the premise i.e. fixed and mobile are direct competitors to DTH, as well as both use spectrum wherein DTH is assigned administratively – hence should be auctioned; are fallacious. There is no substance whatsoever in these convoluted points raised for the sake of it.

First of all, the respondent conveniently overlooks the fact that DTH services are functionally, technically - hence fundamentally different from both fixed-line and mobile services. More importantly, they belong to distinct sectors and do not compete in any manner. While DTH is one-way broadcast service, the mobile and fixed-line services is two-way communication. Therefore, the suggestion that reducing the DTH license fee would create an unfair competitive edge for DTH operators is completely unfounded.

The argument to auction the DTH spectrum because it is assigned administratively is also incorrect. **This debate of assigning spectrum for broadcast services like DTH, Teleports has been decisively settled in the Telecommunications Act, 2023** as they have been clearly included under part of Schedule-1 of the Act which lists services to be assigned spectrum on admin basis. **Secondly**, as stated in preceding para, there is no competition hence comparison between fixed & mobile services, and DTH service is untenable.

It is also absolutely clear from section 5(a)(iii) of the Telecommunications Act, 2023 that, where spectrum cannot be assigned on exclusive basis and due to technical or economic reasons, it will be assigned administratively. This principle holds true and well for DTH, Teleport spectrum as well since the spectrum being used for these broadcast services is a shared resource i.e. the same spectrum is used by multiple users.



Hence, we believe that the argument to auction the DTH / Teleport spectrum lacks merit, is inconsistent with the Telecommunications Act, 2023, and is not technically logical.

This misconceived argument will only distort the larger ‘public good’ of broadcasting services, which are the fundamental and crucial mode of information dissemination to citizens / public at large.

Aside, it is also important to recognize that the primary goal of any regulatory change should be to promote the long-term sustainability of the broadcasting sector, as a whole. Overburdening one segment (i.e. DTH) with excessive fees while offering lighter regulation to others (e.g. Cable TV, OTTs) – where both operate in the same service market - will create market imbalances and a non-level playing field. Therefore, the government should take a balanced approach that promotes innovation across all areas of broadcasting and encourages innovation, without placing undue regulatory or financial burdens on any segment.

In this context, it is important to set the record straight. As a matter of fact, contrary to what is being portrayed, the DTH industry is actually struggling under severe financial pressure, pushing it to the brink of collapse. The Authority, in its Recommendations on “**License Fee and Policy Matters of DTH Services**” observed that *the license fee, entry fee and bank guarantee levied on DTH operators have been of the highest order amongst all the stakeholders of the broadcasting and cable fraternity. In fact, in the television broadcasting sector, license fee is applicable only on the players of the DTH sector.*

This creates a non-level playing field and is discriminatory & against the basic premise of government’s endeavor to have a balanced regulatory framework. **No License Fee is being paid by other competitors of DTH Operators, such as Cable and HITS operators, despite providing the same set of service to the same market.** The differential regulatory approach can be understood through the following table:

Mode of Content delivery / access (e.g Content is a Live Channel / Sports)	Content rides on (underlying bearer)	Is Mode regulated (Y/N) – Need License or Registration	Pays License Fee (Y/N)	Tariffs Regulated (Y/N)	Licensed under & regulated by (for access & carriage)
DTH	Satellite & Dish	Yes (License)	Yes (8%)	Yes	MIB & TRAI
MSOs / Cable TV	Satellite / Dish & Cable / Fiber	Yes MSO (License);	No	Yes	MIB & TRAI



		Cable (Registration)			
<b>IPTV</b>	Fiber	Yes (License)	Yes** (8% / 0%)	Yes	DoT/MIB &TRAI
<b>HITS</b>	Satellite / Dish & Cable / Fiber	Yes (License)	No	Yes	MIB & TRAI
<b>DD Free Dish</b>	Satellite & Dish	No	No	No	Under Prasar Bharti Act (no TRAI regulation apply on it)
<b>Broadcast content being delivered over broadband through an application</b>	Highspeed broadband (Wireless / Wireline)	No	No	No	No

In this regard, the Authority, in its Recommendations highlighted the disparity as under:

- a. **Disparity with other DPOs:** While DTH operators are required to pay license fee at the rate of 8% of AGR, other DPOs, including HITS and MSOs, are not required to pay any license fee.
- b. **Disparity among DTH operators:** There exists an imbalance within the DTH sector itself. Public Broadcaster's free DTH service, DD Free-dish is exempted from paying any license fees. With around eighty private television channels, it is providing an option to the low paying consumers to migrate to free services.
- c. **Disparity with other emerging unregistered platforms providing same content through broadband:** Over-the-Top (OTT) content platforms, that offer linear broadcast content through wireline & wireless broadband, are not subject to any licensing provisions and regulatory framework.
- d. **Disparity with the Broadcasters:** In contrast to DTH providers, broadcasters/ teleport operators are paying only a fixed annual amount for uplinking/ downlinking, which is not linked to their revenue.

The Authority was, therefore, of the view that DTH sector should be treated similar to other distribution platforms in terms of license fees. This may also, in addition to bringing parity and establishing level playing field, yield benefits including enhanced quality of service, innovation, ease of doing business, enhanced coverage due to investment boost, etc.

Further, the Authority also observed that in the case of telecom, the annual License Fee rate of 8% is inclusive of USO levy of 5%. Thus, the actual License Fee rate for telecom is 3% and not 8%. The funds of USO levy come back to the Telecom Service Providers through subsidy granted for participation in eligible projects. However, since DTH does not form part of USO, this levy is disproportionate even if compared with telecom services.

**In light of the above observations, TRAI duly acknowledged the need for establishing a level playing field in its Recommendations on “License Fee and Policy Matters of DTH Services”<sup>3</sup>, and recommended, inter-alia, the following:**

- a. Reduce DTH license fee from 8% to 3% immediately and then to zero by FY 2026-27.**
- b. GR, ApGR and AGR for DTH licensees have been defined on the same lines as prescribed by Cabinet for telecom sector.**
- c. Reduce Bank Guarantee exposure for DTH Industry.**

**However, these Recommendations have not been incorporated into the recent Draft DTH License. Therefore, the inclusion of these recommendations in the Draft Rules is a welcome step by the Authority.**

Both telecom and DTH licences are granted under Section 4 of the Telegraph Act and for all satellite spectrum-related aspects. DTH operators deal only with the DoT. However, the DTH licence is governed by the MIB. **The DoT has recently carried out certain amendments in the Unified License in order to exclude non-telecom revenue (including revenue from DTH) from the definition of AGR. However, no parallel change has been brought about in the DTH license regime by the MIB** although the DTH license is issued under section 4 of Telegraph Act and the LF is paid there also on the AGR basis.

**Therefore, our primary recommendation is to do away with the requirement of license fee payment in DTH services. However, in the interim, there is an urgent need to review the definition of revenue for DTH services, rationalization of levies and the bank guarantees, to reduce the financial burden on the sector and help in the proliferation of DTH services and help the industry both in the short and the long run.**

Another unjust financial burden on DTH operators is the requirement to pay a license fee on revenue that is in the nature of pass-through, as well as income from activities unrelated to the license, including, but is not limited to, content fees received on behalf of broadcasters. This broad

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<sup>3</sup> [https://www.trai.gov.in/sites/default/files/Recommendation\\_21082023\\_0.pdf](https://www.trai.gov.in/sites/default/files/Recommendation_21082023_0.pdf)

and unfair taxation places an undue strain on DTH operators, further exacerbating their financial challenges.

DTH operators merely collect and pass on the broadcaster's revenue and the NTO clearly delineates the revenue streams between DTH operators and broadcasters. **It is reiterated that DTH operators earn revenue from distribution margins and network charges (NCF), while content subscription fees belong entirely to the broadcasters. Thus, in case License Fees is to be levied on Content Revenue, the same should be levied in the hands of Broadcasters directly.**

**To resolve this issue while ensuring the exchequer does not face any losses, it is proposed that all broadcasters, whether satellite-based, ground-based or otherwise, should be subject to license fee based on their revenue generation on a "pay-as-you-grow" model subject to a minimum License Fees of 10% of entry fee. This approach will not only promote fairness and consistency across the industry but also ensure that smaller broadcasters are liable to pay manageable fees while larger operations contribute more proportionally.**

We remain hopeful that TRAI will consider our submissions alongside our referenced response to the consultation paper.