



Telecom Regulatory Authority of India



Consultation Paper
on
Issue/Extension of DTH Licence

New Delhi: October 1, 2013

MahanagarDoorsancharBhawan
Jawaharlal Nehru Marg
New Delhi- 110 002

Written comments on the consultation paper are invited from the stakeholders by 15th October 2013. The comments may be sent, preferably in electronic form to Mr. Wasi Ahmad, Advisor (B&CS), Telecom Regulatory Authority of India, MahanagarDoorsancharBhawan, JawaharLal Nehru Marg, New Delhi - 110002, (Tel No.011-23237922, Fax No.011-23220442; Email: traicable@yahoo.co.in, advbcs@traigov.in). Comments will be posted on the TRAI's website www.traigov.in.

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Introduction

Background

- i. Direct-to-Home (DTH) broadcasting service was opened up in the country in 2001. On 15th March, 2001, the Government issued the 'Guidelines for obtaining licence for providing Direct-to-Home (DTH) broadcasting service in India' (hereinafter referred to as 'DTH Guidelines'). These guidelines, inter alia, prescribe the eligibility criteria, the procedure for obtaining the licence to set up and operate DTH services in the country, and the basic terms and conditions/obligations reposed in the operators.
- ii. A company desirous of operating DTH services has to apply in the prescribed form to the Ministry of Information and Broadcasting (MIB). MIB, after checking that the company meets the eligibility conditions, obtains the security clearance from the Ministry of Home Affairs (MHA) and clearance for usage of satellite from the Department of Space (DoS). Once the clearances are obtained, the company is asked to pay the entry fee of Rs. 10 crore. On payment of the entry fee, MIB communicates its intent to the company to issue a licence. Next, the company has to approach Wireless Planning and Coordination (WPC) for SACFA¹ clearance. Once the SACFA clearance is obtained, the company has to give a bank guarantee of Rs. 40 crore and sign the licence agreement with MIB. After this, the company has to apply to WPC for obtaining the Wireless Operating Licence (WOL). The duration of the DTH licence is 10 years from the date of issue of the WOL. Licences to establish, maintain and operate the DTH platform are granted under Section 4 of the Indian Telegraph Act 1885, and the Indian Wireless Telegraphy Act, 1933.
- iii. Presently, there are six pay DTH operators in the country. M/s ASC Enterprises (now M/s Dish TV India Ltd) was the first DTH licensee which got the WOL for starting its DTH services on 1st October 2003. The other five DTH operators got the WOLs during 2006 to 2008. The first DTH licence was due to expire on 30th September 2013. The DTH Guidelines are silent on the course of action to be adopted after expiry of the 10 year licence period.

¹ SACFA : Standing Advisory Committee for Frequency Allocation

The present reference

- iv. The Ministry of Information and Broadcasting (MIB), through D.O. letter No. 8/3/2013-BP&L dated 3rd September 2013 (Annexure-I), sought the recommendations of TRAI, under section 11(1)(a)(ii) of the TRAI Act, 1997, on certain terms and conditions for extension of the period of DTH licences, including an interim arrangement, since the first licence was due to expire on 30th September 2013. In this regard, the Ministry sought recommendations of TRAI on the following issues:
- a) Whether the entry fee of Rs. 10 crore is required to be paid again by the DTH company for the extension of the validity period of the DTH licence? If not, then whether no entry fee is required or a modified entry fee is required to be levied. In case of requirement of modified entry fee, what should be the amount of entry fee?
 - b) Whether the period of extension of validity of DTH licence should be for another period of 10 years?
 - c) Whether the bank guarantee of Rs. 40 crore is to be renewed for the entire period of the licence again on extension of validity period of licence?
- v. The Authority has to follow a public consultative process before giving its recommendations. The time left before the due date of expiry of the licence period for the first licensee was simply not sufficient for TRAI to follow the due consultation process. Since protection of the interests of consumers is one of the mandates of TRAI, and keeping in view the large subscriber base of the said licensee, TRAI responded to the MIB reference by suggesting some interim measures through letter No. 24-01/2013 B&CS dated 11th September (Annexure II) to the Government. It was suggested that, in the interim, MIB may consider allowing the said DTH licensee to continue its operations/services on the existing terms and conditions subject to the following:
- a. The said DTH operator shall renew the existing bank guarantee.
 - b. The Government shall take a suitable undertaking from the said DTH operator to ensure that once the final policy in this regard is laid down by the Government, the said DTH operator will comply with that policy for the interim period also. Any financial obligations arising from the change in policy shall also be honoured.

- vi. The existing DTH Guidelines provide for the issue of a licence for 10 years. They do not explicitly provide for an extension or a renewal, implying that at the end of the 10-year period of validity, the licence expires.
- vii. While the Guidelines may be silent on the provision of an extension or a renewal, surely it could not be possibly the intent of policy to effectively disallow existing licence holders from continuing their business beyond the initial licence period of 10 years. Starting a DTH business entails a huge investment of resources. It would, therefore, be a reasonable expectation on the part of DTH licencees that, on the expiry of the initial 10 year licence, they would be eligible to apply for issue of a new licence so that they could continue their business.
- viii. Since MIB has sought the recommendations of TRAI on certain aspects, as outlined at(iv)above, for extension of the validity period of DTH licence, it is presumed that other than these aspects, MIB has already examined the terms and conditions of licence agreement and intends to continue with the same. Accordingly, in the present consultation, only those issues are being taken up which have been specifically referred by MIB to the Authority.
- ix. Chapter I of the consultation paper discusses various aspects pertaining to the issues raised in the said MIB reference and brings out the issues for consultation, seeking comments of stakeholders. A summary of the issues for consultation is contained in Chapter II.

Chapter I

Analysis of issues under consultation

- 1.1 The eligibility criteria, basic terms and conditions/obligations cast upon the operators, and the procedure for obtaining the licence to set up and operate DTH services in the country etc. have been specified in the Schedule to Form B (Annexure III) of the 'DTH Guidelines'. The issues raised in the MIB reference dated 3rd September 2013, are discussed in succeeding paragraphs.

Entry fee

- 1.2 DTH Guidelines prescribe the entry fee within the definition of the licence fee as under:

"3.1 The Licensee shall pay an initial non-refundable entry fee of Rs.10 crores before the issue of letter of intent to him by Licensor, and, after the issue of the Wireless Operational License by the Wireless Planning and Coordination (WPC) Wing of the Ministry of Communications, an annual fee equivalent to 10% of its gross revenue in that particular financial year within one month of the end of that year."

- 1.3 Before analysing the issue pertaining to charging of entry fee and its quantum, it is important to discuss the objective/rationale behind the charging of an entry fee. The concept of levying an entry fee has been discussed in various consultation papers and recommendations of TRAI, issued at different points of time. Relevant portions of these consultation papers/recommendations are reproduced below:

- i. Consultation Paper on Issues Related to Entry Fee and Annual Licence Fee for ISP Licence with Virtual Private Network (VPN) dated 24th June 2005:

“

....

5.2.1 The entry fee and annual licence fee for providing a service are normally determined with a view to attract new players, deter non-serious players and based upon the revenue generation capability, market size of a particular service and the number of likely players to obtain the licence for that service. Also, the

level playing field between the providers of similar or substitutable services have to be kept in mind.

5.2.2 While addressing the issue of level playing field, various parameters, like eligibility, entry fee, Annual licence fee (% revenue share), performance bank guarantee are to be considered.

5.2.3 The licence fee payable for any licence has a fixed component and a variable component.

5.2.4 Fixed component of a licence fee regime is normally operated as an entry fee to establish the bonafide of prospective service providers, and to act as the barrier for keeping out non-serious fly-by-night entities (with inadequate stakes) from entering the sector. Ideally, the entry fee should ensure elimination of non-serious players only and to meet the cost of inducting a service provider. It should also take into account the value of resources a licensee gets from Govt. by virtue of its license.

*.....
"*

ii. Consultation Paper for phase II of FM Radio dated 14th April 2004:

"

....

Entry fees are a onetime fees imposed by the Government to allow entry into the market and / or allocate licenses under competitive situations. Entry fees structure is normally linked to the competition strategy and policy objectives that the licensing system intends to sub-serve. It may relate to:

- eliminating non serious players through entry barriers;*
- mopping up rents expected to accrue especially in a market situation with limited competition;*
- raising resources for the budget;*
- regulating scarce resources to which the service roll out is linked; and/or*
- recovering the cost of administering the license from the service providers.*

In case of FM Radio, there were no entry fees. However, entry was decided through a bid on the amount of license fees to be paid. In other sectors such as telecommunications, entry fee is separate from license fee. Entry fees in telecom are one-off fees to meet the above objectives of deterring non-serious players or deciding on an applicant through a competitive mechanism.

*....
"*

- iii. Recommendations on the Headend-in-the-Sky (HITS) dated 17th October 2007:

“

....

2.49 It is advisable and also in consumer's interest not to have non-serious player in the market when the issue is offering services at all-India level. Since HITS is a pan-India operation, the entry fee is one such measure which will act as a deterrent for a non serious player. The Authority is of the firm view that since HITS operations will be country-wide, there should be an entry fee and the amount of entry fee should be atleast equal to the entry fee of DTH operation which is also an all India operation.

...

2.51 The Authority is of the view that the entry fee for HITS operation should be Rs.10 crores. However, there should not be any annual fee for HITS operation in order to ensure its financial viability and to ensure that it can compete effectively both with DTH and the terrestrial MSOs. This will lead to quick digitalisation of cable services.

....

“

- iv. As per the Guidelines for providing Headend-in-the-Sky (HITS) Braodcasting Service in India, an applicant is required to pay a non-refundable entry fee of Rs. 10 crore. However, no annual fee is required to be paid by the operator.
- v. In the Recommendations on restructuring of cable TV services dated 25th July 2008, TRAI had opined that entry fee should be such as to restrain non-serious player from entering into this field. At the same time, the entry fee should not be so high that it becomes a barrier for existing operators.
- vi. Recommendations on Guidelines for Unified Licence/Class Licence and Migration of Existing Licences dated 16thApril 2012

“

....

2.24. Another view was that the concept of entry fee is generally applicable for new entrants, who plan to secure a particular license for the first time or those who plan to add additional services under the scope of current licenses. Therefore, it was contended that one time entry fee for new entrants in Unified License (UL) should be charged to cover the cost of administering and monitoring the Licences granted from time to time and also to deter non-serious players from taking the Unified Licence. It was further contended that the existing UASL should not be required to pay any additional charge / fee for migration to UL.

2.26. The Authority has examined the views expressed by various stakeholders and has decided to revise the entry fee proposed in the draft guidelines downwards. Accordingly, the Authority recommends a uniform one-time non refundable Entry fee of Rs. One crore for all service areas except Jammu & Kashmir and North East service areas where it will be Rs. Fifty lakh. For National level Unified Licence and District level Unified Licence, the Entry fee will be Rs. Fifteen crore and Rs. Ten lakh respectively. The Authority also agrees with the suggestion that the concept of different categories of service areas is no longer relevant. Accordingly, the distinction between service areas is proposed to be done away with.

....
”

- vii. In the Licence Agreement for the Unified License, issued on 2nd August 2013, the following provision has been made regarding charging of arenewal fee on renewal of a licence:

“
....

4.2 On renewal, the Licensee may be required to pay a renewal fee as may be notified by the Licensor.

...”

- 1.4 From the above discussions in different consultation papers and recommendations of TRAI, it can be seen that, generally, the purpose of levying an entry fee could be one or more of the following:

- i. to deter non-serious players;
- ii. to account for the cost of induction of a service provider in the sector;
- iii. to account for the fixed component of the overall licence fee;
- iv. to account for the cost of administering the licence.

As regards the quantum of entry fee, one of the factors that needs to be kept in mind is the importance of a level-playing field between the providers of similar or substitutable services. However, the quantum of the entry fee should be determined based on the rationale for levying the same.

- 1.5 In the DTH Guidelines, the entry fee has been prescribed under the head of ‘license fee’. So, there can be a view that the entry fee is the fixed component of

the licence fee and hence it needs to be levied at the time of issue of a new DTH licence. In case an entry fee is to be levied, its quantum also needs to be determined. One way for determining the quantum of the entry fee could be to link it with the duration of the licence viz. the period of validity of the licence.

- 1.6 Another view could be that, if the entry fee levied at the time of granting the DTH licence was solely to judge the seriousness of the entities seeking the DTH licence and to cover the cost of inducting of a service provider, then at the time of issue of a new licence to an existing licensee, the entry fee ought not to be levied as the DTH operator had already proved its bonafides in the sector and the cost of inducting a service provider is not a recurring cost to the licensor.
- 1.7 As per the data provided by the DTH operators, the two leading DTH operators, who are in the DTH business for over 7 years, have paid an annual licence fee of Rs. 112 crore and Rs. 121 crore for the year 2012-2013, and, till date, they have paid Rs. 354 crore and 372 crore as licence fee to the Government. Since the entry fee of Rs.10 crore paid by an existing DTH operator is quite small as compared to its recurrent payment in the form of annual licence fees paid during the licence period of 10 year licence period, there could be a view that existing DTH operators may not be asked to pay the entry fee again at the time of issue of a new licence; however, for the sake of parity, entry fee should continue to be levied on new players who seek licences for the first time.
- 1.8 DTH operators have, time and again, advanced the argument that it is important to maintain a level-playing field between providers of similar or substitutable services, especially services provided by MSOs through DAS. In this context, DTH operators have pointed out that various levies imposed by the Government, on DTH operators are not levied on the operators of DAS.
- 1.9 **Apropos the above, the issues for consultation are:**
- i. Should an entry fee be charged at the time of issue of a new licence to the existing DTH licensees?**
 - ii. In case an entry fee is to be charged, what should be the quantum of such entry fee?**

Please elaborate your response with justification.

Period of new licence to the existing DTH licencees

1.10 For deliberating on the issue of the period of a new licence to existing DTH licencees, it would be prudent to review the relevant provisions, on the subject, that have been made in other segments of the broadcasting sector.

i. Policy Guidelines for Downlinking of TV channels dated 11th November 2005, as amended:

“

3.1. The Permission granted to a company to downlink channels, uplinked from other countries, into India under these guidelines shall be valid for a period of 10 years from the date of issuance of permission. The Registration granted to such channels under these Guidelines shall also be valid for a period of ten years.

3.2. The Registration granted under these Guidelines to channels uplinked from India shall also be valid for a period of 10 years and shall be co-terminus with the uplinking permission of the channel.

....

....

....

9. RENEWAL OF EXISTING PERMISSIONS / REGISTRATION

9.1. The existing permission holders as on the date of issuance of the amended Guidelines on 05.12.2011 will continue to be governed by the terms and conditions of permission as they existed prior to the issuance of amendments on 05.12.2011 till the expiry of such permission.

9.2. Renewal of permission/ registration will be considered for a period of 10 years at a time, subject to the condition that the company/ channel should not have been found guilty of violating the terms and conditions of permission including violations of the programme and advertisement code on five occasions or more. What would constitute a violation would be determined in consultation with the established self-regulating mechanisms.

9.3. The renewal will also be subject to the permission/ registration holder's acceptance of all of the terms and conditions of permission as the Government may prescribe by way of policy pronouncements from time to time.

9.4. *At the time of considering the renewal of permission/ registration of the existing permission holders, the eligibility criteria of net worth of the company and experience of the top management will not apply. However, other terms and conditions would be applicable as per modified terms and conditions of the permission.*

...
”

In the Guidelines for uplinking of television channels from India, similar provisions have been made regarding the renewal of permission.

ii. FM Radio Policy (Phase III) dated 25th July 2011

“3.1 The Permission shall be valid for a period of fifteen (15) years from the effective date as defined below. There shall be no extension and the Permission, unless cancelled or revoked earlier, shall automatically lapse and expire at the end of the aforesaid fifteen years’ period and the Permission Holder shall thereafter have no rights whatsoever to continue to operate the Channel after the date of expiry of the Permission. Government at the appropriate time shall determine procedure for issue of fresh permissions.”

iii. In the Licence Agreement for Unified License, issued on 2nd August 2013, which prescribes a licence period of 20 years, following provision has been made:

“4. Renewal of License:

4.1 The Licensor may renew, if deemed expedient, the period of License by 10 years at one time, upon request of the Licensee, if made during the 19th year of the license period, on the terms specified by the Licensor, subject to extant policy. The decision of the Licensor shall be final and binding in this regard.

...”

- 1.11 There could be different views on the question of the duration of the period of anew licence to be issued to existing DTHlicencees. One view could be that this period should not be so short that it creates uncertainty in the operators’ business model and inhibits futuristic business planning. This could result in reluctance on the part of the operator in deploying new technologies or undertaking long-term capacity enhancement. Such a move could be detrimental to the interests of consumers as the benefit of new technologies and innovations would be denied.

Investors, both, foreign and domestic, may want a certain minimum period which is not too low. Another viewpoint could be that too long a licence period may not be the right approach from a policy perspective. Broadcasting is a sector where both technology and consumer demands for service are fast-changing. These have to be appropriately reflected in the policy framework in a periodic manner to ensure effective growth of the sector. Therefore, it could be argued that the licence period should not be too long. The two viewpoints have to be judiciously balanced while looking at the licence period of new licences to be issued to existing DTH licencees.

1.12 Presently, we have a situation where the DTH Guidelines do not have an explicit provision for extension/renewal. A similar situation should not arise when the new licences expire. So, it would be appropriate to incorporate, in the DTH Guidelines, a provision that indicates the period of extension/renewal and the procedure to be followed in future for the extension/renewal of the DTH licences on their expiry. The licensor should have the flexibility to modify the terms and conditions for extension/renewal of the licence.

1.13 **Apropos the above, the issues for consultation are:**

- i. What should be the period of the DTH Licences to be issued to existing DTH licencees on the expiry of the licence period of 10 years?**
- ii. What should be the period of extension/renewal of the licences, to be prescribed in the DTH Guidelines, for the extension/renewal of the new DTH licences on their expiry?**

Please elaborate your response with justification.

Period of bank guarantee

1.14 As per the DTH Guidelines, the provisions regarding the bank guarantee are as under:

"4.1 The Licensee shall, within one month of issual of SACFA clearance by W.P.C., submit to the Ministry of I & B, a Bank Guarantee from any Scheduled Bank in Form-C for an amount of Rs.40 crores valid for the duration of the license.

4.2 The Licensor shall be at liberty to encash the Bank Guarantee in full or part in the event of non-payment of the license fee or violation of any of the license condition."

1.15 The bank guarantee is a safeguard against non-payment of licence fee and violation of licence conditions by the licensee. This is why the quantum of the bank guarantee gets linked to the amount of licence fee to be paid by the licensee. As per the present licence agreement, licence fee is paid annually after the end of the financial year. In this setting, the quantum of the bank guarantee ought to be equal to the licence fee paid by the operator during the previous financial year.

1.16 From the above stipulations in the DTH guidelines, it is clear that the bank guarantee is also to act as a performance guarantee for compliance by the DTH licensee with the licence conditions. Accordingly, as regards the validity of the bank guarantee, one logical view could be that the bank guarantee should be renewed and should have the validity which covers the entire period of the new licence issued to the existing DTH licensees.

1.17 **Apropos the above, the issue for consultation is:**

- i. **What should be the quantum and the validity period of the bank guarantee to be furnished by an existing DTH licensee on the issue of a new licence?**

Please elaborate your response with justification.

1.18 Similarly, certain modifications have to be carried out in the DTH Guidelines and the licence agreement to reflect the policy changes that have taken place since 2001. Significant among them being the broadcasting sector coming under the purview of TRAI/TDSAT, in 2004. Accordingly, the references to regulator, arbitrator etc. would have to be suitably modified. The issue of the annual licence fee is presently sub-judice. Any judicial pronouncements in this regard have to be appropriately reflected.

Chapter II

Summary of Issues for Consultation

- 2.1 **Should an entry fee be charged at the time of issue of a new licence to the existing DTH licencees?**
In case an entry fee is to be charged, what should be the quantum of such entry fee?
- 2.2 **What should be the period of the DTH Licences to be issued to existing DTH licencees on the expiry of the licence period of 10 years?**
- 2.3 **What should be the period of extension/renewal of the licences, to be prescribed in the DTH Guidelines, for the extension/renewal of the new DTH licences on their expiry?**
- 2.4 **What should be the quantum and the validity period of the bank guarantee to be furnished by an existing DTH licencee on the issue of a new licence?**
- 2.5 **Any other relevant issue you would like to comment upon.**

Please elaborate your responses with justification.

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GOVERNMENT OF INDIA
MINISTRY OF INFORMATION & BROADCASTING
SHASTRI BHAWAN, NEW DELHI - 110001

D.O. No.8/3/2013-BP&L

3rd September, 2013

Dear Mr Khullar,

As you are aware, the "Guidelines for obtaining license for providing Direct-to-Home (DTH) broadcasting service in India" were issued on 15.03.2001. The Ministry has so far granted licenses to six companies to operate DTH services in the country. The first DTH license was granted to M/s Dish TV India Pvt. Ltd. on 16th September, 2003.

2. As per clause 2.1 of Article 2 of DTH guidelines, DTH license is valid for a period of 10 years from the date of issue of Wireless Operational License to the DTH operators. The validity period of license of DTH operation of 10 years of one of the licensees is coming to end on 30th September, 2013.

3. The Guidelines for DTH License are silent on the course of action to be adopted after expiry of 10 years. In this regard, following issues entail consideration of the Authority:

- Whether the entry fee of Rs.10 crores is required to be paid again by DTH Company for the extension of validity period of DTH license? If not, then whether no entry fee is required or a modified entry fee is required to be levied. In case of requirement of modified entry fee, what should be the amount of entry fee?
- Whether the period of extension of validity of DTH license should be for another period of 10 years?
- Whether the bank guarantee of Rs.40 crores is to be renewed for the entire period of the license again on extension of validity period of license?

4. In case the recommendations of the Authority take time, the Ministry may be advised as to what should be the interim arrangement for continuation of services of M/s Dish TV India Pvt. Ltd. beyond September, 2013.

5. The Authority may furnish its recommendations as per Section 11(1)(a)(ii) of the TRAI Act, 1997.

Best regards,

Yours sincerely,


(BimalJulka)

Shri Rahul Khullar
Chairman
Telecom Regulatory Authority of India (TRAI)
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Jawaharlal Nehru Marg (Old Minto Road)
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सत्यमेव जयते

राजीव अग्रवाल, भा.दू.से.

RAJEEV AGRAWAL, I.T.S.

सचिव/Secretary

भारतीय दूरसंचार विनियामक प्राधिकरण

महानगर दूरसंचार भवन, जवाहर लाल नेहरू मार्ग,

(पुराना मिनटो रोड) नई दिल्ली-110002

TELECOM REGULATORY AUTHORITY OF INDIA

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F. NO. 24-01/2013-B&CS

Dated 11th September, 2013

Sh. Bimal Julka,
Secretary,
Ministry of Information and Broadcasting,
'A Wing', Shastri Bhawan,
New Delhi -110001.

Sub:Extension of DTH licence period - reg.

Dear Sh. Julka,

Please refer to your D.O. letter No. 8/3/2013-BP&L dated 3rd September 2013, addressed to Chairman, TRAI, wherein the Ministry of Information and Broadcasting (MIB) has sought recommendations of TRAI on certain terms and conditions for renewal of DTH licences, including an interim arrangement, since the first licence is due to expire on 30th September 2013.

2. Surely, MIB was well aware that the DTH licences would start expiring from 30th September 2013 onwards. What is more, we are given to understand that the first DTH licensee, M/s Dish TV India Ltd., has been pursuing the case for renewal of their licence with the Ministry since April 2013. However, MIB chose to refer the matter to TRAI only in September 2013 and that too less than 4 weeks before the first licence is due to expire. MIB knows full well that TRAI has to follow an exhaustive public consultative process before giving its recommendations. The time left now is simply not sufficient for TRAI to conduct full consultation process and give its recommendations by 30th September 2013.

3. Protection of the interests of the consumers is one of the mandates of TRAI. Accordingly, considering the large subscriber base of the said licensee, the Authority is of the view that, during the interim period, MIB may consider allowing the said DTH licensee to continue its operations/services on the existing terms and conditions subject to the following:

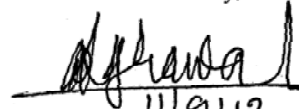
- a. The said DTH operator shall renew the existing bank guarantee.
- b. The Government shall take a suitable undertaking from the said DTH operator to ensure that once the final policy in this regard is laid down by the Government, the said DTH operator will comply with that policy for the interim period also. Any financial obligations arising from the change in policy shall also be honoured.

4. In accordance with provisions of the TRAI Act 1997, we shall start the consultation process immediately. However, it will take time before a consultation paper is released for stakeholders comments.

5. As per the practice, a copy of this letter is being placed on the website of TRAI www.trai.gov.in

With best regards,

Yours faithfully,



11/9/13
(Rajeev Agrawal)

SCHEDULE TO FORM - B

TERMS AND CONDITIONS

ARTICLE-1

ELIGIBILITY CONDITIONS

1.1 *The Licensee company shall be an Indian company, registered under the Indian Companies Act, 1956.*

1.2 *The total Foreign Investment, including FDI/NRI/OCB/FII in the paid up equity of the Licensee Company, shall not be more than 49%.*

1.3 *The FDI component of the foreign equity in the total paid up equity of the Licensee company shall not exceed 20%.*

Explanation : The quantum represented by that proportion of the paid up equity share capital to the total issued equity capital of the Indian promoter Company, held or controlled by foreign investors through FDI/NRI/OCB investments, shall form part of the above said FDI limit of 20%.

1.4 *The Licensee shall not allow Broadcasting Companies and/or Cable Network Companies to collectively hold or own more than 20% of the total paid up equity in its company at any time during the License period. The Licensee shall submit the equity distribution of the Company in the prescribed proforma (Table I and II of Form-A) once within one month of start of every financial year. The Government will also be able to call for details of equity holding of Licensee company at such times as considered necessary.*

1.5 *The Licensee company not to hold or own more than 20% equity share in a broadcasting and/or Cable Network Company. The Licensee shall submit the details of investment made by the Licensee company every year once within one month of start of that financial year. The Government will also be able to call for details of investment made by the Licensee company in the equity of other companies at such times as considered necessary.*

1.6 *The applicant company shall always have Indian management control with majority representatives on the Board, as well as the Chief Executive of the company being a resident Indian citizen.*

1.7 *Any change in the equity structure of the Licensee Company as well as amendment to shareholders agreement, wherever applicable, shall only be carried out in consultation and with prior approval of Licensor.*

ARTICLE-2
TERM OF LICENSE

2.1 *The validity period of License shall be ten (10) years, on non-exclusive basis, and shall be reckoned from the date of issue of Wireless Operational License by the WPC, unless terminated earlier for default or for insolvency or for convenience or for transfer of the License.*

2.2 *The license shall not be transferred without prior approval of the Licensor.*

ARTICLE 3
LICENSE FEE

3.1 *The Licensee shall pay an initial non-refundable entry fee of Rs.10 crores before the issue of letter of intent to him by Licensor, and, after the issue of the Wireless Operational License by the Wireless Planning and Coordination (WPC) Wing of the Ministry of Communications, an annual fee equivalent to 10% of its gross revenue in that particular financial year in the manner detailed hereunder.*

3.1.1 *Gross Revenue for this purpose would be the gross inflow of cash, receivable or other consideration arising in the course of ordinary activities of the Direct to Home [DTH] enterprise from rendering of services and from the use by others of the enterprise resources yielding rent, interest, dividend, royalties, commissions etc. Gross revenue shall, therefore, be calculated, without deduction of taxes and agency commission, on the basis of billing rates, net of discounts to advertisers. Barter advertising contracts shall also be included in the gross revenues on the basis of relevant billing rates. In the case of licensee providing or receiving goods and service from other companies that are owned or controlled by the owners of the licensee, all such transactions shall be valued at normal commercial rates and included in the profit and loss accounts of the licensee to calculate its gross revenue.*

3.1.2 *Every licensee shall maintain separate financial accounts for the channel, which shall be audited by the Statutory Auditors. At the end of each financial year, the company shall provide the statement of gross revenue forming part of the final accounts of the licensee as per the format in Form D, duly certified by the Statutory Auditors. It may be noted that the income heads specified in Form D are only indicative and illustrative and the Auditor would include all the relevant heads qualifying for gross revenue whether or not specifically included in the said format. In addition, the income from the Related Parties shall have to tally with the Related Parties schedule as per Accounting Standards no. 18. Besides, the*

company shall disclose the following information at the end of each financial year, duly certified by the Statutory Auditor.

Total trade and other discounts.

Total agency commission.

Total Related party transaction.

3.1.3 So as to verify that the Gross Revenue is correctly disclosed to it, the Government of India shall have the right to get the accounts of any licensee audited by CAG or any other professional auditors at its discretion. In case of difference between the Gross Revenue determined by the Statutory Auditors and the Government appointed auditors, the views of the government appointed auditor, subject to opportunity of hearing to the licensee shall prevail and the expenses on such audit shall be borne by the licensee.

(Clauses 3.1.1 to 3.1.3 Added by Oredr No. 8/12/2006-BP&L dated 31st July 2006)

3.1A.1 The First payment of Annual license fee for the financial year (FY) shall be made on the basis of provisional accounts for the FY certified by the Statutory Auditors, within one month of the end of that FY.

3.1A.2 Annual License fee for the FY shall be finally determined on the basis of final annual accounts of the FY audited by the Statutory Auditors, which shall not be later than 30th September of the following FY. If the amount so determined is found to be higher than the amount already deposited as per clause 3.1A.1, the difference amount along with simple interest @ 1% per month on the difference for the period of delay calculated from 1st of May of the following FY upto and including the date of such payment shall be paid in one lumpsum within a period of 15 days from the date of finalization of audited accounts, or 15th October of the following FY whichever is earlier.

3.1A.3 Where the total annual fee deposited as per clause 3.1A.1 is more than the amount determined on the basis of audited accounts of the FY, the difference may at the request of the licensee be adjustable against the annual licence fee due for the following FY.

3.1A.4 In case any amount is to be deposited by the licensee as per provisions of clause 3.1.3 it shall be deposited within 15 days of such determination along with simple interest at the rate of 1% per month for the period from 1st May following the FY for which such determination has been made, upto and including the date of payment.

(Clauses 3.1A.1 to 3.A4.3 Added by Oredr No. 8/12/2006-BP&L dated 6th November 2007)

3.2 *The Licensee shall also in addition pay the license fee and royalty for the spectrum used as prescribed by Wireless Planning & Coordination Authority (WPC), under the Department of Telecommunications.*

ARTICLE-4
BANK GUARANTEE

4.1 *The Licensee shall, within one month of issuance of SACFA clearance by W.P.C., submit to the Ministry of I & B, a Bank Guarantee from any Scheduled Bank in Form-C for an amount of Rs.40 crores valid for the duration of the license.*

4.2 *The Licensor shall be at liberty to encash the Bank Guarantee in full or part in the event of non-payment of the license fee or violation of any of the license condition.*

ARTICLE-5
COMPLIANCE WITH PROGRAMME AND ADVERTISING CODES

5.1 *The Licensee shall ensure adherence to the Programme Code (PC) and Advertisement Code (AC), laid down by the Ministry of Information & Broadcasting from time to time.*

5.2 *The Licensee shall invariably ensure that the subscribers of the service do not have access to any pornographic channel or to secret/ anti-national messaging and the like. If the Licensee fails to do so, the License shall stand cancelled.*

(Added by Order No. 8/ 3/2004-BP&L dated 1st June 2005)

ARTICLE-6
PROHIBITION OF CERTAIN ACTIVITIES

6.1 *The Licensee shall not carry any channels prohibited by the Ministry of Information & Broadcasting.*

6.2 *The Licensee shall ensure that its facilities are not used for transmitting any objectionable or obscene content, messages or communication inconsistent with the laws of India. The use of the facility or service for anti national activities would be construed as an offence punishable under the Indian Penal Code and applicable laws and will attract immediate termination of License.*

6.3 *The Licensor reserves the right to prohibit the transmission or reception of programmes in the interest of national security or in the event of emergency/war or similar type of situation. Notwithstanding any agreement between the Licensee and the content providers, the Licensee shall stop forthwith, transmission of TV channels or any content, as and when directed to do so by the Licensor or any other designated lawful authority.*

6.4 Except with prior approval of Licensor, the Licensee shall not either directly or indirectly assign or transfer its right in any manner whatsoever under this Agreement to any other party or enter into any Agreement for sub-license and/ or partnership relating to any subject matter of the License to any third party either in whole or in part. Any violation of the terms shall be construed as breach of the License Agreement and License of the Licensee shall be terminated immediately.

6.5 The Licensee shall not carry the signals of a broadcaster against whom any regulatory body, tribunal or court have found the following

(i) refused access on a non-discriminatory basis to another DTH operator contrary to the Regulations of TRAI

(ii) violated the provisions of any law relating to competition including the Competition Act.

(Added by Order No. 8/ 3/2004-BP&L dated 1st June 2005)

6.6 The Licensee shall not enter into any exclusive contract for distribution of TV Channels.

[Explanation: It shall be the sole responsibility of the licensee to ascertain before carrying its signals on its platform whether any broadcaster(s) has been found to be in violation of the above conditions or not . In respect of TV Channels already being carried on the platform, the licensee shall ascertain from every source including the licensor, TRAI, Tribunal or a court, whether concerned broadcasters or the channels is in violation of the above conditions. If any violation so comes to its notice, the licensee shall forthwith discontinue to carry the channels of the said broadcaster]

(Added by Order No. 8/ 3/2004-BP&L dated 1st June 2005)

6.7 No licensee shall carry or include in his DTH Service any television broadcast or channel which has not been registered by the Central Government for being viewed within the territory of India.

Provided that the licensee may continue to carry or include in his DTH Service any television broadcast or channel, which has made an application for registration to the Central Government on or before the date of issue of this Order, for a period of six months from the date of such Order or till such registration has been granted or refused, whichever is earlier.

Provided further that TV Channels uplinking from India, in accordance with permission for uplinking granted before 2nd December 2005, shall be treated as "registered" Television channels and can be carried or included in the DTH Service.

(Added by Order No. 8/ 3/2004-BP&L dated 11th May 2006)

ARTICLE-7

TECHNICAL STANDARDS AND OTHER OBLIGATIONS

7.1 *The Open Architecture (non-proprietary) Set Top Box, which will ensure technical compatibility and effective interoperability among different DTH service providers, shall have such specifications as laid down by the Government from time to time.*

7.2 *The Licensee shall ensure subscriber's interests through a Conditional Access System (CAS), which is compatible with an open Architecture (non-proprietary) Set Top Box.*

7.3 *The Licensee shall ensure subscriber's interests through a Subscriber Management System (SMS) for an efficient, responsive and accurate billing and collection system.*

7.4 *The Licensee shall not use any equipment, which is identified as unlawful.*

7.5 *All content provided by the DTH platform to the subscribers, irrespective of its source, shall pass through the encryption and conditional access system, located within the Earth Station, situated on Indian soil.*

7.6 *The Licensee shall provide access to various content providers/channels on a non-discriminatory basis.*

7.7 *The Licensee shall adhere to any guidelines/regulations which may be laid down by the Licensor in the interest of consumer such as pricing of bouquet(s) or tier(s) of channels, etc.*

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

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

(Amended vide Order No. 8/12/2006-BP&L dated 10th September, 2007)

ARTICLE-8

MONITORING AND INSPECTION

8.1 *The Licensee shall provide the necessary facility for continuous monitoring of the DTH broadcasting service at its own cost and maintain the recordings of programmes and advertisements carried on the platform for a period of 90 days*

from the date of broadcast and produce the same to the Licensor or its authorised representative, as and when required.

8.2 The Licensee shall furnish any such information at periodic intervals as may be required by the Licensor concerning Channels or content being transmitted or provided under the service, technical parameters etc. in the format as may be prescribed by the Licensor from time to time.

8.3 Licensee shall provide access to the Licensing Authority or its duly authorised representative. to all its facilities including equipments, records, systems, etc.

8.4 The Licensee will, if required by the Licensor or its authorised representative, provide necessary facilities for continuous monitoring for any particular aspect of the Licensee's activities and operations.

8.5 The Licensor will ordinarily carry out the inspection after reasonable notice except in circumstances where giving such a notice will defeat the very purpose of the inspection.

ARTICLE-9

NATIONAL SECURITY AND OTHER CONDITIONS

9.1 The Licensor reserves the right to take over the entire services and networks of the Licensee or revoke / cancel / suspend the License in the interest of national security or in the event of an emergency / war or low intensity conflict or similar type of situations. Further, the Licensor reserves the right to direct the Licensee to close down the service if implications of security so requires. Any specific order or direction from the Government issued in this regard shall be strictly complied with by the Licensee.

9.2 The Licensee shall not use any equipment, which are identified as unlawful and/or render network security vulnerable.

9.3 All foreign personnel likely to be deployed by way of appointment, contract, consultancy, etc. by the Licensee for installation, maintenance and operation of the Licensee's services shall be required to obtain security clearance from the Government of India prior to their deployment.

ARTICLE-10

VALUE ADDED SERVICES

10.1 The DTH facility shall not be used for other modes of communication, including voice, fax, data, communication, Internet, etc. unless specific license for these value-added services has been obtained from the competent authority.

ARTICLE -11
**PREFERENCE TO INDIAN SATELLITES AND INTERSYSTEM CO-
ORDINATION**

11.1 *Though Licensee can use the bandwidth capacity for DTH service on both Indian as well as foreign satellites, proposals envisaging use of Indian satellites will be extended preferential treatment.*

11.2 *The Licensee shall ensure that its operation will conform to the provisions of inter-system co-ordination agreement between INSAT and the satellite being used by the Licensee.*

ARTICLE 12
WPC WING'S LICENSE

12.1 *A separate specific operational license shall be required from the WPC Wing of Ministry of Communications for establishment, maintenance & operation of the DTH platform/facility under usual terms and conditions of that license. Grant of WPC operational license will be governed by normal rules, procedures and guidelines and will be subject to completion of all formalities. As may be prescribed by the WPC Wing, the Ministry of Communication for this purpose, an application shall be made to the "Wireless Advisor to the Government of India, WPC Wing, Ministry of Communications, DakBhavan, Parliament Street, New Delhi-110001" in a prescribed application form available from WPC Wing within one month from the date of signing of this agreement.*

12.2 *The Licensee shall obtain clearances/approvals, as may be prescribed or required, from the Wireless Planning Coordination Wing or from the Department of Space.*

12.3 *The Wireless Planning & Coordination (WPC) Wing of the Department of Telecommunication, Ministry of Communication shall issue SACFA clearance to the Licensee as soon as possible after receiving the application the same and shall grant the final Wireless Operational License, after signing of this agreement, subject to fulfilment of the necessary terms and conditions including installation of equipment etc. as may be required by WPC.*

12.4 *The Wireless and Planning Coordination Wing shall have the right to inspect, from time to time, the installation with a view to ensuring conformity with the WPC's license*

12.5 *The Licensee shall not cause harmful interference to other authorised users of radio spectrum. WPC Wing will have the sole discretion to take practicable and necessary steps for elimination of harmful interference, if any, to other licensed users.*

12.6 *The Licensee shall furnish to the WPC Wing the full technical and operational details of TV channels and other channels proposed to be uplinked through his/her Hub/Teleport in the prescribed format.*

ARTICLE-13

COMMISSIONING OF DTH PLATFORM

13.1 *The Licensee shall establish and complete the installation of the uplink earth station in India including the monitoring facility etc. and commission the DTH Platform within twelve months from the date of issue of the SACFA clearance by the WPC after obtaining wireless operational license and would submit a report to the Licensor in this regard.*

ARTICLE-14

REQUIREMENT TO FURNISH INFORMATION TO THE LICENSOR

14.1 *The Licensee shall furnish to the Licensor, such information at periodic intervals or at such times as the Licensor may require, including, but, not limited to, documents, reports, accounts, estimates, returns or other information such as change in Chief Executive, Board of Directors, equity holding pattern etc.*

ARTICLE-15

TERMINATION OF LICENSE

15.1 *Notwithstanding any other recourse under the terms and conditions of the license or any other law, the Licensor shall have the power, after recording the reasons in writing, to revoke/suspend the license in the event of breach of any terms and conditions of the license. However, before taking such action the licensing authority will give the Licensee an opportunity of being heard. The decision of the licensing authority shall be final.*

15.2 *The Licensor may, at any time, terminate the License without compensation to the Licensee in case Licensee becomes bankrupt or otherwise insolvent or applies for being adjudicated as insolvent/ bankrupt, provided such termination shall not prejudice or affect any right of action which has accrued or will accrue thereafter to the Licensor.*

ARTICLE-16

FORCE MAJEURE

16.1 *If at any time, during the continuance of this License, the performance of any obligation either in whole or in part by any party is prevented or delayed, by reason of war, hostility, acts of enemy, civil commotion, sabotage, fire, flood, act of state or centre, explosion, epidemic, quarantine restriction, strikes materially*

affecting the performance of any obligations of affected party, or act of God (all or any of these hereinafter referred to as Force Majeure Event), neither party shall, by reason of such Force Majeure Event be entitled to terminate this License, nor shall either party have any claim for damages against the other, in respect of such non-performance or delay in performance provided notice of happenings of any such Force Majeure Event is given by either party to the other, within 21 days from the date of occurrence thereof.

ARTICLE-17

DISPUTES WITH OTHER PARTIES

17.1 In the event of any dispute of the Licensee with any party other than Licensor due to any reason whatsoever, the dispute will be sorted out among themselves and Licensor will have no liability in any manner. The Licensee undertakes to indemnify Licensor in respect of any action against Licensor for acts of commission or omission on the part of the Licensee , its agents and servants.

ARTICLE-18

DISPUTE RESOLUTION AND JURISDICTION

18.1 In the event of any question, dispute or difference arising under this License, or in connection thereof, except as to the matter, the decision of which is specifically provided under this License, the same shall be referred to the sole arbitration of the Secretary, Department of Legal Affairs, Government of India or his nominee.

18.2 There will be no objection to any such appointment on the ground that the Arbitrator is a Government servant. The award of the arbitrator shall be final and binding on the parties. In the event of such Arbitrator, to whom the matter is originally referred to, being transferred or vacating his office, or being unable to act for any reason whatsoever, Secretary, Department of Legal Affairs shall appoint another person to act as Arbitrator.

18.3 The Arbitration and Conciliation Act, 1996, the rules made thereunder and any modification thereof, for the time being in force, shall be deemed to apply to the arbitration proceedings as above. The venue of arbitration shall be New Delhi or such other place as the Arbitrator may decide. The arbitration proceedings shall be conducted in English language.

18.4 Upon any and every reference as aforesaid, the assessment of costs, interest and incidental expenses in the proceedings for the award shall be at the discretion of the Arbitrator.

18.5 The Courts at New Delhi shall have the jurisdiction over all disputes.

ARTICLE - 19
CONFIDENTIALITY

19.1 *The Licensee shall keep all the secret and security related information exchanged between the Licensor and itself as confidential and shall not disclose such information to any third party or to the media.*

ARTICLE-20
PENALTY

20.1 *For violation of license conditions, in addition to any other action which may include revocation of license, a penalty upto Rs.50 crores can be imposed by the Licensor on the Licensee. However, before taking such action the licensing authority will give the Licensee an opportunity of being heard. The decision of the licensing authority shall be final.*

ARTICLE-21
MISCELLANEOUS

21.1 *Notwithstanding any clause anywhere else in the License, the License will be subject to the condition that as and when any regulatory authority to regulate and monitor the Broadcast Services in the country is constituted, the Licensee's will have to adhere to the norms, rules and regulations prescribed by such authority.*

21.2 *This license is subject to requirements and provisions of any law which may be enacted in future for regulating and guiding broadcasting in India.*

21.3 *The Licensee shall obtain the necessary environmental clearances, wherever required. The Licensee shall also comply with Copyright Act, the Electricity Act, Factories Act and other relevant laws of the land. In case of non-compliance of any of the aforesaid requirement, the Licensor shall have the right to revoke the License of the Licensee.*
