

## Bharti Telemedia Response to TRAI Supplementary Consultation paper on Issues related to New DTH Licences

Recent events in Direct-To-Home licensing have created an environment of concern amongst DTH operators, especially with respect to the renewal of licenses. We thank the Authority for recognizing the plight of DTH operators and initiating a comprehensive review of DTH licensing policies with all stakeholders.

The supplementary consultation paper published by the Authority on November 14, 2013 identified critical factors that need to be addressed before undertaking the design and implementation of a new DTH licensing framework. In addition to policy changes, the paper takes into consideration technological developments and the evolution of the DTH market. Given that the overall performance of the DTH sector is a key concern, we completely agree that healthy competition and sustainability of this space are of prime importance.

Migration to the new licensing regime for all operators has been proposed in this paper, and we believe that if absolutely necessary, said migration should be incentivized in the form of a reduced net license fee and a higher scope of services. We are also of the view that technology neutrality should be a key tenet of the new licensing framework. The following will incentivize migration to a new licensing regime:

- Ensure that migration to a new license is voluntary.
- Keep a nominal migration fee to cover administrative costs upto a maximum of Rs.1Crore.
- Rationalise the DTH License Fee structure to be applicable only on DTH related revenues with deductions to avoid double taxation of such revenues.
- Enhance innovation to reduce entry costs of subscribers by allowing proliferation of CPEs (Customer Premises Equipment) based on International Standards and removing growth barriers such as 'technical' interoperability in favor of technology neutrality.

We further request the Authority to kindly consider the following aspects before finalizing the recommendations on issue of new licences for DTH:

- 1. Ensure Healthy Competition**
- 2. Sustainability of DTH players**
- 3. Incentives for Migration**

### **1) Ensure healthy Competition:**

Prior to the advent of DTH, the only source of distribution for TV Channels was through cable. To have an alternative to Cable and provide better services to consumers, the Government of India issued the first DTH License in the Year 2003 subsequent to which, 6 more have been issued till date. These operators are competing with Cable TV operators who are registered entities and do not have the same financial burdens such as the large License fee as levied on the DTH industry. Therefore, in order to ensure healthy competition in the digital signals market, it is imperative that operators be regulated so monopolistic situations in the market are avoided.

## 2) Sustainability of DTH by reducing financial burdens on the industry

The DTH sector is currently going through a tough phase and is burdened with an arduous tax & levies regime to the tune of over 35%. **This includes a licence fee (10%), service tax (12.36%) and entertainment tax (~11%).** Major costs for a DTH operator include Satellite bandwidth, technology platform, national sales & distribution network, installation, servicing logistics, broadcasters/content fees, customer care, license fees, customs duty, VAT, entry fee, entertainment tax etc. The DTH industry currently subsidizes DTH CPEs for subscriber upto Rs. 2,700/- to make them affordable.

In this regard, we fully support TRAI's above recommendations (October 1<sup>st</sup>, 2004) and submit that apart from service tax and entertainment tax, the subscription fee passed on the broadcasters should be deducted from total revenue for calculation of AGR. **It may be noted that TRAI in the present consultation has proposed deduction of only taxes for the calculation of AGR which is against its own recommendations of October 2004.** We therefore reiterate/submit that definition of GR should allow for the deduction of all Taxes, Import Duty, and License Fee paid to Broadcasters.

**In view of the above, we request that:**

- *A financial incentive to migrate be provided in the form of a reduction in licence fee*
- *The definition of GR should have revenue from DTH services only. Moreover, it should allow for the deduction in all Taxes, Import Duty and License Fee paid to Broadcasters.*
- *Like UASL/UL, DTH operators should move towards paying L.F. on AGR basis.*
- *To incentivize the DTH industry the L.F. should initially be fixed at 6% of AGR and can be reviewed later based on the financial state of the industry.*

## 3) Incentives for Migration:

Presently, the DTH industry is going through a very tough phase and none of the DTH operators is able to make profits, primarily due to steep financial burden and high taxes of over 35%. It is therefore imperative that financial incentives be provided to existing DTH operators for migrating to the new licencing regime. Financial incentives in the form of reduced taxes and duties should be considered for improving the state of this industry. Moreover, some incentives in the form of increase in scope of services offered could include amongst others, the following:

- Provision to provide DTH related VAS services using internet broadband from any other ISP.
- Time Shift TV
- IPTV
- Other value added services

We can also take instances from the telecom sector wherein for CMTS to UASL migration, the validity of license was increased from 10-15 to 20 years and the scope of services was increased to include basic, VAS, Internet and Internet Telephony services at no extra cost to an existing CMTS.

Further, we believe that instead of forceful or mandatory migration to the new licence regime, **there should be a provision for voluntary migration to the new licencing regime with no enforcement to clear dues that are under litigation or dispute in the existing licence. The charges for this migration could be nominal (say up to maximum of Rs 1 crore).**

**Our response to the issues raised for Consultation is as below:**

**2.1 Stakeholders are requested to give their views on the modification of clauses 1.4 and 1.5 of the DTH Guidelines, as mentioned in para 1.15, prescribing cross-holding/control restrictions. Stakeholders are welcome to suggest other options, if any, with justifications.**

**Stakeholders are also requested to give their views on the timeframe to be given to the existing DTH licencees to comply with the new provisions and the justification thereof.**

No Comments.

**2.2 Do you agree with the approach discussed in para 1.25, on the aspect of technical compatibility and effective interoperability of STBs among different DTH service providers?**

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

**Bharti Telemedia Response:**

**We do not agree with the approach discussed in para 1.25, on the aspect of technical compatibility and effective interoperability of STBs among different DTH service providers. The rationale thereof is as below:**

- The Authority in the consultation paper has proposed that the licence conditions should be amended to mandate compliance to latest BIS specifications for the STBs to be offered to all new subscribers and a period of 6 months be given to operators for complying. Moreover, TRAI has envisaged an approach where the Government shall ensure these BIS specifications are based on an open architecture and should incorporate the latest technological developments with respect to technical interoperability of DTH STB.
- In this regard, we submit that there should be an open standard approach for defining the technical specification of the DTH STB and TRAI should adopt technology neutrality in this regard. We believe that defining technical standards on the basis of BIS specifications may lead to a closed loop approach for any technological advancement in the future and may prove to be an impediment in the growth of the DTH industry.
- We request the Authority to review and possibly adopt an approach similar to the one used in the case of UASL. Clause 31.3 of the License Agreement for provision of Unified Access Services advocates the use of international standards for the deployment of subscriber terminals. We believe a similar approach would be ideal for DTH Licensing, specifically in the case of STBs.
- The license agreement for UAS mandates in clause 2.2d (i):

*'The licensee ..... meet the relevant ITU/TEC/international standardization bodies such as 3GPP/3GPP-2/ETSI/IETF/ANSI/EIA/TIA/IS.'*

- The same principle may be applicable for the DTH Set top boxes and TRAI should recommend that DTH STBs should comply with available international standards.
- Further, on the issue of technical compatibility and technical interoperability we would like to submit the following:
  - We believe that there should be interoperability of the STB however the same should be left to the DTH operators' discretion and the model of sale/purchase of STB. To clarify, we support interoperability of STBs, however the nature of operability i.e. technical or commercial should be driven by the DTH operator.
  - If an operator is selling its STB on the outright purchase model i.e. recovering the full cost of an STB without any subsidy then the STB could be technically interoperable. However, to enable technical interoperability, it is important that all future network and set top boxes manufactured/imported be consistent with the highest technical standard and an open standard based approach be adopted.
  - The Authority is well aware of the challenges faced by the DTH industry in the roll out of technical operability. Operators are currently using varying technology standards, which is the prime impediment in the technical operability. The highest encryption standards i.e. MPEG4 and DVBS2 based STBs are backward compatible however the older version i.e. MPEG2 and DVBS based STBs are not compatible with the new standards and are therefore not interoperable. This is similar to the case of the mobile industry where a 2G handset cannot support 4G technology.
  - **We therefore request that interoperability of the STBs should be left to the selling model of an STB, wherein a consumer has a choice to purchase a technically interoperable/neutral STB by paying the full cost as opposed to rental or other purchase method available in the market.**
- In light of the above, it is submitted that:

**Technical interoperability should not be mandated in the new DTH licence conditions and efforts should be made to bring all operators to the highest standard to make STBs interoperable in future.**

**2.3 Do you agree that, in line with the Unified Licence, the licence fee for DTH services should be charged at the rate of 8% of the AGR where AGR be calculated by excluding Service Tax and Sales Tax actually paid to the Government, if Gross Revenue had included components of Sales Tax and Service Tax?**

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

**Bharti Telemedia Response:**

- We fully support and appreciate the TRAI proposal that like UASL/UL, DTH operators should move towards paying L.F. on AGR basis. We also submit that the definition of GR should be extended to include revenue from DTH services only. Moreover, it should allow for the deduction of taxes, import duty, installation charges and license fee paid to Broadcasters. This would also be in line with the TDSAT vide its order dated 30 August 2007 wherein the Hon'ble Court has allowed deduction of Taxes (service Tax & entertainment Tax), installation charge and content fee paid to the broadcaster for calculation of DTH AGR. **The list of the elements to be deducted while calculating AGR from GR of DTH is as below:**
  1. Content/interconnect Licence fee paid to Broadcaster.
  2. Installation charges.
  3. Entertainment Tax, Service Tax, Custom duty/Excise etc.
  4. Gain from Forex fluctuations
  5. Interest from other income
- We wish to submit/reiterate that the content cost paid to the broadcaster should be deducted while calculating AGR. This is more relevant from the point of view that broadcasters are licensed entities by MIB and are paying L.F. from the revenue generated from content provided to distribution media. Thus, levying any L.F. on DTH for content charges passed on to the broadcaster would lead to double taxation.
- **Further, to incentivize the DTH industry, the L.F. should initially be fixed at 6% of AGR and can be reviewed later based on the financial state of the industry.**

**2.4 Do you agree with the approach discussed in para 1.39, for arriving at the quantum of migration fee to be charged from the existing DTH licencees on their migration to the new DTH licencing regime?**

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

**Bharti Telemedia Response:**

We disagree with the approach discussed in para 1.39, for arriving at the quantum of migration fee to be charged from the existing DTH licencees on their migration to the new DTH licencing regime. The rationale for this is articulated below:

- Existing DTH operators have already paid a one-time entry fee of Rs.10 crores during the issuance of the Licence and are paying a hefty amount as annual licence fee to the Government. **Thus, there should be a nominal migration fee of no more than Rs 1 crore to be levied on existing DTH operators during migration to the new regime.**
- Further, the Authority has taken a reference from the recent UL guidelines for calculating the rebate for migration path towards new DTH licence. In this regard, we believe that any view to compare with the rebate provided under UL guidelines may be incorrect since NLD, ILD and UASL are moving from 20 years validity to extended 20 years validity license with a wide scope of services. Compared to this, DTH licenses are currently valid for a period of 10 years with a much more limited scope of services.

- However, if at all the Government decides that existing DTH operators have to pay the 'net entry fee' then the formula to calculate the rebate should be as below:

$$\text{Rebate} = (\text{Entry fee under existing Licence/existing licence period i.e. 10 years}) \times (\text{No. Of years remaining in the } \underline{\text{new regime}} \text{ at the time of migration})$$

- **This rebate will not only incentivize existing DTH operators to migrate to the new regime but will also reduce any hefty financial burden on their accounts.**
- It is highlighted that existing DTH operators have paid an entry fee of Rs. 10 crores and there is no natural resource like spectrum bundled with this DTH license. DTH licensees are paying separate frequency/spectrum charges to ISRO and WPC and are currently under extreme financial stress. Therefore, the migration fee for existing DTH operators should be nominal, say up to a maximum of Rs. 1 crore.

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

**If yes, how much time, after notification of the new DTH licensing regime, should be given to the existing DTH operators for migration to new DTH licensing regime?**

**If not, what should be the approach followed for migration of existing DTH operators to a new licensing regime?**

**Please elaborate your response with justifications.**

### **Bharti Telemedia Response:**

- The Authority has suggested the following three scenarios for migrating to the new licensing regime:
  - i. Existing operators have the option to migrate to the new regime by a specified date after paying the specified migration fee and clearing all dues payable under the obligations of the existing license or continue in the existing regime, till the expiry of their licence.
  - ii. The existing operator continues in the existing regime and migrates to the new regime on the day of expiry of the existing license.
  - iii. All existing operators compulsorily migrate to the new regime by a specified date after paying the specified migration fee and clearing all the dues payable under the obligations of the existing license.

TRAI has also stated that the scenarios i and ii above are not practically feasible

- In this regard, **we agree with 'Approach 2' above with a provision for voluntarily migration any time during the present validity of licence. However, it needs to be ensured that any dues under legal disputes are not coercively recovered from the licensees under the pretext of migration to a new licence.**

- We further submit that there should not be a forceful or mandatory migration to the new licence regime as any mandatory/forceful migration will dis-incentivize the DTH industry and will put additional burden on the existing DTH operators.
- We also request the Authority to incentivize and not mandate migration to the new regime. These incentives could be rationalization of license fee, increased scope of services etc. as elaborated earlier in our response.
- In light of the above we reiterate that:  
*There should be a provision for voluntary migration to the new licencing.*

**2.6 (i) If any stakeholders have a view that any other provision of the DTH Guidelines requires any change or any provision is required to be added to these guidelines, the same be suggested along with justifications.**

**(ii) In light of the fact that a new DTH licensing regime is being discussed, stakeholders may also give their modified views, if any, on the issues that have been discussed in the consultation paper dated 1st October 2013.**

**Bharti Telemedia Response:**

**We feel that the following additional guidelines should be added to the DTH license:**

- **Provision for Time bound clearances for resource allocation**

Every DTH service provider has been allocated a particular orbital slot for operating its services, for e.g. 102.8° E for Airtel Digital TV. We submit that DTH operators should be allotted additional bandwidth within the same orbital slot to cater to technical requirements. Lack of capacity effectively denies DTH operators' the opportunity to provide more channels to customers and be an effective alternative to cable, who are not dependent on transponders to carry channels. Moreover, DTH operators have to wait for Satellite bandwidth allocations for a longer period which adversely impacts their competitive capability to provide a wider choice to its customers.

Presently, it takes up to 2 years for satellite bandwidth clearances and frequency allocation. DTH operators cannot launch services during this time frame. The opportunity cost of this delay is high and hard to recover. Therefore, any delay for allocation of requisite resources reduces the time frame of the licensee to recover their investments. While the existing 10 year license term is extremely short, any new license for DTH services should be for a longer time period like 20 years with a provision for an extension of 10 years at one time.

*We therefore urge the authority to provide for time bound clearances for additional bandwidth allocation to DTH operators within the same orbital slot.*

- **VAS services:**



As per the 'Article 10' of the current DTH licence, a DTH licensee cannot provide other Value added service such as voice, fax, data, communication, internet etc. The clause 10.1 of the DTH licence is as below:

Clause 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'*

In this regard, it is submitted that DTH operators continuously endeavor to enhance the digital viewing experience of the customer. The modern customers not only desires TV shows, movies and other content provided by broadcasters, but also seeks out other modes of entertainment on his/her TV set. With the advent of technology like SMART TV and the proliferation of the internet, the customer requires features like internet, video/movie on demand, and other key features like recording, time shift etc. with the cable connection.

We also request the Authority to recommend that DTH operators be allowed to provide customer needed VAS services using internet broadband from any other ISP. To clarify, DTH operators should be allowed to connect their STBs with an internet connection provided by any ISP to provide internet related VAS services on their platform. This would not only enable the provision of smart applications on TV but would open the gate for the upcoming innovations in the field of DTH-internet convergence in future.

Additionally IPTV services are allowed to be offered by Cable TV providers, ISPs and UASLs. We believe that while ISPs and UASL both pay a license fee to offer IPTV services, a Cable TV provider pays no such fees to the Government of India. To level the playing field between DTH and Cable TV, IPTV should be included as part of DTH licenses subject to offering these services through a licensed Internet access or registered cable TV connection.

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