

April 14, 2009

The Chairman,
Telecom Regulatory Authority of India,
Mahanagar Doorsanchar Bhawan,
Jawahar Lal Nehru Marg,
New Delhi 110002

**Sub: DTH Issues relating to Tariff Regulation & New Issues under reference
(Consultation Paper No. 4/2009)**

Dear Sir,

We are pleased to present our views on the Consultation Paper on DTH Issues relating to Tariff Regulation & New Issues

We are an IPTV Services Provider, as franchisee to BSNL & MNTL, in 54 cities across India. Being an digital addressable platform, the issues raised in the Consultation Paper are fully applicable to us.

We believe that voluntary digitalization would get a significant boost if the channel rates applicable for digital addressable systems are at par with the effective rates paid by analog networks.

Our enclosed response to the Consultation Paper explains our views in detail.

We hope our views would help in these efforts. This response has been submitted electronically also.

Thanking you,

Yours faithfully,
For **SMART DIGIVISION PRIVATE LIMITED**

KAPIL DEV KUMAR
CHIEF OPERATING OFFICER
(Tel: 98100 48448)

cc: Shri R N Prabhakar, Member, TRAI
Shri R K Arnold, Secretary, TRAI
Shri Rakesh Gupta, Jt Advisor (B&CS)

SMART DIGIVISION'S VIEWS ON THE CONSULTATION PAPER ON DTH ISSUES RELATING TO TARIFF REGULATION AND NEW ISSUES UNDER REFERENCE (CONSULTATION PAPER NO. 4/2009)

ITEMWISE RESPONSE TO "ISSUES FOR CONSULTATION"

5.2 TARIFF FIXATION FOR DTH SERVICES

5.2.1 Whether there is a need to fix tariff for DTH?

Response:

With the increased impetus towards digitalization and the growing need to provide service delivery through addressable platforms, it certainly is the need of the hour to fix the tariff for DTH as well as other addressable platforms like IPTV.

The rationale for keeping DTH prices at 50% of analog rates was an interim measure to ensure some semblance of regulation in the market. Before this was introduced through an advisory exercise by TRAI in April 2008, Broadcasters had announced arbitrary rates for DTH platforms

- Single bouquet instead of multiple bouquet in case of analog networks, and
- Rates for DTH did not have any rational or uniform relation to the rates for analog networks. One would have expected a discount of atleast 50% in line with TDSAT Judgement (in the matter of ASC Enterprise vs. Star India Pvt. Ltd). However, there was no pattern to the ratio of rates for DTH Networks and Analog Cable. Rates announced for DTH were mostly above 50% of analog rates.
- In some cases, rates for DTH were even higher than the rates for analog networks.

With average declaration levels in the analog market at less than 15%, there is a pressing need to fix rates for DTH and other addressable platforms, and well below the 50% interim arrangement.

5.2.2 Whether tariff regulation should be at wholesale level or at retail level or both, i.e., whether tariff should be regulated between broadcasters and DTH operators or between DTH operators and subscribers or at both the levels?

Response:

There are 5 private DTH Operators and another licensee yet to start services. In addition, IPTV Services have started to make presence in the market. Cable Networks have started to go digital in several pockets across India.

As in Telecom services, it is important to ensure reasonable and non-discriminatory inter-connection arrangement to enable and support blooming of operators in the market, while leaving the retail market open for innovative & competition in pricing.

Hence, we believe that there is adequate level of competition in the market and retail level price fixation is not required.

5.2.3 Whether tariff regulation for DTH at wholesale level should be in terms of laying down some relationship between the prices of channels/ bouquets for non-addressable platforms and the prices of such channels/ bouquets for DTH platform? If yes, then what should be the relationship between the prices of channels/ bouquets for non-addressable platforms and the

prices of such channels/ bouquets for DTH platform? The basis for prescribing the relationship may also be explained.

Response:

The tariff regulation for DTH at wholesale level should be in terms of laying down definite relationship between the prices of channels/ bouquets for non-addressable platforms and the prices of such channels/ bouquets for DTH as well as other addressable platforms like IPTV.

We believe that the rates applicable for digital addressable systems should be equal to the effective rates paid by analog networks. In other words, ratio of rates applicable for digital addressable systems to the rates for non-addressable analog networks should be equal to the effective declarations in the analog networks.

We believe that such a step would give the much required boost to voluntary digitalization, even in cable networks.

It is generally believed that the declaration level in analog networks is around 20%. This was acknowledged in TDSAT Judgement dated 31st March, 2007 in petition no. 189(C) of 2006. Acknowledging that declarations in cable industry are about 20%, and the consequent rationale of rate for DTH Networks being 20% of the rates paid by analog networks, TDSAT Judgement dated 31st March, 2007 in petition no. 189(C) of 2006 observed:

“...It is common knowledge as projected by the industry itself that in Cable, the declaration of subscribers is only about 20 per cent of the actual number of subscribers. As compared to this in DTH, the counsel suggests, the declaration would be 100 per cent. Therefore, according to the learned counsel, the DTH operator should get the channels from the broadcaster at 20% of the rates declared by them. Today the position is that this Tribunal has already requested the TRAI to come out with price regulation in this area. Price fixation should be done by the TRAI. In the judgment dated 14th July 2006 this Tribunal had fixed a norm in the interim till price fixation is done by TRAI, that broadcaster will charge the DTH operator 50% of its listed price for cable platform. For the present we would like to continue with the said norm and we reiterate that the TRAI should come out with price fixation and regulation in this behalf as early as possible. Price regulation is a must for protecting consumer interest. Delay on the part of the TRAI in carrying out this job is prejudicial to the DTH operators while it suits the broadcasters...”

Our analysis, using very liberal assumptions in favour of broadcasters, shows that the effective declaration in analog cable networks is actually **close to 10%**. Our analysis is shown in the table below:

Broadcaster	Annual Revenue (Rs cr) ¹ [A]	Relevant Market for Subscription [B]	Relevant Market Size (HH in cr) ² [C]	Effective Realization (Rs/ sub/ month) ³ [D=A/C/12]	Analog Rates ⁴ [E]	Effective Declaration ⁸ [F=D/E]
Star Den	620	N/ W/ E	4.2	12.30	100	12.3%
MSM Discovery	450	N/ W/ E	4.2	8.93	110	8.8%
Zee-Turner	450	N/ W/ E	4.2	8.93	99 ⁵	9.0%
ESPN/ SS	250	All India	7.0	2.98	44 ⁶	6.8%
Sun Networks	240	S	2.8	7.14	91	7.8%
ETV	50	S	2.8	0.99	62 ⁷	2.4%
Others	20					
Total	2080					

Notes:

1. Industry Estimates; For YE Mar'08, except Star Den & ESPN Star Sports where it is Jun'08.
2. Total Analog Cable Households estimated at 7.0 crore (source: FICCI-KPMG Media & Entertainment Industry Report, 2009). Size of North/ West/ East markets, considered as Hindi Speaking Markets, estimated at 60%; Southern Market estimated at 40%

3. Computed as (Revenue/ Size of Relevant Market/ 12). Liberally, entire revenue attributed to analog cable networks in relevant markets. Nothing attributed to DTH Networks.
4. Liberally, only the price of package relevant to relevant markets considered for calculation.
5. Liberally, only rates of bouquets 1-3 considered, which are relevant to N/ W/ E Markets
6. Liberally, only the rates of ESPN and Star Sports considered; Star Cricket not considered
7. Rates of channels declared as pay channels last year has not been considered
8. Effective Declaration computed as Effective Realized Rate divided by declared analog cable rates

The above analysis is based on industry estimated of revenue. We believe that the Authority should conduct a more rigorous exercise based on revenue data collected from Broadcasters and on market size data collated from published sources such as NRS. This analysis could be done for the market as a whole as also for specific markets.

Our assessment is that the declaration levels would be similar even in metro markets.

It is indeed unfortunate that the subscription revenue for broadcasters is just Rs 2080 crore, a mere 13% of the estimated retail subscription revenue of Rs 15800 crore in 2008¹. We believe that the Broadcasters should support digitalization efforts of the operators rather than stifle them by seeking to milk by demanding rates far higher than those effectively realized from analog networks. Towards this, the broadcasters should voluntarily adopt an earlier TRAI recommendation² on new pay channels being made available only on addressable platforms. If this were to be done, there would not be any analog cable rates and the broadcasters should be incentivized by giving them the flexibility in pricing such channels for digital addressable networks.

In summary, we reiterate that the rates applicable for digital addressable systems should be equal to the effective rates paid by analog networks, i.e they should be prescribed as a fraction of rates for non-addressable analog networks, with the fraction being the effective declarations in the analog networks. Our assessment shows that the effective declaration is about 10%.

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

Response:

As has been concluded by TRAI earlier, cost of content cannot be fixed based on conventional approach.

Hence, we believe fixation of prices should not be attempted. The approach should be as proposed in the previous item.

¹ Source: FICCI-KPMG Media & Entertainment Industry Report, 2009

² TRAI Recommendations on Issues relating to Broadcasting and Distribution of TV channels dated October 1, 2004

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

Response:

There are 5 private DTH Operators and another licensee yet to start services. In addition, IPTV Services have started to make presence in the market. Cable Networks have started to go digital in several pockets across India.

As in Telecom services, it is important to ensure reasonable and non-discriminatory inter-connection arrangement to enable and support blooming of operators in the market, while leaving the retail market open for innovative & competition in pricing.

Hence, we believe that there is adequate level of competition in the market and retail level price fixation is not required.

In any case, retail level price fixation cannot be done unless there is a wholesale level price fixation.

As suggested in response to last question, price fixation at wholesale level is not practical.

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

Response:

If it is to be done, then the relationship should be same as in CAS Cable Networks; i.e. Broadcasters should get 45% of the retail rates for pay channels.

5.3 COMPARISON WITH CAS

5.3.1 Whether the basic features of tariff order dated 31st August 2006 for cable services in CAS areas, namely fixing of ceiling for maximum retail prices of pay channels, at the level of the subscriber fixing of ceiling for basic service tier and standard tariff packages for renting of set top boxes should be made applicable to DTH services also?

Response:

We believe that such an approach should not be adopted.

The central aspect is that all content cannot be equated down to a single price - some is worth more, while some is worth less than the level prescribed for CAS networks.

The regulatory decision, in order to launch CAS in a defined timeframe, of one rate for all channels, has, in a way, been detrimental to digitalization. Given that all channels get the same rate, some of the channels in popular genre such as general entertainment have chosen to focus on building viewership (to build advertisement revenue) and have chosen to stay FTA in CAS networks foregoing the prescribed channel rate.

If popular channels remain FTA in CAS Areas, motivation for customers to go digital would remain low.

It creates an ironic situation – where premium channels instead of going pay choose to remain FTA due to a regulatory stance. CAS Regulation have, thus, not been able to promote digitalization.

This approach of keeping channels FTA in CAS areas and Pay otherwise also creates a distortion in the market place (vis-à-vis other localities and vis-à-vis other addressable platforms such as DTH and IPTV):

- Why should a customer in north Delhi pay for a channel that is free in South Delhi.
- Or for that matter, why should a DTH customer in South Delhi pay for a channel that a cable customer in South Delhi is not paying for.

We believe that digitalization is better promoted by keeping a uniform approach on pay vs FTA decision of channels. Channels should be pay or FTA throughout the country. Further, the rate in non-CAS areas should be uniform through-out. There are few instances of channels having different rates in different states. We believe this is also an distortion - there is little logic for Star Vijay to have different pricing for Tamil audience living in Delhi or Tamil Nadu.

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

Response:

As suggested in earlier responses, we believe retail price ceiling should not be prescribed for DTH and other addressable platforms such as IPTV.

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

Response:

We believe that such a stance does not provide any benefit to customers. We believe that customers would not adopt an addressable system if they were interested in FTA channels only. There are hardly any markets where most relevant channels are FTA. Kerala is the only market where all the local channels are FTA. Even there, customers would be interested in pay channels of other languages.

Data from CAS areas should be analyzed to assess how many customers with STBs have taken just the FTA channels.

5.3.4 Whether the DTH operators should be required to make available the pay channels on a-la-carte basis to the subscribers as the cable operators are required to do in the CAS areas?

Response:

This should definitely be done to provide choice and flexibility to customers.

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

Response:

This could be done. However, it would be pertinent to assess the impact given that the DTH market is entirely a pre-paid market. Customers tend to temporarily suspend their

subscriptions (e.g. during school exams). With rentals, this situation of temporary suspension would become complex.

5.4 Other Relevant Issues

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

Response:

We would suggest that the carriage fees charged by the DTH operators from the Broadcasters must be regulated. With increasing number of channels being launched every day, it is impossible to run all the channels and there must be some associated carriage fees to ensure that quality content is only delivered to the customer.

Moreover, when a broadcaster wishes to place his channel at a certain LCN number or forming part of basic tier, then the broadcaster must be made to pay certain premium for the same, which could be deemed as placement fees. To make the entire process transparent, the DTH/ IPTV operator should be allowed to provide rates for each of LCN Numbers/ basic tier available for placement of channels which obviously will be function of their existing/ projected numbers. This will definitely create a transparent environment and level playing field for deciding the carriage and placement charges.

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

Response:

A ceiling on carriage fee can surely be prescribed. The ceiling should be linked with the subscriber base of the DTH/ IPTV operator. It is suggested that DTH/ IPTV platform should be under an obligation to make public the terms and conditions along with the carriage fees charged from the various broadcasters public. The same rule should also be made applicable in the non-addressable trade to bring in parity and transparency at all levels.

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

Response: No comments

PROVISIONING OF NEW SERVICES ON DTH/ IPTV PLATFORM

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

6.1.59(b) In case these are termed as broadcast TV channels, then how could the apparent violation of DTH license provision (Article 6.7, Article 10 and Article 1.4), Uplinking and Downlinking guidelines be dealt with so that availability of new content to consumer does not suffer for want of supporting regulatory provisions?

Response:

We do not subscribe to the idea of recognizing the Movie-On-demand, Video-on-Demand, Pay-per-view or other Value added services such as Active Stories as a broadcast TV channel. We agree that these are add-on value added services which offer to the customer a means of fully exploiting the addressable and interactive feature of DTH/ IPTV platform and thus cannot be termed as Channels in strict sense of the term.

In case of Movie On-Demand on DTH, a customer chooses to watch content at a specific time (like a **multiplex**) and pays for it.

One should further recognize that the Movie on Demand services on DTH is **not** true Video on-demand. Customer cannot watch the movie at the time of his/ her choice and cannot have DVD type functionality of pause/ forward/ rewind. **In other words, these services provided on DTH are not truly unicast. They can, at best, be called multicast. In industry parlance, these service provided on DTH network are known as Near Video-on-demand services (near VOD).**

Two-way networks with sufficient capacity in forward path (IPTV and two-way cable TV networks) provide **True Video-on-Demand (true VOD)** services, where the content stream is a **unicast stream** played just for the customer at the time decided by the customer and under the control (pause/ forward/ rewind, etc.) of the customer. The customer can initiate & control (through the remote) the play/ pause/ rewind/ forward on any content in the library. The content played is available only to the customer who requested the content. This service is like a virtual DVD service, where the DVD player and DVD are not physically at customer premises, but the customer has control as he/ she has on DVD at home.

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

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

Response:

As explained in the previous response, there is a distinction between Near **Video-on-Demand (near VOD)** services provided on DTH Networks and **True Video-on-demand (true VOD)** services provided on two-way networks such as Cable and IPTV.

The regulatory approach for the two situations should be different.

As far as programming code is concerned, DTH Operators should be allowed to offer the near VOD services under a self-regulation, same as that applied to broadcasters.

The true VOD services on Two-way Cable Networks and IPTV Networks should be governed on the same lines as Home Video. Hence, any content having a certification from the Censor Board of India should be allowed on the true VOD service without further editing. The Operators should be mandated to introduce a further layer of parental control (through a password pin) for content that is rated above "U".

Advertisement Code should be uniformly applied for all networks spanning both near VOD and true VOD services as well.

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

Response:

Automatic permission should be granted for new services on the basis that the services may be asked to be discontinued if so becomes necessary in the subscribers' interest or in general public interest or upon other considerations such as security of state, public order, etc.

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

Response:

Please refer to our response to item 6.1.59(c) and (d).

6.1.59(g) *How could the selling of advertisement space on DTH channels or Electronic Program Guide (EPG) or with Value added Service by DTH operators be regulated so that cross-holding restrictions are not violated. In this view, a DTH operator may become a broadcaster technically once the DTH operator independently transmits advertisement content which is not provided by any broadcaster. How could the broadcaster level responsibility for adherence to Program code and Advertisement Code be shifted to a DTH operator, in case the operator executes the sale and carriage of advertisements?*

Response:

Advertisement Code should be uniformly applied for all services on all networks.

On Programming Code, please refer to our response to item 6.1.59(c) and (d).

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

Response:

A clean feed, or a feed with cue tones, can enable an operator to run advertisements relevant to a particular audience. Hence, this flexibility should be allowed to operators. In this case, a commercial arrangement could be prescribed in the form of (a) either a different channel rate for clean feed/ feed with cue tone, or (b) formula for sharing of advertisement revenue between the operator and the broadcaster.

RADIO CHANNELS ON DTH SERVICES

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

Response:

Radio channels should be permitted on DTH and other addressable IPTV platforms. Regulatory provisions applicable to radio channels should be applicable to operators offering radio channels.

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

Response: Please see our response to 6.2.4(a)

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

Response:

Must provide and non-discriminatory offering of radio channels should be extended as done for TV Channels.