

**Comments on
Consultation Paper on DTH Issues relating to Tariff Regulation
&
New issues under reference**

1. General Comments :

- 1.1 In spite of strong regulatory mechanism and Govt. will to digitize TV services, the growth of DTH services in the country remains slow and the operators are incurring huge losses. Therefore, this is the time to look into various policy measures taken by the Govt. & the Regulator and make an analysis as to how such measures have not culminated into desired results to provide stimulus and sustainability to this sector. Growth of DTH industry is important in achieving the Govt. objective of digitalization of TV services at a faster pace across the country and to ensure tax compliance so that revenues due to the Govt. in the form of license fee, service tax etc. are realized.
- 1.2 DTH services are subjected to huge tax burden which is in the range of 35-40%. In addition to this, high content cost and non-level playing field with regard to cable TV services, where under reporting is rampant up to 80%, operation of DTH service is unviable and a loss making business. High cost of capital and appreciation of US dollar has further increased the problems of this sector.
- 1.3 At present DTH tariffs are dependent on non-CAS cable rates. Even with 50% rates of non-CAS cable for DTH platform as per the TRAI's Press Note, DTH operators are paying much more to the broadcasters in comparison to cable operators due to transparent mechanism for subscriber reporting, which is non-existent in the later case. Further, in the absence of tariff order in terms of Section-11 (2) of TRAI Act, TRAI advisory on DTH tariffs is always subject to judiciary intervention and thereby the industry is subject to uncertainty. The present consultation paper of TRAI on DTH issues relating to tariff regulation and new issues under reference is very important and based on the consultation process, it is expected that TRAI will consider all the issues in totality and come out with a tariff order under Section-11 (2) of TRAI Act.

2. Comments on the issues raised in the Consultation Paper :

5.2 Tariff fixation for DTH services

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

Comments :

As has been ordered in the case of Tata Sky v/s TRAI by High Court of Punjab & Haryana, TRAI is required to fix tariff for DTH service under Section-11 (2) of TRAI Act. **We also feel that tariff for DTH service should be fixed and a proper tariff order should be brought in order to avoid any uncertainty and judiciary interventions.**

5.2.2 *If yes, 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?*

Comments :

At present tariff for DTH services at wholesale level are derived from non-CAS cable rates. There is not much competition in the cable TV service as there are only one or two operators in a service area, whereas in the case of DTH there are seven DTH operators including Doordarshan. Further, DTH operators have to compete with the cable operators, who are not subjected to payment of license fee and due to under reporting of subscribers and revenue, there is no level playing field between the DTH operators and the cable operators. **Therefore, we strongly recommend that the tariff regulation for DTH service should be at wholesale level only and tariff at retail level should be kept under forbearance.**

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.*

Comments :

Tariff for the distributors of TV signals have to be worked out on scientific method by taking into account cost of production of the content, revenue generated through advertisement and cost of

distribution of TV signals. At present, there are different rates of TV channels for different platforms, for example, in the case of CAS a uniform rate of Rs. 2.25 is applicable for each pay channel irrespective of its genre. Whereas, in the case of non-CAS cable, bouquet and a-la-carte rates of the channels have been frozen by TRAI through a tariff order and for DTH, tariffs are derived from these non-CAS rates, which is 50%.

Till TRAI carries out a detailed exercise on deciding the pricing mechanism for rates of TV channels for various distributors of TV signals, we are of the opinion that tariff order for DTH service should be linked to non-CAS cable TV rates, provided a level playing field is ensured. It is an admitted fact that in the non-CAS areas, the subscribers and the revenue is under reported, which is of the order of 80%.

By applying 50% formula for DTH, TDSAT as well as TRAI has addressed the issue up to some extent. However, still there is huge mismatch due to 100% reporting by DTH operators and up to 20% reporting by the cable operators in non-CAS area. Further, there is a need to factor into the license fee component which is being paid by DTH operators on the content which is not subjected to payment of license fee when carried on cable TV. In the case of CAS area, as per TRAI's tariff order, the broadcasters are paid only 45% of the content cost. Internationally, the content cost for DTH operator ranges between 25-35%, whereas in India the content cost is as high as 60-70%.

In view of the above, the following is recommended :

- (a) Tariff regulation for DTH at wholesale should be in terms of laying down a relationship between the prices of channels/bouquets for non-addressable platforms and the prices of such channels / bouquets for DTH platforms.
- (b) Till TRAI arrives at a scientific formula on deciding the cost of content for various platforms, DTH tariffs at wholesale level may be derived from the existing non-CAS rates for channels / bouquets after taking into account under reporting in non-CAS areas, license fee paid by DTH operator on the same content when carried on DTH platform and international practices. **We recommend that, tariff for DTH services should not be more than 20% of the non-CAS cable tariffs.**

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

Comments :

Channel programming and procurement cost varies from broadcaster to broadcaster (e.g. costs for Sports channels, Reality channels are higher than Regional channels and General Entertainment channels). Hence, we recommend that current rationale and relationship of Bouquet price, individual channels maximum price etc. should be continued.

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

Comments :

Retail regulation of DTH tariff should not be done in the interests of Competition.

Apart from cost of subsidy on STB, high cost of transponders etc, there are exclusive incremental costs of Call Center operations, higher license fees and revenue share as well to the DTH operators. In addition, technology investments, data maintenance & cost of operations of systems etc are high for DTH and have to be considered in pricing models so as to create a level playing field.

As an example, the STB is subsidized & the amount is recovered over a long period of time, but the subscriber could choose to churn out at any point of time leaving the DTH operator saddled with huge losses on account of non-recovered STBs & recovery and refurbishment costs etc. for the recovered STBs.

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?

Comments :

We recommend regulation of DTH tariffs at wholesale level only and not at retail level. Hence, the above issue is not applicable.

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?*
- 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?*

Comments :

In view of our comments at Para 5.2.5 above, we do not recommend regulation of DTH channel pricing at retail level.

- 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?*

Comments :

DTH operators should not be mandated to provide unencrypted Basic Service Tier. DTH is an addressable system...once it is allowed to stream unencrypted content, it becomes similar to the non addressable system.

- Also, very important consideration has to be the subsidy given by the DTH operators on the STB. With unencrypted services, the subsidies will become nonviable & the subscriber entry cost on the platform will become formidably high, thereby nipping the platforms sustenance.

- 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?*

Comments :

System limitations will not allow this. There is a constraint on the number of offers that can be accommodated on the subscriber's smart card and the a-la-carte count of channels is far higher than the constraint and will be not be a viable option. DTH platforms have Master, Add-On packages and Offers which offers a wide array of choices to the subscriber.

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

Comments :

As per Quality of Service for DTH, DTH operators are required to offer Set Top Boxes on outright purchase, hirer purchase and rental basis. Due to intense competition, the operators are offering very attractive rental schemes bundled with free subscription for certain period. Even one of the operators is providing free STB. Therefore, **there is no justification for regulating or prescribing rental for STBs for DTH operators.**

Further, there are variety of STBs like the standard STB, recorder STB & going forward the HD STB too, on which the same amount of rentals cannot be kept. Multiple rental amounts will further add to the customer confusion.

In line with the earlier philosophy, the total charges taken from customers should be governed by the competitive environment, there by delivering better value for the customers, always.

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?

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?

Comments :

- (i) The issue of carriage fee charged by DTH operators was recently deliberated by TRAI in its Consultation Paper on Interconnection for Broadcasting Sector. As DTH operators have to make huge investment on the infrastructure, transponder cost, etc, the carriage fee for DTH service should not be regulated.
- (ii) **At this point in time, Carriage Fee charged by the DTH operators should not be regulated since the same is linked to a wide spread variable like the subscriber base of DTH operator, the channels popularity & demand.**

Apart from this, the fact to be noted is that the same channel has different popularity in different part of the country, leading to conflict in the positioning of the channel (which happens to be integral part of the negotiation) on the platform.

Also, DTH industry is in nascent stage & over the next couple of year, once it reaches a threshold level, the regulation of Carriage Fees can be considered.

(iii) We recommend that the existing arrangement should continue.

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

Comments :

In the writ petition, Tata Sky has emphasized on issuance of a tariff order for DTH service, we support the same. However, regarding their proposal of linking the tariff order with CAS tariff order, we feel that the company has not provided any justification for the same. Since, CAS tariff order was also an adhoc measure and was issued in order to comply to Court directions, till TRAI arrived at a scientific method of determining the cost of content for distribution over various distribution platforms, **we recommend that tariffs for DTH should be linked to non-CAS cable rates and should be limited to 20% of the same.**

6.1 Provisioning of new services on DTH platform

- 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?*

Comments :

- (i) We are of the view that provision of these services by DTH operators or any other distributors of channels, should not be viewed as broadcast TV channel. Such services are being provided by the DTH operators to their subscribers, therefore, limited to a closed user group. On the contrary, these services should be viewed as Value Added Services.
- (ii) In the past, the Hon'ble Authority has implemented various progressive regulatory policies, including technology neutrality. If technology allows the DTH operators to provide these services as Value Added Services to enhance their viewer's experience, the same should be promoted to spread the digitalization in the country. In the telecom industry, an access provider is allowed to provide numerous value added services like SMS, MMS, Voice Mail, GPRS etc. apart from basic voice call and even in the broadcasting sector, video & audio service has been allowed by IPTV service provider by creating a distinction between TV channels offered by broadcasters and these Value Added Services.
- (iii) The provision of these services by the DTH operators is an internationally accepted practice. For instance, Pay per View is provided by the DTH operators in US, Australia, United Kingdom, Canada, New Zealand, Philippines, Taiwan etc.
- (iv) We are of the view that these services cannot be construed as broadcast TV channel as the broadcasters have a different business case, who carry huge content whereas provision of these services by the DTH operators is merely an additional incentive to enhance customer satisfaction apart from carrying TV channels. Moreover, these services are being provided by the DTH operators with a commercial arrangement with the content owner and under no circumstances, it affects the rights of any party.
- (v) In light of the above, **we earnestly request the Hon'ble Authority to facilitate the march of technology and allow the DTH operators to offer these services as Value Added Services.**

- 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?*

Comments :

As stated above, the **provision of these services by the DTH operators should be considered as Value Added Services with an amendment to the license agreement, if required.**

- 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?*

Comments :

It may be seen that DTH operators have paid Rs. 10 crore entry fee and they pay license fee @ 10% of gross revenue. The operators are also paying license fee on the revenue from value added services provided on their platform. Further, the operators are subjected to security clearance and other statutory clearances as is required by the broadcasters for obtaining a license from the Govt. In order to remove the doubts, it would be appropriate for the Govt. to specifically indicate the provision of such services under DTH license. So far as subscribers are concerned, they enjoy the benefits of value added services being provided by the operators in addition to various channels being made available from the broadcasters.

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

Comments :

As per conditions of the license agreement, the DTH operator is already required to comply with the Programming Code & Advertisement Code. Thus, no change would be required in the license agreement. As carrying these services by the DTH platform would be are only Value Added Services, it should not be construed as broadcast TV channel and thus, **no change in the up-linking / down-linking guidelines would be required.**

- 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.?*

Comments :

We do not support seeking of permission for introduction of new value added services.

Prior permission from the competent authority before introduction of such services will unnecessarily delay the process. Considering that DTH operators hold the license and also operators have made huge investment, if considered necessary, intimation by the operator may suffice.

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

Comments :

In view of the above, **a suitable clause may be added in the DTH license clarifying that services such as Movie-On-demand, Video-on-Demand, Pay-per-view or other Value added services such as Active Stories, etc. are permitted.** Since, such services will be available to the subscribers of a DTH operator and not meant for permitting the same on other DTH platform or the distributor of TV signals, there may not be any requirement for amendment of uplinking / downlinking guidelines.

- 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?*

Comments :

In order to promote its product / service, the companies use various means such as advertisement on TV channels, road-side shows, newspapers, internet etc and thus, advertisement on TV channels is only one of the delivery mechanism. In case, the broadcasters are showing the advertisement on TV channels, it should not prohibit any existing and / or potential delivery mechanism to run the advertisement on its platform. Thus, if the DTH

operators run the advertisement on its platform independently, they should not be construed as broadcasters.

The existing license conditions mandate the DTH operator to comply with the programming / advertisement code and in the case of running the advertisement on its platform, the DTH platform would comply all the applicable laws.

- 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?*

Comments :

We are of the view **that the clear feed is a welcome initiative, which should be considered for Indian market.** However, the must provide clause should existing between broadcasters and DTH platform.

6.2 Radio channels on DTH services

- a. *Whether carriage of radio channels by a DTH operator be permitted? Should such permission cover all kind of radio channels to be carried?*

Comments :

Technology permits DTH operators to carry radio channels on their platforms and it adds value to the content carried. Like in the case of telecom operators who can provide Mobile TV in addition to traditional Voice & Data services, DTH operators can carry TV signals containing audio & video and also audio signals of a Radio channel. Due to inherent limitation of being fixed service, unlike Radio, this application is limited and is not very popular. However, in order to provide complete package, the DTH operators may specifically be allowed to carry all kind of Radio channels. DTH is an entertainment & information medium and hence carrying of radio channels is a logical path to take.

- 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?*

Comments :

In order to remove the doubts, **a specific clause may be added in the license permitting carriage of Radio channels on DTH platforms.** However, a condition could be attached that only those Radio channels which have been licensed by the Govt. may be allowed for carriage on DTH platform.

- 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?*

Comments :

As in the case of TV channels, TRAI may mandate RIO for Radio channels ensuring must provide and a non-discriminatory offering of Radio channels to the DTH operators.