



Date: 10th August 2007

To
The Advisor (B&CS)
Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan
Jawaharlal Lal Nehru Marg
New Delhi – 110 002

Sub: Issues relating to Head end-In-The-Sky (HITS);
Response to the Consultation Paper dated July 24, 2007 issued by the TRAI

Dear Sir,

We take this opportunity to welcome the initiatives taken by TRAI for promoting digitalization and addressability of cable networks and alternate platforms and role of TRAI in order to judiciously balance the competing interests of the stakeholders. We also appreciate the issues floated for consultation in relation to the HITS platform, aimed at policy framework for the guidelines and licensing terms and conditions for HITS operations.

. We also assume some basic concerns in dealing with the same will be kept in mind, such as:

- **Conditional Access Integrity**
- **Measures against anti piracy**
- **Adequate competition in consumer interest**
- **Flexibility and choice to consumers**
- **Level Playing field across all addressable platforms**
- **Discouragement of monopolies**

In view of the issues highlighted in the Consultation Paper, our specific views as under



4.53.2 Whether HITS operations should be allowed in C-Band or in Ku band or in both?

- HITS should be allowed in both C-Band and Ku band as there is nothing wrong about putting in place an enabling mechanism which allows the operator to choose the technology – C band or Ku band. The operator should be free to adopt and decide the target group of consumers (through cable operators or directly to end consumers). The rationale is that the decision on C-Band or Ku Band or whether directly to end consumers or through the cable operators would ultimately be guided by commercial considerations and value proposition to the consumers
- Also in the interest of competition, the Government should ensure that no Single Player be issued a HITS License at one point of time. **There should be at least two or more players**, who should be given the license together, at one point of time, to ensure competition and discouragement of monopolies

4.53.3 Whether a HITS operator should be restricted to offer services only to the cable operator? Alternatively, should HITS operator be allowed to serve the end customer also directly? If yes, then whether the restriction on DTH to service end customer only needs any review?

- HITS operator should be permitted to service even end customer directly. Simultaneously DTH players should be permitted to service LCO's for retransmission by amending the DTH Guidelines and License to permit commercial redistribution. Doing so would enable a level playing field across all platforms. We have time and again emphasized the urgent need to ensure a level playing field amongst all addressable platforms so that competition can be encouraged in the best interest of the consumers at large.

4.53.4. What should be the limit of Foreign Direct Investment (FDI) for HITS licenses? Should there be any restriction on the maximum limit on the composite figure of FDI and FII?

- The FDI limits should be same as that of DTH presently to ensure a level playing field. Presently the upper limit for foreign investment in DTH, cable and up linking permission is 49%. In the case of DTH, there is additional "*inter se*" restriction of 20% on foreign direct investment. This should be made applicable to a HITS operator as well to promote a level playing field.



- In addition to the same , vertical monopolies with Broadcasters be discouraged and in order to meet the objective , Broadcasters be not permitted to invest in HITS platforms

4.53.5 What should be the entry fee and the annual license fee for HITS?

- The entry fee and the annual license fee for HITS should be the same as that applicable to a DTH operator. The one time non-refundable entry fee in case of DTH license is Rs. 10 Crores. Further, in the DTH license, there is a provision for payment of annual license fee equivalent to 10% of its gross annual revenue. Similar entry fee and annual license fee should be applicable to a HITS operator as well as the ultimate objective for both platforms is to carry and distribute broadcast television signals by first up linking from an earth station to a satellite in the sky for down linking later.
- Alternatively, any concession given to a HITS operator in respect of entry fee and the annual license fee the same should be extended to the DTH industry also to ensure equality of treatment across platforms.

4.53.6 Whether HITS operator should be allowed to uplink from outside India also?

- To ensure common norms, its is important that a HITS operator be treated at par with a DTH operator and only be allowed to uplink from within India as is indicated by Clause 13.1 and clause 7.5 of the licensing conditions of DTH license that entails that the up linking has to be done from an earth station situated in India and all the content has to pass through the conditional access system and subscriber management system located in India.
- A HITS operator should only be allowed to uplink only from within India owing to ease of monitoring and national security implications. An India based uplink facility would also be in national interest as it would entail development of infrastructure and job creation.



4.53.8 Should any interconnection issues be addressed in licensing conditions?

- The existing interconnect regulations are applicable to all carriage platforms. However TRAI needs to formulate a non discriminatory Tariff and Commercial framework for all addressable platforms so as to enable a level playing field across addressable platforms. We have time and again emphasized the urgent need to ensure a level playing field amongst all addressable platforms so that competition can be encouraged in the best interest of the consumers at large.
- Owing to the nature and infancy of the addressable content distribution business in India (DTH and now HITS), mandating access has to be backed/ supported by a non discriminatory commercial framework formulated by the TRAI. The interconnect regulation mandate access of signals by the broadcasters to the distributors on non-discriminatory, just, fair and reasonable terms, without price regulation. It is a settled economic principle and well accepted in developed markets that mandatory access necessarily involves price regulation as in the absence of a price regulation, the upstream monopolist i.e. broadcaster will offer access to downstream competitors i.e. DTH/HITS operators/other carriers at an unrealistic price thereby in effect negating the object and spirit of the Interconnect Regulation, the consumer interest and choice and perpetuating monopolistic practices in the broadcasting industry.
- In the absence of non discriminatory tariff and commercial framework, similarly placed addressable platforms are/ will be unable to provide effective choice and flexibility to consumers as a result of being saddled with bundling of content by broadcasters.
- Further the absence of a commercial framework to regulate the wholesale/ content tariff for the HITS and/ or DTH platform will be unfair and unreasonable being discriminatory between a similar mode of carriage–CAS in view of the fact that TRAI has provided for price regulation for CAS being a similar addressable platform as is evident from the notification issued by TRAI on August 31, 2006.
- Absence of a commercial framework shall perpetuate exploitative monopoly of entrenched interests by –



- i. Creating pricing and packaging disadvantages vis-à-vis CAS operators in the minds of the consumers.
- ii. Hostile discrimination and unreasonable market distortions against DTH / HITS, subjecting the consumers to incomparable offerings and unreasonable fluctuations across platforms thereby defeating consumer choice.
- iii. Imposing vagaries of un-addressable system (where the declaration levels range between 10% to 20%) on DTH and HITS (which are fully addressable (100%);

4.53.9 Should spectrum charges be recommended to be done away with for HITS service provider?

- Spectrum Charges are legitimate charge by Government for use of the public airwaves. No exceptions should be made to this principal. However if it all an exception is to be made then the same should be extended to the DTH platform as well.

4.53.10 should there be any cross holding restriction? If yes, please suggest the nature and quantum of restrictions.

- HITS operations should be subject to cross holding restrictions as in the case of DTH to discourage vertically integrated monopolies.

4.53.11 should HITS operator be allowed to offer value added services?

- As the HITS Platform is primarily based on a Teleport License , the same position as in Teleport License should be maintained
- It will also be easier to adopt the framework of Teleport License , which is currently in operations and will save the costs for the HITS operators

4.53.12. Whether “must carry/must provide” conditions be imposed on HITS operation?

- As the Interconnect Regulations (the Regulations) stand today, each broadcaster / Distributor is under the obligation to provide its content to the carriers of signals. There is a ‘must provide’ obligation cast on the broadcasters. Thus, depending on the market needs and consumers’



- demands, a carrier of channels can seek signals from a broadcaster on a must provide basis – broadcaster cannot impose any un-reasonable condition thereby denying access to their services
- However, the DTH license conditions make it obligatory for the DTH operator to provide access of its platform to channel providers on a non-discriminatory basis. This clause has been tested in the court of law and has been interpreted as **not amounting** to a “Must Carry” provision. We submit that TRAI has rightly noted in its consultation paper that in view of this interpretation the clause itself becomes superfluous as no other valid interpretation can be ascribed to it.
- Thus we submit that the HITS license should carry the same license conditions in regard to “must carry/must provide” conditions as in the DTH license or the DTH license ought to be suitably amended to remove the superfluous “Must Carry” clause.

Yours sincerely,
For Tata Sky Limited

A handwritten signature in blue ink, appearing to read "Anshuman".

Anshuman Sharma
Chief Legal & Regulatory Affairs Officer