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dth services



RP/FY 21-22/075/96
June 6, 2022

To,
Mr. Anil Kumar Bharadwaj
Advisor(B&CS)-II
Telecom Regulatory Authority of India,
Mahanagar Doorsanchar Bhawan,
Jawahar Lal Nehru Marg,
Old Minto Road,
New Delhi-110002

Sub: Response to TRAI Consultation Paper on "Issues related to New Regulatory Framework for Broadcasting and Cable services"

Ref: TRAI Consultation Paper dated May 7, 2022.

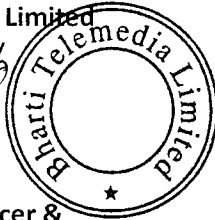
Dear Sir,

In reference to the captioned consultation paper, we are pleased to enclose our response for your perusal.

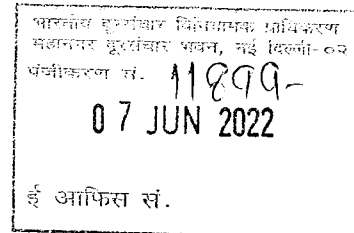
We hope that our submissions will merit your kind consideration.

Thanking You
Yours Sincerely

For Bharti Telemedia Limited



Rahul Vatts
Chief Regulatory Officer &
Authorized Signatory
Encl: As mentioned above.



Copy to:

i. Principal Advisor(B&CS), TRAI.

ii. Secretary, TRAI

Response to CP on “Issues related to New Regulatory Framework for Broadcasting and Cable Services”

Preamble

We would like to thank the Telecom Regulatory Authority of India (TRAI) for giving us an opportunity to submit comments on the consultation paper on Issues related to New Regulatory Framework (“NRF”) for Broadcasting and Cable Services (“B&C services”), released on May 07, 2022.

At the outset, we wish to state as under:

1. **The objective of New Tariff order brought about by TRAI in 2017 followed by an amendment in the year 2020, was to create an enabling environment for orderly growth of the television broadcasting sector and to protect consumer interests, and bring in a non-discriminatory framework.**
2. **On the contrary, it has caused widespread unrest with prices going up for customers and choices of channels they could view, going down.**
3. **The NTO has mandated every miniscule aspect of pricing and packaging in an industry which was being managed very simply through forbearance prior to the event.**
4. This created a mind-boggling amount of complexity for the DTH players and even more importantly for the customer with no benefit to any stake holder.
5. The industry is marred with excessive, complex as well as **disbalanced regulatory framework wherein platforms like OTT’s and Free Dish are able to provide the same content to the subscribers** with no cost or implication of license fee. This aspect of skewed regulation relates to the same content being made available for free (This is what happens on DD Free to Air) or same content being made available on the same screen through a broadband pipe at unregulated prices – this is what happens on OTT platforms. As a result, the DTH industry has been crippled.
6. **The discriminatory regulatory framework, wherein the TRAI over regulates only DTH platform while ignoring Cable Industry, OTTs & DD Free to Air, has resulted in creation of not only a non -level playing field but promoted an arbitrage between the various platforms leading to erosion of customers from DTH platforms to OTT/Free Dish.**
7. **Thus, the DTH Industry has been facing serious head winds, observing constant decline in revenues, customer base and viewership content.** The industry has been brought to its knees due to excessive and skewed regulatory framework.
8. The outcome of discriminatory regime is evident in the shrinking customer base of DTH. This has been acknowledged by the TRAI in its Performance Indicator Report released on 04.05.2022. TRAI has observed that the DTH subscriber base has witnessed a reduction from 68.89 million in Quarter ending

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2021 to 68.52 million in quarter ending December, 2021.¹ This evidences a fact that the DTH industry is facing enormous hardships even in its basic survival.

9. With the same content being offered on DTH, cable & OTT's, the framework is different for each of the platforms and strangely for no cogent reason, this disparity exists.
10. It is quite relevant to highlight here that the overall broadcasting industry has made significant direct and indirect contributions to the economy. According to a Deloitte report² the gross value addition by the TV industry in 2017 was INR 65,377 crore. The industry employed 16.44 lakh people in that year.
11. **Therefore, to cope up with the competitive constraint from unregulated platforms, there is a pressing need to bring 'regulatory parity' among all delivery platform operators.** The growth of entire sector and DTH industry in specific cannot be sustainable if interest of industry players, and interest & choice of the consumer cannot be ensured.
12. Hence, there is an urgent and immediate need to revamp the whole regulatory framework. The DTH industry is operating in a highly competitive environment and therefore, the Authority should allow the market forces to play.

In summary, we list below the issues that we believe need the Authority's immediate attention, although not covered in the extant paper:

- **Pricing and packaging forbearance:** need to revisit the New Tariff Order (NTO) 2020 and allow freedom of pricing and innovation in designing packs to meet and serve consumer needs by those who have direct relationship with the consumer i.e. the DTH operators
- **Uniform license fee regime across DPOs** i.e. DTH, MSOs (of Cable and HITS).
- **Adherence to principle of non- discrimination and must-provide** (on the lines of must-carry) framework across all platforms –free dish, linear channels via OTTs
- **Parity with IPTV** – The DTH and IPTV being substitutable services (latter offering linear channels albeit on wireline medium) should be treated same way
- **Resolution of the DTH AGR issue** – Necessary clarity be issued on the DTH License fee i.e. LF be restricted to revenues from licensed activities only (exclusion of all non-licensed revenues).

¹ https://www.trai.gov.in/sites/default/files/QPIR_10012022_0.pdf

² Economic Contribution of the Film and Television Industry in India

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We therefore request the Authority to address these challenges by re-introducing forbearance at the earliest as well bringing a uniform regulatory framework for sustainability and orderly growth of all players including the DTH industry.

With above context setting, we explain these issues in detail:

A. Importance of Pricing Forbearance:

The objective of New Tariff order brought about by TRAI in 2017 followed by an amendment in the year 2020, was to create an enabling environment for orderly growth of the television broadcasting sector and to protect consumer interests, and bring in a non-discriminatory framework. However, the framework, despite its noble objectives has led to unintended consequences which have not been positive neither for the consumer nor for the DTH industry. Instead, it has caused widespread unrest with prices going up for customers and choices of channels they could view, going down.

i. The New Tariff Order(NTO) excessively regulates almost every aspect of pricing leaving no room for innovation in packaging channels and curating tariffs:

a. In the prevailing regulatory framework TRAI’s over prescriptive provisions have taken away the DPOs’ freedom do business in a way that could have best served consumers’ interest. Specifically:

- *DPOs’ freedom to design products/ services by way of packaging channels for its subscribers got removed.*
 - This is fundamental to the DTH business to cater to specific consumer needs keeping in mind the consumer behavior, demand, ability to pay and several other dynamic factors. The package offerings would help to differentiate services from others.
- All aspects of tariffs and rates are completely regulated leaving no flexibility for DTH operators to price their offerings in sync with market realities:
 - The Network Capacity Fee (NCF) is fully regulated.
 - The discount on NCF for multi TV homes is regulated
 - No provision of adjusting pricing for inflation in NCF
 - No flexibility to offer differential NCF basis the different segments/class of customers/region or any other criteria
 - Micro Regulation on issues such as installation charges, activation charges, STB schemes, complex ask wrt reporting of interconnection agreements etc.

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- Electronic Programming Guide (EPG) guide has too many rules – sequence of genre, prior approval of TRAI etc.
- Other restrictions include those on Carriage fee, allocation of spare channels, disconnection of channel, restriction on promotional schemes etc.
- Fixation of Distribution Retail Price (DRP) of Channels: The power to fix the MRP for the channels and the bouquet which can be charged from the subscribers has been taken away from the DPOs and has been given to the Broadcaster.
- No Freedom to a DPO to decide the channels they want to carry on their platform
- The Carriage Fee/Distribution Fee to be earned by a DPO for providing the services has been fully regulated thereby regulating the ability to generate rightful business margins.

Clearly, the NTO has regulated almost every possible aspect of packaging and pricing thereby creating excessive complexity not only for the DTH players, but more importantly for the customer. This complex framework has led to a huge churn in the subscriber base.

Surprisingly, this over-regulated approach in case of NTO is in sharp contrast to TRAI’s preferred and successful approach of forbearance e.g. as seen in Telecom. It must also be noted that DTH industry is operating in a highly competitive environment and hence the Authority should allow market forces to operate.

b. Impact on Customers: more pain than gain

- Since introduction of NTO, the prices of ala carte channels/ bouquets - **up by ~15%**.
- Average price per customer - **up from INR 219 pre NTO to INR 251 post NTO.**
- The number of paid channels - **reduced from 55 to 40.**
- The ala-carte prices of most preferred channels (SD) - **increased beyond INR22 which were earlier in the range of INR10/-**
- Customers at the lower end of the socio-economic classes (for whom TV is the only source of affordable entertainment) and those from regional markets have seen the steepest price increase.
- The entire premise of customers opting for their own choice of channels is limited to a few sets of digital savvy customers, while others face significant inconvenience, resulting in an increasing number of customer complaints.

Clearly, the DTH customer has been at the receiving end of the unintended consequences emanating from the NTO, as it is left with neither any choice on truly choosing channels of choice

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nor with any flexibility to manage its wallet outgo more effectively. The above complexities become more stark if we review how the pre-NTO regime worked and had impact on the stakeholders.

ii. The Pre NTO-framework was a net positive for all stakeholders including the consumers:

- a. Prior to NTO, the DPO’s negotiated fixed payouts with broadcasters, created bundles of content at the prices their customers would afford and served them.
- b. The healthy competition ensured fair prices and customers were not inconvenienced. Thus, the industry was earlier managed very simply and effectively through forbearance.
- c. The Pre NTO-regime was flexible and no unnecessary restrictions were put on the DPOs. The content reached to the subscribers in following manner:
 - The broadcasters published their Reference Interconnect Offers (RIOs) specifying terms and conditions for providing channels to DPOs.
 - A written interconnection agreement was entered into between the Broadcasters and DPOs for distribution of channels based either on RIO or on mutual agreement basis.
 - DPOs formed the bouquets of the channels and price both a-la-carte and bouquets of channels. The DPOs independently fixed their prices without intervention by the Regulator and successfully met the requirement of the subscribers.

In view of the above, we request the Authority to reinstate pricing forbearance, and allow the DPOs to price and package their own plans/bouquets without any restrictions in order to meet the demands of the subscribers. The DTH sector operates in a highly competitive environment and thus, the forbearance will work well.

B. Introduce a non- discriminatory framework for all platforms:

In this section we highlight a few more impacts of a skewed regulatory framework that works to the detriment of the regulated players, while leaving the unregulated players competing in the same market, distort the competitiveness in the market i.e.

- i. Discriminatory license fee regime across DPOs and OTT players
- ii. Issue of Free Dish and/or OTTs offering same linear channels to their subscribers for free and/or at unregulated prices, which channels are otherwise bought by subscribers of DTH and Cable operators at regulated prices
- iii. Discriminatory regulatory regime across DPOs offering same service/channel – to the detriment of one set of players

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We elaborate these issues below:

i. Discriminatory License Fee Regime:

- Initially, the Pay TV in India was offered via cable in an analog mode and it was unlicensed. This was followed by the entry of digital medium i.e. DTH as a licensed offering subject to a license fee of 10%. Later on, the cable was also digitized and required a license/registration but without obligation of license fee.
- Surprisingly, among all the distribution platforms, viz – DTH, Cable, HITS and now OTT emerging as distribution mode, the DTH is the only platform which pays license fee.
- This is clearly unsustainable and discriminatory, and has created non-level playing field for DTH players vis. a vis. other DPOs or new competitors like OTTs.
- In-fact OTTs operate freely without any regulations or restrictions. They neither are price regulated nor contribute to the license fee. The absence of regulation for the OTTs has enabled them to bypass the boundaries of broadcasting regime via data streaming offering same content.
- In case of a DTH operator, the proper licensing framework binds the operator not only in terms of data streaming but also in terms of placing financial obligations.
- Additionally, OTT platforms are offering their services at a very nominal cost and even they are not levied with any burden of License Fee and censorship.
- The table below explains the financial obligations borne by the DTH operators in comparison with the OTT players/Broadcasters & other LCOs and MSOs:

| DPOs | DTH | Broadcaster OTTs & other OTTs | HITS | LCO [Cable Operator] | MSO [Cable Operator] |
|---------------------------|---------------------|--|---------------|-----------------------------|---------------------------------------|
| Entry Fee | Rs. 10 crores | Nil | Rs. 10 crores | Rs. 500/- One-time | Rs. 1 Lakh one-time registration Fee. |
| Annual License Fee | 8% of Gross Revenue | Nil | NIL | NIL | NIL |
| BGs | Rs. 40 crores | Nil | Rs. 40 crores | NIL | NIL |

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ii. Free channels via Free Dish and/or in unregulated manner by OTTs:

- This is another instance of skewed regulation where the very same content is being made available for free through DD Free Dish i.e. offering paid channels to its subscriber free of cost
- The skewed worsens as the same content / linear channels is being made available through a broadband connection by OTTs but at totally unregulated prices, when broadcasters offer that content free or unregulated pricing.
- So while on one end, the consumer of a DPO (i.e. Free Dish) or an unregulated entity (i.e. OTTs) may or may not pay for same content, on the other end, a regulated entity i.e. DTH player gets regulated on pricing, and also contributes on license fee.
- When same content is provided for free without payment for channel or license fee etc., it creates alternate medium which is not level playing field.
- Such a framework that is different for each of the platforms, rather more stringent and onerous for DTH is widening the disparity that cannot be argued to have any cogent basis.

This discriminatory framework has created an arbitrage and resulted in a non-level playing field among various platforms. It is causing immense harm to the industry and increasing market distortion in the way different platforms offering same services are treated.

In-fact, this has led to a situation with DTH industry witnessing worsening financial condition as customer churn has accelerated due to their migrating from DPO platforms to Free Dish and/or OTT Platforms. This is evident from **TRAI's** last few quarterly Performance Indicator Reports of TRAI **which show that the total pay active subscriber base of private DTH operators has been falling constantly, as sampled below:**

| Period (Quarter) | DTH Sub base (mn) | Drop / Increase by (mn and %) |
|----------------------------------|--------------------------|--------------------------------------|
| June 2021 | 69.86 | |
| September 2021 | 68.89 | (0.97) mn, 1.4% |
| December 2021³ | 68.52 | (0.37) mn, 0.53% |

³ https://www.trai.gov.in/sites/default/files/QPIR_10012022_0.pdf

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Therefore, it is time that TRAI recognizes that in the era of convergence of telecommunications, broadcasting and IT, the existing differentiated regulatory regimes are not working. **The current dynamics calls for a coherent regulatory regime covering all digital mediums of distributions that is consistent with market realities.**

iii. **Ensure non-discriminatory framework across all distribution platforms**

- The broadcasting sector presently is catered by four permitted Distribution Platform Operators (DPOs), i.e. MSOs, DTH, HITS and IPTV.
- However, due to availability of high-speed broadband services and smart devices, **the linear programming, live broadcasting and global and local OTT content are being consumed across screens (e.g., smartphone, PC, Smart TVs).**
- **Most OTT platforms allow content to be casted on larger screens and through internet enabled TV sets, essentially eliminates any difference between an OTT platform carrying live television and a registered distribution platform.** They offer a wide variety of content including relay of LiveTV channels and catch-up TV shows. OTT platforms are now larger than Television platforms with access to around 770⁴ million wireless broadband consumers.
- Over the last 3 years the OTT mode of delivery has become mainstream for Television as well as Public Exhibition. Major OTT providers now provide for up to 600 TV channels to a population base of over 400 Million active viewers via 4G networks as per data available.
- There is no technological difference between IPTV and OTT and both services are designed to transmit TV content over the Internet, which is an IP network, and hence have strong similarities at the application Layer. **It is noteworthy that while the TRAI regulates IPTV services, it has left OTT services untouched.** India’s numerous OTT platforms include online video streaming services, broadcaster owned apps offering a wide variety of content, including relaying of Live TV channels and catch-up TV shows for free or for a nominal charge or at charge to the consumer that is totally unregulated.
- **The Broadcasters charge wholesale tariffs from DPOs as per the TRAI published Tariff Orders. However, the tariff regulations are not applicable to OTT platforms for the same**

⁴ https://www.trai.gov.in/sites/default/files/PR_No.50of2021.pdf

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linear content. Hence broadcasters follow unregulated and arbitrary pricing norms for OTT platforms. This creates an anti-competitive environment and disadvantageous to the DPOs. The price discrimination at wholesale level and unequal bargaining power of registered DPOs have left them in a disarray.

- It is incomprehensible, that when the services being provided, the underlying technology (IP) and the target audience is the same, along with convergence with OTT having the capability to relay content exactly in the same manner as is being done by the DPOs, the regulatory and pricing restrictions are only applicable to DPOs, and more rigorously on the DTH industry.
- In view of the changed market and distribution structure, services of DPOs and OTTs are perfectly substitutable and hence should be brought under the same regulatory regime for orderly growth of broadcasting sector.

Not addressing these anomalies is also leading to distortion in certain principles of regulations and doing business, as explained below:

➤ **Restricted and Discriminatory application of “Rule of Must Provide”**

Most of the OTT platforms are vertically integrated with different broadcasters, either directly or indirectly. This creates a conflict of interest between these vertically integrated OTT platforms and the standalone distribution/OTT platforms to whom the Broadcasters are reluctant to offer their channels. These vertically integrated broadcasters have incentives to not provide their channels to standalone distributors or selectively offer their channels to digital platforms. This amounts to the violation of ‘Must Provide’ rule of TRAI.

The must provide principle clearly requires the broadcasters to provide their content to all the distribution platforms without any discrimination. However, due to the vertically integrated OTT platforms with some major broadcasters, these broadcasters are reluctant to offer their channels to any other players in the digital side. This anomaly can be addressed by extending the principle of “Must Provide” to all platforms including App/OTT as the same content is offered via TV industry and over the App/ OTT.

➤ **Open violation of the downlinking policy for Television channels**

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The extant policy guidelines for TV channels clearly states that the broadcasters cannot provide services directly to the customers and any medium other than registered DPOs (e.g. MSO, cable operators, DTH, IPTV, HITS). Thus, the broadcasters, who are providing their content to the OTT platforms are in clear and blatant violation of the downlinking policy. However, broadcasters are rampantly providing TV channels directly to OTT platforms. This is clear and blatant violation of downlinking guidelines and needs to be urgently addressed and curtailed.

In view of the changed market and distribution structure, services of DPOs and OTTs are perfectly substitutable and hence should be brought under the same regulatory regime for orderly growth of entire broadcasting sector.

Accordingly, we recommend that:

- **There is a need for Uniform Regulatory framework to ensure Parity of Pay Channel Pricing across all platforms i.e. Pay TV channels on DD Free Dish, OTT and DTH - Same pricing for Same Content- platform agnostic charges.**
- **The “Must Provide” must be applied universally across all platforms since the underlying content delivered through all platforms including App/OTT remains the same.**
- **Any digital media/online/OTT platform offering similar content should be brought under a single regulatory regime. OTT platforms to be brought under the ambit of TRAI regulations and Licensing conditions, as applicable to DTH/IPTV.**

C. Measures to be taken to relieve the financial stress of the sector:

- i. **AGR issue needs to be resolved much like the Telecom industry which got relief from Cabinet after which DOT issued the revised AGR definition. Applicability of License fee to be restricted to revenues from Licensed activities only (exclusion of all non-licensed revenues):**
 - The DoT in its telecom license amendment dated 25th October 2021 has allowed that revenue from activities under the license /permission issued by MIB will be excluded from AGR for calculation of license fee payable under the license issued by DoT. Therefore, if a telecom operator provides DTH or Cable services, DoT would not levy a license fee on such revenue. However, a similar understanding is required to be confirmed for the broadcasting sector to enable the service providers to start moving towards convergence of telecom and broadcasting services.

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- In the era of growing convergence of Telecommunication and Broadcasting services, consumers are increasingly demanding telecom/DTH services from a single entity for ease of billing and interaction with their service provider. This will also help service providers in offering a better service experience due to converged digital platforms and operational efficiencies.
 - Therefore, the principle set by the Union Cabinet (levying license fee only on the revenue earned from licensed activities and not beyond that) should be extended to DTH services also for enabling convergence of DTH and Telecom services.
- ii. IPTV LF waiver – Against the principles of non-discrimination:**
- The recent media report highlights that DoT is likely to consider the waiver of the license fee on wireline broadband services (including IPTV) offered by licensed Telecom Service Providers (TSPs). The DoT decision is purportedly based on TRAI recommendations.
 - IPTV service enables all linear TV content/ channels being made available on wireline/ wireless platforms being provided, by TSP’s. Currently the IPTV services are subject to a license fee of 8% of Adjusted Gross Revenue (AGR).
 - However, any such proposal of exemption of License Fee on IPTV would lead to a prejudicial and detrimental impact on DTH service providers.
 - The DTH and IPTV are substitutable services and extension of benefit to one service to the exclusion of other service is arbitrary, unreasonable and creates a non-level playing field. The DTH industry already faces stress due to un regulated OTTs and DD free Dish and any LF waiver to IPTV would threaten the very survival of Industry.
 - The DoT proposal is even otherwise beyond the required policy mandate/ TRAI recommendations.

We therefore, request that:

- **TRAI should ask DoT to review its proposal for LF waiver for IPTV services, and**
- **In interim, the decision may kindly be put in abeyance till the time MIB takes a similar decision on enabling waiver of license fee for DTH operator.**

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iii. **Extend Waiver of NOCC Charges to DTH:**

- DoT vide its letter has conveyed the removal of NOCC charges for the telecom service licensees for the use of space segment. This order is made applicable for all DoT licensees for commercial/captive VSAT services, GMPCS, NLD and other telecom licensees having Unified License/Standalone license.
- In this regard we submit that the DTH industry is also one of the significant users of Satellite/Space bandwidth. Therefore, it is imperative that the direction related to removal of NOCC charges should also be made applicable to DTH and Satellite Broadcasting players alike. This will bring uniformity in approach for all licenses availing the satellite bandwidth.

CONCLUSION:

There is an urgent need for regulatory reset to create a sustainable and growth enabling environment.

The persisting skewed and overregulated approach on partial market participants while leaving the other part unregulated is keeping the market distorted in ways that harm competition, slows innovation, and ultimately deprive consumers of the benefits.

In order to cope up with the technological advancements, fierce competition and the evolving nature of the Broadcasting Industry involving multiple platforms, there is need to ensure a ‘regulatory parity’ among all delivery platform operators, and a just “regulation” to facilitate survival and growth of this sector with underlying principles of non-discrimination and level playing field to safeguard the industry and interest and choice for the consumer.

Hence, there is an urgent and immediate need to revamp the whole regulatory framework that must be alive and adjust to the changing market dynamics in a non-discriminatory and equal manner. It requires TRAI to take a fresh look at prevailing regulatory approach in a comprehensive manner and provide a conducive environment for everyone to compete on equal footing.

It is therefore, submitted that the Authority should re- introduce forbearance as well as takes necessary steps to ensure uniform regulatory framework.

We most humbly request TRAI that taking the above measures will help to revive the declining DTH Industry and benefit all other stakeholders.
