

**Response of Dish TV India Limited
to the
Pre-consultation Paper
on
Ease of Doing Business
in
Broadcasting Sector
dated
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Response of Dish TV India Limited to the Pre-consultation Paper on Ease of Doing Business in Broadcasting Sector:

We welcome the Pre-consultation Paper on ease of doing business in broadcasting sector. We agree with the view expressed by the Authority that a favorable business environment is a pre-requisite for any country to be a favorite business destination which not only leads to employment generation but also helps in the growth and development of an economy.

Since this is a pre consultation process, we would limit our response to the primary issues which are affecting DTH sector. Dish TV has been advocating for the rights of the DTH operators for long and we shall enumerate here all such issues, which, in our opinion, require immediate and urgent attention of the Authority, the Ministry and other concerned.

1. **Creation of Level playing field – to enable the DTH operators to undertake the business efficiently:** We state that parity and uniformity in any industry is the pre-condition for an enabling and conducive business environment and in the broadcasting industry such uniformity and parity cannot be achieved unless the discrimination being meted out to DTH platform through Regulation and Government conditions are not considered. We reiterate that until uniformity in the business opportunity is provided, any and all attempts for uniformity in the nature of services would continue to be discriminatory for the DTH operators. As stated repeatedly in various responses and representation, the imposition of License Fee – exclusively on DTH platform, was and continues to be discriminatory on the DTH platform. Such discrimination is not being corrected despite repeated representations. It is an undisputed fact that the present regime for the license fee is discriminatory against the DTH Operators and is designed to provide the leveraged position to Cable Operator, HITS, IPTV, and MSO etc. in the market place as they are not required to pay any annual license fee. On account of such additional burden the DTH subscriber is discriminated who has to bear higher burden, compared to cable/HITS subscriber. The DTH industry has been raising this issue from the time the industry has come into being. It is a matter of record that in the month of March 2008, the Ministry of Information and Broadcasting had taken a

decision to fix the License Fee @ 6% of the Gross Revenue which decision had the concurrence of the TRAI also. However, for reasons best known to the Government, the said decision is yet to be put into effect. The TRAI and the Ministry of Information & Broadcasting is well aware that the DTH has played a very critical role in making the Digitization dream a success in addition to providing a world class experience to the consumers. Despite this, the DTH industry has always been accorded a step motherly treatment. There is an urgent need to remove these anomalies and create a level playing field for the DTH operator and thus paving the way for a conducive business environment. Dish TV seeks the support of the TRAI in rationalization of the License Fee so that even the DTH may be granted a level playing field which has all along been given step motherly treatment by the Government and the TRAI.

Regarding license fee it may be noted that on 01.10.2004, the TRAI while issuing its recommendations on 'Issues relating to Broadcasting and Distribution of TV channels' where it recommended reduction in license fee to 8% of Adjusted Gross Revenue (AGR) also recommended that the amount paid by the DTH operators to the broadcasters towards content should be deducted for the purpose of calculation of license fee. The relevant extract of the said TRAI Recommendation is extracted hereunder:

“The principle of application of license fee on Adjusted Gross Revenue (AGR) as in the case of telecom may also be followed. The AGR in case of DTH service should mean total revenue as reflected in the audited accounts from the operation of DTH as reduced by

- (i) Subscription fee charges passed on to the pay channel broadcasters;
- (ii) Sale of hardware including Integrated Receiver Decoder required for connectivity at the consumer premise;
- (iii) Service/Entertainment tax actually paid to the Central/State Government, if gross revenue had included them.”

However in a complete departure from the abovementioned view, TRAI, on its recommendation dated 23.07.2014 recommended that the license fee should be calculated

@8% of AGR where AGR is to be calculated by excluding only Entertainment Tax, Service Tax & VAT. This was done when the Government did not seek the recommendation of the TRAI on the quantum of License Fee to be paid by the DTH operators and when there was huge opposition by the DTH industry. The role of TRAI towards the DTH industry is therefore not very supportive.

The already created a large gap between the revenue generation capacities of the MSOs vis-à-vis the DTH operators, has also caused further prejudice to the DTH operators considering the fact that the MSOs and DAS operators and also the HITS operator are not required to pay any Entry Fee, Bank Guarantee which are required to be paid by the DTH operators. Further, the tax liability on the DTH sector is highest in the industry. Clearly therefore there is no level playing field for the DTH operators and the DTH operators are competing with the operators who are much better placed. This is despite the DTH services brought transparency in the sector giving the much needed boost which was required by the sector to tackle the persisting problem of under declaration by the cable operators.

In view of the above, it is requested that if the Authority is intended to create opportunities for ease of doing business in the DTH sector, it must act upon removing all such road blockers, as mentioned above so as to create opportunities for other players to invest more in this sector.

2. **Availability of Satellite / bandwidth to DTH:** Satellite space is the most critical resource for a DTH platform, abundant availability of which is most critical for the DTH operator to be able to provide the entire gamut of channels as well as to be able to compete effectively with the Cable.

It is a matter of record that the DTH industry has been facing heavy scarcity of satellite capacity along with the duration of the existence of the DTH industry. While the DTH was introduced in India as an alternative to the cable however, shortage of satellite capacity,

among other reason, has been an hindrance towards the proper growth of the DTH platform.

Further, despite their being no provision in the DTH or WPC license issued to the DTH operators, the DTH operators are prohibited to directly engage and negotiate with the satellite operators for availing capacity for the DTH Services. As per the procedure, the Antrix Corporation Limited is the body which directly negotiates with the Satellite operators and provides the satellite capacity to the DTH operators. However, without any plausible reasons, the DTH operators are not allowed to participate in such negotiation with the satellite operators and the DTH operators are forced to pay such amount as may be negotiated and finalized by Antrix. Under these circumstances, the DTH operators have not had the opportunity to use their commercial expertise to negotiate a lower rate for the satellite capacity.

In addition to the above, the DTH operators are required to pay Service charge to Antrix which is on the extremely higher side. Effectively, the DTH operators are forced to pay Service Charge for such activity which can be undertaken by the DTH operators directly and in more efficient way.

In view of the above, it is stated that there is an imperative need to streamline the manner in which the satellite capacity can be availed by DTH operators.

3. **Toll free charges:** The requirement of establishment of a call center is a regulatory requirement imposed on the DTH sector by virtue of the Quality of Service regulation. While we understand that importance of establishment and maintenance of call center by a DTH operator, however the requirement of provision of toll free number is not well appreciated. Whereas in the case of telecom operators, the said services are provided by their own resources and except that no other industry has such a provision and provision of such services takes a lot of toll on the DTH operators. DTH business is already a costly affair. Moreover with discriminatory license conditions, huge taxation, the DTH sectors has already

reeled under a huge losses. We therefore propose this requirement of provision of toll free number by the DTH operators should be done away with.

4. **NOCC monitoring charges:** As per the DTH guidelines, an applicant company has to pay the license fee and royalty for the spectrum used as prescribed by Wireless Planning & Coordination Authority (WPC), under the Department of Telecommunications. In addition to the same, the applicant company has to pay monitoring charges to NOCC. It is stated that the object to having such provision is to monitor the transmissions of DTH operators by NOCC. It may however be stated that NOCC does the monitoring of the transmission done through only Indian satellites and it has no role where the transmissions are done through foreign satellites. As we all are aware, most of the DTH operators are using the services of the foreign satellite services providers, however despite the same, such operators are required to pay the monitoring charges to NOCC.

It may be pointed out that DTH business is a hugely cost incurring business and even before the commencement of the business operations, the applicant company has to shell out more than 100 crores towards entry fee, bank guarantee, establishment of head-end and call center facility etc. It is therefore clear that no non serious player can enter into the DTH business. It is highly unlikely that any of the DTH operator would resort to any illegal transmission of channels and therefore the requirement to have NOCC as a monitoring agency for DTH sector as well does not quite justify the rationale.

Further, the DTH license conditions requires a DTH operator to provide facility for continuous monitoring of the DTH broadcasting service at its own cost and maintain the recordings of programmes and advertisements carried on the platform for a period of 90 days from the date of broadcast and therefore there is absolutely no requirement for an additional monitoring done by NOCC and pay for the same.

Furthermore, it is a matter of record that till date NOCC has not provided any adverse report against any of the DTH operators. It is therefore requested that this requirement of payment of monitoring charges to NOCC may be done away with.

5. **Disaster Recovery sites**: The DTH license conditions the DTH operators to establish and complete the installation of the uplink earth-station with all monitoring facilities before commencement of DTH Platform. To safeguard the interests of the subscribers and to ensure that the subscribers should not suffer in case of an eventuality arising out of natural calamity or similar situations, many the DTH operators have a Disaster Recovery/ backup head-end ('DR Sites'). Establishment and maintenance of such DR sites requires huge capital and for the purpose proper maintenance of such DR sites it is required that such sites do not remain non-operational. However the DTH operators are now allowed to operate more than one earth station at one given point in time which results into a situation where one of the earth stations (mainly the DR sites) lie unused most of the time. It is therefore requested that the DTH operators are allowed to use the DR sites simultaneously in usual course of operation, thus reducing burden on primary head-end.