



Telecom Regulatory Authority of India



Supplementary Consultation Paper
on
Issues related to New DTH Licences

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Written view/comments on this paper are invited from the stakeholders by 25th November 2013. The comments may be sent, preferably in electronic form to Mr. Wasi Ahmad, Advisor (B&CS), Telecom Regulatory Authority of India, Mahanagar Doorsanchar Bhawan, Jawahar Lal Nehru Marg, New Delhi - 110002, (Tel No.011-23237922, Fax No.011-23220442; Email: traicable@yahoo.co.in or advbcs@traigov.in). Comments/counter-comments will be posted on the TRAI's website www.traigov.in.

Table of contents

Chapter	Title	Page No.
	Introduction	4
1.	Analysis of issues under consultation	6
2.	Summary of Issues for Consultation	23
Annexure		
I.	Relevant provisions regarding licence fee in HITS Guidelines, FM radio Phase III policy, IPTV Guidelines and Unified License for telecom services	25
II.	Relevant provisions regarding GR and AGR as prescribed in different policy, licence or guidelines	28

Introduction

- i. The existing 'Guidelines for obtaining licence for providing Direct-to-Home (DTH) broadcasting service in India' (hereinafter referred to as 'DTH Guidelines') provide for the issue of a licence for 10 years. There is no explicit provision for an extension or a renewal, implying that at the end of the 10-year period of validity, the licence expires. Therefore, in case, the Government intends to allow DTH operators to continue their business after the expiry of stipulated 10 year licence period, it will have to issue a new licence.
- ii. While the Guidelines may be silent on the provision of an extension or a renewal, surely it could not be possibly the intent of policy to effectively disallow existing licence holders from continuing their business beyond the initial licence period of 10 years. Starting a DTH business entails a huge investment of resources. It would, therefore, be a reasonable expectation on the part of DTH licencees that, on the expiry of the initial 10 year licence, they would be issued a new licence so that they could continue their business.
- iii. The Telecom Regulatory Authority of India (TRAI) had, on 1st October 2013, issued a Consultation Paper (CP) on 'Issue/Extension of DTH Licence'. This CP was issued in response to a reference from the Ministry of Information and Broadcasting (MIB) dated 3rd September 2013, wherein MIB has sought the recommendations of TRAI. In the CP only those issues were taken up which were specifically referred to the Authority by MIB. These issues pertained to levying of entry fee and quantum thereof, period of extension of the DTH licence and the renewal of bank guarantee on extension of the licence period.
- iv. It was also stated in the CP that certain modifications will have to be carried out in the DTH Guidelines and the licence agreement to reflect the policy changes that have taken place since 2001, such as the broadcasting sector coming under the purview of TRAI/TDSAT, in 2004. It was also stated that the issue of the annual licence fee being presently sub-judice, any judicial pronouncements in this regard will also have to be appropriately reflected.
- v. During discussions with the Authority, as part of the consultation process, the DTH industry stakeholders requested that since a new licence is to be issued, it would be in the interest of the sector that a comprehensive review of

the existing DTH licence conditions be taken up, not only taking into account the policy changes but also considering technological developments and overall performance of the sector since the notification of the DTH Guidelines in 2001. It also emerged that though the issue of licence fee in the present licensing regime is sub-judice, the licence fee that would be applicable in a new licensing regime could be separately deliberated upon and decided. Further, it was stated that the issue of devising a migration mechanism, as an option to licencees who have yet to complete existing licence periods, would also be a natural corollary to the formulation of a new licensing regime.

- vi. Accordingly, the Authority has decided to take up a comprehensive review of the provisions in the existing DTH Guidelines for which this supplementary consultation paper is being issued.
- vii. Chapter I of the consultation paper discusses various provisions of the existing DTH Guidelines being taken up for consultation and brings out the issues for consultation, seeking views/comments of stakeholders. A summary of the issues for consultation is contained in Chapter II.

Chapter I

Analysis of issues under consultation

1.1 The DTH Guidelines, amongst others, prescribe the eligibility criteria, licence fee, and technical standards and other obligations cast upon the licencees. The relevant provisions which may need to be revisited in the backdrop of policy changes, technological developments and the overall performance of the DTH sector, are discussed in the succeeding paragraphs.

A. Cross-holding/Control between a DTH licensee and Broadcasting entities and TV Channel Distribution entities

1.2 In the DTH Guidelines the following provisions have been specified :

“1.4 The Licensee shall not allow Broadcasting Companies and/or Cable Network Companies to collectively hold or own more than 20% of the total paid up equity in its company at any time during the License period.

1.5 The Licensee company not to hold or own more than 20% equity share in a broadcasting and/or Cable Network Company.”

1.3 In the Guidelines for providing HITS Broadcasting Service in India, the following provision has been prescribed:

“1.6 Broadcasting Company(ies) and/or DTH licensee company(ies) will not be allowed to collectively hold or own more than 20% of the total paid up equity in the company (getting license for HITS operation) at any time during the permission period. Simultaneously, the HITS permission holder should not hold or own more than 20% equity share in a broadcasting company and/or DTH license company. Further, any entity or person holding more than 20% equity in a HITS permission holder company shall not hold more than 20% equity in any other broadcasting company(ies) and/or DTH licensee company and vice-versa. This restriction, however, will not apply to financial institutional investors. However, there would not be any restriction on equity holdings between a HITS permission holder company and a MSO/cable operator company.”

Regarding the manner of determining the shareholding, the following has been stated in the said guidelines:

“1.7 While determining the shareholding of a Company or entity or person as per para 1.6 above, both its direct and indirect shareholding will be taken into account. The principle and methodology to determine the level of indirect holding shall be the same as has been adopted in Press Note 2 of 2009 dated 13.2.09 of the Department of Industrial Policy and Promotion under the Ministry of Commerce and Industry for determination of indirect foreign investment.”

- 1.4 In the context of DTH Guidelines, the basic intent behind the provisions pertaining to cross-holdings was to ensure that the broadcasting and the different types of TV channel distribution operators do not control each other i.e. to prevent an outcome when vertical integration across segments and/or horizontal integration across TV channel distribution platforms could compromise or limit competition. This is all the more relevant in the DTH sector where the sector is facing bandwidth capacity crunch due to limited availability of transponders. This translates into a limited TV channel carrying capacity of a DTH operator. Unlike the digital addressable cable TV sector, due to the bandwidth capacity crunch, it may also not be feasible to mandate ‘must carry’ provisions, in the DTH sector, to protect the interests of the broadcasters. In such a scenario, a vertically integrated DTH operator would have all the means to prevent entry or to drive-out channels of a competing broadcaster and thus has the potential to distort the market to further its own interests. Similarly, in case the distribution platform operators are integrated and have market dominance such entities can block content selectively in their own interest. This will, in turn, also restrict consumer choice and may also adversely affect the quality of service in the long run. In both the scenarios, the selective blocking of content may also restrict content plurality.
- 1.5 At the present juncture, the aspect of ownership/control over a company/operator, engaged in a particular licenced/permitted activity in the media and, broadcasting and cable TV services sectors is a subject matter of the on-going consultations of the Authority pertaining to media ownership and monopoly/market dominance in the cable TV sector. It would be appropriate that the principle remains the same across all the policies/guidelines governing various segments of these sectors so as to ensure a vibrantly competitive level-playing-field amongst various players and platforms of these sectors. This is also

important to bring in clarity to the existing as well as the prospective investors in these sectors.

- 1.6 In order to address the issue of cross-holding amongst entities in DTH, broadcasting and other TV distribution segments, what is important is that any of these entities, simultaneously, at any point of time, should not 'control' more than one among broadcaster, DTH operator or operator of cable TV network /HITS operator, rather than a restriction based on thresholds of equity they hold or own amongst each other, as presently prescribed in the DTH Guidelines (ref. para 1.2). In order to achieve this objective, it is necessary to have a comprehensive definition of 'control' which could cover all these aspects and conveys the same in simple and clear terms. To arrive at a comprehensive definition of 'control' it would be relevant to study the definition of control and the related terms in different Indian Acts, policies, guidelines, regulations etc.

Definition of 'Control'

- 1.7 The definitions of 'control' and 'group', as given in clauses (a) and (b) of Section 5 of the Competition Act 2002, are reproduced below:

"(a) 'control' includes controlling the affairs or management by –

- (i) one or more enterprises, either jointly or singly, over another enterprise or group;*
- (ii) one or more groups, either jointly or singly, over another group or enterprise;*

(b) 'group' means two or more enterprises which, directly or indirectly, are in a position to-

- (i) exercise twenty-six per cent or more of the voting rights in the other enterprise;*
- or*
- (ii) appoint more than fifty per cent of the members of the board of directors in the other enterprise; or*
- (iii) control the management or affairs of the other enterprise;"*

- 1.8 With respect to above mentioned clauses, the following was notified vide Notification 481 (E) passed on 4th March 2011:

"In exercise of the powers conferred by clause (a) of section 54 of the Competition Act, 2002 (12 of 2003), the Central Government, in public interest, hereby exempts

the 'Group' exercising less than fifty per cent of voting rights in other enterprise from the provisions of Section 5 of the said Act for a period of five years."

- 1.9 In this regard, it is also worth noting the definition of 'control' in Regulation 2(1)(e) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 2011 ('Takeover Code'), which also emphasizes on the importance of agreements between parties that could significantly contribute to control:

"Control includes the right to appoint the majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner."

- 1.10 In addition to considering the definition of 'control' given in the Competition Act and the SEBI takeover regulations, the definitions of 'associated company', 'control', 'subsidiary' and 'relatives' as given in the Companies Act 2013 are also relevant. These are reproduced below:

"(6) "associate company", in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

Explanation. – For the purposes of this clause, "significant influence" means control of at least twenty per cent. of total share capital, or of business decisions under an agreement;"

"(27) "control" shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner;"

"(77) "relative", with reference to any person, means any one who is related to another, if –

- (i) they are members of a Hindu Undivided Family;*
- (ii) they are husband and wife; or*
- (iii) one person is related to the other in such manner as may be prescribed;"*

“(87) “subsidiary company” or “subsidiary”, in relation to any other company (that is to say the holding company), means a company in which the holding company –

(i) controls the composition of the Board of Directors; or

(ii) exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Explanation. – For the purposes of this clause, –

(a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;

(b) the composition of a company’s Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;

(c) the expression “company” includes any body corporate;

(d) “layer” in relation to a holding company means its subsidiary or subsidiaries;”

1.11 The definition for associate could be further extended by including one aspect of the Meaning of Associated Enterprise as given in Clause 2 (c) of Section 92A in Chapter X of the Income Tax Act 1961 as follows:

“Two enterprises shall be deemed to be associated enterprises if a loan advanced by one enterprise to the other enterprise constitutes not less than 51% of the book value of the total assets of the other enterprise.”

This suggests that if the loan advanced by an enterprise is a substantial amount (more than half of assets), then this can amount to exercise of significant influence over the other enterprise, sufficient enough for them to be termed associated enterprises.

1.12 Keeping in view the definition of ‘control’ and ‘group’ as defined in the Competition Act, 2002, SEBI regulations, Income Tax Act 1961 and the Companies Act 2013, in order to contain the vertical/horizontal cross holdings

amongst the broadcasting and various TV channel distribution operators, the following definition of 'control' could be adopted:

An entity (E1) is said to 'control' another entity (E2) and the business decisions thereby taken, if E1, directly or indirectly through associate companies, subsidiaries and/or relatives¹:

(a) Owns at least twenty per cent of total share capital of E2. In case of indirect shareholding by E1 in E2, the extent of ownership would be calculated using the multiplicative rule. For example, an entity who owns, say, 30% equity in Company A, which in turn owns 20% equity in Company B, then the entity's indirect holding in Company B is calculated as 30% * 20%, which is 6%.; OR

(b) exercises de jure control by means of:

- (i) having not less than fifty per cent of voting rights in E2; Or
- (ii) appointing more than fifty per cent of the members of the board of directors in E2; Or
- (iii) controlling the management or affairs through decision-making in strategic affairs of E2 and appointment of key managerial personnel; OR

(c) exercises de facto control by means of:

- (i) being a party to agreements, contracts and/or understandings, overtly or covertly drafted, whether legally binding or not, that enable the entity to control the business decisions taken in E2, in ways as mentioned in (b) (i) (ii) and (iii) above.

For this purpose:

- (i) The definitions of 'associated company', 'subsidiary' and 'relatives' are as given in the Companies Act 2013.

¹ As defined in the Companies Act 2013

- (ii) An 'entity' means individuals, group of individuals, companies, firms, trusts, societies and undertakings.

- 1.13 In case the above mentioned definition of 'control' is adopted then the conditions pertaining to the cross-holdings in the DTH Guidelines may be required to be suitably modified.
- 1.14 As stated earlier, as per the existing DTH Guidelines, Broadcasting companies and/or Cable Network operators cannot collectively hold or own more than 20% of the total paid up equity in the DTH licensee. Further, in the HITS policy guidelines, neither the HITS permission holder nor any entity or person, holding more than 20% equity in a HITS permission holder company, is permitted to hold more than 20% equity in any broadcasting company(ies) and/or DTH licensee and vice-versa. The HITS operator is permitted to have control over operator(s) of cable TV network and vice-versa. This is because a HITS operator is basically an MSO and is permitted to cater to its subscribers through its own cable TV network(s).
- 1.15 In view of the above, to bring in the new concept of 'control', the provisions in the DTH Guidelines pertaining to cross-holdings/control may be modified as under:

"1.4 The Licensee shall not allow any entity controlling Broadcasting and/or any TV channel distribution operator to control it.

1.5 Any entity controlling the Licensee should not control any broadcasting and/or any TV channel distribution operator."

The term 'TV channel distribution operator' includes operators of Cable TV Network, HITS, DTH and IPTV. However, the IPTV operators which provide their services through cable TV networks will be considered as Cable TV operators for this purpose.

- 1.16 To give effect to the new concept of 'control' in various segments of the broadcasting sector, similar provisions applicable for cable network operators, broadcasters and HITS operators will also be required to be incorporated in the Cable TV Networks Rules, Uplinking/Downlinking Guidelines and Policy guidelines HITS respectively.

- 1.17 In case, the new definition of control is incorporated in the DTH guidelines, it is quite possible that some of the existing DTH licences may not be in compliance with the same. In such a scenario, a suitable timeframe (say one year) may have to be given to them to comply with the new provisions.
- 1.18 **Apropos the above, stakeholders are requested to give their views on the modification of clauses 1.4 and 1.5 of the DTH Guidelines, as mentioned in para 1.15, prescribing cross-holding/control restrictions. Stakeholders are welcome to suggest other options, if any, with justifications.**

Stakeholders are also requested to give their views on the timeframe to be given to the existing DTH licencees to comply with the new provisions and the justification thereof.

B. Interoperability of DTH STBs

- 1.19 The DTH Guidelines have provision on the technical interoperability of the DTH set-top boxes. These read as under:

“7.1 The Open Architecture (non-proprietary) Set Top Box, which will ensure technical compatibility and effective interoperability among different DTH service providers, shall have such specifications as laid down by the Government from time to time.

7.2 The Licensee shall ensure subscriber’s interests through a Conditional Access System (CAS), which is compatible with an open Architecture (non-proprietary) Set Top Box. “

- 1.20 The MIB in their two references dated 3rd May 2006 had sought TRAI’s recommendations, amongst others, on the issue regarding the interoperability of DTH STBs. TRAI gave its recommendations on 25th August 2006, endorsing the licence conditions with respect to the condition of interoperability of STBs prescribed in the DTH Guidelines. Alluding to these recommendations, the MIB, vide their reference dated 28th September 2007, again sought recommendations of TRAI regarding the continuance of the license conditions pertaining to interoperability of STBs. On 30th January 2008, TRAI gave its recommendations to the Government, inter-alia suggesting the retention of the technical interoperability conditions.

- 1.21 Subsequently, the Government, in May 2010, referred the recommendations back to TRAI for reconsideration. A consultation paper was issued in Aug 2010 and an open house discussion (OHD) was also held on the subject.
- 1.22 Some stakeholders opined that the condition of technical interoperability be retained and Bureau of Indian Standards (BIS) may be asked to come out with specifications for STBs, compatible with different technological standards to ensure effective technical interoperability. In the consultation process it also emerged that due to the fact that different operators entered the sector at different stages of evolution of compression and modulation technologies, different technologies co-exist. Therefore, the consumer-premises-equipments (CPEs) deployed by one operator may not be practically compatible with the network of another operator, hampering easy migration of the subscriber from one operator to another, in case the subscriber wishes to do so, without re-investing in a new CPE. It was also pointed out by the industry stakeholders that mandating these conditions, besides adding to the cost of the STBs and consequently to the cost to the subscribers, still would not ensure effective technical interoperability. Accordingly, these stakeholders were of the view that the conditions prescribing 'technical interoperability' may be dispensed with.
- 1.23 Subsequently, on 27.5.2013, TRAI issued the Telecommunication (Broadcasting and Cable) Services (Sixth) (The Direct to Home Services) Tariff Order, 2013 (No. 2 of 2013) in order to provide an easy exit option to subscribers, ensure availability of CPEs at reasonable price and, easy to understand, terms and conditions and, at the same time, protect the interests of the service providers. A similar tariff order was also notified for the set-top-boxes (STBs) offered by the operators, providing cable TV services through digital addressable cable TV systems (DAS). These Tariff Orders prescribe schemes for taking of CPE/STB on rental basis which are in addition to and not in exclusion of the other rental schemes, hire purchase schemes or outright purchase schemes offered by the DTH operator/MSO. This would provide an easy exit option for the subscriber and thus provides commercial interoperability.
- 1.24 The current provision at clause 7.1 of the DTH Guidelines is open to interpretation. The operators can interpret that they have to comply with BIS specifications which, in turn, ensures technical compatibility and effective interoperability among different DTH service providers. Whereas, the consumers can have a different view that these provisions mandate the service providers to ensure technical compatibility and effective interoperability among different DTH service providers and at the same time they have to comply with

the BIS specifications also. This ambiguity needs to be addressed. To do so, it would be appropriate that in the licence conditions, the issue of technical compatibility and effective interoperability should be de-linked from the requirement to comply with the BIS specifications. While the licence conditions can mandate compliance to the BIS specifications, the Government should ensure that BIS specifications should be in tune with the latest technological standards, including the aspect of technical compatibility and effective interoperability among different DTH service providers, and international practices available in the field. Once, new BIS specifications are notified, the operators should be mandated to comply with the same within a specified time frame, say 6 months. However, the operators shall be free to upgrade or not to upgrade the STBs of their existing consumers as per their business plan.

1.25 In light of the discussions above, the following approach may be adopted:

- a. The Government shall ensure that :
 - i. The BIS specifications are based on open architecture and should incorporate the latest technological developments with respect to the technical interoperability of DTH STBs, taking into account its practicability as well as the international experience;
 - ii. The BIS specifications clearly specify the contours of interoperability between the STBs based on different technological standards.
- b. The licence conditions should be amended to mandate compliance to the latest BIS specifications for the STBs to be offered to all the new subscribers. For compliance, a suitable period, say 6 months from the date of notification of such specifications, be given to the operators.

1.26 Apropos the above, issue for consultation is:

- i. **Do you agree with the approach discussed in para 1.25 above, on the aspect of technical compatibility and effective interoperability of STBs among different DTH service providers?**

If not, an alternative approach may be suggested with justification.

C. Licence Fee

1.27 Presently, the DTH licence has the following clause related to licence fee:

“3.1 The Licensee shall pay an initial non-refundable entry fee of Rs.10 crores before the issue of letter of intent to him by Licensor, and, after the issue of the Wireless Operational License by the Wireless Planning and Coordination (WPC) Wing of the Ministry of Communications, an annual fee equivalent to 10% of its gross revenue in that particular financial year in the manner detailed hereunder.

3.1.1 Gross Revenue for this purpose would be the gross inflow of cash, receivable or other consideration arising in the course of ordinary activities of the Direct to Home [DTH] enterprise from rendering of services and from the use by others of the enterprise resources yielding rent, interest, dividend, royalties, commissions etc. Gross revenue shall, therefore, be calculated, without deduction of taxes and agency commission, on the basis of billing rates, net of discounts to advertisers. Barter advertising contracts shall also be included in the gross revenues on the basis of relevant billing rates. In the case of licensee providing or receiving goods and service from other companies that are owned or controlled by the owners of the licensee, all such transactions shall be valued at normal commercial rates and included in the profit and loss accounts of the licensee to calculate its gross revenue.”

1.28 In its recommendations on “Issues relating to Broadcasting and Distribution of TV channels” dated 1st October 2004, TRAI recommended:

“a) A reduction of 2% in the license fee for DTH as already proposed by the Authority in its recommendations on “Accelerated growth of internet and broadband penetrations”, in line with the reduction in the license fee given for other telecom operators.

b) The principle of application of license fee on the 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 Government.”

- 1.29 Subsequently, on 15th April 2008, in response to MIB's reference dated 17th March 2008 on above recommendations, TRAI agreed for levying the licence fee at 6% on Gross Revenue (GR) basis.
- 1.30 The relevant provisions regarding licence fee in HITS policy, FM radio Phase III policy and Unified License for telecom services have been placed at Annexure I.
- 1.31 The other relevant parameters in the context of licence fee are the definitions of GR and Adjusted Gross Revenue (AGR). The definitions of GR and AGR as defined in different relevant licences, policies and guidelines pertaining to broadcasting and telecom sectors are placed in Annexure II.
- 1.32 In case of IPTV service providers, who are providing the services under UL, as per the definition of the AGR given in the UL, Service Tax on provision of service and Sales Tax actually paid to the Government if gross revenue had included as component of Sales Tax and Service Tax is excluded from the Gross Revenue to arrive at the AGR.
- 1.33 In view of the growing convergence between the broadcasting and Telecom sectors and the fact that the DTH licences are also granted under section (4) of Indian Telegraph Act 1885, as in the case of telecom licences, the licence fee and the definition of AGR for the DTH sector may be aligned with that in the Unified Licence. Presently, the licence fee, as prescribed in the Unified Licence, is 8% of AGR. Thus, for DTH services, licence fees may be charged at 8% of the AGR where AGR could be calculated by excluding Service Tax on provision of service and Sales Tax actually paid to the Government if Gross Revenue had included components of Sales Tax and Service Tax.
- 1.34 Apropos the above, the issue for consultation is:
- i. Do you agree that, in line with the Unified Licence, the licence fee for DTH services should be charged at the rate of 8% of the AGR where AGR be calculated by excluding Service Tax and Sales Tax actually paid to the Government, if Gross Revenue had included components of Sales Tax and Service Tax?**
- If not, an alternative formulation may be suggested along with justifications.**

D. Migration fee

- 1.35 Once new licencing regime is put in place, there would be a situation where two licencing regimes would be simultaneously in operation. So as to ensure a level-playing field between the two sets of DTH operators (operating under two different regimes), it would be but natural to make available a migration scheme to operators, working in the old regime to migrate to the new regime. This would automatically raise the question of levying of migration fee on such operators.
- 1.36 Earlier, in case of FM radio sector, the Government had allowed licencees of Phase-I to migrate to Phase-II after payment of a migration fee. The migration fee for a city was decided to be equal to the average of the one-time-entry-fee (OTEF) of all the successful bids in phase I for that city or that category of city. All Phase-I operators were migrated to Phase-II w.e.f. 1.4.2005 and were issued fresh licences for 10 years, at par with the new operators who entered FM broadcasting in Phase-II
- 1.37 As per the 'Guidelines for Grant of Unified Licence' issued on 19th August 2013 by Department of Telecommunications, Ministry of Communications and Information Technology, the relevant provisions pertaining to migration/renewal of existing licences are as under:

"8. Migration / Renewal of existing Licenses

8.1 In order to ensure that the UL Regime covers all existing Licenses, a migration path is offered to the existing licensees to migrate to UL regime. Licenses of any of the existing Telecom Service Provider shall be eligible to migrate to UL with any number of additional services, however, the Telecom Service Provider has to migrate all of its existing licenses

8.2 It would be open for existing Licensees of any Telecom service to migrate to Unified License well before the due date of expiry of existing license. However, it would be mandatory for an existing Licensee to migrate to Unified License Regime under following conditions:

a) All the Telecom Service Providers who wish to expand the scope of their license/ service to include any additional service or any licensed area/Service Area, shall have to migrate all of its existing licenses to Unified License regime. This shall also be applicable when additional service/Service Area License is acquired through transfer/merger of license from another Licensee. Further, on expiry of any of their current license, the Telecom Service Providers shall have to migrate all its licenses to

Unified License regime at the time of renewal/extension of license and obtain spectrum separately, which is delinked from Unified License, if required.

b) In case of Merger & Acquisition being sought by Licensee with a Telecom service Provider who has not migrated to UL, the merged entity shall migrate to UL and both/all licensees involved in the Merger and Acquisition Activity shall give an undertaking to this effect prior to Merger and Acquisition Activity.

8.3 The procedure for migration of existing licensees is as follows:-

(i) On migration, Unified License shall be for a period of 20 years from the effective date of UL, irrespective of the validity period of the License already held.

(ii) Entry fee applicable to migration to Unified License shall be equal to entry fee for new Unified License except for Internet Service Provider with BWA spectrum.

However, a rebate on pro-rata basis to the Telecom Service Provider in entry fee for migration to UL license with respect to ILD/ NLD/ UL(AS)/ UASL/ CMTS licenses only shall be given as per formulae below:

Sl. No.	Type of Existing License	Rebate
1	ILD /NLD	Rs 12.5 lakh x No of years remaining for existing NLD/ILD License validity.
2	UL(AS)/ UASL/ CMTS in various service area	Rs 5 lakh for each service area except J&K and NE and Rs. 2.5 lakh J&K and NE service area x No of years remaining for existing UL(AS)/UASL/ CMTS License validity subject to maximum limit of Rs. 15 crore.

(iii) In respect of other licensees who may opt to migrate to Unified License, pro-rata rebate to the Telecom Service Provider may be given on the Entry Fee paid, if any, by them for obtaining their respective Licenses based on the balance number of years (Part of year shall not be counted). However, no Entry Fee refund shall be made by the Licensor.

(iv) After migration, the terms and conditions of Unified License shall be applicable, however, Roll out obligation and any other relevant liabilities including financial dues and treatment of violations and imposition of penalty thereof, if any, associated with the existing Licenses/spectrum shall remain applicable under the terms of existing license even after migration to Unified License.

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1.38 In the new DTH licence regime, the entry fee shall be applicable for both new entrants and existing DTH operators migrating to the new regime. However, a rebate, commensurate to the value of the licence for the remaining licence period, may be granted to migrating licencees. The net entry fee payable by the migrating DTH licencee may be termed as the 'migration fee'.

1.39 The quantum of migration fee for the existing licencees can be arrived at by giving a rebate in the entry fee, equivalent to the residual value of the entry fee of the existing licence i.e. the existing licencee gets compensated for the residual entry fee for the balance period of the existing licence. For example, if a licencee has been in operation for a period of 6 years out of the 10 years licence period, then he will get compensated for the Rs.10 crore entry fee, rationalized for the period of balance 4 years of its operations. Accordingly, the rebate may be calculated as per the following formula:

$$\text{Rebate} = (\text{Entry fee under existing Licence/existing licence period i.e. 10 years}) \times (\text{No. Of years remaining in the existing regime at the time of migration})$$

In this formulation part of a year is not to be counted.

1.40 Apropos the above, the issue for consultation is:

- i. Do you agree with the approach discussed in para 1.39 above, for arriving at the quantum of migration fee to be charged from the existing DTH licencees on their migration to the new DTH licencing regime?**

If not, an alternate formulation may be suggested along with justifications.

- 1.41 In case, a new licencing regime is put in place, there could be following scenarios:
- i. The existing operators have an option to migrate to the new regime by a specified date after paying the specified migration fee and clearing all the dues payable under the obligations of the existing license or continue in the existing regime, till the expiry of their licence.
 - ii. The existing operator continues in the existing regime and migrates to the new regime on the day of expiry of the existing license.
 - iii. All the existing operators compulsorily migrate to the new regime by a specified date after paying the specified migration fee and clearing all the dues payable under the obligations of the existing license.

In the scenarios i and ii above, there could be a situation where there will be two concurrent regimes in operation which have different provisions for cross-holdings/control, licence fee etc. Such a solution may not be practically feasible.

1.42 Apropos the above, the issue for consultation is:

- i. **Do you agree with approach regarding migration of existing DTH licencees to a new licensing regime, discussed in para 1.41 above?**
- ii. **If yes, how much time, after notification of the new DTH licensing regime, should be given to the existing DTH operators for migration to new DTH licencing regime?**
- iii. **If not, what should be the approach followed for migration of existing DTH operators to a new licensing regime?**

Please elaborate your response with justifications.

1.43 In view of the growing convergence between the broadcasting and Telecom sectors, certain provisions, prescribed in the Unified Licence such as Modifications in the Terms and Conditions of Licence, Restrictions on 'Transfer of Licence', Requirement to furnish information, Dispute settlement, security conditions, preparation of accounts, Quality of Service, suspension and revocation of licence, Applicability of Telegraph Act, confidentiality of

information etc. may also be required to be suitably incorporated, in the DTH Guidelines.

1.44 (i) If any stakeholders has a view that any other provision of the DTH Guidelines requires any change or any provision is required to be added to these guidelines, the same be suggested along with justifications.

(ii) In light of the fact that a new DTH licensing regime is being discussed, stakeholders may also give their modified views, if any, on the issues that have been discussed in the consultation paper dated 1st October 2013.

Chapter II

Summary of Issues for Consultation

- 2.1 Stakeholders are requested to give their views on the modification of clauses 1.4 and 1.5 of the DTH Guidelines, as mentioned in para 1.15, prescribing cross-holding/control restrictions. Stakeholders are welcome to suggest other options, if any, with justifications.

Stakeholders are also requested to give their views on the timeframe to be given to the existing DTH licencees to comply with the new provisions and the justification thereof.

- 2.2 Do you agree with the approach discussed in para 1.25, on the aspect of technical compatibility and effective interoperability of STBs among different DTH service providers?

If not, an alternative approach may be suggested with justification.

- 2.3 Do you agree that, in line with the Unified Licence, the licence fee for DTH services should be charged at the rate of 8% of the AGR where AGR be calculated by excluding Service Tax and Sales Tax actually paid to the Government, if Gross Revenue had included components of Sales Tax and Service Tax?

If not, an alternative formulation may be suggested along with justifications.

- 2.4 Do you agree with the approach discussed in para 1.39, for arriving at the quantum of migration fee to be charged from the existing DTH licencees on their migration to the new DTH licencing regime?

If not, an alternate formulation may be suggested along with justifications.

2.5 Do you agree with approach regarding migration of existing DTH licences to a new licensing regime, discussed in para 1.41?

If yes, how much time, after notification of the new DTH licensing regime, should be given to the existing DTH operators for migration to new DTH licencing regime?

If not, what should be the approach followed for migration of existing DTH operators to a new licensing regime?

Please elaborate your response with justifications.

2.6 (i) If any stakeholders has a view that any other provision of the DTH Guidelines requires any change or any provision is required to be added to these guidelines, the same be suggested along with justifications.

(ii) In light of the fact that a new DTH licensing regime is being discussed, stakeholders may also give their modified views, if any, on the issues that have been discussed in the consultation paper dated 1st October 2013.

Relevant provisions regarding licence fee in HITS Guidelines, FM radio Phase III policy, IPTV Guidelines and Unified License for telecom services

a. The Guidelines for provisioning of HITS broadcasting services in India

"4. NON REFUNDABLE ENTRY FEE AND OTHER FEES

4.1 The applicant will be required to pay a non-refundable entry fee of Rs. 10 crores.

4.2 No annual fee will be required to be paid.

4.3 The company/permission holder shall also in addition pay the license fee and royalty for the spectrum used as prescribed by Wireless Planning & Coordination Authority (WPC), under the Department of Telecommunications."

b. The policy guidelines for FM Radio Phase III

"6.1 (a) Subject to the provisions contained in sub-para (b), the Permission Holder shall be liable to pay an Annual Fee to the Government of India every year charged @ 4% of Gross Revenue of its FM radio channel for the financial year or @ 2.5% of NOTEF for the concerned city, whichever is higher.

(b) The permission holders in the States of North East (i.e. Arunachal Pradesh, Assam, Meghalaya, Manipur, Mizoram, Nagaland, Sikkim and Tripura,) and Jammu & Kashmir (J&K) and island territories (i.e. Andaman and Nicobar islands and Lakshadweep) will be required to pay an Annual Fee to the Government of India charged @ 2% of Gross Revenue for each year or 1.25% of NOTEF for the concerned city, whichever is higher, for an initial period of three years from the date from which the annual license fee becomes payable and the permission period of 15 years begins. The revised fee structure will also be applicable to existing operators in these States/UTs to enable them to effectively compete with the new operators. The three year period for the existing operators shall be reckoned from the first day of the commencement of the next quarter (refer para 6.3) subsequent to the date of issuance of these guidelines.

6.3 Annual Fee shall be paid in advance on quarterly basis in four equal instalments within the first fortnight of each quarter of a financial year. For this purpose, four quarters shall be tri-monthly periods beginning 1st April, 1st July, 1st October and 1st January respectively.”

c. The Guidelines for provisioning of Internet Protocol Television (IPTV) Services

“(i) Telecom service providers (UASL, CMTS) having license to provide triple play services and ISPs with net worth more than Rs. 100 Crores and having permission from the licensor to provide IPTV or any other telecom service provider duly authorized by the Department of Telecom will be able to provide IPTV service under their licenses without requiring any further registration. Similarly cable TV operators registered under Cable Television Network (Regulation) Act 1995 (referred as Cable Act hereafter) can provide IPTV services without requiring any further permission.

(iii) Telecom service providers as mentioned above will be subjected to percentage of Adjusted Gross Revenue (AGR) as license fee as applicable from time to time which is presently 6%, 8%, and 10% for access service licensees in category “C”, Category “B” and category “A” circles and 6% for ISPs. In case any telecom service provider register itself as cable operator and provides IPTV using its telecom resources, it shall be considered as service under telecom license. Such a service provider shall have to pay the license fee on IPTV revenue also as applicable to its telecom license.”

Recently, licence fee has been revised under the Unified Licence for telecom services, and has been set at 8% of AGR.

d. Unified Licence for telecom services

“1. 18. FEES PAYABLE:

18.1 Entry Fee:

18.1.1 A one-time non-refundable Entry Fee for each authorized Service shall be paid as per Annexure-II. The total amount of Entry fee shall be subject to a maximum of Rs. 15 crore.

18.2 License Fee:

18.2.1 *In addition to the Entry Fee, an annual License fee as a percentage of Adjusted Gross Revenue (AGR) shall be paid by the Licensee service-area wise, for each authorized service from the effective date of the respective authorization. The License fee shall be 8% of the AGR, inclusive of USO Levy which is presently 5% of AGR.*

Provided that from Second Year of the effective date of respective authorization, the License fee shall be subject to a minimum of 10% of the Entry Fee of the respective authorized service and service area"

Relevant provisions regarding GR and AGR as prescribed in different policy, licence or guidelines

a. FM Radio Phase III policy

“6.2 Gross Revenue for this purpose would be the gross inflow of cash, receivables or other consideration arising in the course of ordinary activities of the FM Radio Broadcasting enterprise from rendering of services and from the use by others of the enterprise resources yielding rent, interest, dividend, royalties, commissions etc. Gross Revenue shall, therefore, be calculated, without deduction of taxes and agency commission, on the basis of billing rates, net of discounts to advertisers. Barter advertising contracts shall also be included in the gross revenues on the basis of relevant billing rates. In the case of a permission holder providing or receiving goods and services from other companies that are owned or controlled by the owners of the permission holder, all such transactions shall be valued at normal commercial rates and included in the profit and loss account of the permission holder to calculate its gross revenue.”

b. Unified Licence for telecom services

i. “Access Service”

“3.1 GROSS REVENUE

The Gross Revenue shall be inclusive of installation charges, late fees, sale proceeds of handsets (or any other terminal equipment etc.), revenue on account of interest, dividend, value added services, supplementary services, access or interconnection charges, roaming charges, revenue from permissible sharing of infrastructure and any other miscellaneous revenue, without any set-off for related item of expense, etc.

3.2 Adjusted Gross Revenue (AGR)

For the purpose of arriving at the “Adjusted Gross Revenue (AGR)”, the following shall be excluded from the Gross Revenue to arrive at the AGR:

I. PSTN/PLMN/GMPCS related call charges (Access Charges) actually paid to other eligible/entitled telecommunication service providers within India;

II. Roaming revenues actually passed on to other eligible/entitled telecommunication service providers and;

III. *Service Tax on provision of service and Sales Tax actually paid to the Government if gross revenue had included as component of Sales Tax and Service Tax.*"

ii. *"Internet Service"*

"3.1 Gross Revenue: The Gross Revenue shall be inclusive of all types of revenue from Internet services, revenue from Internet access service, revenue from internet contents, revenue from Internet Telephony service, revenue from activation charges, revenue from sale, lease or renting of bandwidth, links, R&G cases, Turnkey projects, revenue from IPTV service, late fees, sale proceeds of terminal equipments, revenue on account of interest, dividend, value added services, supplementary services, interconnection charges, roaming charges, revenue from permissible sharing of infrastructure etc. allowing only those deductions available for pass through charges and taxes/levies as in the case of access services, without any set-off for related item of expense etc.

3.2 For the purpose of arriving at the "Adjusted Gross Revenue (AGR)" the following shall be excluded from the Gross Revenue to arrive at the AGR:

(i) Service Tax on provision of service and Sales Tax actually paid to the Government if gross revenue had included as component of Sales Tax and Service Tax.

(ii) Roaming revenue actually passed on to other eligible/entitled telecom service provider."