

Response to TRAI Consultation Paper No. 8/2007

On

Headend-In-The-Sky (HITS)



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Response to TRAI Consultation Paper on HITS Zee Network

1. **Introduction:** Zee network welcomes the consultation process on HITS and we are pleased to file our comments in this paper. At the outset, we would like to draw the attention of the Authority to the guidelines issued for HITS, under which the ASC Enterprises holds a HITS license to operate the HITS platform. As per the definition contained in Interconnect Regulations 2004, the HITS operators are required to:

(i) use only C-Band for transmission with EIRP of less than 33 DBw (which requires antenna sizes by cable operators of 4 meters (12 feet) or above). Such dishes can only be mounted by cable operators and the provision was kept in order to maintain a firewall between the cable operators and DTH operators and the intention has been that HITS is mainly meant for MSOs/cable operators for delivering the contents to the customers on cable.

(ii) the HITS operator was envisaged to use its own encryption system and all channels were to be encrypted with the same encryption system in order that the subscribers can use a common box for reception.

We feel that both these stipulations were carefully thought out and are relevant for consideration in the new process of consultation as well.

Issues for Consultation

I. Scope for HITS Operation

The scope for consultation outlines two models:

Model 1: Where the HITS operator contracts with different operators for buying content and encrypts the same under a common encryption for transmission to MSOs/cable operators for onward delivery to subscribers through cable.

Model 2: In the said model the HITS operator merely provides infrastructure facilities to one or more MSOs or to consortium of cable operators / MSOs desirous of uplinking TV channels to its HITS satellite for downlinking and further transmission to the TV homes by the cable operators across the country. The infrastructure facilities would normally consist of transponder space on satellite, earth station facilities and the provision for simulcrypt/multicrypting of channels aggregated by different MSOs with different encryption systems.

HITS operator in this model does not contract with the broadcaster for content. He only enters into the contracts with one or more MSOs or consortium of cable operators desirous to uplink their aggregated channels from HITS earth station(s) to the HITS satellite. The HITS operator acts as a facilitator by providing facility of a satellite for the aggregated content to be uplinked and subsequently downlinked by the cable operators.

In the light of above the following issue has been posted for consultation

What should be the scope of the HITS operations? Whether the scope of the HITS operator should include both the models as stated under heading “scope of HITS operation” in paras 4.5 and 4.6?

Zee Network Response:

We are of the view that policy guidelines for HITS should provide for both the models for the HITS operations i.e. model 1 as well as model 2. The Model 2 which envisages the provision of infrastructure facilities is definitely going to incentivise different MSOs to digitize using a common up linking Hub and

infrastructure facilities and thereby reducing their costs so as to provide services to the customers at the competitive price.

In this Model the MSO are not required to invest in Capital infrastructure and as such the major cost required to be invested in creating the up linking Hub and Transponder capacity would be done by the HITS infrastructure provider. In this Model the precious and expensive resource of Satellite capacity will be shared between multiple MSO/LCO thus not only saving foreign exchange but also facilitating the faster roll out of the services.

In addition once the basic HITS infrastructure in place, the common infrastructure service provider can at any time, by entering into a content arrangement with the broadcasters, become full fledged HITS service provider platform by making available the digital services to the MSO/Cable operators.

Thus in view of Zee Network we recommend that guidelines for HITS operations should include both the models.

II Frequency Band for HITS Transmission:

The issue for consultation is whether the HITS operation be allowed both in “Ku band” and “C band” or only in ‘C band’. If both bands are to be allowed, then whether the existing restriction on DTH for transmission under Ku band should also be reviewed.

Response

If the Ku band is to be considered for HITS transmission, with the objective to reach all MSOs/cable operators and or to the subscribers directly, we need to analyse as to why all the leading broadcasters are using C-band for transmission for their services.

It is a matter of common knowledge that all the major broadcasters such as Zee Network, Sahara, Star, Eanadu, Sun, Asianet etc are using different C-band satellites for their transmissions. Even the smaller broadcasters are on Insat or other C-Band satellites.

The reason for using the C-Band lies in the Physics of transmission in the Ku Band. The frequencies in the Ku band of 11/14 GHz are severely affected by rain, snow, hail, storms and atmospheric moisture. The result is that the quality and availability of received signal is not such that it may be used for large scale cable distribution. It should also be recognized that the DTH signals go direct to the TV sets whereas the cable signals after reception need to traverse many Kilometers of cable with repeaters and inherent error rates even in digital systems, thereby further degrading the quality.

In case of DTH, the operators are aware that it will suffer rain impairment and Ku band signals may be not receivable in some coastal areas or borders of India where the EIRP is low. It is taken as a known factor in the reach to customers. However the broadcasters are not willing to compromise the signal quality by having the distribution to cable operators being done by the Ku Band.

Today in coastal, rainfall prone areas and areas with snowfall and fog, the signals are still available via cable due to use of C-band. It may not be out of place to mention that such areas may be deprived off the TV transmissions if the cable delivery through HITS is carried out in Ku band.

The Zee Network would like to reiterate its position by saying that we are transmitting in the C-band to ensure quality reception across India including all its border and coastal areas, and all territories and rural areas. We would not be agreeable to have the entire benefits of C-band transmission stripped off by the final leg of transmission to cable operators being in the Ku band through HITS.

(ii) As mentioned in our introductory remarks, the HITS operators are required to use only C-Band for transmission with EIRP of less than 33 dBw (which requires antenna sizes by cable operators of 4 meters (12 feet) or above). Such dishes can only be mounted by cable operators and the provision was kept in order to maintain a firewall between the cable operations and DTH. We would like to iterate that the same arguments are entirely valid today.

(iii) We need to recognize that “Piracy” is a burning issue in India and will remain so in the near future. The technologies which are introduced, need to ensure that this objective continues to be furthered. It is our opinion that piracy using Ku band is very difficult to detect or to eliminate as both HITS and DTH would be using the Ku band and at the customers end it may be difficult to distinguish the transmission feed.

(iv) In addition there are a lot of regulatory issues involved in providing HITS service in Ku band. The major being the license fee /revenue sharing issue and the pricing of services in CAS areas. A subscriber enjoying DTH service in a CAS notified area may be paying subscription fee which would be totally different from his neighbor who has opted for CAS through cable (as cable prices are regulated by TRAI) though both the subscriber may be getting the same content feed through the Ku band. Hence it is our submission that the firewall be continued to be maintained and the HITS operations be restricted to solely the C-band.

(v) Any likely introduction of Ku band HITS would create irresolvable confusion on the ground. Today most multistory buildings are already being served by the Ku band DTH systems MDUs. If HITS goes in the Ku band, the same can serve the MDUs as well. Will the government make the DTH operators give up all the MDUs? If not will it permit the cable operators to install MDUs? Which tariff, license fees and tax structure will be followed? Which price regulation will apply?

Similar questions will start arising from small cable communities as well. Hence the firewall is very important.

III. FDI Limits

The issue for consultation is what should the FDI limits for HITS platform be. (49% with 20% cap on direct holding as in the case of DTH or 49% overall cap as in case of uplink stations or 74% as in case of Telecom).

Response

The argument which seems to have been advanced to support the higher FDI purportedly is that the investments in satellite transponders, uplink stations and purchasing of content are very high and may not be forthcoming from domestic operators alone. We would like to point out that these arguments are fallacious as despite the 49% direct and indirect cap in DTH, the number of operators who have applied for services is more than what the satellite systems and our infrastructure can support. The Indian companies are today buying out global giants and to further an argument that money for such ventures can only come if FDI is relaxed, depicts a stunning lack of awareness of what is happening in the media sector in particular and in the Indian industry in general. Such an argument should have been rejected at the TRAI level itself.

The second argument which is furthered is that in Telecom the FDI has been relaxed to 74% and therefore in view of convergence, this sector also may be treated the same. As has been pointed out before to TRAI, the media sector is a very sensitive sector and therefore it has been recognized that a different treatment is needed as is the case in other countries as well. As we have also pointed out that the foreign countries continue to maintain a differential policy on ownership of media assets and services such as DTH. USA which permits 100% FDI in telecoms still requires strict controls in media sector, including the need

for citizenship of USA. This should be enough to reply to foreign companies which under the garb of “convergence” try to seek dispensations which are not permitted in their own countries.

IV. Entry Fee and Annual Fee

Response

(i) The digitalization of cable services in the country and the introduction of subscriber identity via CAS need to be the major objectives of the government in furthering the growth of CAS. The hiring of transponders and infrastructure will require expanses which will need to be borne by the customers. Hence we do not recommend any annual fees to be charged at present. It is also logical as the HITS is merely a retransmission of the original broadcasts. However in order to keep non serious players out, an entry fees of Rs. Ten Crore is justified. We further propose that the fees be refunded in full once the HITS operator completes setting up the platform and commence services. The fees should be forfeited if the operator fails to set up a platform within eighteen months of grant of license.

(ii) There is no justification of Charging any annual fee as HITS merely means Headend situated in the Sky instead of a Terrestrial Headend and in fact is nothing else but an MSO service. Since only the mode of delivery of the content is slightly altered in case of HITS, rest all other ingredients of the cable services remain the same. Therefore there is absolutely no justification in treating the HITS operations differently from Cable Services just because at an intermediate stage, a satellite is used and thus proposing levy of annual license fee.

V. Restrictions on uplinking

At present there is a clause in the DTH policy (Clauses 13.1 and 7.5) which makes it compulsory for the earth station to be uplinked from India. In the

consultation paper after giving some possible reasons for permitting uplinking from outside India, the question posed for consultation is:

If the HITS operator is allowed to uplink from outside India, then what are the kind of checks and balances that would need to put in place to address the concerns of a HITS operator who is uplinking from India?

Response

At the outset we would like to say that the question is like putting the Cart before the Horse. The question seems to convey the impression that the decision to permit the HITS operators to uplink from outside India has already been taken and now we need to discuss the checks and balances for the same. In fact even the proposal to permit the HITS operator from outside India warrants no consideration because of various security, monitoring and regulatory issues.

The restriction of uplinking of DTH to be from India has been done by keeping the importance of the media sector and the sensitivities it holds. It has been a decision of the Parliament after considered discussions including Ku band uplinking and its potential impact on the media sector. The view of the Zee Network is that there is no question of dilution of this policy which has the potential to put the future of the country in jeopardy because of impending security threats.

One argument which is given in favor of the permission being granted to set up the HITS from overseas is that the downlink policy permits the channels to be received from uplink stations located abroad. We would like to point out that there is a difference in some channels being permitted uplinks from abroad and that of a platform itself residing abroad. The platform residing abroad has the following additional implications:

Firstly the presumption of the TRAI in assuming that the channels which go on the HITS platform will be on some satellite in C or Ku band is fallacious. Today many Indian broadcasters are taking their channels on optical fibers to various platforms such as Astra, Hotbird, Echostar and DirecTV. If a HITS platform is available, many operators will give their channels via fiber to the HITS hub. Is the Government of India willing to give a downlink license to those channels which exist only on Fiber?

Secondly the HITS platforms will be earning a certain percentage of the Cable services revenue which will accrue to them abroad. There may be lot of taxation and regulatory issues in this.

Thirdly, it would not be appropriate for an encryption system to be applied on the platform from overseas. In cases of national emergency the agencies will have no control on the content beamed to India nor will they be in a condition to monitor the same.

Fourthly, if the cable platform, which has more than 70 million homes, can be permitted to uplink from abroad, what is the justification of withholding the same for DTH with only 3 million customers? This goes against spirit of the policy decisions taken by the Parliament with extensive and due deliberations on the sensitivity of media sector.

Fifthly, it is improper to ask an Indian content provider to give content decryption rights to an operator overseas and pay in foreign exchange for its services. In case of piracy the Indian broadcaster will be at the mercy of the foreign operator as will be the case where a HITS operator who starts to control large chunks of Indian subscribers forces unfavorable terms, raises rates and similar unfavorable and anticompetitive actions.

In short, there can be no question of permitting a HITS platform to operate from abroad due to the serious implications as explained above. The question of safeguards etc. for such foreign uplinking is out of context when the basic question of uplinking from out of India itself has not been agreed.

VI. Spectrum Fees

We are in agreement that there is no justification for charging spectrum fees for HITS service. We suggest a similar dispensation for the DTH services as well.

VII and VIII Should any interconnection issues be addressed in licensing conditions?

Response

The TRAI has rightly articulated in detail as to how the previous attempt at launching the HITS platform by ASC was stymied because of some broadcasters refusing to give content on flimsy grounds. However now the Interconnect regulation 2004 duly recognize HITS operator as “Distributor of Channels” thus entitling it to demand the content from Broadcasters on non discriminatory basis.

We would like to propose as follows:

(i) Giving content to all licensed HITS platforms operating out of India should be mandatory within 60 days of receiving such request as provided in Interconnect Regulations.

(ii) The broadcasters should determine the price of all bouquets or channels as the case may be. The HITS operator will be responsible for a revenue share for all pay channels, which may be prescribed by the TRAI.

(iii) There should be no restrictions on carriage of FTA channels in terms of pricing or revenue share or any other aspect.

(iv) There should be a provision in the HITS license on the lines similar to the stipulations contained in DTH license to ensue the availability of content. A model clause in this regard is given below:-

The Licensee shall not carry the signals of a broadcaster against whom any regulatory body, tribunal or court have found the following:

- (i) refused access on a non-discriminatory basis to another HITS operator contrary to the Regulations of TRAI;*
- (ii) violated the provisions of any law relating to competition including the Competition Act.*

Explanation: *It shall be the sole responsibility of the licensee to ascertain before carrying its signals on its platform whether any broadcaster(s) has been found to be in violation of the above conditions or not . In respect of TV Channels already being carried on the platform, the licensee shall ascertain from every source including the licensor, TRAI, Tribunal or a court, whether concerned broadcasters or the channels is in violation of the above conditions. If any violation so comes to its notice, the licensee shall forthwith discontinue to carry the channels of the said broadcaster*

IX. Value Added Services

Zee Network would like to suggest that both the DTH and the HITS operators should be permitted to offer value added services in the interest of consumers and the viability of platforms.

X. Must Provide / Must Carry provisions:

Zee Network would like to suggest that there should be a must provide provision to ensure that content is provided by all broadcasters to make the HITS successful. It should be recognized that HITS is nothing but an MSO service and non provision of content will deprive the cable customers of the specific channels which may be withheld by the broadcasters because of rivalry/anti competitive practices. This may place customers who do not have the option to choose cable operator due to ground realities at a great disadvantage. We however agree with the TRAI that at present there is no need for a Must carry Clause.

We request the Authority to hold Open House Discussions on this issue and may please grant us an opportunity to explain our view point in more detail.
