



Telecom Regulatory Authority of India

Recommendations

on

License Fee and Policy Matters of DTH Services

New Delhi, India

21st August 2023

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LIST OF ACRONYMS

| Acronyms | Description |
|----------|---|
| AGR | Adjusted Gross Revenue |
| ApGR | Applicable Gross Revenue |
| BG | Bank Guarantee |
| CP | Consultation Paper |
| CAG | Comptroller and Auditor General |
| CAS | Conditional Access System |
| DoT | Department of Telecommunications |
| DTH | Direct-to-Home |
| DPO | Distribution Platform Operator |
| FBG | Financial Bank Guarantee |
| GR | Gross Revenue |
| GST | Goods and Service Tax |
| HC | High Court |
| HITS | Headend-In-The-Sky |
| IFMC | In-flight and Maritime Connectivity Authorizations |
| IPTV | Internet Protocol Television |
| LCO | Local Cable Operator |
| MIB | Ministry of Information & Broadcasting |
| MRO | Minimum Rollout Obligation |
| MSO | Multi System Operator |
| M&E | Media and Entertainment |
| NCF | Network Capacity Fee |
| OHD | Open House Discussion |
| OTT | Over-the-Top |
| OSP | Other Service Provider |
| PBG | Performance Bank Guarantee |
| PDOA | Public Data Office Aggregator |
| RBI | Reserve Bank of India |
| SACFA | Standing Advisory Committee on Frequency Allocation |
| SC | Supreme Court |
| SMS | Subscriber Management System |
| STB | Set Top Box |
| TDSAT | Telecom Disputes Settlement & Appellate Tribunal |
| TSP | Telecom Service Provider |
| TRAI | Telecom Regulatory Authority of India |
| TV | Television |
| UL | Unified License |
| USOF | Universal Service Obligation Fund |
| VAT | Value Added Tax |
| WOL | Wireless Operating License |
| WPC | Wireless Planning and Coordination |

CHAPTER I

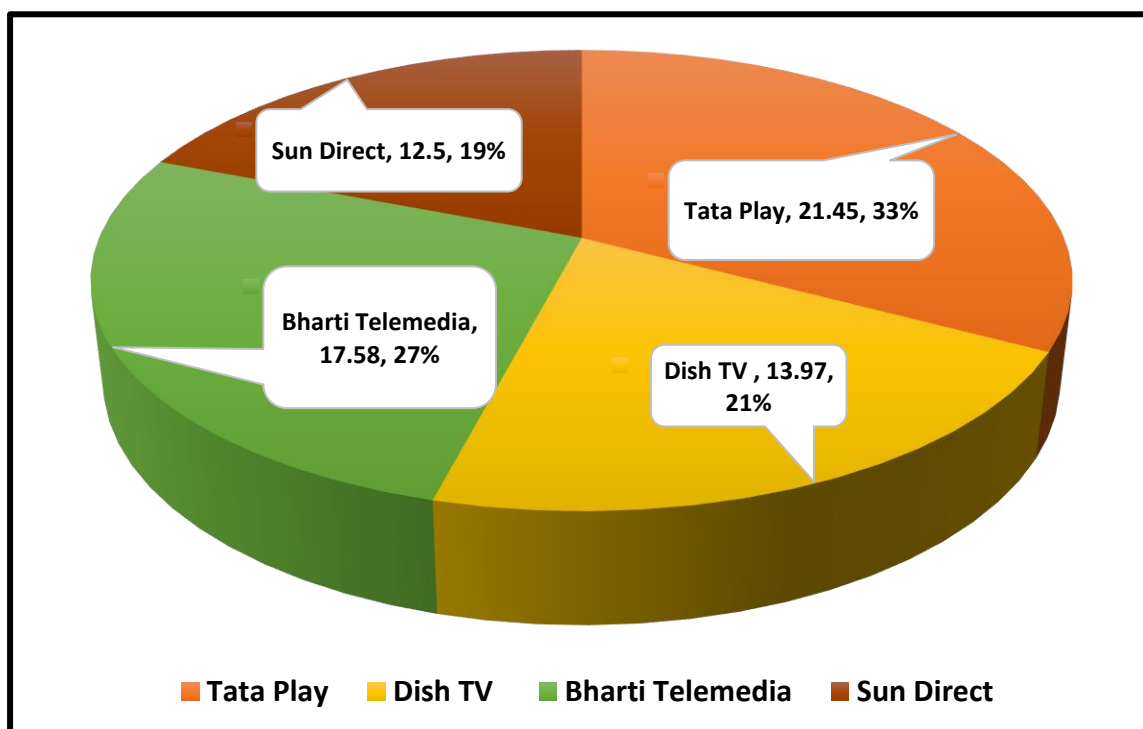
INTRODUCTION AND BACKGROUND

A. Introduction

- 1.1 Television distribution in India comprises of television services delivered by Direct to Home (DTH) service providers, cable television (TV) services delivered by Multi-System Operators (MSOs) (and its linked Local Cable Operators (LCOs)), Internet Protocol Television (IPTV) service providers and Headend-in-the-Sky (HITS) service providers. Direct to Home service providers also include DD Free Dish platform. It is owned and operated by Public Service Broadcaster 'Prasar Bharati'.
- 1.2 Among these distribution platforms, DTH services are governed by the policy guidelines for obtaining license for providing DTH broadcasting services in India. These guidelines and the license are issued by Ministry of Information and Broadcasting (MIB). The Government of India had permitted the reception and distribution of television signals in Ku band vide its notification no. GSR 18(E) dated 9th January 2001 issued by the Department of Telecommunications (DoT). This marked the beginning of DTH broadcasting services in India in the Ku band.
- 1.3 In DTH technology, in general, the satellite television channels are received using a personal dish antenna in an individual home. The broadcast signals are transmitted from geosynchronous satellite located approximately 35,700 km above the earth at certain orbital location. The viewer's dish picks up signals from the satellite and passes it on to the set-top box receiver located inside the viewer's house. The receiver processes the signal and passes it on to the television.
- 1.4 The policy guidelines for obtaining license for providing DTH broadcasting service were issued by MIB on 15th March 2001. The guidelines as amended up to 2007 are hereinafter referred to as 'DTH

Guidelines¹. The latest amendment to DTH Guidelines was made on 30th December 2020 (hereinafter referred to as ‘DTH 2020 Amendment²). As per the ‘DTH 2020 Amendment’, DTH operators have been issued provisional licenses by MIB for providing DTH services as per amended terms with effect from 1st April 2021. Subsequently, the ‘Operational DTH Guidelines’ were issued by MIB on 16th September 2022 with respect to license fee, platform service channels and sharing of infrastructure by DTH operators.

Figure 1.1: Percentage share of pay DTH operators



**Note: The above figure depicts the subscriber base in millions.*

1.5 At present, there are four pay DTH operators providing television services through addressable system in the country. The operators are M/s Tata Play Limited, M/s Bharti Telemedia Limited, M/s Dish TV India Limited and M/s Sun Direct TV Private Limited. The total active³ subscriber base of pay DTH service providers is around 65.50 million

¹ [https://new.broadcastseva.gov.in/digigov-portal-web-app/jsp/mib/common/PDFContent/DTH_PDF/DTH%206.11.2007%20\(1\).pdf](https://new.broadcastseva.gov.in/digigov-portal-web-app/jsp/mib/common/PDFContent/DTH_PDF/DTH%206.11.2007%20(1).pdf)

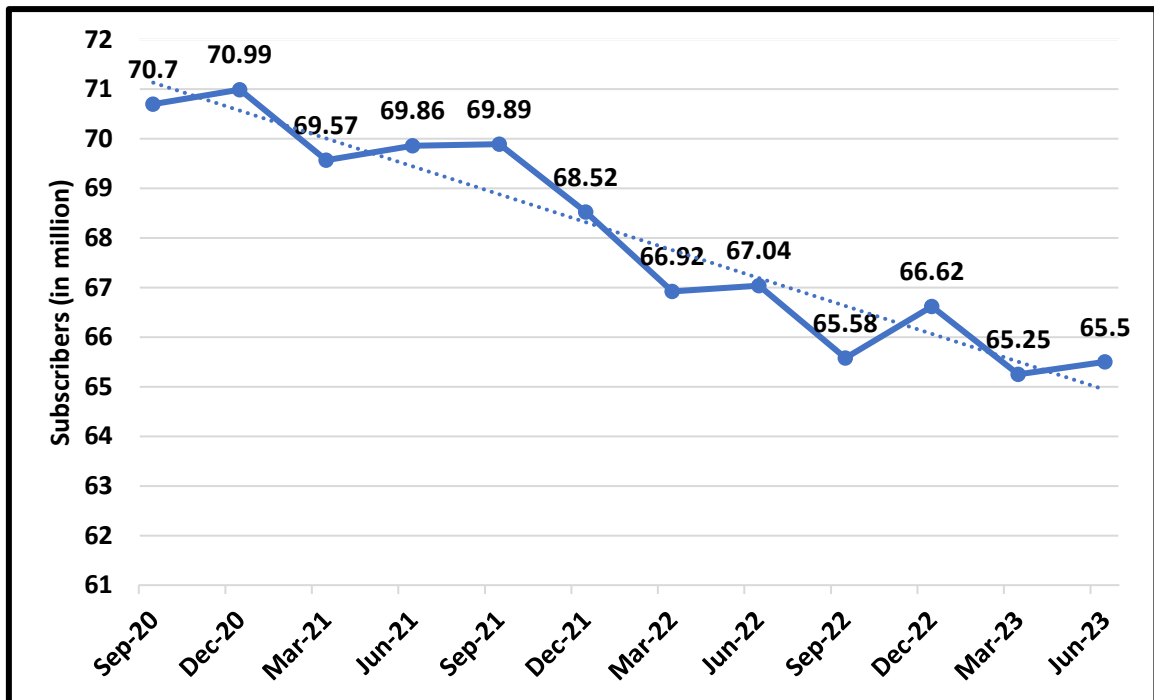
² <https://mib.gov.in/sites/default/files/Amendment%20in%20Guidelines%20for%20obtaining%20license%20for%20providing%20DTH%20Broadcasting%20Services%20in%20India.pdf>

³ Total active subscriber base also includes subscribers who have been inactive or temporarily suspended for not more than last 90 days.

at the quarter ending 30th June 2023⁴. The percentage share of each DTH operator is as per the graph in **Figure 1.1**.

1.6 Further, the trend of the total active subscriber base of the four pay DTH operators⁵ for the last 12 quarters⁶, is depicted in **Figure 1.2**. It may be inferred from the figure that the DTH sector is showing a declining trend in terms of subscribers over the last two years.

Figure 1.2: Total active subscriber base of DTH Sector



1.7 The ‘DTH 2020 Amendment’ prescribe an annual License Fee at the rate of 8% of its Adjusted Gross Revenue (AGR), to be paid on a quarterly basis to MIB. The AGR is calculated by excluding Goods and Service Tax (GST) actually paid to the Government from the Gross Revenue (GR) of the Licensee.

1.8 The ‘DTH 2020 Amendment’ also prescribes to submit a Bank Guarantee to MIB for an amount of Rs. 5 crore for the first two quarters, and thereafter, an amount equivalent to License Fee for two quarters and other dues not otherwise securitized.

⁴ As reported by the DTH operators to TRAI

⁵ Four DTH service providers are Tata Play, Airtel DTH, Dish TV and Sun Direct

⁶ Figures as reported to TRAI

1.9 The License Fee and Bank Guarantee have been prescribed as per recommendations of TRAI on 'Issues related to New DTH Licenses' issued on 23rd July 2014⁷ and response to the back reference issued on 12th April 2018⁸.

B. MIB reference

1.10 Based on the representations of DTH association and DTH operators, MIB sent a reference to TRAI on 2nd February 2022 vide letter no. 2/33/2021-BP&L ([Annexure-I](#)). Vide this reference, MIB requested TRAI to examine the following issues from policy angle and furnish its recommendations under section 11(1)(a) of the TRAI Act, 1997:

- i. Issue of exclusion of non-licensed activities from definition of Gross Revenue in respect of DTH License Fee as in case of recent amendments carried out by Department of Telecommunications (DoT) and/or identify any other base for levy of the license fee. Accordingly, the format of Form-D in DTH sector as per GR/AGR criteria may also be provided;
- ii. Percentage/ amount of Bank Guarantees (BGs) in respect of private DTH services as in case of recent amendments carried out by Department of Telecommunications (DoT); and
- iii. Issue of Uniform License Fee (Level playing field) in respect of all Distribution Platform Operators (DPOs).

1.11 The Consultation Paper (CP) titled 'License Fee and Policy matters of DTH Services' covering the above-mentioned issues was released by TRAI on 13th January 2023⁹.

C. DoT's amendments: AGR definition and BG quantum

1.12 Since the MIB reference is based on the amendments made by DoT with respect to AGR/ license fee and BGs, it is important to discuss those amendments here. In telecom domain, a set of telecom reforms

⁷<https://traigov.in/sites/default/files/DTH-Reco%28New-Licensing-Regime%29-uploaded.pdf>

⁸<https://traigov.in/sites/default/files/TRAIResponse12042018.pdf>

⁹https://traigov.in/sites/default/files/CP_13012023.pdf

were announced by Union Cabinet on 15th September 2021¹⁰. In furtherance to the cabinet approval, certain amendments were carried out by DoT in the Unified License (UL) Agreement for telecom services. The two amendments related to the issues raised in this consultation are as below:

- Amendment vide DoT letter no. 20-271/2010 AS-I (Vol.-V) dated 25th October 2021¹¹ on the subject 'Amendment in UL agreement for Adjusted Gross Revenue (AGR)' hereinafter referred to as 'UL AGR Amendment'. These amendments were carried out considering TRAI's recommendations on 'Definition of Revenue Base (AGR) for the Reckoning of License Fee and Spectrum Usage Charges' dated 6th January 2015¹² (hereinafter referred to as 'UL AGR Recommendations'). As per the amendments in various telecom license agreements, the definition of AGR has been changed by DoT. The amendments have introduced a new term that is Applicable Gross Revenue (ApGR). Further, DoT has also issued clarifications on 17th July 2023 on the issue of definition of GR and AGR.
- Amendment vide DoT letter no. 20-271/2010 AS-I (Vol.-IV) on 06th October 2021¹³ on the subject 'Amendment in Unified License Agreement for rationalization of Bank Guarantees'. As per these amendments all telecom licensees are required to submit Performance Bank Guarantee (PBG) to a maximum of Rs. 44 crore initially, instead of Rs. 220 crore earlier, and initial Financial Bank Guarantee (FBG) to a maximum of Rs. 8.8 crore instead of Rs. 44 crore earlier. Thereafter, FBG will be equivalent to 20% of the estimated sum payable equivalent to License fee for two quarters and other dues not otherwise securitized, which was earlier equivalent to the estimated sum payable equivalent to License fee for two quarters and other dues not otherwise securitized. Further,

¹⁰ <https://pib.gov.in/PressReleasePage.aspx?PRID=1755086>

¹¹ <https://dot.gov.in/sites/default/files/AGR%20Amendment.pdf>

¹² https://traigov.in/sites/default/files/Reco-AGR-Final-06.01.2015_0.pdf

¹³ https://dot.gov.in/sites/default/files/BG-UL-06-10-2021_0001.pdf

the FBG is subject to periodic review on six monthly bases by the Licensor and is renewed from time-to-time.

D. Consultation with the Stakeholders

- 1.13 Comments on the Consultation Paper were invited from the stakeholders by 13th February 2023 and counter-comments by 27th February 2023, as per initial timelines. Upon request of some stakeholders, the dates for submission of comments and counter-comments were extended to 27th February 2023 and 13th March 2023, respectively.
- 1.14 The Authority received comments from 07 stakeholders and counter-comment from 01 stakeholder. These comments and counter-comments are available on TRAI's website¹⁴. An Open House Discussion (OHD) was conducted on 20th April 2023 through video conferencing to seek the views of the stakeholders on various issues.

E. Structure of the document

- 1.15 Based on the inputs received from stakeholders, amendments carried out by DoT and TRAI's internal analysis, the Authority has finalised these recommendations. Chapter II delineates with the revised definitions of GR, the newly introduced term ApGR, revised AGR definition and the quantum of License Fee thereof for DTH Licensees. Chapter III elaborates the issue of rationalizing the Bank Guarantee. Summary of the recommendations is available in Chapter IV.

¹⁴ <https://traigov.in/consultation-paper-license-fee-and-policy-matters-dth-services>

CHAPTER II

ISSUES RELATED TO LICENSE FEE

- 2.1 As mentioned in Chapter I, TRAI received a reference from MIB on 2nd February 2022, wherein TRAI has been requested to furnish its recommendations on the DTH guidelines on the issues related to levy of License Fee, quantum of the Bank Guarantee and the level playing field amongst various distribution platform owners. The consultation paper raised the pertinent issues as per the MIB reference.
- 2.2 Responses received from the stakeholders in the form of comments/ counter-comments and submissions made during the open house discussions on the issues listed above have been duly deliberated and analysed in the following sections.

A. Provisions relating to License Fee in the DTH Guidelines

- 2.3 License Fee is a non-tax fee levied on a service provider against the privilege of being permitted to carry out a licensed activity. The license fee is levied on different kinds of licensees as the government delineates it's right to carry out certain activities.
- 2.4 The Article 3 on License Fee of 'DTH Guidelines', prescribes the following definition of Gross Revenue, which is valid till date:

“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.

3.1.2 Every licensee shall maintain separate financial accounts for the channel, which shall be audited by the Statutory Auditors. At the end of each financial year, the company shall provide the statement of gross revenue forming part of the final accounts of the licensee as per the format in Form D, duly certified by the Statutory Auditors. It may be noted that the income heads specified in Form D are only indicative and illustrative and the Auditor would include all the relevant heads qualifying for gross revenue whether or not specifically included in the said format. In addition, the income from the Related Parties shall have to tally with the Related Parties schedule as per Accounting Standards no. 18. Besides, the company shall disclose the following information at the end of each financial year, duly certified by the Statutory Auditor.

Total trade and other discounts.

Total agency commission.

Total Related party transaction.”

- 2.5 Accordingly, a Form-D has been prescribed with income heads that are indicative and illustrative.

FORM-D

STATEMENT OF GROSS REVENUE FORMING PART OF THE FINAL ACCOUNTS OF M/S. -----

| S.L. N. | Income Heads | Tariff rate/ rate card | Discount trade | Others | Agency Commission | Taxes | Net as per P& L a/c |
|------------|-----------------|------------------------------|-------------------|--------|----------------------|-------|---------------------------|
|------------|-----------------|------------------------------|-------------------|--------|----------------------|-------|---------------------------|

[Amount Rupees in lacs]

1. Advertisement
2. Promotional events
 - 2.1. Musical/Star Events
 - 2.2. Sponsored

- programmes
- 3. Marketing Rights
- 4. Commission
- 5. Royalties
- 6. Sale of antenna, set top boxes etc.
- 7. Rent –Premises
- 8. Rent-Equipment
- 9. Interest/Dividend
- 10. Related Party Transactions
 - 10.1 Goods sold.
 - 10.2 Services tendered.
 - 10.3 Production
 - 10.4 Marketing
 - 10.5 Others

Note: 1. The income heads are only indicative and illustrative, and the Auditor would include all the relevant Heads of the licensee.

2. The income from the Related Parties shall tally with the Related Parties as per accounting standards no. 18.

2.6 Thereafter, on 23rd December 2020¹⁵, Cabinet approved revision in guidelines for providing DTH Services in India. Subsequent to this, an amendment was issued by MIB on 30th December 2020¹⁶, through which the license fee has been modified to 8% of AGR from earlier 10% of GR. The ‘DTH 2020 Amendment’ on License Fee prescribes as under:

1. *The Licensee shall pay an annual fee equivalent to 8% of its Adjusted Gross Revenue, calculated by excluding GST from Gross Revenue (GR) as reflected in the audited accounts of the company for that particular financial year.*
2. *The minimum annual license fee shall be subject to 10% of the Entry Fee.*
3. *The license fee is to be paid on a quarterly basis, the quantum thereof to be equal to the actual License Fee payable for the preceding quarter. The annual settlement of the License Fee shall be done at the end of the financial year.*

¹⁵ <https://mib.gov.in/sites/default/files/Cabinet%20decision%20on%20DTH%20.pdf>

¹⁶ <https://mib.gov.in/sites/default/files/Amendment%20in%20Guidelines%20for%20obtaining%20license%20for%20providing%20DTH%20Broadcasting%20Services%20in%20India.pdf>

4. *The licensor will have the right to modify the license fee as a fixed percentage of AGR during the validity of license period.*

2.7 Pursuant to this amendment, all the existing pay DTH operators were issued provisional licences on 31st March 2021, which *inter-alia* mentions that:

1. *The Licensee shall adhere to the terms and conditions of the "Guidelines for Obtaining License for Providing Direct-To-Home (DTH) Broadcasting Services in India (as amended upto 06.11.2007) and further amended on 30.12.2020."*
2. *The Licensee shall have to enter into an Agreement containing terms and conditions of DTH License with the Ministry of Information and Broadcasting in accordance with "Guidelines for Obtaining License for Providing Direct-To-Home (DTH) Broadcasting Services in India (as amended up to 06.11.2007) and further amended on 30.12.2020."*

2.8 In continuance to this, on 16th September 2022¹⁷, MIB has issued the 'Operational Guidelines' with respect to license fee, platform service channels and sharing of infrastructure by DTH service providers in India. With respect to payment of License Fee, the following has been stated:

1. *The Licensee shall pay an annual fee equivalent to 8% of its Adjusted Gross Revenue, calculated by excluding GST from Gross Revenue (GR) as reflected in the audited accounts of the Company for that particular financial year.*
2. *The minimum annual license fee shall be subject to 10% of the Entry Fee.*
3. *The license fee is to be paid on a quarterly basis, the quantum thereof to be equal to the actual License Fee payable for the preceding quarter. The first payment of license fee for the previous quarter shall be made on the basis of provisional account for the*

¹⁷<https://mib.gov.in/sites/default/files/%28English%20Version%29%20Operational%20Guidelines%20for%20Direct-To-Home%20%28DTH%29%20Broadcasting%20service%20in%20India%20dated%2016.09.2022.pdf>

quarter within one month of the end of a particular quarter. The annual settlement of the License Fee shall be done at the end of the financial year.

4. *The payment of license fee for the 4th quarter shall be made after adjustments and settlements of accounts for the whole year and on the basis of the finalised audited statement of the entity and latest by 30th September succeeding the financial year.*
5. *The licensor will have the right to modify the license fee as a fixed percentage of AGR during the validity of license period.*

B. Background

2.9 The subsequent paragraphs discuss the following issues connected to License Fee of DTH Licensees and amendments made in Unified License by DoT:

- TRAI's recommendations on the DTH Licensee Fee
- Response of MIB
- Chronology of court cases on the subject
- TRAI's recommendations on definition of AGR in telecom, and
- Amendments carried out by DoT in Unified License agreement w.r.t. AGR definition.

B1. TRAI's recommendations on the issue of License Fee and correspondence with MIB

2.10 MIB issued 'DTH Guidelines' for operating DTH services in India on 15th March 2001, wherein License Fee was prescribed as an annual fee equivalent to 10% of its gross revenue in that particular financial year in the manner detailed in the guidelines. Broadcasting and Cable Services came under the purview of TRAI with effect from 9th January 2004¹⁸ by notification No. S.O.44(E) and 45(E) in the Gazette of India, Extraordinary, Part III, Section 4, issued by DoT.

¹⁸ Ministry of Communications and Information Technology vide Notification No. 39 dated 09.01.2004 bearing S.O. No. 44(E)

2.11 After due consultations, TRAI issued recommendations on 'Issues relating to Broadcasting and Distribution of TV Channels' on 1st October 2004¹⁹, wherein the Authority *inter-alia* recommended the following:

- 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/State Government, if gross revenue had included them.*
- c) *DTH operators shall have to carry out detailed accounting separation so that revenues accrued from the DTH operations and from other services, sale of hardware could be separated. The operator should follow the Accounting Separation guidelines issued by the Authority from time to time.*
- d) *The DTH operator shall produce, on demand, all such books of accounts and documents which have bearing on the verification of revenue for the purpose of calculating license fee and auditing by the Comptroller and Auditor General of India in accordance with provisions of Section 16 of the Comptroller*

¹⁹ <https://tra.gov.in/sites/default/files/01octcable%5B1%5D.pdf>

and Auditor Generals' (Duties, Powers and Condition of Service) Act, 1971.

e) Necessary changes should be made to the license agreements to incorporate these changes.

- 2.12 With regards to the above recommendation, MIB sent a back reference dated 17th March 2008 and sought TRAI's views. The back reference proposed to prescribe annual license fee as 6% of GR (compared to 10% of GR as prescribed in 'DTH Guidelines') instead of considering the deductions to arrive at AGR. MIB opined that allowing such deductions is likely to enable the companies to conceal their actual shareable revenue rather than making the system transparent. MIB stated that the proposal for levying 6% license fee on GR will be broadly in line with the proposal of TRAI to charge at 8% of AGR in terms of actual revenue accrual to the Government.
- 2.13 On the said proposal of MIB, TRAI vide its response dated 15th April 2008²⁰ informed that it had no objection, if the Ministry continues with the concept of gross revenue for license fee. However, despite TRAI's agreeing with the said proposal, it was not implemented.
- 2.14 Thereafter, on 03rd September 2013, MIB had sent a fresh reference to TRAI on the issue of entry fee, bank guarantee and the period of extension of license (since the license period of first DTH operator was about to expire). Based on the reference, TRAI issued a Consultation Paper on 01st October 2013²¹ on the subject 'Issues/Extension of DTH License'. In the said CP, TRAI acknowledged that the issue of the annual license fee was sub-judice. It was also mentioned in the CP that the consultation does not impact the ongoing case(s) as regards the license fee.
- 2.15 However, in response to the October 2013 consultation paper, DTH service providers vide their comments requested TRAI to undertake a comprehensive review of the DTH guidelines. Considering the request of

²⁰ https://traigov.in/sites/default/files/08Apr_Recommendation_15Apr08.pdf

²¹ https://traigov.in/sites/default/files/DTH_cp-01102013.pdf

the stakeholders, TRAI issued a supplementary Consultation Paper dated 14th November 2013²² on 'Issues related to New DTH Licenses'. The supplementary Consultation Paper vide para 1.27 to 1.34 raised the issue related to license fee and sought comments of the stakeholders.

2.16 Based on aforesaid consultation process, TRAI released its recommendations on 23rd July 2014²³ on 'Issues related to New DTH Licenses'. Vide para 1.24 of the said recommendations, TRAI averred that license fee is basically a non-tax revenue collected from a service provider in-lieu of the privilege of being permitted to perform licensed activity. The DTH service providers pay sales tax, service tax and the entertainment tax on the good and services provided by them to their subscribers, in addition to the license fee. The revenue on which the license fee is levied should not include the revenue which actually goes towards payment of other forms of taxes. Therefore, the license fee should not be charged on GR; rather, it should be charged on AGR, computed by deducting the amount of taxes from the GR. The recommendations that were made after due analysis is as under:

- i. The license fee in the new DTH licensing regime should be charged as 8% of AGR where AGR is calculated by excluding, Service Tax, Entertainment Tax and Sales Tax/VAT actually paid to the Government, from the GR.*
- ii. The DTH licensees shall be required to pay license fee on a quarterly basis, the quantum thereof shall be equal to the actual license fee payable for the preceding quarter. The annual settlement of the license fee shall be done at the end of the financial year.*
- iii. The annual License Fee shall be subject to a minimum of 10% of the Entry Fee.*
- iv. The license should include a provision that prescribes that the Licensor reserves the right to modify the License Fee as a percentage of AGR any time during the currency of the agreement.*

²² <https://traigov.in/sites/default/files/Supplementary%20CPas%20uploaded-14112013.pdf>

²³ <https://traigov.in/sites/default/files/DTH-Reco%28New-Licensing-Regime%29-uploaded.pdf>

The schedule of payment of License Fee should be amended accordingly.

2.17 MIB had sent a back reference to TRAI on 12th March 2018²⁴, wherein MIB proposed to vary from the TRAI recommendations of 23rd July 2014 on the issues of period of license, entry fee, rate of license fee, periodicity of payment of license fee and quantum of bank guarantee. Regarding the licence fee, MIB mentioned the following:

- *While deliberating on the issue of rate of license fee it has been noted that the DTH sector is growing and being a network economy, the sector may get benefit of reducing marginal costs. It may also benefit from the technological innovation, thus reducing the costs of DTH operators. It is proposed to continue to charge license fee @10% of GR.*
- *It is proposed that the DTH license shall be required to pay license fee on an annual basis, with an option of pre-payments by DTH operators.*

2.18 However, in response to MIB back reference dated 12th March 2018, TRAI vide its response dated 12th April 2018²⁵ reiterated its earlier recommendations. TRAI recommended to charge License Fee as 8% of AGR. As per the recommendations, AGR is calculated by excluding Goods and Services Tax (GST) actually paid to Government. While reiterating these recommendations, TRAI observed that it would be logical to align it with the percentage prescribed in the UL, in view of the growing convergence of telecom and broadcasting services. It is important to note that the license fee of 8% in the telecom sector comprises of Universal Service Obligation Fund (USOF) levy of 5%.

2.19 Secondly, on the proposal of MIB to pay the license fee on an annual basis, TRAI reiterated to pay the license fee on quarterly basis. This has been reiterated since it is a well-established practice in the Telecom

²⁴ <https://tra.gov.in/sites/default/files/MIBBackReference12042018.pdf>

²⁵ <https://tra.gov.in/sites/default/files/TRAIResponse12042018.pdf>

sector and TRAI believed that synergy in telecom and broadcasting sector needs to be developed keeping in view the growing convergence.

2.20 Based on the TRAI recommendations of 2014 (para 2.16) and TRAI's response to the back reference on 12th April 2018 (para 2.18 & 2.19), MIB brought the amendment for License Fee on 30th December 2020²⁶. MIB subsequently notified 'Operational DTH Guidelines' on 16th September 2022²⁷ in respect of license fee, platform service channels and sharing of infrastructure by DTH operators.

2.21 It is pertinent to note here that the initial DTH guidelines were issued in the year 2001 and the change in license fee was brought in year 2021 (i.e. revision of license fee from 10% of GR to 8% of AGR). Further that the pay television market is undergoing disruption. Technological developments have enabled Over-the-Top (OTT) based content services to offer on demand entertainment for pay television consumers. Whereas DD Free Dish with around eighty private television channels²⁸ is providing an option to the low paying consumers to migrate to free services.

2.22 A timeline of the MIB guidelines on DTH license and recommendations made by TRAI are briefly shown in the **Figure 2.1** below:

²⁶<https://mib.gov.in/sites/default/files/Amendment%20in%20Guidelines%20for%20obtaining%20license%20for%20providing%20DTH%20Broadcasting%20Services%20in%20India.pdf>

²⁷<https://mib.gov.in/sites/default/files/Operational%20guidelines%20for%20DTH%20Broadcasting%20Services%20in%20India.pdf>

²⁸ <https://www.freedish.in/p/dd-freedish-channel-list-by-package.html>

Figure 2.1: Timelines: TRAI Recommendations on DTH LF and MIB Guidelines

| | |
|---|--|
| MIB DTH Guidelines: 2001 | MIB prescribed LF as 10% of GR for a financial year. |
| TRAI Recommendations (Suo-Motu): 2004 | TRAI recommended LF as 8% which is to be applicable on AGR . AGR to be calculated by reducing subscription fee charges passed to the broadcasters, sale of hardware & taxes actually paid to the Government from the GR. |
| MIB Back Reference: 2008 | MIB proposed LF as 6% of GR in place of 10% of GR . MIB did not agree for the concept of deductions and applying LF on AGR. |
| TRAI's response to the back reference: 2008 | TRAI agreed with MIB proposal. However, no revised guidelines were issued by MIB. |
| MIB Reference: 2013 | MIB sent a reference to TRAI on the issue of entry fee, BG, and period of extension of license. |
| TRAI CP (reference from MIB) & Supplementary CP (stakeholder's comments): 2013 | TRAI issued a CP on the extension of DTH licenses , considering the sub-judice status of annual LF. To address stakeholder requests for a comprehensive review of DTH licenses, a supplementary CP was issued, on the issue of LF . |
| TRAI Recommendation: 2014 | LF in DTH regime should be charged as 8% of AGR where AGR is calculated by excluding, taxes paid to Government, from the GR. The annual LF shall be minimum of 10% of the Entry Fee . |
| MIB Back reference: Mar 2018 | MIB proposed to continue to charge LF @ 10% of GR on an annual basis. |
| TRAI response: Apr 2018 | TRAI reiterated its earlier recommendations of 2014. |
| MIB notified Amendment to DTH Guidelines on LF: 2020 | LF equivalent to 8% of its AGR , calculated by excluding GST from GR . Minimum license fee shall be subject to 10% of the Entry Fee (Based on TRAI recommendations & response to back reference) |
| MIB Operational Guidelines: 2022 | Licensee to adhere to the terms and conditions of the " Guidelines for Obtaining License for Providing DTH Broadcasting Services in India last amended on 30.12.2020. " |

B2. Court Cases in regard to License Fee

2.23 The issue of computation of license fee and the constitutional validity of the definition of Gross Revenue in the 'DTH Guidelines', has been challenged by the DTH operators since 2009. Firstly, a petition no. 92 (C) of 2009 was filed by one of the DTH operators (M/s Sun Direct TV Pvt. Ltd.) before Telecom Disputes Settlement & Appellate Tribunal (TDSAT) against Union of India.

2.24 In the petition, the petitioner prayed that the following should not come under the purview of the term AGR:

- Subscription Fee charges based on the pay channel broadcast channel;
- Commission to dealers and distributors;
- Installation charges;
- Taxes actually paid to the Central or State Government; and
- FDs earned on the equity shares subscribed by the shareholders.

2.25 TDSAT vide Order dated 28th May 2010 has allowed certain exclusion of non-licensed activities. Thereafter, the DTH operators (Sun Direct, Videocon d2h, Airtel) filed separate writ petitions in High Courts of Kerala and J&K and got the orders to continue to pay license fee as they have been paying. The sequence of court cases and pronouncement thereof have been tabulated in the [Annexure-II](#) for ready reference.

2.26 On an application of MIB all the petitions have been transferred to the Hon'ble Supreme Court in September 2019 (Refer Annexure-II for details). These cases were last heard on 08th December 2022²⁹. The matter is pending for final hearing.

B3. Amendments made by DoT in the UL Agreement on AGR

2.27 MIB in its reference made a mention of the amendments carried out by DoT on License Fee. DoT on 25th October 2021³⁰ has issued 'Amendment in UL agreement for Adjusted Gross Revenue (AGR)'.

²⁹ As per the information available on the website of the Hon'ble Supreme Court,

³⁰ <https://dot.gov.in/sites/default/files/AGR%20Amendment.pdf>

These amendments have been framed considering TRAI's 'UL AGR Recommendations'. In the amendments, the definition of AGR have been changed by introducing a term called Applicable Gross Revenue (ApGR). The amendment carried out for Access Service authorization of Unified License is listed in **Table 2.1**.

Table 2.1: Amendment made by DoT in UL Agreement on AGR

| S. No | Old Clause | Amended Clause (Amendment dated 25.10.2021) |
|--------------|--|---|
| 1. | <p>PART-I, CHAPTER-III, FINANCIAL CONDITIONS</p> <p>19. Definition of 'Adjusted Gross Revenue':</p> <p>19.1 The Gross Revenues and Adjusted Gross Revenue (AGR) for the purpose of calculation of License fee for different services authorized under this license are defined in the respective chapters of the Service in PART-II of this Schedule.</p> | <p>PART-I, CHAPTER-III, FINANCIAL CONDITIONS</p> <p>19. Definition of Gross Revenue, Applicable Gross Revenue (ApGR) and Adjusted Gross Revenue (AGR):</p> <p>19.1 The Gross Revenue, Applicable Gross Revenue (ApGR) Adjusted Gross Revenue (AGR) for the purpose of calculation of License fee for different services authorized under this license are defined in the respective chapters of the Service in PART-II of this Schedule.</p> |
| 2. | <p>PART-II, CHAPTER-VIII, ACCESS SERVICE</p> <p>3.FINANCIAL CONDITIONS</p> <p>3.1 GROSS REVENUE</p> <p>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,</p> | <p>PART- II, CHAPTER-VIII, ACCESS SERVICE</p> <p>3. FINANCIAL CONDITIONS</p> <p>3.1 GROSS REVENUE</p> <p>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,</p> |

| | |
|---|---|
| <p>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 revenue, item of expense, etc.</p> <p>3.2 Adjusted Gross Revenue (AGR):</p> <p>For the purpose of arriving at the "Adjusted Gross Revenue (AGR)", following shall be excluded from the Gross Revenue to arrive at the AGR:</p> <p>I. PSTN/PLMN/GMPCS related call charges (Access Charges) actually paid to other eligible/ entitled Telecommunication service providers within India;</p> <p>II. Roaming revenues actually passed on to other eligible/ entitled telecommunication service providers and;</p> <p>III. Goods and service tax (GST) actually paid to the Government if gross revenue had included as component of GST.</p> | <p>without any set-off for related revenue, item of expense, etc.</p> <p>3.1A Applicable Gross Revenue (ApGR):</p> <p>ApGR shall be equal to Gross Revenue (GR) of the licensee as reduced by the items listed below:</p> <p>i) Revenue from operations other than telecom activities/ operations.</p> <p>ii) Revenue from activities under a license/ permission issued by Ministry of Information and Broadcasting.</p> <p>iii) Receipts from the USO Fund.</p> <p>iv) List of other income* to be excluded from GR to arrive at ApGR</p> <p>a. Income from Dividend and;</p> <p>b. Income from Interest</p> <p>c. Capital Gains on account of profit of Sale of fixed assets and securities</p> <p>d. Gains from Foreign Exchange rates fluctuations</p> <p>e. Income from property rent</p> <p>f. Insurance claims</p> <p>g. Bad Debts recovered</p> <p>h. Excess Provisions written back</p> <p>*Subject to conditions given in Annexure VIII of DoT dated 25.10.2021</p> <p>3.2 Adjusted Gross Revenue (AGR):</p> <p>For the purpose of arriving at the "Adjusted Gross Revenue (AGR)", following shall be excluded from the Applicable Gross Revenue (ApGR):</p> <p>I. PSTN/PLMN/GMPCS related Call charges (Access Charges) actually paid to other eligible/ entitled Telecommunication service providers within India;</p> <p>II. Roaming revenues passed on to other eligible/entitled telecom service providers and;</p> <p>III. Goods and service tax (GST) paid to the Government if the Applicable Gross Revenue (ApGR) had included as component of GST.</p> |
|---|---|

2.28 As can be seen from **Table 2.1**, in telecom licenses, certain deductions have been made from the GR to arrive at a concept that has been termed as Applicable Gross Revenue (ApGR). The Adjusted Gross Revenue (AGR) is then calculated by deducting pass-through charges and GST from ApGR. No other modification has been made in the definition of AGR. The definitions of GR, ApGR and AGR has been recommended by TRAI in its ‘AGR Recommendations’, wherein the Authority *inter-alia* recommended:

1. *The LF and SUC should continue to be computed based on Adjusted Gross Revenue.*
2. *Gross Revenue shall comprise revenue accruing to the licenced entity by way of all operations/activities and inclusive of all other revenue/ income on account of interest, dividend, rent, profit on sale of fixed assets, miscellaneous income etc. without any set-off for related items of expense.*
3. *Applicable Gross Revenue (ApGR) would be equal to total Gross Revenue of the licensee as reduced by:*
 - (i) *revenue from operations other than telecom activities/ operations as well as revenue from activities under a licence/ permission issued by Ministry of Information and Broadcasting;*
 - (ii) *Receipts from the USO Fund; and*
 - (iii) *items of ‘other income’ as listed in the ‘positive list’*

| Sl. No. | <i>Item/ head of ‘Other Income’*</i> |
|----------------|--|
| 1. | <i>Income from Dividend</i> |
| 2. | <i>Income from Interest</i> |
| 3. | <i>Capital gains on account of profit on sale of fixed assets and securities</i> |
| 4. | <i>Gains from Foreign Exchange rates fluctuations</i> |
| 5. | <i>Income from property rent</i> |
| 6. | <i>Insurance claims</i> |
| 7. | <i>Bad Debts recovered</i> |

| | |
|--|---------------------------------------|
| 8. | <i>Excess Provisions written back</i> |
| <i>* subject to conditions given in Annexure-III (a) of this recommendations</i> | |

4. *No changes in the existing definition of pass-through charges (i.e. deductions) under different licences to arrive at AGR for the computation of LF and SUC except the inclusion of access charges paid by TSPs providing international calling card services and toll-free charges.*
5. *For simplicity of administration, ease of verifiability and to avoid higher transaction and compliance costs, any netting of amounts paid to other entities should not be permitted for the computation of AGR so as to meet with the licence condition that does not permit setting off any related item of expense.*
6. *Accounting of deductions of pass-through charges from applicable gross revenue (ApGR) to arrive at the relevant revenue base (i.e. AGR) for the computation of LF and SUC should be allowed on an accrual basis. However, in the case of service tax and sales tax/VAT collected on behalf of the Government, deductions from revenue should be allowed only for the amount actually paid to the Government.*

C. Issues raised in the Consultation Paper on License Fee

2.29 In light of the facts discussed in the foregoing paras and the MIB reference, TRAI has raised three questions (**Q1 to Q3**) in its consultation paper, pertaining to the License Fee including the revised definition of Gross Revenue (GR) and Adjusted Gross Revenue (AGR), revenue components to be excluded from the GR to arrive at AGR and the distinct income heads for revised format of Form-D. The questions are reproduced as under:

Q1. Whether the existing definition of Gross Revenue and Adjusted Gross Revenue as prescribed in the extant DTH Guidelines needs any modification? If yes, please provide revised definition of the

revenue on which license fee should be applicable. Provide your comments with proper justification.

- Q2. Is there a need to exclude certain revenue components from the definition of Gross Revenue in the DTH Guidelines? If yes, what income heads should be excluded from Gross Revenue to arrive at Adjusted Gross Revenue? What mechanism should be adopted to ensure that the revenue excluded reflect true value, without compromising the revenue streams that entail payment of license fee?*
- Q3. Please provide comments on the list of possible income heads as per Form-D'. Accordingly, apropos to Q2 above, provide a clear, precise and unambiguous format of Form-D containing:*
- i. Exhaustive income heads forming part of Gross Revenue*
 - ii. Exhaustive list of revenue components (income heads) to be excluded from Gross Revenue*

D. Comments of the Stakeholders

- 2.30 In response to the above-mentioned questions, the DTH industry has submitted comprehensive feedback regarding the definition of GR and AGR, as well as the determination of LF. Largely, all the Licensees demanded for a zero license fee in first place. However, they added, if any license fee has to be continued it should be brought down to percentage ranging from 3% to 4% of AGR, as a step towards level-playing field with other distribution platforms. With respect to the question that whether the existing definitions of GR and AGR needs any modification, all the DTH operators and an association have pressed upon the requirement to amend the definitions.
- 2.31 One service provider has suggested that the definition of GR/ AGR should be limited to distribution margin, network capacity fee (NCF), carriage fee, and revenue from value-added services offered.
- 2.32 Another stakeholder has commented that the scope of revenue and determination/ measurement of revenue should be first defined, before

arriving to the definition of GR/ AGR. The definition of GR should be amended and made consistent with the prevailing laws and accounting standards. The revenue constituents should be the same for all, excluding items that do not constitute revenue like forex fluctuations and trade margins. Gross Revenue should only relate to revenue received directly from the customer for provision of DTH services under the Indian Telegraph Act, 1885.

2.33 It has been suggested that the license should stipulate that the accounting principles stated in the Companies Act be followed while determining revenue. The approach used to measure costs should be the same as that used to measure revenue to ensure consistency. Additionally, the accrual method of accounting should be used for both revenue and allowable deductions. Since Capital Receipts do not qualify as revenue, it is crucial to take them out of the Gross Revenue (GR) and Adjusted Gross Revenue (AGR) calculations. In addition, the licensee should not count on its own earnings to offset the revenue of other organizations. To protect government revenue, the idea of fair valuation should be utilized when licensed services are combined with other licensed or unlicensed services or when commodities are sold. It is possible to use various arm's length pricing techniques as a guide in certain circumstances, as long as they comply with GST or Income Tax regulations.

2.34 The definition of GR proposed by the said service provider is:

“Gross Revenue is the amount charged; calculated on accrual basis as per the accounting standard notified under the Companies Act, 2013 as amended from time to time; from the customers 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. 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.”

2.35 Yet another DTH service provider has suggested the following definition:

“All revenue accruing to the DTH licensee on account of the services rendered under the DTH license including activation and subscription fee, charges for value added services such as Movie on Demand and Pay per View, installation charges, late fee, advertisement revenue, commission received, royalties, marketing, carriage fees, customer support service, as well as ancillary revenue accruing to the DTH licensee due to the privileges connected with the DTH licensee, such as rent for use of telecom equipment’s/ premises, revenue from sharing of infrastructure, capital gains on account of sale of such immovable property, which has been established for maintaining and working of DTH, income from sale/ lease of passive infrastructure and any other charges which are of a fixed nature and payable monthly by the subscribers of the licensee.”

2.36 On the matter of exclusion of certain revenue components (income heads) from the definition of GR, the stakeholders provided the varying list of revenue components.

2.37 A DTH operator numerated the following should not be included in AGR:

- Income from investments.
- Income from property, which is not connected with establishment, maintenance and working of telecommunications.
- Subscription charges payable to broadcasters, commission paid to distributors/ dealers & Installation fee & other revenue of pass-through nature.
- Income from sale of equipment including set top boxes and dish antennas.
- Income from other activities not connected or associated with the license under Indian Telegraph Act, 1885.
- Income from reversal of bad debts and taxes and vendor credits.

2.38 Two of the service providers have suggested a slew of items to be excluded from GR to arrive at ApGR, in line with the amended telecom licensing regime, which are as follows:

- i. Revenue from operations other than from DTH business for which License has been granted by MIB.
- ii. Revenue from activities under a license/ authorization issued by Ministry of Communications.
- iii. Revenue from non-licensed operations such as OTT Revenue & other partnership revenue (involving third party products/ services).
- iv. Other revenues to be excluded:
 - a. Income from interest and dividend.
 - b. Capital gains on account of sale of fixed assets or gain on sale of Securities/ Investment.
 - c. Capital Receipts.
 - d. Gains from foreign exchange rate fluctuations.
 - e. Income from Property Rent.
 - f. Insurance Claims received.
 - g. Bad Debts Recovered.
 - h. Miscellaneous Income like Scrap Sales, Notice Pay, etc.
 - i. Capital Gains on account of business combinations, e.g., merger/ demerger, slum sale, etc.
 - j. Other income like management support charges (including knowledge sharing/auxiliary services like insights on customer, content, etc.), Manpower Services, treasury income including gains on mark to market, derivatives and any other notional gains.
 - k. Margin/ Commission on the principal of revenue realized.
 - l. Advertising revenue and rental of STBs as these services can be facilitated by non-licensed operator.
 - m. Deduction towards cost of goods sold against sale of accessories.

2.39 Afterwards from ApGR to arrive at AGR, they have suggested the following deductions:

- i. Content cost charges paid to the broadcasters.
- ii. Installation charges passed on to the service providers/ third parties on the basis of number of customers acquired are in the nature of pass through.
- iii. GST, Entertainment Tax or any other taxes actually paid to any central/state or local authority. Such taxes are collected on behalf of the Government and are not considered as the revenue of a company.

2.40 Based on these suggested exclusions, some service providers have suggested the income heads to be included in Form-D.

2.41 One of the service providers commented that if revenue and cost are considered on an accrual basis, the same can be verified directly from the audited books of account. Form-D is verified and signed by Statutory Auditors of Company bound under the Companies Act 2013 and the Auditing Standards as per the ICAI guidelines. Any wrong statement has a penal action.

E. Analysis of the issue and views of the Authority

2.42 The detailed information of the License Fee paid along with the Form-D submitted by DTH operators over the last six financial years, obtained from MIB was reviewed and analysed by TRAI. The income heads under which DTH operators have declared their revenue were also looked up by TRAI. The study reveals that DTH providers are not following any common approach while claiming deductions. Moreover, the reported revenue has been shown differently using disparate income heads by DTH service providers. Regarding the license fee paid and the deductions claimed, no consistent trend has been followed by DTH service providers. It is also noted that one of the DTH provider is offering teleport services under the same company name in which it obtained its DTH license. In this instance, for the purpose of

determining the License Fee, the revenue from the teleports operations has been deducted by the licensee.

2.43 The Authority is conscious of the fact that proceedings on AGR matter are still going on in Hon'ble Supreme Court. However, it is of the considered view that this does not, in any manner, impede the Authority from undertaking a public consultation process and for making recommendations on the subject matter. It is also noted that this review has been undertaken on a specific reference from the Government.

2.44 In this context, attention needs to be drawn to the provisions of Section 11(1)(a) of the TRAI Act under which Authority can make recommendations, either *suo moto* or on a request from the licensor on various matters as mentioned in the said Section. In the context of present Recommendations, the provisions of Section 11(1)(a)(ii) are more specifically applicable wherein the recommendations relating to terms and conditions of license to a service provider are to be made. The payment of License Fee is one of the terms and conditions of the license for the DTH operators. As has already been mentioned in the preceding paragraphs that the MIB has sought Recommendations on the matter of DTH License Fee vide the present reference dated 02nd February 2022. The Authority is required to ensure transparency as per the provisions of Section 11(4) of TRAI Act and therefore, before making the present recommendations, the Authority had issued on 13th January 2022 the Consultation Paper on the subject matter.

E1. Revised definition of Gross Revenue for DTH License

2.45 TRAI vide its 'UL AGR Recommendations' has recommended the following definition of GR:

“Gross Revenue shall comprise revenue accruing to the licenced entity by way of all operations/activities and inclusive of all other revenue/income on account of interest, dividend, rent, profit on sale of fixed assets, miscellaneous income, etc. without any set-off for related items of expense.”

2.46 The Authority in its 'UL AGR Recommendations' has cited the components of GR. The GR of a telecom licensee can be classified into the following categories:

(1) Revenue from Operations: The operating revenue represents the revenue generated by way of provision/ delivery of services and sale of goods for which a telecom licence is required and also includes operating revenue from activities other than telecom, such as transportation, power transmission, etc, as well as revenue from services operated under licence/ permission from the Ministry of Information & Broadcasting (MIB), such as cable TV or broadcasting services. Revenue from operations also includes 'other operating revenue' arising from telecom activities or ancillary to telecom activities but for which a telecom licence is not required (e.g., sale of handsets/ equipment, revenue from sharing of passive infrastructure/ providing OTT services etc.) and 'other operating revenue' from activities other than telecom.

(2) Other Income: It comprises all other revenues/ incomes other than revenue from operations.

2.47 The Authority is of the view that the same definition of GR should be recommended for DTH services. This would be in accordance with the standard accounting principles and would provide a level-playing field. The Authority believes that the Gross Revenue should include all revenue which is generated on account of the services by virtue of DTH license and enterprise. The definition of GR should also cover additional forms of income connected to the DTH activities which include ancillary revenues along with the revenue accrued directly from DTH services. These include income from services like subscription fee, installation fee, activation fee, other service charges such as visiting charges, restoration fees, reactivation fees, maintenance fees, subscription and advertisement revenue from platform services channels, carriage fees, income from marketing and placement agreements, commission received, revenue from sale, repair and maintenance of customer premises equipment,

royalties, revenue from customer support service, any other revenue of the enterprise etc.

- 2.48 The existing definition of GR, *inter-alia*, states that- *“in the case of licensee providing or receiving goods and service from other companies that are 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.”* This part of the definition should be continued in the revised definition of GR; however, it may be kept as an explanation clause. The definition of “Control” may be referred for this purpose from section 2(27) of the Companies Act, 2013³¹, which provides- *“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.”* This definition of control may be used to determine the entities which are under control of DTH operators and thus in turn would be relevant in determining revenues generated by same for calculation of the GR.
- 2.49 In India, business entities are required to follow Accounting Standards for recording/ transactions and preparation of accounts. Accounting standards prescribe accounting/ recording of any transactions to be based on generally accepted three fundamental accounting principles i.e., going concern, consistency, and accrual principle. These fundamental accounting assumptions underlie the preparation and presentation of financial statements. They are usually not specifically stated because their acceptance and use are assumed to be followed.
- 2.50 The Authority has been consistent with the view that the license fee shall be calculated on accrual basis. This ensures more accurate representation of the financial performance of DTH operators by recognizing revenue when it is earned rather than when it is received. According to the accrual basis, regardless of when the payment is

³¹ <https://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf>

received, income should be recognised as soon as it is earned. This complies with accepted accounting principles and guarantees a uniform method of revenue recognition. This also enables adjustment and accounting of revenue when accrued in case of prepaid customers having long duration plans.

2.51 The accrual-based calculations should be applied for DTH operators. It is pertinent to mention here that the telecom Licensees under UL Agreement pay the License Fee on the revenue on accrual basis. The UL Agreement states that *“The AGR based license Fee shall be paid by the Licensee on the basis of revenue on accrual basis for the quarter, duly certified with an affidavit by a representative of the Licensee who is authorized by the Board Resolution coupled with General Power of Attorney”*. Such revenue should be calculated on accrual basis as per the accounting standards notified under the Companies Act, 2013 as amended from time-to-time.

2.52 In view of the above, **the Authority recommends that the Gross Revenue shall comprise revenue accruing to the licenced entity by way of all operations/ activities and inclusive of all other revenue, income on account of interest, dividend, rent, profit on sale of fixed assets, miscellaneous income etc. without any set-off for related items of expense.**

Explanation:

1. The Gross Revenue shall be inclusive of subscription fee, installation, activation, restoration, reactivation, relocation, visiting and other service charges, subscription and advertisement revenue from platform services channels, carriage fees, revenue from marketing and placement agreements, commissions received, revenue from sale, repair and maintenance of customer premises equipment, royalties, revenue from customer support service and any other revenue of the enterprise.

2. The Gross Revenue should also include ancillary revenue accruing to the DTH licensee such as income from property rent,

revenue from sharing of infrastructure, revenue from sale of immovable property, gains from foreign exchange rates fluctuations, insurance claims, bad debt recovered, excess provisions written back which has been established for maintaining and working of DTH service or any other such miscellaneous revenue.

3. In the case of licensee providing or receiving goods and service from other companies that are 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.

*** “Control” as defined in Section 2 (27) of the Companies Act 2013.**

E2. Introduction of Applicable GR (ApGR) for DTH License

2.53 As brought out above, there has been long drawn court cases on the definition of Gross Revenue and computation of License Fee. Based on the information provided by MIB, it can be inferred that each operator has adopted its own method for determining the License Fee and in turn the Form-D, by their own interpretation of TDSAT judgement and orders of various High Courts. It is quite desirable now that the definitions are precise and simple. The definitions should be comprehensive, amenable to unambiguous interpretation, reduce disputes and litigation, and minimize incentives for reduction of liability through varied accounting practices. It should be easy to verify - the definition of revenue base should enable a uniform, transparent and simple procedure for verification of revenue. The exclusions and deductions allowed therein should be clear and transparent.

2.54 Not all revenues that go into GR are eligible or ought to be considered while determining the licence fees. This has been kept as the underlying principle by TRAI. The License Fee should be applied on the revenue that is derived from the DTH enterprise’s primary and related business activities. The Authority is of the view that the AGR should accurately

represent the revenue produced by the licensee's main business operations by eliminating specific income sources and the GST amount actually paid to the Government, thereby arriving at a transparent computation of AGR for DTH licensees. Therefore, the Authority is of the view that some of the deductions as allowed by DoT in their UL Agreement should also be permitted for the DTH operators.

2.55 The Authority in its 'UL AGR Recommendations' has noted that:

“other income’ under many heads accrues to the licensee from activities ancillary to their core telecom business e.g., income from management or consultancy fee, interest earned on deposits from subscribers, commission earned etc. Equally, there are sound reasons to exclude certain other heads (of other income) such as dividend income, gain on foreign exchange, insurance claims etc., from the computation process of LF and SUC. There is no limitation by way of definition of ‘other income’ either in the Companies Act, 2013 or Accounting Standard-9. It is basically the nature of income that determines whether it is ‘income from operations’ or ‘other income’. Thus it is very difficult, if not impossible, to list all likely heads of ‘other income’ and their treatment in computation of AGR. Therefore, the Authority is of the view that, to avoid any ambiguity in the future and to ensure a clear demarcation, a ‘positive list’ may be prescribed containing the list of other income items that will not form part of AGR for the purpose of LF and SUC. Items of other income recommended for inclusion in the ‘positive list’ and the reasons are given in Annexure 2.1.”

The Annexure 2.1 of 'UL AGR Recommendations' is reproduced at [Annexure-III \(a\)](#) of this recommendations.

2.56 As highlighted in the Consultation Paper, the recent amendment in UL agreement adopted by the DoT introduced the concept of Applicable Gross Revenue (ApGR). The calculation of license fee of the DTH operators based on the same would bring in parity across service providers.

2.57 Therefore, the Authority is of the view that the ApGR for DTH operators, shall be equal to total GR of the licensee as reduced by the items listed below:

- **Revenue from activities under a license/ permission issued by Department of Telecommunications:** This is also adopted from UL Agreement amendment. In UL revenue from activities under a license/ permission issued by Ministry of Information and Broadcasting has been excluded. For DTH, revenue from activities under a license/ permission issued by Department of Telecommunications should be excluded from GR to arrive at ApGR.
- **Reimbursement, if any, from the Government:** In DoT, there is an USO Fund and receipts from the USO Fund is also reduced from GR. In broadcasting and distribution sector, there is no such fund, however reimbursement, if any from the Government is liable to be excluded from GR to arrive at ApGR.
- **List of other income to be excluded from GR to arrive at ApGR:** The following income heads have been considered as ‘Other Income’, and hence excluded from GR to arrive at ApGR, in consonance with the ‘UL AGR Recommendations’. The reasons and recommendations have been detailed in [Annexure-III](#) of these recommendations.
 - a. Income from Dividend
 - b. Income from Interest
 - c. Income from Sale of fixed assets and securities
 - d. Gains from Foreign Exchange rates fluctuations
 - e. Income from property rent
 - f. Insurance claims
 - g. Bad Debts recovered
 - h. Excess Provisions written back

2.58 In view of above, **the Authority recommends that the DTH operators should calculate Applicable Gross Revenue (ApGR) for arriving at the revenue calculations for license fee. ApGR should be equal to the total Gross Revenue (GR) of the licensee as reduced by the following items:**

- i. Revenue from activities under a license/ permission issued by Department of Telecommunications;**
- ii. Reimbursement, if any, from the Government; and**
- iii. List of other income* to be excluded from GR to arrive at ApGR:**
 - a. Income from Dividend;**
 - b. Income from Interest;**
 - c. Income from sale of fixed assets and securities;**
 - d. Gains from Foreign Exchange rates fluctuations;**
 - e. Income from property rent;**
 - f. Insurance claims;**
 - g. Bad Debts recovered;**
 - h. Excess Provisions written back.**

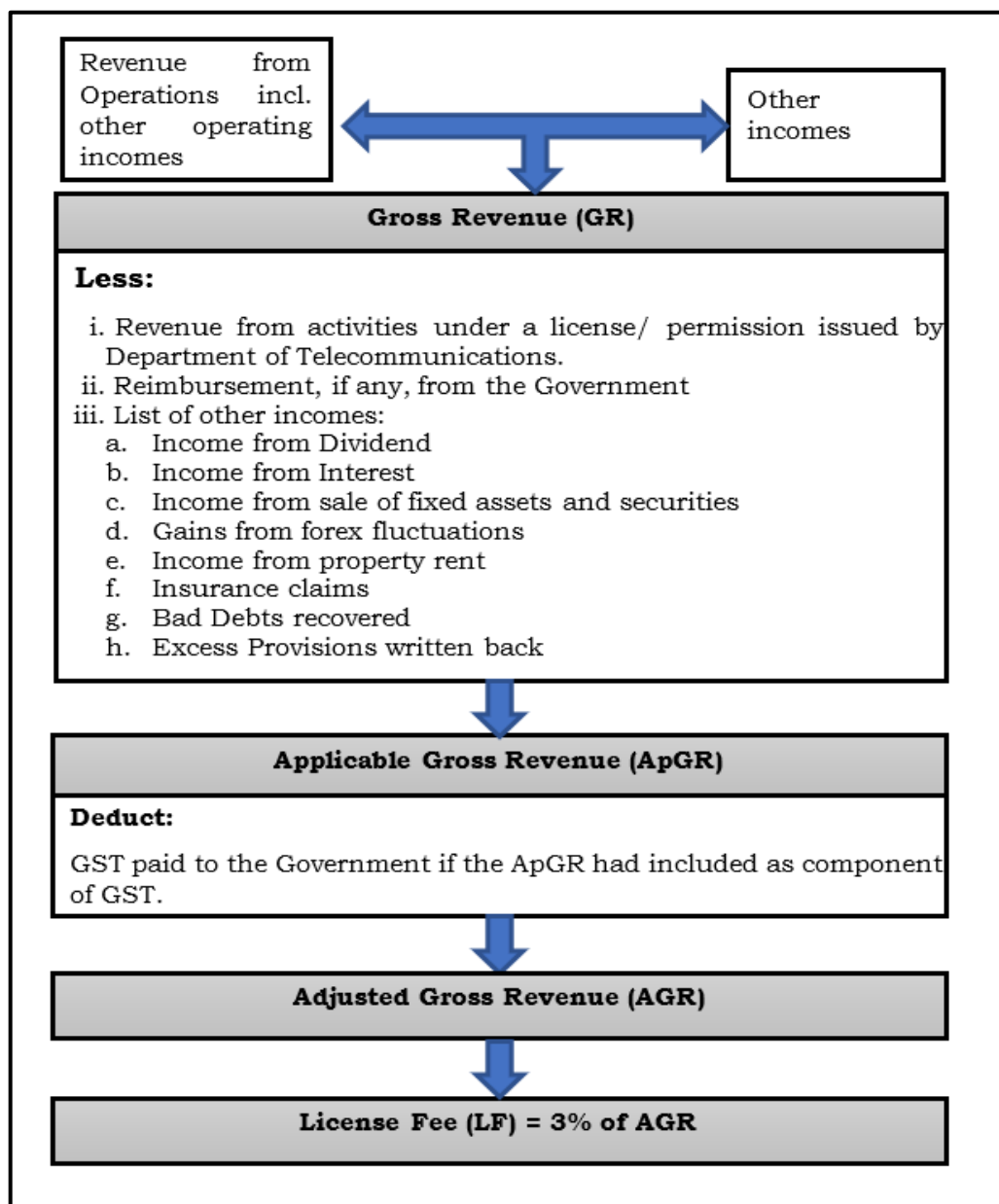
*** subject to conditions given in [Annexure-III](#)**

E3. Revised Definition of AGR for DTH License

- 2.59 The stakeholders in their comments have demanded to allow the broadcaster's share of revenue collected "for and on behalf of" broadcaster as the pass-through amount. The same should not be considered as the revenue for calculating the license fee. They also demanded to pass-through the commission paid to the dealers and distributors.
- 2.60 Broadcaster's share of revenue may not be permitted as pass-through component primarily because of the following key reasons:
- No revenue-based license fee is prescribed for broadcasters/ teleport operators.
 - Broadcasters earn similar revenue from other DPOs (MSOs, HITS) wherein again no license fee has been prescribed.
 - The payment made to broadcasters is essentially an expenditure for providing the DTH services.
- 2.61 There may be instances where DTH operator may tend to take unfair advantage of the pass-through revenue as there is no license fee on the broadcasters.

- 2.62 As far as the commission paid to the dealers and distributors is concerned, it is a legitimate expenditure incurred by the DTH operators by virtue of its DTH license. Such expense is rendered as a necessary component of rendering service under DTH License.
- 2.63 Therefore, allowing any revenue as a pass-through revenue will further increase the complications. However, the potential consequence of the revenue burden on the DTH operators has been duly accounted for in these recommendations. To avoid further complicating matters, it is deemed unwise to allow any such revenue as pass-through revenue.
- 2.64 The existing definition of AGR in DTH guidelines excludes GST from GR. However, now since the term ApGR has been introduced. AGR will be calculated on considering ApGR as the base. DTH operators also collect GST on behalf of the Government. The Authority is of the view that GST collected on behalf of Government should be allowed to be deducted only on an actual payment basis so that there is no impediment to the amount of taxes payable to the Government. Allowing pass through for Government taxes on actual/ paid basis will not only ensure timely payment but will also encourage DTH operators for early discharge of their liabilities. Therefore, the Authority is of the view that AGR should be calculated by excluding from the ApGR, GST paid to the Government, if the ApGR had included as component of GST.
- 2.65 In view of above, **the Authority recommends that Adjusted Gross Revenue (AGR) is calculated by excluding from the Applicable Gross Revenue (ApGR), Goods and Services Tax (GST) paid to the Government if the ApGR had included as component of GST.**
- 2.66 For ready reference, the proposed structure for computation of License Fee as per the recommended definitions of GR, ApGR and AGR is shown in the flowchart in **Figure 2.3** below.

Figure 2.3: Flowchart for computation of License Fee



E4. Revised format of Form-D for DTH License

2.67 Since MIB has also sought the recommendations of TRAI on the format of Form-D in the DTH sector as per GR/AGR criteria, a sample Form-D' having the Statement of Revenue and License Fee was provided in the CP for the comments of the stakeholders.

2.68 The Form-D has to be filled and submitted by the DTH operators every quarter. Every licensee have to maintain separate financial accounts, which is audited by the Statutory Auditors. In this regard, the 'Operational Guidelines' on License Fee mentions that:

“The license fee is to be paid on a quarterly basis, the quantum thereof to be equal to the actual License Fee payable for the preceding quarter. The first payment of license fee for the previous quarter shall be made on the basis of provisional account for the quarter within one month of the end of a particular quarter. The annual settlement of the License Fee shall be done at the end of the financial year.

The payment of license fee for the 4th quarter shall be made after adjustments and settlements of accounts for the whole year and on the basis of the finalised audited statement of the entity and latest by 30th September succeeding the financial year.”

2.69 Based on the definitions recommended above for GR, ApGR and AGR, the Authority recommends the following format of Form-D for seeking the Statement of Revenue and License. The submission of Form-D along-with the relevant documents should be enabled for online submission via single window system i.e., BroadcastSeva Portal. The characteristics of such online portal should be in line with TRAI Recommendation 4.1 of “Ease of Doing Business in Telecom and Broadcasting Sector” dated 2nd May 2023³². The online submission of Form-D would ensure proper submission of financial information in the designated format.

2.70 Accordingly, **the Authority recommends that MIB should revise the Form-D (the Statement of Revenue and Licence Fee for DTH Licensees) and adopt the format of Form-D as prescribed in [Annexure-IV](#). The process for the submission of Form-D should be made end-to-end online with facility to upload all the related documents in digital mode via single window system.**

E5. Deduction Verification Process for DTH License

2.71 For the verification of the revenue and the deductions claimed by the DTH operators, **Q4** has been raised in the Consultation paper:

³² https://www.trai.gov.in/sites/default/files/Recommendations_02052023.pdf

‘Q4. What method of verification should be adopted by the licensor to verify the deductions claimed, if any, for the purpose of calculation of the license fee payable by the DTH operators?’

- 2.72 On this question, the stakeholders responded broadly on the same lines. One of the stakeholders has commented that verification should be done basis the disclosures made by the Licensees under various Forms. As per the current regime, only Form-D has been prescribed, which may not be sufficient. Separate accounts must be maintained under different heads.
- 2.73 Another service provider has commented that the current regulatory regime has measures in place to ensure transparency in the operations, which includes maintaining CAS and SMS, reporting subscriber numbers to broadcasters, and undergoing an annual audit by TRAI empanelled auditors. Broadcasters can also audit to check the veracity of the report. DTH operators are required to maintain separate financial accounts audited by Statutory Auditors and provide a statement of gross revenue in Form-D at the end of each financial year which are certified by the Statutory Auditors. MIB can verify LF declarations from annual accounts, rather than relying on Form-D submitted. Further MIB has a provision to get the accounts audited by CAG or any other professional auditor. Hence, they suggested these measures are sufficient and no further method of verification should be imposed.
- 2.74 Furthermore, if the revenue and cost are considered on an accrual basis, the same can be verified directly from the audited books of accounts. A certificate from Statutory Auditors in the prescribed format showing the revenue and the deductions, i.e., “Form-D”, along with a reconciliation of the same with the annual accounts of the Company duly certified by the Statutory Auditors, should suffice.
- 2.75 It is stated that the Form-D is verified and signed by Statutory Auditors of Company who are bound under the Companies Act 2013 and the Auditing Standards as per the ICAI guidelines. Any wrong statement has a penal action.

Analysis of the issue and views of the Authority

- 2.76 Since certain deductions from GR are recommended to arrive at ApGR and then in turn to AGR, therefore it becomes essential to verify the deductions claimed by the Licensee.
- 2.77 The submission of Form-D along with the payment of LF has to be done on a quarterly basis. The final adjustments and settlements of accounts for the financial year is also submitted as statement of Gross Revenue (Form-D) duly certified by the Statutory Auditors along with the Auditor's report and the annual financial statements for the said financial year by the Licensee.
- 2.78 The Authority is of the view that MIB should put in place a thorough and reliable structure for the verification process to guarantee precise and credible verification of revenue deductions, with a focus on determining the License Fee where the Licensee would provide the Licensor all relevant books of accounts to streamline this procedure. These records must contain all the data required for reconciliation, with a focus on confirming the revenue used to calculate the License Fee. Through this MIB can assure fairness, transparency, and accountability in the deduction verification process. The DTH operators should ensure that any charges claimed as a deduction under any of the allowed income heads be it other income or the pass-through income should be transacted in a transparent and completely verifiable manner.
- 2.79 The Authority is of the view that a deduction verification process similar to what is being followed in DoT should be adopted in MIB. A well-defined process would bring more transparency, accountability and will lessen the chance of any anomalies or errors being made while calculating revenue deductions and the ensuing correct computation of the Licence Fee. DoT has an established and rich deduction verification process, wherein, the transaction vouchers-both inter and intra companies, are duly verified through multiple level of authorities. DoT has further digitized this deduction verification process through its SARAS³³ digital

³³ <https://www.saras.gov.in/main/index>

solution. MIB may also incorporate a module for deduction verification process in its existing BroadcastSeva portal³⁴, the way DoT has digitized its deduction verification process through SARAS portal. The software module for the portal should appropriately incorporate the provisions and the validations required for the deduction verification procedures. The deduction verification process should be conducted by officials of Government of India with a detailed process flow. The verification should ensure thorough examination at multiple levels within MIB.

- 2.80 In view of the above, **the Authority recommends that MIB should develop a robust mechanism for deduction verification process through single window online portal. The Licensee is required to produce to the Licensor, all such books of accounts and documents required for reconciliation which have a bearing on the verification of revenue for the purpose of calculating License Fee.**

F. Percentage of AGR for computing License Fee for DTH License

- 2.81 Service providers were asked about the applicability of the Licence Fee on Gross Revenue in place of Adjusted Gross Revenue, in **Q5** of the Consultation Paper.

Q5. Alternatively, should the license fee be levied on Gross Revenue in place of Adjusted Gross Revenue, or any other base be used? If yes, what should be the percentage/quantum of such base? Please support your response with proper reasoning.

- 2.82 In addition, they were also asked for their input on whether any alternative base should be used for calculating the license fee and, if yes, what should be the percentage/ quantum of such base. Further, in **Q9**, stakeholders were requested to provide other comments.

Q9. Stakeholders are requested to provide any other comments, if any, relevant to DTH policy matter.

³⁴ <https://new.broadcastseva.gov.in/digigov-portal-web-app/>

G. Comments of Stakeholders on Computing License Fee

- 2.83 In response to question no. 5 and 9, most of the stakeholders demanded that license fee should not be imposed on DTH operators at all or the percentage should be reduced. Such reduction can be a step towards level-playing field vis-à-vis other distribution platforms. They also stated that Public Service Broadcaster i.e., DD Free Dish is providing comparable services like DTH. Both the DD Free Dish and OTT platforms are disrupting the television broadcasting market.
- 2.84 One of the stakeholders suggested to eliminate the license fee for DTH or imposing of a uniform license fee of around 4% only on the revenue generated from licensed activity for all content distributors (that is cable, MSOs, HITS, OTT, or DTH). According to the stakeholder, this will create a level playing field and it will be revenue-neutral for the Government. Alternatively, Gross Revenue should be calculated on distribution margin, network capacity fee, carriage fee, and value-added services offered.
- 2.85 The stakeholder also commented that DTH was subject to entertainment tax in the pre-GST regime, while other platforms were not. The license fee imposed on DTH also includes taxes collected that are not even the revenue of the company, unlike income tax which excludes indirect taxes when computing taxable income. Despite being a tax-paying and transparent platform, the DTH sector is being singled out, and there should be parity brought amongst all operators.
- 2.86 Another service provider commented that there should be zero license fees for DTH services to ensure a level playing field with other distribution platforms that offer the same content. In case if any license fees are to be levied, it should be based on Adjusted Gross Revenue and not on Gross Revenue. The 8% license fee rate suggested by TRAI includes the USO levy of 5%, which is not relevant for the DTH sector. As per the stakeholder, the actual license fee for telecom sector is 3% and not 8%.
- 2.87 The stakeholder further stressed that the pricing for identical content should be consistent across all platforms regardless of access technology.

The "must carry-must provide-same price" framework should apply to all modes of content delivery across wireline, wireless, satellite, and cable platforms. There should be no obstruction to access, and transparency and level playing field should be ensured for all the players.

- 2.88 Also, the stakeholder stated that TRAI's regulatory framework should be applied to DD Free Dish, which provides DTH services like other operators. As per the comment, Free Dish offers 22 pay channels free to its subscribers, while private DTH providers charge for the same channels. This discrimination has caused financial losses for private providers and violates TRAI's tariff order that prohibits a channel from being both a pay and free channel simultaneously. This discrimination goes against the principles of equality and a level playing field.
- 2.89 One of the service providers mentioned that considering TRAI recommendations dated 01st October 2004 and the associated back reference, MIB should have reduced license fee from 10% to 6% of GR.
- 2.90 One of the DTH operator said that the license fee for DTH operators should be imposed on Adjusted Gross Revenue rather than Gross Revenue, to ensure that it is only charged on revenue generated from services rendered under the license granted under the Telegraph Act. The recommended fee rate is 4% of the AGR earned by the DTH business. DTH operators should maintain separate and distinct accounts of their licensed and non-licensed activities to streamline the process.
- 2.91 The stakeholder further requested TRAI to recommend that the Government should create guidelines and regulations for the OTT sector. This is because the current regulatory treatment for OTT services is not on par with that of DTH services, despite them being comparable services. The lack of a regulatory framework for the OTT sector, coupled with the increasing availability of high-speed internet connectivity and growing middle-class demographics, has led to a surge in the consumption of digital content on OTT platforms in India. However, this has also led to a reduction in revenue share for the DTH sector.

- 2.92 Stakeholders have in-general advocated that levying license fee on AGR will ensure revenue generated from services rendered under the license granted under the Telegraph Act 1885. One of the service providers commented that LF should be charged @ 4% of the AGR. The process needs to be streamlined by requiring the DPOs to maintain separate and distinct accounts of the various licensed and non-licensed activities.
- 2.93 In response to question no. 9, the stakeholders have stressed upon the need to bring level playing field by ensuring:
- Same rule for same services (i.e., either the uniform license fee or no license fee for all DPOs);
 - Must carry-must provide at the same price principle;
 - Parity in pay channels pricing across all platforms;
 - Forbearance in DTH and grant freedom of pricing/ packaging in customer interest; and
 - Same regulatory framework for unregulated platforms (OTT) among all DPOs.

H. Analysis and views of the Authority for Computing license fee

- 2.94 It is essential to acquaint with the chronology of DTH guidelines and TRAI recommendations with respect to the license fee of DTH Licensees. The background of license fee for DTH license in a chronological order including the earlier recommendations given by the Authority on this issue has been examined and enumerated below:

I. Initial DTH Guidelines of MIB issued in 2001

- 2.95 In the beginning, MIB issued 'DTH Guidelines' for operating DTH services in India on 15.03.2001 and prescribed the license fee as 10% of Gross Revenue (GR). In its first recommendations given to MIB on DTH related issues, TRAI vide its recommendations dated 1.10.2004 on 'Issues relating to Broadcasting and Distribution of TV Channels' recommended a reduction of 2% in the license fee of DTH service. The Authority in its recommendations justified the reduction of 2% as the same was already

proposed by the Authority in its recommendations dated 29.04.2004 on “Accelerated growth of internet and broadband penetrations” given to DoT for the telecom sector. The said recommendation inter-alia stated as follows:

“To enable Receive Only Internet Service via satellite, a DTH provider should be permitted to get an ISP license. The ISP license should be permitted to allow reaching customers for downloading data through DTH and other receive only satellite services.”

2.96 It was also recommended that- *“ISP’s should be permitted to provide bi-directional data services to customers using the DTH platform, and should follow the same rules and regulations as recommended for VSAT providers.”*

2.97 In respect of license fee, it was recommended that- *“Though the issue of license fee for all telecom services is under consultation process, it is recommended that like for other operators, concession of 2% in license fee may be given to the VSAT and DTH operators also.”*

II. TRAI recommendations dated 1.10.2004 on ‘Issues relating to Broadcasting and Distribution of TV Channels’

2.98 The analysis and recommendations given by TRAI on 01.10.2004, inter-alia, in respect of Rationalization of License Fee and Taxes are reproduced below:

“Para 7.1 There is a fundamental difficulty in providing competition within the cable industry in the provision of last mile services. In some parts of the world this has been explicitly recognized and the local operator has been given an exclusive franchise in a given geographical area. This is not feasible in India given the way the industry has grown and evolved. The most feasible way of giving competition to the cable industry in the short run, is through DTH.

Para 7.2 If there has to be competition between the two platforms then license fees, taxes etc. should all be made as uniform as is possible.

To some extent given the differences in size, technology and reach, complete uniformity is not possible.

Para 7.3 Keeping in view the above and also TRAI's recommendation on DTH segment on 'Accelerating Growth of Internet and Broadband Penetration', the following recommendations are made:

- The Authority has already proposed a reduction of 2% in the revenue share license fee for DTH 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. 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*
 - Subscription fee charges passed on to pay channel broadcasters.*
 - Sale of hardware including Integrated Receiver Decoder required for connectivity at the consumer premises.*
 - Service tax / entertainment tax paid to Central/ State Govt if the gross revenue is inclusive of these taxes."*

III. MIB Back Reference dated 17.03.2008

2.99 With regards to the TRAI recommendation dated 01.10.2004, MIB sent a back reference dated 17.03.2008 and sought TRAI's views. The back reference proposed to prescribe annual license fee as 6% of GR (compared to 10% of GR as prescribed in 'DTH Guidelines') instead of considering the deductions to arrive at AGR. MIB opined that allowing such deductions is likely to enable the companies to conceal their actual shareable revenue rather than making the system transparent. MIB stated that the proposal for levying 6% license fee on GR will be broadly in line with the proposal of TRAI to charge at 8% of AGR in terms of actual revenue accrual to the Government.

IV. TRAI Response dated 15.04.2008 to MIB Back Reference

2.100 TRAI vide its response dated 15.04.2008 informed the following to MIB:

*“The Authority recalls its recommendations on the various issues of broadcasting sector where the Authority has recommended that the license fee shall be levied on the gross revenue. The Authority has further noted that since the beginning, the DTH service providers are required to pay license fee as a percentage of their Gross revenue. The I&B ministry has stated that the deductions proposed by the TRAI are likely to enable the companies to conceal their actual shareable revenue rather than making the system transparent .TRAI while analyzing this aspect agrees that the I&B ministry will have to scrutinize all the details of the revenues and deductions submitted by the DTH operators which not only will be time consuming but may also require skilled staff to ensure proper and legitimate revenue to the Government. The gross revenue concept will make the calculation and verification of License fee straight forward through effectively discouraging scope for manipulating revenue figures. It is also noted by the Authority that the ministry has adopted gross revenue concept for other broadcasting services. Moreover, the passthrough of some components arising from interconnection mode as prevalent in telecom is not the key feature in DTH. **In view of above TRAI has no objection if the I&B Ministry continues with the concept of Gross Revenue for license fee.**”*

*“The Authority would like to mention its earlier recommendations that the broadcasting services should not be treated as a major revenue stream for the Government. Imposing lower license fee on the service providers is likely to encourage higher growth. With increased growth, it would be a win- win situation for the industry and the Government. The earlier recommendation of 2% reduction was in the context of AGR as the principle for fee estimation. Perhaps the gross revenue concept would make a case for higher relief. **Therefore, the Authority is in agreement with the proposed reduction in license fee of DTH service providers.**”*

However, the above-mentioned proposal of MIB of DTH license fee as 6% of GR was not implemented by MIB.

V. TRAI Recommendations dated 23.07.2014 on “Issues Related to New DTH Licenses”

2.101 On 03.09.2013, MIB had sent a fresh reference to TRAI on the issue of entry fee, bank guarantee and the period of extension of license (since the license period of first DTH operator was about to expire). Based on the reference, TRAI issued a consultation paper on 01.10.2013 on the subject ‘Issues/Extension of DTH License’. In the said CP, TRAI acknowledged that the issue of the annual license fee was sub-judice. Therefore, the CP mentioned that any judicial pronouncement with regard to license fee will have to be appropriately reflected.

2.102 However, in response to the CP, DTH service providers vide their comments requested TRAI to undertake a comprehensive review of the DTH guidelines. Considering the request of the stakeholders, TRAI issued a supplementary consultation paper dated 14.11.2013 titled as ‘Issues related to New DTH Licenses’. The supplementary consultation paper through its para numbers 1.27 to 1.34 raised the issue related to license fee and sought comments of the stakeholders.

2.103 On the basis of aforesaid consultation process, TRAI released its recommendations on 23.07.2014 on ‘Issues related to New DTH Licenses’. The following analysis and recommendations were, inter-alia, made by the Authority:

“Para 1.24 The license fee is basically non-tax revenue being collected from a service provider against the privilege of being permitted to perform a particular licensed activity. The DTH service providers are presently supposed to pay sales tax, service tax and the entertainment tax on the goods and services provided by them to their subscribers, apart from the license fee. The revenue on which the license fee is levied should not include the revenue which actually goes towards payment of other forms of taxes. Therefore, the license fee should not be charged on the GR; rather, it should be charged on AGR, computed by deducting the amount of the above mentioned taxes from the GR.”

Para 1.25 As far as the percentage of the AGR that should be charged as license fee, in view of the growing convergence of telecom and broadcasting services, it would be logical to align it with the percentage prescribed in the UL. In the UL, the AGR is arrived at by excluding the taxes and the charges of pass through nature paid to other telecom service provider(s) to whose network, the licensee's network is interconnected. However, in the case of DTH, other than taxes, there is no such pass through component analogous to pass through for interconnection charges applicable for telecom services.”

The following recommendation, inter-alia, was given in respect of license fee:

Para 1.28(i) “The license fee in the new DTH licensing regime should be charged as 8% of AGR where AGR is calculated by excluding, Service Tax, Entertainment Tax and Sales Tax/VAT actually paid to the Government, from the GR.”

VI. MIB Back Reference dated 12.03.2018

2.104 In its back reference dated 12.03.2018, MIB, inter-alia, noted the following in respect of DTH license fee:

“While deliberating on the issue of rate of license fee it has been noted that the DTH sector is growing and being a network economy, the sector may get benefit of reducing marginal costs. It may also benefit from the technological innovation, thus reducing the costs of DTH operators. It is proposed to continue to charge license fee @ 10% of GR.”

VII. TRAI Response dated 12.04.2018 to MIB Back Reference

2.105 TRAI has, inter-alia, given the following response on 12.04.2018 in respect of back reference dated 12.03.2018 received from MIB:

- *“The license fee is non-tax revenue being collected from a service provider against the privilege of being permitted to perform a particular licensed activity.*

- *TRAI earlier in 2004, has recommended a reduction of 2% in the license fee for DTH operators i.e., 8% from the existing level of 10% which is to be calculated on Adjusted Gross Revenue (AGR).*
- *TRAI in its subsequent recommendations dated 15th April 2008, in response to MIB's reference dated 17th March 2008 wherein TRAI's comments were sought on Government's proposal for reducing the annual licence fee in respect of DTH service providers from 10% of GR to 6% of GR, agreed for levying the license fee at 6% on Gross Revenue (GR) basis.*
- *Further, in the recommendations dated 23rd July 2014 for DTH licenses, TRAI stated that the revenue on which the license fee is levied should not include the revenue which actually goes towards payment of taxes to the Government. Therefore, the license fee should not be charged on the GR; rather, it should be charged on AGR.*
- *Deduction of taxes from Revenue could be a better option as it shall avoid license fee on the revenue collected by an operator on behalf of the Government.*
- *The Authority is of the view that AGR should be calculated by excluding, Goods and Service Tax (GST) actually paid to the Government, from the Gross Revenue (GR) of the licensee company.*
- *In view of the growing convergence of telecom and broadcasting services, it would be logical to align it with the percentage prescribed in the UL.*
- *In view of above, TRAI reiterates its earlier recommendations to charge License Fee as 8% of Adjusted Gross Revenue (AGR) where AGR is calculated by excluding Goods and Services Tax (GST) actually paid to Government.”*

VIII. Current Guidelines of MIB on DTH license Fee

2.106 Based on the TRAI recommendations dated 23.07.2014 and TRAI's response dated 12.04.2018 to the MIB's back reference, the amendment has been made by MIB in the DTH License Fee on 30.12.2020. MIB has subsequently notified 'Operational DTH Guidelines' on 16th September

2022 in respect of license fee, platform service channels and sharing of infrastructure by DTH operators. With respect to payment of License Fee, the following has been stated in the 'Operational DTH Guidelines' dated 16th September 2022:

“The Licensee shall pay an annual fee equivalent to 8% of its Adjusted Gross Revenue, calculated by excluding GST from Gross Revenue (GR) as reflected in the audited accounts of the Company for that particular financial year.”

2.107 Now coming to the review of the quantum of license fee. It is noted that, with 340-350 million households and a very large population, there are only four DTH operators in India. Moreover, the number of subscribers of the DTH services are showing a declining trend. As per the periodic reports received from DTH operator over 5 million subscribers have reduced since September 2020. All the existing DTH operators are directly or indirectly into broadcasting and telecom business. Further, one of the DTH operator is already undergoing insolvency proceedings.

2.108 The license fee, entry fee and bank guarantee levied on DTH operators have been of the highest order amongst all the stakeholders of the broadcasting and cable fraternity. In fact, in the television broadcasting sector, license fee is applicable only on the players of the DTH sector. This existing disparity within the sector is enumerated as under:

- a. Disparity with other DPOs:** While DTH operators are required to pay license fee at the rate of 8% of AGR, other DPOs, including HITS and MSOs, are not required to pay any license fee. This disparity again calls into question the fairness and equality of treatment of the various industry participants.
- b. Disparity among DTH operators:** There exists an imbalance within the DTH sector itself. Public Broadcaster's free DTH service is exempted from paying any license fees. Private DTH operators are at a disadvantage because of this preferential status, which also distorts the market.

c. Exemption to the emerging platforms: OTT platforms, which have grown considerably in recent years, are not subject to any licensing procedures. The notion that OTT platforms operate online and are not traditional distributors may be one of the arguments. But it brings in the disparity and can be viewed as favouring new entrants over established DTH operators.

d. Broadcasters fixed annual amount: In contrast to DTH providers, broadcasters/ teleport operators are paying only a fixed annual amount for uplinking/ downlinking, which is not linked to their revenue.

2.109 It can be seen that the existing fee structure is not equitable in the broadcasting sector. The comments of the stakeholders have been carefully considered. There is almost unanimous demand from stakeholders for the review of the existing system of LF based on AGR. License fee as 8% of AGR has been prescribed for DTH operators. All the DTH service providers have demanded parity with other DPOs and removal of license fee.

2.110 In this regard, the following is noted with respect to license fee in Department of Telecommunications,

- Under the telecom industry's unified licensing framework, all authorizations are grouped together, and each is liable to pay 8% of AGR as LF. This indicates that various telecom service providers, including Access Service providers, Internet Service Providers, commercial Very Small Aperture Terminal operators and others, pay license fee uniformly.
- Out of the 8% LF in the telecom sector, 5% goes to the USOF levy. The USO fund³⁵ was established with fundamental objective of providing access to telegraph services including mobile services, broadband connectivity and ICT infrastructure creation to people in remote and rural areas at affordable and reasonable prices.

³⁵ <https://usof.gov.in/en/genesis>

2.111 However, in the television broadcasting domain, license fee is imposed only on the DTH service providers. Other stakeholders which include the broadcasters, HITS, MSOs (and LCOs) and OTT platforms are not obligated to pay any license fee. In contrast to the telecom industry's unified approach under the UL framework, only DTH service providers are required to pay license fee.

2.112 Television broadcasting services can be delivered to the consumers via four modes termed as DPOs of the TV broadcasting sector:

- i. Direct-to-Home (“DTH”) operators registered under the DTH guidelines issued by Government of India
- ii. Multi System Operators (“MSOs”)/ Cable Operators registered under the Cable Television Networks (Regulation) Act, 1995
- iii. Headend-in-the-Sky (“HITS”) operators duly permitted under the policy guidelines for HITS
- iv. Internet Protocol Television (“IPTV”) service providers duly permitted under their existing telecom license authorized by DoT or under MSO registration by MIB.

2.113 **Multi System Operators (“MSOs”)/ Cable Operators:** This segment that is Cable Distribution segment, is now fully digital addressable system consisting of two players in their value chain that is MSOs and LCOs, who are governed by Cable Television network rules.

- Cable operators: The eligibility criteria for cable operator is provided as under Rule 2A of The Cable Television Network Rules, 1994³⁶. The cable operator is required to make an application under Rule 3 of 1994 Rules in Form-I and is required to pay an annual license fee of Rs. 500 only at the Head Post Office where the application for registration or renewal of registration or issue of duplicate certificate of registration is being made. The registration is granted under Rule 5 read with Section 4 of the Cable Television Act. In regards to annual license fee for cable TV services, TRAI in its

³⁶ <https://tra.gov.in/sites/default/files/CableTelevisionNetworkRules1994.pdf>

recommendations dated 25th July 2008³⁷ has *inter-alia* recommended that there will be no annual license fee for cable television operator.

- Multi-system operators: The eligibility criteria for multi-system operator are laid down in the provisions of Rule 11B of 1994 Rules and upon fulfilling eligibility criteria of 11B and the requirement of Rule 11A which prescribes a processing fee of Rs one lakh and declaration in Form 2, registration certificate is granted under Rule 11C. Further, TRAI in its recommendations dated 25th July 2008³⁸ has *inter-alia* recommended vide para 4.9.4 that there will be no annual license fee for Multi-Systems Operator.

2.114 **HITS distribution segment**: The policy guidelines for HITS broadcasting service in India were issued by MIB on 26th November 2009³⁹, which prescribes “*No annual fee will be required to be paid*”. This was on the basis of TRAI recommendations dated 17th October 2007⁴⁰ on Headend-In-The-Sky. As per analysis in the said recommendations, *inter-alia* it is noted by TRAI that, ‘*As far as annual fee is concerned, the operational model of a HITS operator is not different from a multi system operator except that the former has a head end in the sky instead of on the earth. Even more importantly, both the MSOs and HITS operator have the same business model under which they have to share their revenues with another intermediary, namely, the last mile cable operator. This is not the case with DTH where there is no revenue sharing with any intermediary between the DTH operator and the consumer. Thus, if HITS is treated at par with DTH for imposition of annual fee as a percentage of revenue, then to that extent HITS will be handicapped in competing with terrestrial MSOs who do not have to pay any revenue share. It will also not be cost-effective in comparison with the DTH operator because DTH does not have to share revenue with any intermediary. Thus, the very purpose of digitalisation of cable services will be defeated.*’

³⁷ <https://tra.gov.in/sites/default/files/recom25july08.pdf>

³⁸ <https://tra.gov.in/sites/default/files/recom25july08.pdf>

³⁹ <https://mib.gov.in/sites/default/files/headend.pdf>

⁴⁰ <https://tra.gov.in/sites/default/files/rec17oct07.pdf>

2.115 Accordingly, TRAI in its recommendations on the issue of annual license fee for HITS operators recommended that *“there should not be any annual fee for HITS operation in order to ensure its financial viability and to ensure that it can compete effectively both with DTH and the terrestrial MSOs. This will lead to quick digitalization of cable services.”* It is noted that while making the recommendations on license fee for HITS operators, TRAI attention was to maintain a level playing field with MSO. The consultation paper on the subject highlighted that HITS can be an effective alternate technology for digitalization of cable networks.

2.116 **IPTV distribution segment:** IPTV services in India are regulated as per the 'Guidelines for provisioning of IPTV services' issued by MIB on 8th September 2008⁴¹. These guidelines enable the distribution of TV channels using managed IP networks. Telecom Access Service Providers (Unified Access Service Licensees, Cellular Mobile Telephone Service Licensees, and Basic Service Licensees) have a license to provide triple-play services and ISPs with a minimum net worth of Rs. 100 crore and having permission from the licensor to provide IPTV or any other telecom service provider duly authorized by the DoT 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 can provide IPTV services without requiring any further permission.

2.117 From the aforesaid paragraphs, it may be seen that the above three distribution platforms (i.e., MSOs/HITS/IPTV services provided by cable operators) are not required to pay any annual license fee. The DTH guidelines prescribe license fee as 10% of Gross Revenue since beginning, which was subsequently amended to 8% of AGR based on TRAI's recommendations dated 23rd July 2014.

⁴¹ https://mib.gov.in/sites/default/files/ilovepdf_merged_1.pdf

2.118 Level Playing Field: It is clear that there is a need for establishing a level playing field among all type of television distribution platforms. An equal license fee structure among different distribution segments can address the disparities. This can promote healthy competition, encourage innovation across all platforms, and benefit consumers by providing them with a wider range of choices.

2.119 Free Dish DTH Service: Moreover, free DTH services offered by DD Free Dish are meanwhile being allowed to provide the same services to subscribers with no cost implications of any kind of License Fee. DD Free Dish offers more than 250 television channels including around eight television channels of private broadcasters. These television channels belong to almost every genre including general entertainment, movies, music, kids channels, infotainment and news. Therefore, DD Free Dish has gained quite a large number of consumers (estimated around 50 million) across the country, thereby impacting the pay DTH operators.

2.120 OTT Platforms: The technological development, especially proliferation of Broadband services has also enabled content-based OTT services in recent years. by these content-based OTT platforms, entertainment is being provided on the same television screen through a broadband pipe at dissimilar prices. OTT services are unregulated at present in terms of Tariff, Interconnection norms and quality of services. The rise of OTT platforms, which deliver media content directly over the internet, has indeed unsettled the traditional broadcasting and distribution landscape. The growth of OTT platforms is causing an adverse impact and creating burden on the existing regulated players including the DTH service providers.

2.121 It's worth noting that the Media and Entertainment (M&E) sector is constantly evolving with the emergence of new entrants like OTT platforms in the market, thereby disrupting the existing players. Finding the right balance between regulation and market forces is a continuing challenge. Striking the right balance requires a comprehensive

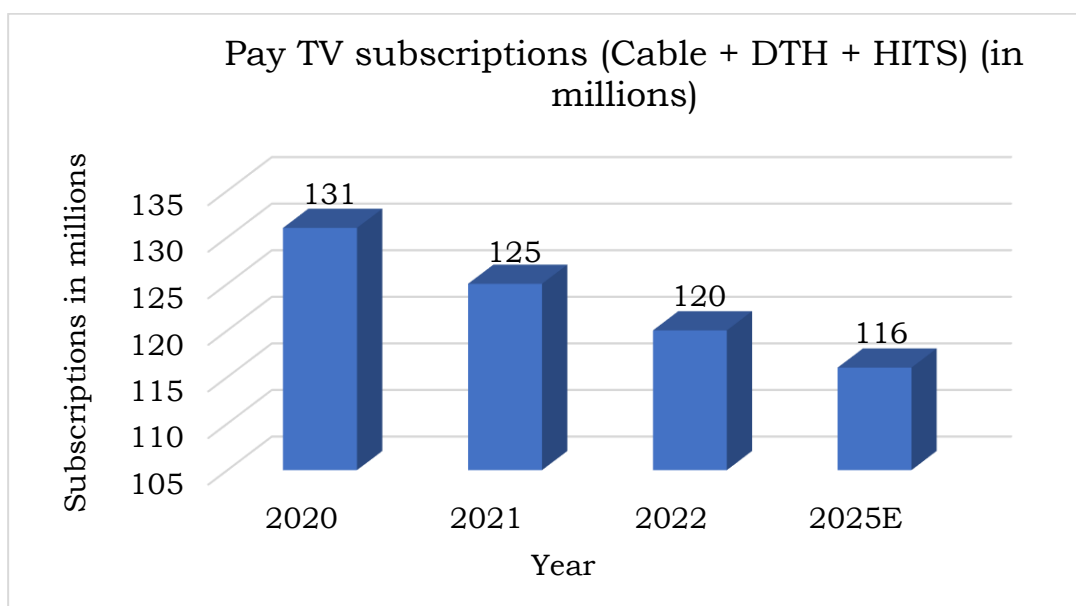
understanding of consumer behaviour, technological advancements, and industry trends to ensure fair competition, consumer protection, and sustainable growth of all the players involved. There are other issues in content-based OTT services, which however is a separate subject.

2.122 International Practices: References may also be taken from the international best practices, wherein either no license fee is levied, or if it is levied, it is same for all the distribution platforms. There is no license fee for DTH services in the UK. There was license fee for DTH operators but was subsequently done away with. Further, while there is a license fee paid by television channels and broadcasters to Ofcom, there is no such fees for platforms. In Singapore, as well, license fee is levied at the rate of 2.5% of total revenue. Minimal License Fee is paid in the US, basis the number of subscribers. More details of international practices are provided in the Consultation Paper¹⁴ on this issue vide para number 2.14 to para 2.23.

2.123 License fee on other type of DPOs: The Authority acknowledges that there exists an anomaly in license fee for different platforms. It is imperative that this anomaly requires to be removed at the earliest. One way to remove this anomaly is to levy license fee on other DPOs i.e., MSOs (and LCOs) and HITS operators. In the cable TV segment, MSOs are already grappling for retaining their subscribers. LCOs are discontinuing their services by transferring their operations to other LCOs. In HITS vertical, only one operator is operational presently. As per an industry report⁴², the number of pay TV subscription are declining year-on-year. Therefore, as seen from **Figure 2.2** below, it would not be appropriate to prescribe license fee for other DPOs.

⁴² https://assets.ey.com/content/dam/ey-sites/ey-com/en_in/topics/media-and-entertainment/2023/05/ey-me-report.pdf

Figure 2.2: Decline in linear pay TV subscriptions



2.124 Similarly on the broadcasting end, the emergence of upcoming broadcasters, influencers, and the widespread sharing of user-generated content (UGC) has indeed significantly disrupted the conventional broadcasting industry in recent times.

2.125 Therefore, the license fee for the DTH sector should be reduced and then reduced to zero over a period of time. This would maintain equality and apply the same service same rule concept for all delivery platforms.

2.126 The Authority believes that the quantum of the license fee should be in accordance with the industry standards. Other DPOs such as MSOs and HITS as well as local cable operators are not paying any license fee. Similarly Free Dish and content-based OTT aren't paying any license fee. Telecom licensees under the Unified License Agreement are levied license fee as 8% of AGR, which includes 5% as USOF levy. As there is no USOF levy in broadcasting sector, the license fee for DTH service provider should be reduced to 3% of AGR immediately.

2.127 The Authority is of the view that DTH sector should be treated similar to other distribution platforms in terms of license fees. This may also, in addition to bringing parity and establishing level playing field, which is the core issue of the MIB reference, yield several potential benefits as under:

- **Investment boost:** Lowering or eliminating license fees for DTH operators will attract more investment in the sector. This will lead to the expansion of services, infrastructure improvement, and increased competition, ultimately benefiting consumers.
- **Investor confidence:** A reduced license fee structure instils confidence in the potential investors, as they find a favourable regulatory environment. This could attract both domestic and foreign investors, stimulating growth and development in the DTH sector.
- **Enhanced quality of service:** With increased investment, DTH operators may allocate resources towards improving the quality of services. This could include technological upgrades, better customer support, and the introduction of new features, resulting in a better user experience.
- **Enhanced coverage/ distribution in Rural and Far-Flung Areas:** DTH technology has the capability to reach to the rural areas, remotest far-flung areas and the difficult terrains, due to the coverage of the satellite footprint. In many such remote areas the reach of cable and internet is neither feasible nor cost-effective.
- **Technological innovation:** Lower license fees may encourage DTH operators to invest in research and development, leading to technological advancements. This could include the adoption of better compression algorithms, improved transmission protocols, and the integration of new technologies such as 4K broadcasting or virtual reality.
- **Ease of doing business:** Treating the DTH sector on par with other distribution platforms can simplify regulatory compliance and administrative processes. This will enable operators to enter the market and operate their services efficiently.

2.128 Taking cognizance of the fact that no license fee exists for both the regulated (MSOs, HITS Operators and IPTV providers) as well as

unregulated distribution operators (DD Free Dish and Content Based OTT services) delivering the same broadcasting services, the Authority is of the view that there should be equal treatment to all the service providers to ensure level playing field. The Authority feels that this anomaly requires to be removed at the earliest.

2.129 With these plausible potential benefits and taking into consideration the specific market dynamics, consumer interests, and the long-term sustainability of the sector, the Authority is of the view that DTH sector should be treated just like all other regulated distribution platforms. The Authority therefore proposes a two stages approach for reducing the burden on DTH players and bringing in parity with other distribution platforms.

2.130 In view of the above, **the Authority recommends that the DTH Licensee should pay an annual license fee equivalent to 3% of Adjusted Gross Revenue (AGR).**

2.131 Further, as per detailed analysis and the reasons mentioned above, the Authority is of the view that there should be no license fee after three years that is March 2027.

2.132 **Therefore, the Authority recommends that the License Fee for DTH Licensees should be brought down to zero in next three years. DTH Licensees should not be charged any license fee after the end of the financial year 2026-2027.**

CHAPTER III

ISSUES RELATED TO BANK GUARANTEE

- 3.1 Bank Guarantee (BG) is a type of financial backstop offered by a lending institution. BG means that the lender will ensure that the liabilities of a debtor will be met. In other words, if the debtor fails to settle a debt, the bank will cover it. According to the Reserve Bank of India (RBI)⁴³, the bank guarantee is a commitment made by the issuing bank to make payment to the beneficiary in case of default by the creditor. BG ensures that the service providers pay their dues on time and fulfill their obligations as per the terms and conditions prescribed in the license agreement. BG is a useful instrument to safeguard the interests of the Government.
- 3.2 ‘DTH Guidelines’ prescribe a Bank Guarantee as a safeguard against the non-payment of license fee and violation of any of the license conditions by the licensee. Clause 4.1 of ‘DTH Guidelines’ stated that:
- “The Licensee shall, within one month of issual of SACFA clearance by W.P.C., submit to the Ministry of I & B, a Bank Guarantee from any Scheduled Bank in Form-C for an amount of Rs.40 crores valid for the duration of the license.”*
- 3.3 Further, clause 4.2 states that:
- “The Licensor shall be at liberty to encash the Bank Guarantee in full or part in the event of non-payment of license fee or violation of any of the license condition.”*
- 3.4 MIB on 03rd September 2013 sought recommendations of TRAI on various DTH licensing issues including “*Whether the bank guarantee of Rs. 40 crore is to be renewed for the entire period of the license again on extension of validity period of license?*” Accordingly, TRAI in its recommendations on 'Issues related to New DTH Licenses' dated 23rd July 2014⁴⁴ had recommended that:

⁴³ https://m.rbi.org.in/scripts/BS_ViewMasCirculardetails.aspx?id=9813#1

⁴⁴ <https://traigov.in/sites/default/files/DTH-Reco%28New-Licensing-Regime%29-uploaded.pdf>

- i. *The DTH licensees shall be required to furnish a Bank Guarantee for an amount equivalent to the estimated sum payable, equivalent to License fee for two quarters and other dues not otherwise securitized.*
- ii. *The bank guarantee should be valid for a year which should be renewed year-on-year basis in such a manner that the BG remains valid during the entire license period.*
- iii. *For new entrants, a BG for a fixed amount of Rs. 5 crore shall be taken for the first two quarters, and thereafter, for an amount equivalent to the estimated sum payable, equivalent to License fee for two quarters and other dues not otherwise securitize.*

3.5 As also mentioned in para 2.17 in Chapter II, MIB had referred back the recommendations to TRAI on 12th March 2018⁴⁵, wherein MIB proposed to vary from the recommendations of TRAI on the period of license, entry fee, rate of license fee and periodicity of payment of license fee and quantum of bank guarantee. Regarding the bank guarantee, MIB proposed to raise the bank guarantee to Rs. 100 crore instead of the existing Rs. 40 crore, keeping in view inflation over the past 17 years.

3.6 TRAI in its response dated 12th April 2018⁴⁶ mentioned “*Keeping the Bank Guarantee at a fixed amount of Rs. 100 crore will block the money of operators, which could be utilised for better delivery and expansion of their services and would also deter entry for new operators. There are well established practices in the telecom sector to calculate bank guarantee on the basis of license fee for two quarters, which dynamically takes care of small and big operators. Hence making the bank guarantee as a fixed component does not appear to be an appropriate option. In view of above, TRAI reiterates its earlier recommendations.*”

3.7 TRAI’s recommendations of 23rd July 2014 and response to the back reference to MIB on 12th April 2018 in respect of BG had been

⁴⁵ <https://traigov.in/sites/default/files/MIBBackReference12042018.pdf>

⁴⁶ <https://traigov.in/sites/default/files/TRAIResponse12042018.pdf>

considered and accepted by MIB and the following have been notified in 'DTH 2020 Amendment':

*“The Licensee will have to submit a Bank Guarantee from any scheduled Bank to the Ministry of Information and Broadcasting for an amount of **Rs. 5 crore** for the first two quarters, and, thereafter, for an amount equivalent to estimated sum payable, equivalent to License fee for two quarters and other dues not otherwise securitized. For existing DTH Operators, Bank Guarantee from any Scheduled Bank for an amount **equivalent to the estimated sum payable, equivalent to License Fee for two quarters** and other dues not otherwise securitized. Further, the Bank Guarantee shall be valid for a year which should be renewed on year-on-year basis in such a manner that the Bank Guarantee remains valid during the entire license period.”*

emphasis supplied

- 3.8 Pursuant to these amendments, provisional license was granted to existing four DTH operators on 31st March 2021, wherein MIB has mentioned that:

“The Licensee shall, within one month, submit to the Ministry of Information and Broadcasting, a Bank Guarantee from any Scheduled Bank in Form-C for an amount equivalent to the estimated sum payable, equivalent to License Fee for two quarters and other dues not otherwise securitized.”

- 3.9 This provisional license was made applicable with effect from 1st April 2021. TRAI in its CP raised three questions viz. **Q6** to **Q8** w.r.t. Bank Guarantee seeking comments of the stakeholders which are reproduced as under:

Q6. Is there any need to review the initial Bank Guarantee for the first two quarters, especially since the Bank Guarantee has already been reduced for the first two quarters vide amendments in DTH Guidelines notified on 30th December 2020?

Q7. Whether the amendments made by DoT in Unified License Agreement w.r.t. rationalization of Bank Guarantees should be

extended for existing DTH licensees also? If yes, what should be the percentage of License Fee for the two quarters to be submitted as Bank Guarantee to the licensor?

Q8. Whether any alternate method should be adopted instead of Bank Guarantee for securitizing license fee and ensuring compliance of the DTH license conditions. If yes, please specify the details thereof.

- 3.10 MIB, in its reference has referred the amendments carried out by DoT on 06th October 2021⁴⁷ on the subject 'Amendment in Unified License Agreement for rationalization of Bank Guarantees'. These amendments are discussed in the subsequent paragraphs.
- 3.11 In the present telecom licensing regime, there are two types of Bank Guarantees i.e., Financial Bank Guarantee (FBG) and Performance Bank Guarantee (PBG). The former i.e., FBG covers the liabilities in respect of license fee and other dues not otherwise securitized, whereas PBG covers the violation of license conditions and ensures the performance under the license agreement. Whereas, in DTH License only one BG is prescribed which secures license fee as well as violation of any of the license condition.
- 3.12 According to the DoT amendments dated 6th October 2021, telecom licensees are required to submit separately for each service and service area PBG for the prescribed amount subject to a maximum of Rs. 44 crore, instead of earlier Rs. 220 crore. The FBG is made to a maximum of Rs. 8.8 crore instead of Rs. 44 crore initially. Thereafter, this FBG is equivalent to 20% of the estimated sum payable equivalent to License fee for two quarters and other dues not otherwise securitized. Earlier, the FBG was equivalent to the estimated sum payable equivalent to License fee for two quarters and other dues not otherwise securitized. The detailed amendments made in UL agreement in respect of Bank Guarantees is mentioned in **Table 3.1**.

⁴⁷ https://dot.gov.in/sites/default/files/BG-UL-06-10-2021_0001.pdf

Table 3.1: DoT Amendment in UL Agreement w.r.t. BGs

| Old Clause | Amended Clause (Amendments dated 06.10.2021) |
|--|--|
| <p>PART-I, CHAPTER-III, FINANCIAL CONDITIONS</p> <p>21. BANK GUARANTEES 21.1 Performance Bank Guarantee:</p> <p>Performance Bank Guarantee (PBG) in prescribed format at Annexure III of this license agreement shall be submitted separately for each service and service area for the amount as per Annexure II, subject to a maximum of Rs. 220 crore initially, before signing the License Agreement or subsequent authorization of service(s), as the case may be, valid for one year, from any scheduled bank or for one year, from any scheduled bank or public financial institution duly authorized to issue such bank guarantee, to cover violation of license conditions and to ensure the performance under the license agreement including compliance of instructions issued by the Licensor from time to time. The PBGs shall be maintained and kept valid by the licensee during the entire currency of the license Agreement. However, the Licensor may increase the value of PBGs whenever any demand is raised for non-compliance of terms and conditions of License/ authorization to the extent it remains un-securitized by the</p> | <p>PART-I, CHAPTER-III, FINANCIAL CONDITIONS</p> <p>21. BANK GUARANTEES 21.1 Performance Bank Guarantee:</p> <p>Performance Bank Guarantee (PBG) in prescribed format at Annexure III of this license agreement shall be submitted separately for each service and service area for the amount as per Annexure II, subject to a maximum of Rs. 44 crore initially, before signing the License Agreement or subsequent authorization of service(s), as the case may be, valid for one year, from any scheduled bank or for one year, from any scheduled bank or public financial institution duly authorized to issue such bank guarantee, to cover violation of license conditions and to ensure the performance under the license agreement including compliance of instructions issued by the Licensor from time to time. The PBGs shall be maintained and kept valid by licensee during the entire currency of the the license Agreement.</p> <p>However, the Licensor may increase the value of PBGs whenever an demand is raised for non-compliance of terms and conditions of License/</p> |

| | |
|---|---|
| <p>existing PBGs, which shall be maintained till clearance of such demand by the licensee.</p> | <p>authorization to the extent it remains un-securitized by the existing PBGs, which shall be maintained till clearance of such demand by the licensee.</p> |
| <p>21.2 Financial Bank Guarantee: The Licensee shall submit Financial Bank Guarantee (FBG) separately for each service and service area for the amount as per amount Annexure II, subject to a maximum of Rs. 44 crore initially before signing License Agreement or subsequent the License of authorization of service(s), as the case, valid for one year, from any may be, Scheduled Bank or Public Financial Institution duly authorized to issue such Bank Guarantee, in the prescribed Proforma at Annexure IV of this license agreement. Subsequently, the amount of FBG shall be equivalent to the estimated sum payable equivalent to License fee for two quarters and other dues not otherwise securitized. The amount of FBG shall be subject to periodic review on six monthly basis by the Licensor and shall be renewed from time to time.</p> | <p>21.2 Financial Bank Guarantee: The Licensee shall submit Financial Bank Guarantee (FBG) separately for each service and service area for the amount as per Annexure II, subject to a maximum of Rs. 8.8 crore initially before signing License Agreement or subsequent the License of authorization of service(s), as the case, valid for one year, from any may be, Scheduled Bank or Public Financial Institution duly authorized to issue such Bank Guarantee, in the prescribed Proforma at Annexure IV, of this license agreement. Subsequently, the amount of FBG shall be equivalent to 20% of estimated sum payable (of License fee for two quarters and other dues not otherwise securitized). The amount of FBG shall be subject to periodic review on six monthly basis by the Licensor and shall be renewed from time to time.</p> |

3.13 It is mentioned in the MIB reference that the DTH operators have requested the Ministry that the principle adopted and implemented in telecom sector should also be extended for DTH sector. This would rationalize the requirement and quantum of BGs.

Comments of the Stakeholders

3.14 Stakeholders held a differing opinion on the quantum of the Bank Guarantee. Their perspectives varied, some of them advocated for a

complete elimination of BG, while others supported continuing with the BG for securitizing license fee for one to two quarters with reduced quantum i.e., 20%.

- 3.15 Stakeholders advocating for no BG requirement contented the fact that MIB had never invoked BG in the last 20 years as the current DTH operators are established business houses. This establishes the fact that even without BG, interest of Licensor is protected. They commented that the inclusion of an entry fee sufficiently guarantees that only committed and dedicated players will participate in the business. The stakeholder further added that in the new DTH regime, Rs. 5 crore for the first two quarters and thereafter an amount equivalent to the LF for two quarters is still high. The same amount remains locked in BGs, which is not beneficial either for the licensee or the licensor. Hence, the BG requirements should be done away with. The stakeholder opined that industry should mobilize and deploy precious funds/ capital in generating value for all stakeholders by putting more investments into digital infrastructure, networks, services etc. As per the comments, on a conservative basis, over 400 crore remains locked in terms of BGs with MIB for the industry as a whole.
- 3.16 One of the stakeholders has commented that BG may be reduced to one quarter instead of two quarters. As per the comment, the revenue outstanding at any point would be of one quarter only. This would enable the new entrants to adjust and offset losses while establishing a base in a new market consisting of established DTH operators and OTT platforms. The stakeholders have commented that with the increasing OTT market in India, new entrants face difficulty in a highly regulated domain. In the absence of any licensing regime or BG for such OTT platforms, these entrants begin profit from initial investment itself. On the contrast, in DTH, initial permission from WPC wing alone drains large resources.
- 3.17 The stakeholders further commented that imposition of BGs to securitize dues is also not consistent with other statutory dues. They mentioned that there is no requirement of BGs under the Income Tax

Act or GST laws to securitize such due payments. The need for securitization itself can be eliminated by substantially reducing the regulatory levies (LF) to recover only the cost of administering the license.

- 3.18 The comment further elaborated that DoT itself is transitioning towards a regime where no securitization of dues is being pursued. DoT decided not to securitize the deferred Spectrum Auction payments and Minimum Rollout Obligation (MRO) in the recent auction. Also, no BGs are required for registration of Other Service Providers (OSPs), Public Data Office Aggregators (PDOAs) and In-flight and Maritime Connectivity Authorizations (IFMC).
- 3.19 However, the stakeholders commented that if at all BG is retained, then it should be reduced proportionately to the telecom sector i.e., equivalent to 20% of the LF paid for two quarters. Further they implored that for level playing field, BG should either be uniformly imposed on all content distributors (cable, MSOs, HITS and OTT) or eliminated for DTH sector.
- 3.20 Besides, a service provider put forth an alternative viewpoint that if the Licensor deems it necessary to secure the dues, it may be done through corporate guarantee instead of BG.

Analysis and views of the Authority

- 3.21 As discussed in para 3.7, MIB had already reduced the initial BG from 40 crore to 5 crore and subsequent BGs were made equivalent to LF for two quarters, based on TRAI recommendations.
- 3.22 However, as suggested by the stakeholders and based on the reforms made in the telecom sector w.r.t. BGs, the Authority is of the view that the BG should be rationalized for DTH operators as well. It has been observed that in the broadcasting and distribution sector, the requirement of BG is applicable only to the HITS and DTH distribution segments. HITS operators are governed by the guidelines dated 26th November 2009⁴⁸ for providing HITS broadcasting service in India. In

⁴⁸ <https://mib.gov.in/sites/default/files/headend.pdf>

the said guidelines, BG for an amount of Rs. 40 crore has been prescribed valid for a period of three years. It is essential to stay informed that the Bank guarantee for HITS operators is not linked to their revenue since HITS operators are not required to pay any License Fee.

- 3.23 The Authority is of the view that the Bank Guarantee should exist to securitize the payment of license fee and other dues otherwise not securitized and security for the due observance and performance of the terms and conditions of the said License. In DTH Sector, it may be noted that only one Bank Guarantee has been prescribed, which is both the financial as well as the performance Bank Guarantee, to safeguard the non-payment of license fee or violation of any of the license condition. Therefore, the Bank Guarantee for DTH Licensees may be treated as Financial and Performance Bank Guarantee.
- 3.24 The Authority believes that the Bank guarantee amount should be brought down as the DTH operators' license fee for two quarters accumulates to a substantial sum, resulting in the BG being locked with the bank. By decreasing the BG amount, DTH operators can enhance their working capital flow, leading to increased business value generation.
- 3.25 Therefore, the Authority reiterates that for the new entrants, Bank Guarantee should be continued at a fixed amount of Rs. 5 crore for the first two quarters from any Scheduled Bank to the Ministry of Information and Broadcasting, but may be treated as Financial and Performance Bank Guarantee.
- 3.26 Thereafter, the Licensee should submit a Bank Guarantee for an amount equivalent to 20% of the estimated sum payable, equivalent to License Fee for two quarters and other dues not otherwise securitized, as being made by DoT in its structural reforms.
- 3.27 Accordingly, Form-C should also be amended to reflect the quantum change. Moreover, electronic Bank Guarantees (eBG) should be encouraged and permitted for ease of doing business.

- 3.28 The Bank Guarantee should be valid for minimum one year which should be renewed on year-on-year basis in such a manner that it remains valid during the entire license period. The amount of Bank Guarantee is subject to periodic review after every six months by the Licensor.
- 3.29 Further, recommendation at para 2.110 may be referred, wherein Authority has recommended that *'the License Fee for DTH Licensees should be brought down to zero in next three years. DTH Licensees should not be charged any license fee after the end of the financial year 2026-2027.'* Accordingly, proportion of the bank guarantee which covers the financial component will also become zero. However, the Authority is of the view that to safeguard the violation of the license conditions, a minimal Performance Bank Guarantee should be retained. The Authority recommends that a fixed amount of 5 crore as Performance Bank Guarantee should be prescribed in the DTH Guidelines, once the license fee becomes zero, and it should be valid for entire currency of the license Agreement.
- 3.30 Reducing the Bank Guarantee (Financial and Performance) substantially for the next three years and thereafter retaining a minimal Performance Bank Guarantee will contribute to accelerating their growth, fostering innovation, and encouraging investments in the DTH sector.
- 3.31 For existing DTH operators, the Authority recommends that:
- a. The Licensee should submit an Initial Bank Guarantee from any Scheduled Bank to the Ministry of Information and Broadcasting for an amount of Rs. 5 crore for the first two quarters.**
 - b. Thereafter, the Licensee should submit a Bank Guarantee (covering Financial and Performance Bank Guarantee) from any Scheduled Bank to the Ministry of Information and Broadcasting for an amount equivalent to the Initial Bank Guarantee (i.e., Rs. 5 crore) or 20% of the estimated sum**

- payable, equivalent to License Fee for two quarters and other dues not otherwise securitized, whichever is higher.
- c. **Once the license fee becomes zero, the Licensee should submit a Bank Guarantee (Performance Bank Guarantee) for a fixed amount equivalent to the Initial Bank Guarantee (i.e., Rs. 5 crore) from any Scheduled Bank to the Ministry of Information and Broadcasting, which should be valid for a minimum of one year and renewed every year to ensure it remains valid for the entire currency of the license Agreement.**
 - d. **The Licensor should be at the liberty to encash the Bank Guarantee in full or part in the event of violation of any of the license condition.**
 - e. **Electronic Bank Guarantee should be encouraged and permitted for ease of doing business.**

3.32 It has been noted that there is an ongoing court case with respect to license fee for DTH operators (Details of court case(s) are provided in Annexure II). It is noted that these recommendations are being made on a reference received from MIB. These recommendations revise the definitions of GR, AGR and introduce a new concept of Applicable Gross Revenue (ApGR). The recommendations also revise the ratio (percentage) of AGR for calculating the annual license fee payable by the DTH operators. It is clarified here that these Recommendations may be applied prospectively.

3.33 Therefore, **the Authority recommends that these recommendations including the definition of Gross Revenue (GR), Applicable Gross Revenue (ApGR), Adjusted Gross Revenue (AGR) and the percentage of AGR to calculate the License Fee for the DTH License may be made applicable prospectively.**

CHAPTER IV SUMMARY OF RECOMMENDATIONS

Gross Revenue (GR)

- 4.1 The Authority recommends the Gross Revenue shall comprise revenue accruing to the licenced entity by way of all operations/ activities and inclusive of all other revenue/ income on account of interest, dividend, rent, profit on sale of fixed assets, miscellaneous income etc. without any set-off for related items of expense.

Explanation:

1. *The Gross Revenue shall be inclusive of subscription fee, installation, activation, restoration, reactivation, relocation, visiting and other service charges, subscription and advertisement revenue from platform services channels, carriage fees, revenue from marketing and placement agreements, commissions received, revenue from sale, repair and maintenance of customer premises equipment, royalties, revenue from customer support service and any other revenue of the enterprise.*
2. *The Gross Revenue shall also include ancillary revenue accruing to the DTH licensee due to the privileges connected with the DTH licensee, such as income from property rent, revenue from sharing of infrastructure, revenue from sale of immoveable property, gains from foreign exchange rates fluctuations, insurance claims, bad debt recovered, excess provisions written back which has been established for maintaining and working of DTH service or any other such miscellaneous revenue received by the licensee.*
3. *In the case of licensee providing or receiving goods and service from other companies that are 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.*

** “Control” as defined in Section 2(27) of the Companies Act 2013.*

[Para. 2.52]

Applicable Gross Revenue (ApGR)

4.2 The Authority recommends that the DTH operators should calculate Applicable Gross Revenue (ApGR) for arriving at the revenue calculations for license fee. ApGR should be equal to the total Gross Revenue (GR) of the licensee as reduced by the following items:

- i. Revenue from activities under a license/ permission issued by Department of Telecommunications;**
- ii. Reimbursement, if any, from the Government; and**
- iii. List of other income* to be excluded from GR to arrive at ApGR:**
 - a. Income from Dividend;**
 - b. Income from Interest;**
 - c. Income from sale of fixed assets and securities;**
 - d. Gains from Foreign Exchange rates fluctuations;**
 - e. Income from property rent;**
 - f. Insurance claims;**
 - g. Bad Debts recovered;**
 - h. Excess Provisions written back.**

*** subject to conditions given in [Annexure-III](#)**

[Para. 2.58]

Adjusted Gross Revenue

4.3 The Authority recommends that Adjusted Gross Revenue (AGR) is calculated by excluding Goods and Services Tax (GST) paid to the Government from the Applicable Gross Revenue (ApGR), if the ApGR had included as component of GST.

[Para. 2.65]

Format of Form-D

- 4.4 The Authority recommends that MIB should revise the Form-D (the Statement of Revenue and Licence Fee for DTH Licensees) and adopt the format of Form-D as prescribed in [Annexure-IV](#). The process for the submission of Form-D should be made end-to-end online with facility to upload all the related documents in digital mode via single window system.**

[Para 2.70]

Deduction Verification Process

- 4.5 The Authority recommends that MIB should develop a robust mechanism for deduction verification process through single window portal. The Licensee is required to produce to the Licensor, all such books of accounts and documents required for reconciliation which have a bearing on the verification of revenue for the purpose of calculating License Fee.**

[Para. 2.80]

License Fee

- 4.6 The Authority recommends that the DTH Licensee should pay an annual license fee equivalent to 3% of Adjusted Gross Revenue (AGR)*.**

[Para. 2.130]

- 4.7 The Authority recommends that the License Fee for DTH Licensees should be brought down to zero in next three years. DTH Licensees should not be charged any license fee after the end of the financial year 2026-2027.**

[Para. 2.132]

Bank Guarantee

- 4.8 The Authority recommends that:**
- a. The Licensee should submit an Initial Bank Guarantee from any Scheduled Bank to the Ministry of Information and**

- Broadcasting for an amount of Rs. 5 crore for the first two quarters.
- b. Thereafter, the Licensee should submit a Bank Guarantee (covering Financial and Performance Bank Guarantee) from any Scheduled Bank to the Ministry of Information and Broadcasting for an amount equivalent to the Initial Bank Guarantee (i.e., Rs. 5 crore) or 20% of the estimated sum payable, equivalent to License Fee for two quarters and other dues not otherwise securitized, whichever is higher.
 - c. Once the license fee becomes zero, the Licensee should submit a Bank Guarantee (Performance Bank Guarantee) for a fixed amount equivalent to the initial Bank Guarantee (i.e., Rs. 5 crore) from any Scheduled Bank to the Ministry of Information and Broadcasting, which should be valid for a minimum of one year and renewed every year to ensure it remains valid for the entire currency of the license Agreement.
 - d. The Licensor should be at the liberty to encash the Bank Guarantee in full or part in the event of violation of any of the license condition.
 - e. Electronic Bank Guarantee should be encouraged and permitted for ease of doing business.

[Para. 3.31]

4.9 The Authority recommends that these recommendations including the definition of Gross Revenue (GR), Applicable Gross Revenue (ApGR), Adjusted Gross Revenue (AGR) and the percentage of AGR to calculate the License Fee for the DTH License may be made applicable prospectively.

[Para. 3.33]

Reference received from MIB (Page 1)

**No. 2/33/2021-BP&L
Government of India
Ministry of Information & Broadcasting**

'A-Wing', Shastri Bhawan,
New Delhi, Dated: the 2nd February, 2022

To

The Secretary,
Telecom Regulatory Authority of India (TRAI),
Mahanagar Doorsanchar Bhawan,
Jawahar Lal Nehru Marg,
Old Minto Road,
New Delhi-110002.

Subject: Representations received from DTH Association and DTH Operators regarding DTH matters keeping in view the recent amendments carried out by Department of Communications, Ministry of Communications in the Unified License Agreement-regarding.

Sir,

Kindly refer to the subject mentioned above. As you are aware, Ministry of Communications, Department of Telecommunications (DOT) vide their letter no. 20-271/2010 AS-I (Vol.-IV) dated 06.10.2021 has carried out amendment in Unified License Agreement for rationalization of Bank Guarantees. As per the amendment, all Telecom Licensees are now required to submit Performance Bank Guarantee (PBG) to a maximum of Rs. 44 Crore instead of earlier Rs. 220 Crore and Financial Bank Guarantee (FBG) to a maximum of Rs. 8.8 Crore instead of earlier Rs. 44 Crore. This FBG shall be equivalent to 20% of the estimated sum payable (of license fee for two quarters and other dues not otherwise securitized).

2. Further, DOT vide their letter no. 20-271/2010 AS-I (Vol.-V) dated 25.10.2021 has also carried out amendment in the Unified License Agreement for Adjusted Gross Revenue (AGR). As per the amendment, the Gross Revenue (GR) shall be inclusive of installation charges, late fees, sale of proceeds of handsets (or any other terminal equipment, etc.), revenue on account of interest, dividend, value added services, supplementary services, revenue earned from parent NSO(s), revenue from permissible sharing of infrastructure and any other miscellaneous revenue, without any set-off for related item of expense, etc. As per the amendment, Applicable Gross Revenue (ApGR) shall be equal to GR of the licensee by reducing component like Revenue from operations other than telecom activities/operations, Income from Dividend, Income from Interest etc. Further, AGR shall be arrived by excluding some components from ApGR.

3. Based on the recommendation of Telecom Regulatory Authority of India (TRAI) on "Issues related to New DTH Licenses" dated 23.07.2014, it is informed that Ministry of Information and Broadcasting vide order dated 30.12.2020 carried out amendments in the DTH Guidelines (as amended up to 06.11.2007). As per the amendments, the existing DTH Operators are required to submit Bank Guarantee to this Ministry from any Scheduled Bank for an amount equivalent to the estimated sum payable, equivalent to License Fee for two quarters and other dues not otherwise securitized. However, for new DTH Operators, the Licensee will have to

Reference from MIB (Page 2)

submit a Bank Guarantee from any Scheduled Bank to this Ministry for an amount of Rs. 5 crores for the first two quarters, and thereafter, for an amount equivalent to estimated sum payable, equivalent to License fee for two quarters and other dues not otherwise securitized. Further, as per the amendments, the DTH Operators are required to pay an annual fee equivalent to 8% of its Adjusted Gross Revenue, calculated by excluding GST from Gross Revenue (GR) as reflected in the audited accounts of the Company for that particular financial year.

4. Keeping in view the aforesaid amendments carried out by DOT, DTH Association has raised their concerns and requested this Ministry to amend the definition of AGR in DTH sector by excluding the revenue generated from non-licensed activities as well as pass through items like content, for the calculation of License Fee and bring a uniform and Industry friendly licensing policy. DTH Operators have also requested the Ministry that the principle adopted and implemented by the Government to rationalize the requirement of Bank Guarantees (BGs) for the telecom sector should also be extended for the DTH sector to align the quantum of BGs as has been made applicable to telecom.

5. DTH Association has also raised the matter of level playing field between Distribution Platform Operators (DPOs). It has been stated by them that MSOs and HITS, while being licensed by this Ministry and security cleared by MHA, do not have to pay any license fee whereas DTH has to pay a License Fee @ 8% of AGR. To create a level playing field, they have requested the Ministry to charge 4% License Fee from all the DPOs viz. Cable, HITS and DTH while not being too harsh a levy on Cable. It would also be revenue neutral for the exchequer.

6. TRAI is therefore, requested to examine the following issues from policy angle and furnish its recommendations under Section (11) (1) (a) of the TRAI Act, 1997 to this Ministry:-

- i. Issue of exclusion of non-licensed activities from definition of Gross Revenue in respect of DTH License fee as in case of recent amendments carried out by Department of Telecommunications (DOT) and /or identify any other base for levy of the license fee. Accordingly, the format of Form-D in DTH sector as per GR/AGR criteria may also be provided.
- ii. Percentage/amount of Bank Guarantees (BGs) in respect of private DTH services as in case of recent amendments carried out by Department of Telecommunications (DOT); and
- iii. Issue of Uniform License Fee (Level playing field) in respect of all Distribution Platform Operators (DPOs).

7. This issues with the approval of Competent Authority.

Yours sincerely,


(Sanjiv Shankar)

Joint Secretary to the Govt. of India
Tele: 011-23384453

Annexure-II

Court Cases chronology in the matter of computation of License Fee

The issue of computation of license fee and the constitutional validity of the definition of Gross Revenue in the 'DTH Guidelines', has been challenged by the DTH operators since 2009, and the matter has been heard in various courts of India. They have challenged the correctness and computation of the license fee levied by the Union of India (MIB).

| S. No. | Date | Event |
|---------------|-------------|--|
| 1. | 24.04.2009 | M/s Sun Direct TV Pvt. Ltd. filed petition against Union of India (UoI) before TDSAT. |
| 2. | 28.05.2010 | Hon'ble TDSAT allowed the petition and provided for payment of license fee on AGR basis with certain exclusion of non-licensed activities. (details provided in next para) |
| 3. | 17.09.2014 | UoI filed an appeal in Hon'ble Supreme Court (SC) of India against TDSAT decision. The Hon'ble SC disposed of the appeal filed by the UoI by referring the matter back to the TDSAT for fresh adjudication. |
| 4. | 19.10.2015 | M/s Sun Direct TV Pvt. Ltd. filed Writ Petition before Hon'ble HC of Kerala assailing the clause 3.1.1 of the licensing agreement. |
| 5. | 20.10.2015 | The HC of Kerala at Ernakulam passed an interim order allowing the prayer of petitioner in WP(C) No. 31856 of 2015 titled M/s Sun Direct TV Pvt. Ltd. vs UoI. |
| 6. | 29.10.2015 | Another similar WP(C) No. 33021/2015 was filed by Videocon D2H at HC of Kerala at Ernakulam. |
| 7. | 29.10.2015 | The HC of Kerala at Ernakulam in WP(C) No. 33021 of 2015 titled M/s Videocon D2H Ltd. vs. UoI and others passed interim order allowing the prayer of the petitioner to continue to pay the |

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| | | license fee as they have been paying since the date of grant of license and not to take any coercive steps against the petitioner. |
| 8. | 16.12.2015 | Another similar WP (C) No. 38271/2015 titled as M/s Bharti Telemedia Pvt. Ltd. vs UoI was filed before the High Court (HC) of Kerala at Ernakulam. |
| 9. | 17.12.2015 | The HC of Kerala in WP(C) No. 38271 of 2015 titled M/s Bharti Telemedia Pvt Ltd. vs. UoI and others passed interim order for three months allowing the prayer of the petitioner to continue to pay the license fee as they have been paying since the date of grant of license and not to take any coercive steps against the petitioner. |
| 10. | 18.02.2016 | The HC of Kerala in WP(C) No. 38271 of 2015 titled M/s Bharti Telemedia Pvt Ltd. vs. Union of India and others extended interim order until further orders allowing the prayer of the petitioner to continue to pay the license fee as they have been paying since the date of grant of license and not to take any coercive steps against the petitioner. |
| 11. | 11.01.2018 | Hon'ble TDSAT on 11.01.2018 ordered that the hearing of broadcasting petitions of DTH operators is adjourned <i>sine die</i> and be resumed on mentioning by either of the parties after the validity of relevant articles and other related issues decided by the High Courts. |
| 12. | 05.03.2018 | M/s Tata Sky Ltd. (now Tata Play Ltd.) filed a Transfer Petition (Civil) No. 463-466/2018 before Hon'ble SC seeking transfer of all above-mentioned cases to Hon'ble SC. |
| 13. | 09.03.2018 | Hon'ble SC of India has disposed of the Transfer Petition with a direction to Union of India, to file |

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| | | reply in the writ petition within two months and also requested the concerned High Courts to decide the cases as far as possible within six months. |
| 14. | 2018 | Counter Affidavits filed by MIB in all the pending Writ Petitions but no progress has been made. |
| 15. | 09.07.2019 | MIB filed the Transfer Petition in Hon'ble SC of India. |

The transfer petitions mentioned at point no. 15 above have been allowed by the Hon'ble Supreme Court on 23.09.2019 and the matters have been numbered as:

- *TC (C) No. 70/2019 titled as "M/s Sun Direct TV Pvt Ltd v Union of India & Ors"*
- *TC (C) No. 71/2019 titled as "Dish TV India Ltd v Union of India" (earlier Videocon D2H Limited v Union of India & Ors.)*
- *TC (C) No. 72/2019 titled as "Bharti Telemedia Pvt Ltd v Union of India & Ors"*

Annexure-III

**Reasons and recommendations for excluding ‘Other Income’ heads
from GR to arrive at ApGR for DTH Licensees**

| S. No. | ‘Other Income’ heads | Reasons and Recommendations |
|-------------------|-------------------------------------|--|
| i. | Income from Dividend | <p>Income from dividend is return on investment made by the company. Such investment is made out of surplus funds available with the company. Companies Act, 2013 and Accounting Standard-9 classified dividend income as ‘other income’ i.e., distinct from the core operations of the entity.</p> <p>Therefore, the Authority recommends that income from dividend should not be part of ApGR for the purpose of computation of LF. Gain from mutual funds would also be excluded.</p> |
| ii. | Income from Interest | <p>Income from interest is return on investment made by the company in bank deposits, corporate deposits, debentures etc. Such investment is made from surplus funds available with the company. Also, sometimes TSP receives interest from Tax Authorities on advance tax or refundable tax. Companies Act, 2013 and Accounting Standard-9 classified interest income as ‘other income’ i.e., distinct from the core operations of the entity.</p> <p>At the same time the Authority also notes that DTH operators accepts refundable deposits from customers, and other vendors. These deposits essentially are part of DTH operations and needed to</p> |

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| | | <p>identify/ keep separately. The Authority is of the view that to maintain separately identity of these deposits, DTH operators will open a separate bank account for refundable deposits from customers, telecom vendors and other TSPs. The interest income earned on such accounts will be recorded and kept separately.</p> <p>In view of above, the Authority recommends that income from interest should not be part of ApGR for the purpose of computation of LF. However, interest earned on refundable deposits from customers and other vendors should be considered in ApGR for the purpose of computation of LF. In case segregation of such interest income is not possible, entire interest income should be considered part of ApGR. The Authority also recommends that any refundable deposit received by the DTH operators on the strength of broadcasting services viz. linkage with tariff, advance rental etc. will also have similar treatment for inclusion in ApGR. Interest on direct tax/ indirect tax refunds also excluded.</p> |
| <p>iii.</p> | <p>Income from sale of fixed assets and securities</p> | <p>Capital gain earned by the DTH operator on the account of profit on sale of assets and securities, are of from investing activities instead of from DTH operations. Therefore, the Authority recommends that revenue on account of sale of immovable property, securities, warrants or debt instruments, other items of fixed assets should not be part of ApGR for the purpose of computation of LF. Capital gains on business combination e.g. merger, demerger, slump sale</p> |

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| | | etc. will be excluded. Capital receipts will also be excluded. |
| iv. | Gains from Foreign Exchange rates fluctuations | <p>Foreign Exchange differences arise when actual rates at the time of settlement differs from those at which they were initially recorded in the books. The Authority also notes the provisions contained in the Accounting Standard-11 which requires a notional entry for exchange differences in respect of liabilities at the closing date of the AFSs. The foreign exchange gains reflected in the profit and loss statement of DTH operator could arise from reduction of payment liability or increase in the value of foreign exchange accounts receivables. In other words, foreign exchange fluctuation is a contingency which has impact on every business which may have something to do with foreign exchange and is not specific and unique to DTH business.</p> <p>In view of above, the Authority recommends that revenue/profit arising out of upward valuation or devaluation on account of fluctuation of foreign exchange should not be part of ApGR for the purpose of computation of LF. Market to market accruals would also be excluded.</p> |
| v. | Income from property rent | <p>DTH operators may rent or lease part of their properties and earn revenue in the form of rent. Some DTH operator as part of staff welfare measure provides staff quarters to their employees and receive rent from such staff. The Authority notes that revenue from rent cannot be distinctly treated as only from telecom business. Therefore, the Authority recommends that revenue/ income from property rent should not be part of ApGR</p> |

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| | | <p>for the purpose of computation of LF. The Authority further recommends that in case property is let out for ‘establishing, maintaining and working of broadcasting services’, then revenue/ income from such rent should be considered in ApGR for the purpose of computation of LF.</p> |
| vi. | Insurance claims | <p>A receipt from Insurance company against loss of property/fixed assets is basically a reimbursement in nature for the loss occurred by the DTH operator. Therefore, the Authority recommends that receipt of insurance claim from insurance company should not be part of ApGR for the purpose of computation of LF. Claims received on account of business loss also excluded.</p> |
| vii. | Bad Debts recovered. | <p>Bad debt is an amount owed by a debtor that is unlikely to be received/realized and recognized as an expense in the books of accounts. Bad Debts recovered represents reversal of debits (i.e., bad debts) appearing in the profit and loss account of previous year(s). This basically represents an adjustment to the amount of an expense (i.e., bad debts) as estimated in an earlier year(s) in which it had already recorded as part of revenue from operations.</p> <p>Therefore, the Authority recommends that income on account of bad debts recovered should not be part of ApGR for the purpose of computation of LF.</p> |
| viii. | Excess Provisions | <p>Excess Provisions written back represent the reversal of excess provision made for any liability or expenses in any previous year. On settlement, this</p> |

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| | <p>written back</p> | <p>excess provision is written back into books of accounts as other income. This basically represents an adjustment instead of actual revenue earned.</p> <p>Therefore, the Authority recommends that income on account of excess provisions written back should not be part of ApGR for the purpose of computation of LF. Reversal on account of writeback off vendor balances would also be excluded.</p> |
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***Note:** Clarification provided by DoT vide its letter no. 12-44/2021-LFP dated 17th July 2023 for telecom licensees has also been considered and reflected appropriately in the above Annexure-III.*

Annexure-III (a)

Items included in 'POSITIVE LIST' of Annexure 2.1 of
'UL AGR Recommendations'

| S. No. | Item/head of 'Other Income' | Reasons and Recommendations |
|---------------|------------------------------------|---|
| i. | Income from Dividend | <p>Income from dividend is return on investment made by the company. Such investment is made out of surplus funds available with the company. Companies Act, 2013 and Accounting Standard-9 classified dividend income as 'other income' i.e., distinct from the core operations of the entity.</p> <p>In the DoT's order number 7-4/2001-Tariff notified in gazette dated 8th January 2003, investment (in other company's equities, securities etc.) is not considered as part of capital employed i.e., funds invested for providing telecom services.</p> <p>Therefore, the Authority recommends that income from dividend should not be part of ApGR for the purpose of computation of LF and SUC.</p> |
| ii. | Income from Interest | <p>Income from interest is return on investment made by the company in bank deposits, corporate deposits, debentures etc. Such investment is made out of surplus funds available with the company. Also, sometimes TSP receives interest from Tax Authorities on advance tax or refundable tax. Companies Act, 2013 and Accounting Standard-9</p> |

| | | |
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| | | <p>classified interest income as 'other income' i.e., distinct from the core operations of the entity.</p> <p>At the same time the Authority also notes that TSP accepts refundable deposits from customers, telecom vendors and other TSPs. These deposits essentially are part of telecom operations and needed to identify/keep separately. The Authority is of the view that to maintain separately identity of these deposits, TSP will open a separate bank account for refundable deposits from customers, telecom vendors and other TSPs. The interest income earned on such accounts will be recorded and kept separately.</p> <p>In view of above, the Authority recommends that income from interest should not be part of ApGR for the purpose of computation of LF and SUC. However, interest earned on refundable deposits from customers, telecom vendors and other TSPs should be considered in ApGR for the purpose of computation of LF and SUC. In case segregation of such interest income is not possible, entire interest income should be considered part of ApGR. The Authority also recommends that any refundable deposit received by the TSP on the strength of telecom service viz. linkage with tariff, advance rental etc. will also have similar treatment for inclusion in ApGR.</p> |
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| <p>iii.</p> | <p>Capital gains on account of profit on sale of fixed assets and securities</p> | <p>Capital gain earned by the TSP on the account of profit on sale of assets and securities, are of from investing activities instead of from telecom operations. Therefore, the Authority recommends that revenue on account of sale of immovable property, securities, warrants or debt instruments, other items of fixed assets should not be part of ApGR for the purpose of computation of LF and SUC.</p> |
| <p>iv.</p> | <p>Gains from Foreign Exchange rates fluctuations</p> | <p>Foreign Exchange differences arise when actual rates at the time of settlement differs from those at which they were initially recorded in the books. The Authority also notes the provisions contained in the Accounting Standard-11 which requires a notional entry for exchange differences in respect of liabilities at the closing date of the AFSs. The foreign exchange gains reflected in the profit and loss statement of TSP could arise from reduction of payment liability or increase in the value of foreign exchange accounts receivables. In other words, foreign exchange fluctuation is a contingency which has impact on every business which may have something to do with foreign exchange and is not specific and unique to telecom business.</p> <p>In view of above, the Authority recommends that revenue/profit arising out of upward valuation or devaluation on account of fluctuation of foreign exchange should not</p> |

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| | | be part of ApGR for the purpose of computation of LF and SUC. |
| v. | Income from property rent | TSP may rent or lease part of their properties and earn revenue in the form of rent. Some TSPs as part of staff welfare measure provides staff quarters to their employees and receive rent from such staff. The Authority notes that revenue from rent cannot be distinctly treated as only from telecom business. Therefore, the Authority recommends that revenue/ income from property rent should not be part of ApGR for the purpose of computation of LF and SUC. The Authority further recommends that in case property is let out for ‘establishing, maintaining and working of telecommunication’, then revenue/ income from such rent should be considered in ApGR for the purpose of computation of LF and SUC. |
| vi. | Insurance claims | A receipt from Insurance company against loss of property/fixed assets is basically a reimbursement in nature for the loss occurred by the TSP. Therefore, the Authority recommends that receipt of insurance claim from insurance company should not be part of ApGR for the purpose of computation of LF and SUC. |
| vii. | Bad Debts recovered | Bad debt is an amount owed by a debtor that is unlikely to be received/realized and recognized as an expense in the books of accounts. Bad Debts recovered represents reversal of debits (i.e., bad debts) appearing in |

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| | | <p>the profit and loss account of previous year(s). This basically represents an adjustment to the amount of an expense (i.e., bad debts) as estimated in an earlier year(s) in which it had already recorded as part of revenue from operations.</p> <p>Therefore, the Authority recommends that income on account of bad debts recovered should not be part of ApGR for the purpose of computation of LF and SUC.</p> |
| viii. | Excess Provisions written back | <p>Excess Provisions written back represent the reversal of excess provision made for any liability or expenses in any previous year. On settlement, this excess provision is written back into books of accounts as other income. This basically represents an adjustment instead of actual revenue earned.</p> <p>Therefore, the Authority recommends that income on account of excess provisions written back should not be part of ApGR for the purpose of computation of LF and SUC.</p> |

Form-D

(Format of Statement of Revenue and License Fee)

Statement of Revenue and License Fee of M/s _____
 (Name of the Licensee) for the quarter _____ of the financial
 year _____

(Amount in Rupees)

| S. No. | Particulars | Actuals for the previous quarter | Actuals for the current quarter | Cumulative up to the current quarter |
|-----------|---|----------------------------------|---------------------------------|--------------------------------------|
| 1. | Revenue from DTH Services | | | |
| i. | Subscription Revenue | | | |
| ii. | Revenue from subscription of Platform Service channels | | | |
| iii. | Advertisement Revenue generated from Platform Service channels | | | |
| iv. | Advertisement Revenue generated from any other means | | | |
| v. | Installation charges | | | |
| vi. | Activation charges | | | |
| vii. | Service Revenue (Visiting, Restoration, Reactivation, Relocation charges, Repair & Maintenance charges, etc.) | | | |
| viii. | Carriage Fee | | | |
| ix. | Marketing & Placement agreements | | | |
| x. | Sale, repair, and maintenance of Customer Premises Equipment (Antenna, Set Top Box, LNB, wiring etc.) | | | |
| xi. | Sale of toolkits and accessories | | | |
| xii. | Revenue from Customer Support Service | | | |
| xiii. | Commission | | | |
| xiv. | Royalties | | | |
| xv. | Promotional events | | | |
| xvi. | Musical/ Star events | | | |
| xvii. | Sponsored Programmes | | | |
| xviii. | Related party transactions (please specify sub-heads) a. b. | | | |

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| | ... | | | |
| xix. | Goods and Service Tax (GST) | | | |
| xx. | Any other/ miscellaneous income of the enterprise (please specify) a. b. ... | | | |
| 2. Revenue from sharing of infrastructure | | | | |
| i. | Revenue from sharing earth station uplinking facility | | | |
| ii. | Revenue from sharing satellite resources (transponder capacity) | | | |
| iii. | Revenue from sharing of transport stream | | | |
| iv. | Revenue from sharing of CAS and SMS | | | |
| v. | Revenue from sharing of disaster recovery system in hot-standby mode | | | |
| vi. | Goods and Service Tax (GST) | | | |
| vii. | Any other Income (please specify): a. b. ... | | | |
| 3. Other Income | | | | |
| i. | Income from Dividend | | | |
| ii. | Income from Interest | | | |
| iii. | Income from sale of fixed assets and securities | | | |
| iv. | Gains from Foreign Exchange rates fluctuations | | | |
| v. | Income from property rent | | | |
| vi. | Insurance claims | | | |
| vii. | Bad Debts recovered | | | |
| viii. | Excess Provisions written back | | | |
| 4. | Revenue from activities under a license/ permission issued by Department of Telecommunications. | | | |
| 5. | Reimbursement, if any, from the Government. | | | |
| AA. | GROSS REVENUE (GR) OF THE LICENSEE COMPANY [Add 1-5] | | | |

| | | | | |
|------------|--|--|--|--|
| B. | LESS | | | |
| 1. | Revenue from activities under a license/ permission issued by Department of Telecommunications | | | |
| 2. | Reimbursement, if any, from the Government | | | |
| 3. | Other Income | | | |
| i. | Income from Dividend | | | |
| ii. | Income from Interest | | | |
| iii. | Income of sale of fixed assets and securities | | | |
| iv. | Gains from Foreign Exchange rates fluctuations | | | |
| v. | Income from property rent | | | |
| vi. | Insurance claims | | | |
| vii. | Bad Debts recovered | | | |
| viii. | Excess Provisions written back | | | |
| BB. | TOTAL (1+2+3) | | | |
| CC. | APPLICABLE GROSS REVENUE (ApGR) (CC= AA - BB) | | | |
| DD. | DEDUCT | | | |
| 1. | Goods and Service Tax (GST) paid to the Government if the ApGR had included as component of GST. | | | |
| EE. | ADJUSTED GROSS REVENUE(AGR) (CC-DD) | | | |
| | LICENSE FEE @ 3% OF ADJUSTED GROSS REVENUE (EE) | | | |

**** END OF THE DOCUMENT ****