

5th December, 2013

To,
Mr. Wasi Ahmad
Advisor BC&S
Telecom Regulatory Authority of India,
Mahanagar Doorsanchar Bhawan,
Jawahar Lal Nehru Marg,
New Delhi-110022

Ref:-Supplementary Consultation Paper No.11/2013 dated 14th November, 2013.

Dear Sir,

At the outset we would like to take this opportunity to appreciate the endeavor of the Authority to take up the additional issues vide the captioned Supplementary Consultation Paper on Issue/Extension of DTH License.

At the outset, whilst reiterating our response dated 14th October 2013 submitted to the Consultation Paper No. 9/2013 dated 1st October, 2013 we would like to put on record our comments on the additional issues raised in the captioned Supplementary Paper as follows:-

1. CROSS-HOLDING/CONTROL BETWEEN A DTH LICENSEE AND BROADCASTING ENTITIES AND TV CHANNEL DISTRIBUTION ENTITIES:

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

OUR RESPONSE:-

We agree with the views of Authority on proposed amendment of the provisions incorporated under Clause 1.4 in the current DTH Guidelines. We agree that the definition of "control" as mentioned in the Paragraph 1.12 of the captioned consultation paper could be adopted in order to contain the

vertical/horizontal cross holdings amongst the broadcasting and various TV channel distribution operators.

As a corollary of the above we also concur with the proposal of the Authority to replace the existing Clause 1.4 and 1.5 of the DTH Guidelines in line with the amendment as mentioned in the Paragraph 1.15 of the captioned Supplementary Consultation Paper.

The Proposed amendment mentioned in Paragraph 1.15 of the captioned supplementary Paper to Clauses 1.4 and 1.5 of the existing DTH Guidelines are ideal for inclusion.

Additionally, we would also like to state that parity between equally placed stakeholders across the distribution chain including but not limited pay TV operators such as Digital and Analogue Cable Multi System Operators, OTT platform to name a few, needs to be achieved by applying similar principal as proposed by the Authority.

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

OUR RESPONSE:

For all those entities whose license has expired, we agree with the view of the Authority to grant such entities a period of one year for complying with new licensing provisions.

For all other entities whose the term of the License Agreement is still valid and existing, migration to the new licensing regime should be optional any time during the existing unexpired term. With reasonable notice time frame, as may be prescribed by the Authority, they should be allowed to migrate at any time during the existing unexpired term.

2. INTEROPERABILITY OF DTH STB'S:

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

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

OUR RESPONSE:

The very purpose for which the requirement of technical compatibility was originally included in the DTH License has been entirely satisfied by the successful achieving of commercial interoperability by DTH service providers.

The mandate of Technical Interoperability envisaged protection of subscribers by enabling them to easily shift from one DTH service provider to another without purchasing new hardware, i. e. STB. However, the subscriber has to purchase a CAM for insertion into the Common Interface Slot of such STB. The cost of CAM is in similar range as that of obtaining a new STB. The DTH service providers offer an Option to their Subscribers for obtaining the DTH hardware besides on Sale also on Hire Purchase or Rent basis as per their schemes. Thus, we state that the DTH Subscribers have an Option to conveniently change their Service Provider through Commercial Interoperability.

It is pertinent to note here that the DTH Service Provider is being unnecessarily required to invest and spend a huge amount of its Capital in provisioning the Common Interface Slot (CI Slot) into the STBs, because of the CAM requirement.

Given our above submissions, we suggest that the DVB-CI requirement should be re-considered and waived off.

Additionally:-

1. The DVB-CI slot adds about Rs.100 to the cost of each STB. With extremely low ARPUs (Average Revenue per User) in India, any lowering of the cost of the STB will be beneficial for the viability of the DTH business.
2. It is important to note that the cost of a DVB-CI CAM (required by another operator to get the STB to decode his service) is almost the same as the cost of a new STB. This will be act as a deterrent for consumers at large from incurring additional expense towards the CAM when he could easily migrant under rental or hire purchase schemes being offered by the DTH Service Providers.
3. Also the use of the DVB-CI CAM allows for decoding of the Audio and Video but does not guarantee full and proper functioning of Applications and Value Added Services.

4. None of the other DTH markets in the world have this requirement. This makes availability of newer STBs models, more difficult (and more expensive) as STB manufacturers have to develop India specific models.

In view of the above we opine that the points with regard to Interoperability of DTH STBs should be omitted.

We state that since the requirement of technical interoperability has become redundant Clauses 7.1 and 7.2 in the existing license agreement need to be omitted altogether and there is further no need for introduction of any mandates in this regard as mentioned in Paragraph 1.25 of the captioned Paper.

In view of the above we strongly feel that at best the matter may be **independently** referred to BIS to examine specifications only after due and detailed consultative process involving DTH operators and other stakeholders given the fact that technical interoperability is a non starter due to various impediments. Additionally, it is also against consumers at large as it would incur further and more cost to them. We state that this being the case the concept of technical interoperability needs to be entirely dropped from the licensing regime and consequently there is no need for any further mandate to the Government as envisaged under paragraph 1.25 of the captioned supplementary paper.

The BIS should also modify the STB specifications to incorporate the latest technological developments.

3. LICENSE FEE:

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

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

OUR RESPONSE:

We would like the Authority to kindly take into consideration the fact that there are several kinds of costs which are of the nature of pass through, on which there is absolutely no control or influence of a DTH operator. The best example would be that of the huge cost incurred towards obtaining the content from broadcasters. In more than one way, such costs are regulated by TRAI, on which a DTH Player has no role to play. We would also like to state that a DTH Operator necessarily functions as a mere transferor of signals through its equipment on procuring the content at such huge cost.

Second example could be that of the huge cost incurred by a DTH Operator towards hardware, its activation and installation. Additionally, in order to compete in the open market subsidies become expedient and under compelling circumstances, a DTH operator has to necessarily provide the Consumer Premises Equipment (CPE) at subsidized rates. It will not be out of place to mention here that in order to acquire the subscriber; the DTH Operator has to give huge amount of discount or commission to its channel partner.

In view of the above elucidation of pass through costs of various nature in the DTH industry, and in order to allow the industry to financially survive it is very important to capture the exact definition of AGR in the License.

We would like to briefly summarize components which need exclusion for arriving at AGR, apart from service tax and sales tax as proposed by the Authority under the captioned Supplementary Paper:-

- a) *Content Cost paid to Broadcasters.*
- b) *Revenue (by whatever name called) realized from non licensed activities such as*
 - a. *revenue against activation of Hardware including Set top box, Smart card, Outdoor unit and accessories thereof for connectivity at the consumer premises, by whatever name called.*
 - b. *Installation Charges*
 - c. *discounts and commissions,*
 - d. *Income from dividend, Capital Gains,*
 - e. *Gains from forging exchange rate fluctuations,*
 - f. *reversal of provisions and vendor credits,*
 - g. *revenue arising out of provisions like bad debts and taxes,*

- h. *income from property if it is not used for establishing, maintaining and working for the licensed activity,*
- i. *revenue from one licensed activity in the revenue of another licensed activity, revenue from USO funds, bad debts, waivers and discounts.*

c) *Service tax, Entertainment tax, Central/State Government Sales Tax.*

We urge the Authority that the License fee needs to be brought down to 6% of AGR as explained above in order to boost the DTH industry as a whole which has been incurring losses worth thousands of crores of rupees since the industry was first introduced in the country. With multiple taxation regimes already playing its role in destabilizing the DTH business, it is high time that the unreasonable burden is considered in its proper perspective and DTH business is given some relief from any further and more taxing events. It is in this light that we earnestly beseech the Authority to reconsider the

percentage of levy of license fee and have the same reduced to 6% in the definition of AGR.

4. MIGRATION FEE:

- i) **Do you agree with the approach discussed in para 1.39 above, for arriving at the quantum of migration fee to be charged from the existing DTH licensees on their migration to the new DTH licensing regime?**
- ii) **If not, an alternate formulation may be suggested along with justifications.**

OUR RESPONSE

We do not agree with the proposed formula laid down in Parag 1.39 for calculating applicable rebate for entities opting for migration. We state that there should be no migration fee, except for any administrative cost attached to such migration. In case the Authority imposes any migration fee then in that event the cost for migrating entities should not increase vis a vis the cost being levied under the earlier licensing regime for unexpired period.

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

Please elaborate your response with justifications.

OUR RESPONSE:-

Given that most of DTH players have existing and valid license agreements and whose terms are yet to expire, it would not be ideal and feasible to thrust upon them a migration option of any sort at this stage. Migration needs to be left optional for players to decide anytime during the existing unexpired period of their licenses.

We would reiterate our reply dated 14th October 2013 submitted to the Authority that the renewal should be without any further cost/fee of any nature.

Thanking you.

Yours faithfully,
For Bharat Business Channel Limited



S.K.Singh
Head-Regulatory & Compliance