RESPONSE OF ZEE TURNER LIMITED

ON

CONSULTATION PAPER ON DTH ISSUES RELATING TO TARIFF REGULATION AND NEW ISSUES UNDER REFERENCE ISSUED ON 6th MARCH 2009.

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ZEE TURNER LIMITED

COMMENTS ON CONSULTATION PAPER ON DTH ISSUES RELATING TO TARIFF REGULATION AND NEW ISSUES UNDER REFERENCE ISSUED ON 6th MARCH 2009.

At the very out-set we would express our gratitude to Telecom Regulatory Authority of India for their laudable efforts for coming out with the consultation paper on DTH issues relating to tariff regulation and new issues under reference

Our comments on the consultation paper on DTH issues relating to tariff regulation and new issues under reference are as under:-

TARIFF FIXATION FOR DTH SERVICES:

Comment to the 5.2.1 whether there is a need to fix tariff for DTH?

(i) In our opinion there is no need to fix tariff for DTH at this juncture as the competitive scenario prevalent in DTH sector with multiple DTH players providing the services and the interplay of market forces are keeping the level of tariff at reasonable level. After the notification of interconnect Regulations dated 03/09/2007 vide which the methodology of Reference Interconnect Offer (RIO) was prescribed, the interconnection agreement are being concluded between the Broadcasters and DTH operators smoothly.

(ii) However, if certain sections of stake holders are of the view that a formal tariff fixation is required to be done under the statute, to facilitate the procurement of content by the DTH operators on non-discriminatory basis and to ensure the conclusion of Interconnect Agreements speedily, the formula laid down by Hon'ble TDSAT in petition no. 136(C) of 2006 (ASC Vs Star) and 189(C) of 2006 (Tata

Sky Vs Zee Turner) i.e. 50% of non-CAS rates be adopted. It may be mentioned that the Reference Interconnect Offers issued by the majority of Broadcasters is in conformity with the formula laid down in the abovementioned judgements. The advisory issued by TRAI vide its press release No. 39/2008 dated 18th April 2008 upon the consensus arrived at in the meetings with the Broadcasters is also based on the abovementioned judgements of Hon'ble TDSAT in petition no. 136(C) of 2006 (ASC Vs Star) and 189(C) of 2006 (Tata Sky Vs Zee Turner) and the same be converted into Tariff Notification u/s 11(2) of the TRAI Act,1997 (as amended in 2000). Attempting to introduce any other basis/methodology/mechanism to fix tariff would not only upset the already established norms of 50% of non-CAS rates but would also result in lot of disputes and litigations in the sector.

Comment to the 5.2.2 whether tariff regulation should be at wholesale level or at retail level or both, i.e., whether tariff should be regulated between broadcasters and DTH operators or between DTH operators and subscribers or at both the levels?

(i) In our view there is no need for tariff regulation either for wholesale or at retail level at this present juncture. We do not find any change in the market conditions as compared to the situation prevailing as on 12th May 2008 as expressed by Telecom Regulatory Authority of India (TRAI) in its response to Tata Sky Limited's letter/representation dated 18th March 2008 submitted in pursuance to the directions of the Hon'ble Punjab and Haryana High Court dated 11th March 2008. In the said response TRAI has rightly reiterated that there is no need for regulating the tariff for DTH services by way of a tariff order in the country as explained in the Consultation Paper on issues relating to DTH issued by the Authority on 2nd March 2007 wherein, it has been stated that till such time and till the impact of the roll out of CAS can be assessed

the Authority had felt that it would be premature to initiate the consultation process on DTH tariff issues both at the retail level as well as the wholesale level. It has been further stated in the said consultation paper that the need for regulating the wholesale tariffs of pay channel payable by DTH operators to Broadcasters, Distributors and the retail tariff applicable to the end consumers for such channels is to be viewed in the context of the competitive environment prevalent in the market, the industry structure, the present levels of penetration of the service, future potential for penetration in rural and remote areas where the incumbent cable service is yet to reach such areas. The position as stated in the consultation paper dated 2nd March 2007 still holds good and the same was reiterated by TRAI on 12th May 2008. According to us nothing has changed drastically over the last 11 months for TRAI to reconsider its own decision to not to have a tariff regulation for DTH industry. In view of the above we feel there is no need for a separate tariff regulation at the wholesale as well as retail level.

(ii) Without prejudice to above, it may be mentioned that certain Broadcasters have raised the issue of legal sanctity of the advisory/clarification dated 18/04/2008 issued by TRAI. In order to address the said issue if the TRAI proceeds with the tariff fixation exercise, in view of the fact that RIOs of majority of Broadcasters are in conformity with the press release dated 18/04/2008 of the TRAI, the content of the said advisory/clarification dated 18/04/2008 be converted into Tariff Notification under Section 11(2) of the TRAI Act.

Comment to the 5.2.3 whether tariff regulation for DTH at wholesale level should be in terms of laying down some relationship between the prices of channels/ bouquets for non-addressable platforms and the prices of such channels/ bouquets for DTH platform? If yes, then what should be the relationship between the prices of channels/ bouquets for non-addressable platforms and the prices of

such channels/ bouquets for DTH platform? The basis for prescribing the relationship may also be explained.

(i) At the outset we have already expressed our opinion that there is no need for tariff regulation for DTH at wholesale level. However, in the event TRAI proceeds with the tariff fixation exercise then so far as the relationship between the prices of channels/bouquets for non addressable platform and prices of such channels/bouquets for DTH platform is concerned, we would suggest that tariff regulation for DTH at wholesale level should be in terms of laying down definite criteria between the prices of Channels/ Bouquets for non-addressable platforms and the prices of such Channels/ Bouquets for DTH platform. The present criteria applicable for DTH platform i.e. 50% of the analogue rates is acceptable to us. It is suggested that present advisory issued by TRAI vide its press release No. 39/2008 dated 18th April 2008 be converted in to Tariff Notification u/s 11(2) of the TRAI Act, 1997 (as amended in 2000).

(ii) It is a cumbersome exercise rather practically impossible to calculate the content prices by the regulator, as the content developed by the content providers is dependent on numerous factors. Even if the content prices can be calculated, the same cannot be divided by the number of subscribers subscribing the content per month to derive some mathematical formula for rate per Subscriber per month, as the viewer ship pattern of content varies based on Linguistic, Regional and subscriber choice. Thus, one of the acceptable methodologies available would be to adopt the analogue rates prevalent in the industry which have been declared by the Broadcasters themselves as the basis.

Comment to the 5.2.4 whether tariff regulation for DTH at wholesale level should be in terms of fixation of prices for different bouquets/ channels? If yes, then the prices for different bouquets/ channels may be suggested. The methodology adopted for arriving at the prices for such bouquets/ channels may also be elucidated. Further, the methodology may also be given.

The present issue for consultation needs no reply in view of the comments given to the immediately preceding issue. However, on the issue of fixation of price for a new pay channel, we would suggest that status-quo should be maintained and the subscription rate of new channel should be calculated on the basis of other channels of same genre.

Comment to the 5.2.5 whether retail regulation of DTH tariff should be in terms of maximum retail prices of various channels or is there any other way of regulating DTH tariff at retail level?

Firstly, we are not agreeable for retail regulation of DTH tariff. In case the TRAI proceeds with the prescription of tariff at retail level as well, we would suggest that DTH tariff at retail level must bear some correlation with the wholesale pricing of the channels. Thus, the price which a DTH platform owner pays to the broadcaster for availing channels must have a correlation with the price which a subscriber pays for the package provided by the DTH platform owner. The DTH platform owner cannot be given an unbridled power to charge subscription fees from the subscriber merely because there is a notion that due to inter-se competition amongst the DTH platform owners the prices of the packages would be consumer friendly. There is a reasonable apprehension that DTH Platform owners may form a cartel to fix a higher tariff at consumer level. Accordingly, we suggest a cap on the price to be charged by a DTH operator for channel(s) at retail level in terms of percentage of the wholesale price at which the content has been procured.

Comment to the 5.2.6 In case DTH tariff is to be regulated at both wholesale and retail levels, then what should be the relationship between the wholesale and retail tariff?

At the outset we are not agreeable to the tariff regulation at both wholesale and retail level. In case the DTH tariff has to be regulated then in that case, it is suggested that a DTH Operator cannot charge more than 100% to its subscribers, of the wholesale price at which he procures the channel from the Broadcaster.

In order to appreciate the need to cap the wholesale as well as the retail price, let us take the example of two channels namely ETC Punjabi and Zee Punjabi on ala carte is provided by a broadcaster to a DTH Platform owner at the rate of Rs.5.25/- i.e.(Rs. 4.50/- and Rs.0.75/-). Whereas the DTH operator subsequently provides the said two channels at Rs. 20/-to the end consumer, thereby getting an additional sum of Rs. 14.75/- i.e. a margin of approx. 181%, which is much more than what a broadcaster gets for providing the content.

Another example of one more DTH operator which is providing the Ten Sports Channel on ala carte basis at a rate of Rs. 20/- Per subscriber Per month however the broadcaster as on date is charging only Rs. 7.50/- per subscriber per month from the DTH Platform owner. Similarly, Zee Kannada is provided by a DTH Platform owner on ala carte basis at a rate of Rs. 10/- per subscriber per month however, the broadcaster as on date is being paid only Rs. 3.73/- per subscriber per month by the DTH Platform owner.

Thus, for passing the benefit of tariff fixation at the wholesale level, the retail pricing needs to be regulated. The DTH operators may be permitted to charge not more than 100% the amount at which they have subscribed the channel from the broadcaster on ala carte basis. In other words for example ten sports Channel which is provided by the

Broadcaster to the DTH Platform owner at the rate of Rs. 7.50/- per subscriber per month on ala arte basis can not be charged more than Rs. 15/- per subscriber per month to the end consumer. Even otherwise, with the increased Subscriber base the fiscal equations will tilt in favour of DTH operator.

5.3 COMPARISON WITH CAS

Comment to the 5.3.1 Whether the basic features of tariff order dated 31st August, 2006 for cable services in CAS areas, namely fixing of ceiling for maximum retail prices of pay channels, at the level of the subscriber fixing of ceiling for basic service tier and standard tariff packages for renting of Set Top Boxes should be made applicable to DTH services also?

We are not agreeable to the suggestion of fixing of ceiling for maximum retail prices of pay channels, at the level of the subscriber in line with the tariff order dated 31st August, 2006 for cable services in CAS areas. As the Development of content involves a huge amount of investment and the content owners can only provide good content only if they spend substantial amount of money for development of quality content. The subscription rates for the channels in the analogue area had been in vogue for the past many years. It is a known fact that the financial inputs for the development of content have sky rocketed in the past five years and have increased disproportionately as compared to the increase provided by TRAI, taking into account the inflation figures. In such a scenario, fixing of Subscription rates at par with the CAS area would compel the broadcasters to provide the content even below its procurement costs besides compromising with the content quality. Moreover, the Authority itself has in its various consultation papers and Explanatory Memorandum to the Tariff Orders/Interconnect Regulations has categorically stated that there is no similarity between DTH and CAS. The tariff regime prevalent in CAS areas was mandated to ensure the

smooth implementation of conditional access system in certain notified areas as per the mandate of the Central Government/Hon'ble High Court. It is the stated position of TRAI that even the tariff ceiling of Rs.5.35 per channel is for a limited period to ensure smooth transition from non-CAS regime to CAS regime and the said ceiling in itself is due for review/revision.

However, we would welcome the move of the authority in fixing of ceiling for standard tariff packages and for renting of Set Top Boxes. The authority can undertake the cost benefit analysis for providing a bouquet of FTA as a basic service tier in lines with the CAS areas. This would only lead to the expansion of the subscriber base of the DTH platform and would result in reduction operating costs.

Comment to the 5.3.2 whether the ceiling for maximum retail prices of pay channels for DTH should be the same as laid down for cable services in CAS areas.

The present issue for consultation needs no reply in view of the comments given to the immediately preceding issue.

Comment to the 5.3.3 whether DTH operators should be mandated to provide a basic service tier of FTA channels and if so, what mechanism should be adopted by DTH operators to provide the service of unencrypted Basic Service Tier, which is available in CAS areas without having to invest in a Set Top Box?

(i) We are of the opinion that there should not be any mandate for DTH operators to provide Basic Tier comprising of FTA channels similar to the Basic Service Tier provided by the cable operators in CAS areas. It is pertinent to point out that presently, DD Direct Plus is already providing FTA channels on its DTH platform to almost 11 Million subscribers and the said service can be availed by all such subscribers who are willing to opt for such channels.

Moreover it would be difficult to design a standard basic tier package for FTA channels for the DTH operator, since the choice and preferences of the subscribers would vary on the basis of region, language and preference of subscribers which would ultimately result in voluminous data to be maintained by the DTH operator which would add to total cost.

(ii) Further a DTH operator cannot provide channels in unencrypted form since, it is not permitted as per the terms of the license granted to the DTH operator and also due to technological constraints. In order to provide FTA channels in encrypted form the DTH operator need to be compensated adequately to meet the additional cost for STB, dish antenna, LNB, middleware and viewing card for encrypting the FTA channels.

(iii) In case DTH operators are mandated to provide a basic service tier of FTA channels, the authority may undertake the cost benefit analysis for providing a bouquet of FTA as a basic service tier after taking into account the various cost components referred herein above and thereafter prescribe a rate for Basic Service Tier comprising of FTA channels.

Comment to the 5.3.4 whether the DTH operators should be required to make available the pay channels on a-la-carte basis to the subscribers as the cable operators are required to do in the CAS areas?

We are agreeable to the suggestion of making the pay channels on ala-carte basis to the subscribers as the cable operators are required to do in the CAS areas. The providing of the channels of their own choice would be in the interest of the consumers and the consumers would be required to pay only for the opted channels. Since, the Broadcaster in the interest of consumers is under an obligation to provide channels on ala carte basis to the DTH Platform owner, the same obligation should be extended

to the DTH platform owner. In the event of non providing of the channels on ala-carte basis to the consumers by the DTH Platform owner, the entire exercise of giving signals to the DTH platform owners on ala carte basis by the broadcaster for the benefit of the consumers would be rendered futile. By making it mandatory to provide channels on Ala Carte basis to the consumers would also put pressure on the DTH Platform owners to carry quality content.

Comment to the 5.3.5 whether standard tariff packages for renting of Set Top Boxes should also be prescribed for DTH operators?

We are agreeable to the suggestion of prescribing standard tariff packages for renting of Set Top Boxes for DTH operators, provided the cost of Consumer Premises equipment covering Antenna, L & B, cable, viewing card and installation charges be billed separately in addition to the rent for Set Top Box as everyone is aware that it is not only the Set top box which is installed at the customer's premises but the installation also covers additional expenses relating to ancillary components/fittings. This exercise should be done on the basis of costing data pertaining to the set top box obtained from DTH service providers as different types of STBs are being used by different DTH platforms.

5.4 OTHER RELEVANT ISSUES

Comment to the 5.4.1 whether the carriage fee charged by the DTH operators from the Broadcasters should also be regulated? If yes, then what should be the methodology of regulation?

We would suggest that the carriage fees charged by the DTH operators from the Broadcasters should be regulated. Due to the limited capacity of the transponders, the DTH platform owners seek signals of such channels, which provide the best content from the Broadcasters on ala

carte basis and in doing so they take shelter under must provide clause. It would be quite unfair on the part of the authority to provide the shield of must provide Clause to the DTH Platform owners which is used to the disadvantage of the Broadcasters. Therefore, the concept of carriage fees must be done away for DTH platform.

In the event a broadcaster wishes to place its channel at a certain Logical channel number (LCN) forming part of basic tier, then the broadcaster is made to pay certain premium for the same, which could be deemed as placement fees. However, it is suggested that a DTH Platform owner should be under an obligation to make such deemed placement fees public by way of a placement agreement, which could be put up on the website of such DTH operator. The Interconnect Agreement should inter-alia provide rates for each of LCN Numbers/basic tier available for placement of channels. This will definitely create a transparent environment for level playing field for deciding the placement charges across the universe. In fact there should be a RIO for carriage fee to be published by the DTH operators on the lines of RIO published by Broadcasters for subscription of their channels.

Comment to the 5.4.2 whether any ceiling on carriage fee needs to be prescribed? If yes, then whether the ceiling should be linked with the subscriber base of the DTH operator or should it be same for all DTH operators?

In case the Authority is not agreeable to our aforesaid comment of giving a farewell to the carriage fees regime for the DTH platform, we would suggest that a ceiling on carriage fee be prescribed. The ceiling should be linked with the subscriber base of the DTH operator. It is suggested that a DTH Platform owner should be under an obligation to make public the broad terms and conditions along with the carriage fees charged by them from the various broadcasters by hoisting the said data on their

respective website(s). Also it should be made mandatory for the DTH operator to file the said data with TRAI on quarterly or half yearly basis.

Comment to the 5.4.3 Comments may also be offered on the prayers made in the writ petition of M/s Tata Sky Ltd.

M/s Tata Sky in the Writ Petition had made, inter-alia, the following prayer:

> *"……b) pass a writ or direction to the respondent-I Authority to ensure that similarly placed systems, namely CAS and DTH are treated equally and viewers and subscribers of these systems/platforms are not denied popular content due to anti competitive practices or otherwise…"*

That the relief sought by the M/s Tata Sky Ltd in Writ Petition No. 16097 of 2007 titled as M/s Tata Sky & another vs. Telecom Regulatory Authority of India & Ors. in respect of drawing parity between CAS and DTH is misplaced, misconceived and totally irrelevant. Without prejudice to the submission that CAS & DTH pricing is not comparable. The operation of CAS is limited to certain geographical region, which are specifically notified by the Central Government in this regard. Whereas DTH is having pan India operations. The introduction of CAS in certain specific regions is limited to certain Metros and the results/ inferences of such an exercise in the CAS cities has not been encouraging. In these circumstances, it would be premature/ inappropriate to fix the tariff for DTH platform in line with CAS.

It is pertinent to point out that the rate of Rs. 5/- per channel fixed by the Authority for CAS areas vide Tariff Order dated 31/8/2006 is the retail tariff applicable to consumers with a stipulated revenue share for various stakeholders i.e. broadcasters 45% (Rs. 2.25) and MSO & cable operators 55% (Rs. 2.75). The distributors of channels in CAS areas are

required to provide the channels to consumers on a-la-carte basis as per the choice of the consumers @ Rs. 5/- per channel. In addition, vide the said Tariff Order dated 31/8/2006, TRAI has also fixed the tariffs for set top boxes provided by the service providers to the subscribers.

The DTH Platform owner in the aforesaid Writ Petition while claiming parity with CAS, has mischievously sought the benefit of a selective portion of the CAS Tariff Order, i.e. regarding procurement of content from the broadcasters (ostensibly at Rs. 2.25 per channel) without having any tariff stipulation by TRAI in respect of the price applicable for making available its services to the end consumers at retail level and without having any obligation whatsoever to comply with the stipulations regarding the pricing of set-top box as well as the manner of making available the channels to the subscribers as have been made applicable by TRAI in CAS areas vide Tariff Order dated 31/8/2006. It may be mentioned that the DTH Platform owner in the said Writ Petition was making available only bouquet(s)/package of channels to the end consumers as against the a-la-carte channels being made available by MSOs and cable operators in CAS areas as per the stipulations of TRAI. Thus, the comparison between CAS and DTH platform was totally unwarranted and misplaced.

The DTH platform owner had deliberately omitted to bring to the notice of the Hon'ble High Court, Chandigarh Clause 4.17 of the Explanatory Memorandum of the Telecommunication (Broadcasting and Cable) Services (Third) (CAS Areas) Tariff Order, 2006 (6 of 2006) dated 31st August 2006 wherein TRAI had made it amply clear that the CAS rates cannot be made applicable to the DTH Platforms because of the reason that CAS has been implemented in the limited geographical region under the mandate of the Government of India whereas DTH is available all across the country. The said clause 4.17 is extracted herein under –

"4.17. The provisions of the Tariff Order relating to STB Schemes have not been proposed for the STBs supplied by the Direct to Home (DTH) operators for the present as they are two different systems of delivery in several respects.
Further, DTH is a matter of choice for the subscribers ***throughout India*** *while CAS has been notified by the Government of India for implementation in the specified areas of Chennai, Delhi, Mumbai and Kolkatta. However, the Authority is closely monitoring developments in the DTH market and will consider initiating a separate consultation process on all regulatory issues concerned with DTH in India at an appropriate time."*

Hence the prayer made by the DTH Platform owner in Writ Petition No. 16097 of 2007 titled as M/s Tata Sky & another vs. Telecom Regulatory Authority of India & Ors. is devoid of any merits and lacks substance.

PROVISIONING OF NEW SERVICES ON DTH PLATFORM

Comment to 6.1.5(a) whether Movie-On-demand, Video-on-Demand, Pay-per-view or other Value added services such as Active Stories should be recognized as a broadcast TV channel?

(i) We are of the opinion that Movie-On-demand, Video-on-demand, pay-per-view should be treated as separate channel(s) on DTH platform requiring permission under the uplinking/downlinking guidelines. By virtue of the licensing stipulation a DTH operator cannot be a broadcaster. Thus if it has a channel of his own then he is violating the licensing conditions and the uplinking/downlinking norms. Therefore, it is suggested that the DTH operator should tie up with the broadcaster/his agent who has the requisite permissions to run a broadcast channel. This will also ensure that a non discriminatory access for the content is available to all DTH service providers. There is an apprehension that in future that if this is not regulated under uplinking/downlinking regulation then content exclusivity can be brought via this route. One can secure the cricketing rights and

thereafter show the said content exclusively under the garb of Pay per view.

(ii) Value added services such as Active Stories, Games are data services, thus are not related to any broadcasting services and therefore do not require to be covered under the uplinking/downlinking guidelines.

Comment to 6.1.5(b) in case these are termed as broadcast TV channels, then how could the apparent violation of DTH license provision (Article 6.7, Article 10 and Article 1.4), Uplinking and Downlinking guidelines be dealt with so that availability of new content to consumer does not suffer for want of supporting regulatory provisions?

Movie-On-demand, Video-on-Demand, Pay-per-view are to be treated as content broadcasted as a separate channel(s) to be provided by broadcaster to the DTH platform owners. The said channel shall be transmitted by the DTH operator as a separate and distinct channel whereby the consumers would continue to get the content of the said channel(s) under the realm of "Must Provide" regulation.

Comment to 6.1.5(c) what should be the regulatory approach in order to introduce these services or channels while keeping the subscriber interest and suggested alterations in DTH service operations and business model?

We are of the opinion that services like Movie-On-demand, Video-on-Demand, Pay-per-view are to be treated as broadcasting channel(s) and therefore should be under the realm of 'Must Provide' clause. Whereas, other services like Active services should be treated as value added service and should be treated beyond the realm of the "*Must Provide*" clause. The responsibility for Programme Code and Advertisement Code should be cast upon the DTH operator, except where content has been certified by competent Authority. So far as the Movie-On-demand, Video-

on-Demand, Pay-per-view are concerned, the compliance with Programme Code and Advertisement Code has to be the responsibility of the content provider.

Comment to 6.1.5(d) In case these are not termed as broadcast TV channels, then how could such a channel be prevented from assuming the role of a traditional TV channel? How could bypassing of regulatory provisions- Uplinking/ Downlinking, Programme Code, and Advertisement Code be prevented?

In view of our comments to clause 6.1.5(a) herein above, no separate comments are warranted. The responsibility for Programme Code and Advertisement Code should be cast upon the DTH operator, except where content has been certified by competent Authority. In any event the licensing conditions of DTH operators already stipulate the compliance of Programme and Advertisement Code by the service providers.

Comment to 6.1.5(e) whether it should be made mandatory for each case of a new Value added service to seek permission before distribution of such value added service to subscribers? Or whether automatic permission be granted for new services on the basis that the services may be asked to be discontinued if so becomes necessary in the subscribers' interest or in general public interest or upon other considerations such as security of state, public order, etc.?

We would suggest that the Permission granted for providing add-on services should cover a wider ambit so that the DTH platform owner would not be required to seek permission frequently. In case of minor alteration or trivial change in services, the DTH operator should be given liberty of post facto reporting. This would save a lot of time and energy and on the other hand would maintain adequate checks and balances on the add-on services provided by the DTH platform owners.

Comment to 6.1.5(f) In view of above, what amendments shall be required in the present DTH license conditions and Uplink/ Downlink guidelines?

In case where the DTH operator introduces a new channel providing services like Movie-On-demand, Video-on-Demand, Pay-per-view, the requisite permission under uplinking/downlinking guidelines would be obtained by the content provider. At present there are restrictions on the cross holdings allowed in the Broadcasting and DTH business. However as stated hereinabove, the other services such as provision of data, active services, etc. are not broadcast services in as such no permission is required to be obtained in this regard. By way of abundant clarity, to enable the DTH operator to have its own channel for the above services, appropriate amendment to this limited extent be carried out in DTH licenses.

Comment to 6.1.5(g) how could the selling of advertisement space on DTH channels or Electronic Program Guide (EPG) or with Value added Service by DTH operators be regulated so that cross-holding restrictions are not violated. In this view, a DTH operator may become a broadcaster technically once the DTH operator independently transmits advertisement content which is not provided by any broadcaster. How could the broadcaster level responsibility for adherence to Program code and Advertisement Code be shifted to a DTH operator, in case the operator executes the sale and carriage of advertisements?

We are not agreeable to the suggestion of providing clean feed to the DTH operator and further making it the privilege of the DTH Platform owner to insert the advertisements. The revenue model of the Broadcasters is based on the two streams of revenues – subscription revenue and the advertisement revenue. The major portion of the earnings are from advertisements. It should be the sole prerogative of the content developer i.e. channel owner to select and procure the advertisements and charge for the same. DTH platform is only a content distribution mechanism. In case the authority permits DTH platform owner to insert advertisements the same shall tantamount to equating

the DTH platform owner as a Broadcaster and the bar on cross holdings would reduce to nullity. There is absolutely no necessity for providing a clean feed to the DTH operator. Hence, the "Must Provide" clause needs no amendment and status quo should be maintained. Similarly, DTH operators should not be permitted to sell the advertisement space on DTH channels or electronic programming guide, etc. as the moment the advertisement are inserted and transmitted by uplinking the same, a DTH operator would become the Broadcaster, thus encroaching upon the domain of the Broadcaster on the one hand and violating the DTH licensing terms and condition on the other.

Comment to 6.1.5(h) traditionally advertisements as well as program content fall in the domain of the Broadcasters. In case, DTH operator shares the right to create, sale and carry the advertisement on his platform, then the channels are necessarily distinguished on the basis of who has provided the advertisement with the same program feed. In what way any potential demand to supply clean feed without advertisement by a DTH operator be attended to (by a broadcaster)? Should 'must provide' provision of the Interconnect Regulation be reviewed, in case supply of clean feed is considered necessary?

Already covered under response to para 6.1.5(g) above.

RADIO CHANNELS ON DTH SERVICES

Comment to 6.2.4 (a) whether carriage of radio channels by a DTH operator be permitted? Should such permission cover all kind of radio channels to be carried?

In our opinion DTH platform owners should not be permitted to carry radio channels as the licensing for the radio services is separate and distinct. Moreover, if such an arrangement is permitted it may lead the Radio licensee to by-pass the Revenue sharing criteria as stipulated under the license. Further, it would also result in networking of

additional areas resulting in infringing of territorial limits allowed under the existing Radio License.

Comment to 6.2.4 (b) in case this is permitted, whether DTH license, Uplink/ Downlink guidelines, Conflict of business interests conditions with existing radio system operators, should be amended keeping in view, the incumbent or new DTH operators?

In view of our comments to clause 6.2.4 (a) no separate response is warranted in this regard.

Comment to 6.2.4 (c) If so, what changes are needed in the existing regulatory provisions so that the general policy of must provide and a non-discriminatory offering of channels be extended to between radio channels and DTH operators?

In view of our comments to clause 6.2.4 (a) no response is warranted in this regard.

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