

Cable Operators Federation of India

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The Chairman
Telecom Regulatory Authority of India
New Delhi-110001

**Sub: Comments on Consultation Paper on DTH Issues relating to
Tariff Regulation & new issues under reference**

Dear Sir,

Reference your Consultation Paper on **DTH Issues relating to Tariff Regulation and new issues under reference dated 06 March 2009.**

We wish to bring to your notice that while framing any type of regulations by TRAI, the following must be kept in mind:

- (a) Level playing field for all platforms including Cable TV, DTH, HITS and IPTV as far as distribution of TV channels and their rates are concerned.
- (b) While permitting all new technologies like DTH, HITS and IPTV to go addressable with conditional access, government is only delaying the process for cable TV industry since the last six years, in-spite of there being a law enacted. This has created lot of discontentment in the cable TV industry when a deliberate boost is being given to DTH and other technologies through regulatory measures. If cable TV industry has to be left on its own in the Non-CAS areas, which is the major part of the industry, TRAI has to make special regulations for them regarding tariff not related to other addressable platforms. The rates in non-addressable market should be kept the lowest in the interest of the consumers because the reason for not implementing CAS in these markets as given by the government and the states was that it was out of the reach of the common man. Now, it is DTH that gets the benefit of 50% of rates of channels in non-addressable markets.
- (c) Although CAS has been implemented in cable TV in a small part of the market (less than 1.0 %), DTH, IPTV etc are being promoted countrywide as a competition to the cable TV industry of 80 million house holds. More than 60000 cable operators having analog networks and no protection by the regulations have been pitted against giant broadcasters, telcos and MSOs who have all the privileges including a regulatory frame work, government support, support from investors, media power and political clout.

(d) Whereas **the broadcasters force their arbitrary rates of channel bouquets on the /Cable operators/ MSO's**, the same can not be passed on to the subscribers in any way in the market as the subscribers pay a fixed amount for all channels provided. Also the fixed rate paid by the subscribers that range from Rs 50- 250 is many times lower than the combined rate of all the pay channels, which is more than Rs 700/-. Cable operator does not even get revenue for day to day expenses in his network from this money. This subsidy is much more than what DTH operators incur while selling set-top-boxes at lower rates.

(e) Since there are no cross media restrictions, broadcasters own the DTH platforms, MSO networks, mobile networks, radio stations, and IPTV networks creating near monopolies in the market where as cable operators have been left to fend for themselves with a restricting regulatory regime rather than a growth oriented one.

Thus, there is a need to have such regulatory guidelines which enable cable networks in non-CAS areas to become addressable and to acquire content on competitive terms. The competition which TRAI is trying to bring in will not act as a driving force for digitalization of cable networks as envisaged. As the global experience shows, the cable industry and other alternative platforms will co-exist in future only if the cable industry keeps updated with the latest technology.

It is agreed that the roll out of addressable systems for non CAS areas is market driven but what can be done if the market dynamics are being changed by delaying regulatory support? Why should a channel costing Rs 30 per month to the cable subscriber in Non-CAS areas be sold to a DTH subscriber for Rs 15. We sincerely feel that this must be viewed seriously by the regulator.

Our Parawise comments are given below:-

5.2 Tariff fixation for DTH services

5.2.1 Whether there is a need to fix tariff for DTH?

Yes, there is a need to fix the tariff for DTH services because the proportion at which these services are being utilized in the country by the masses, they achieve the status of public services like telecom, electricity, water etc, which, although have not been classified as essential services yet, have the same importance. It should not be forgotten that Doordarshan FTA Channels made compulsory for carrying on all cable and DTH networks was done by the government in Public Interest.

TRAI can actually workout the cost of a channel per subscriber based on the balance sheets of broadcasters keeping in mind their earnings from advertising, SMSs, international market, marketing of same content dubbed in different languages, repetition of content broadcast etc. Then the average cost of different genere can be assessed.

5.2.2 If yes, 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?

Price can be worked out at wholesale level and retailing be left to the operators because they can package the channels according to the choice of subscribers.

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.

These prices should not be linked with prices in non-addressable areas. This has been explained in the introduction above.

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 to fix price for a new pay channel may also be given.

As answered above, the cost per channel should be worked out genre wise and then wholesale price of the bouquet worked.

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?

No there should not be any retail regulation. Maximum limit of profit on wholesale price should be laid down.

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?

Already answered in 5.2.5

5.3 Comparison with CAS

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?

There can be a standard tariff of the STB and installation of equipment.

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?

MRP of the channels should be the same for all platforms.

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?

As there is a limitation of transponders, basic tier is not required on DTH. However, till DD does not start its own pay DTH platform, some DD channels can be made mandatory on DTH too.

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?

Not required as ample choice is available today.

5.3.5 Whether standard tariff packages for renting of Set Top Boxes should also be prescribed for DTH operators?

Yes for the complete CPE and installation charges

5.4 Other Relevant Issues

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?

Carriage fee should not be regulated

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

No ceiling should be there

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

No comments.

Provisioning of new services on DTH platform

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 Channels?

Movie-on-demand is a channel thus it should be under the provisions of downlinking Guidelines. DTH operators cannot own this, else they will start showing exclusive content and thus will beat the cable operators by not providing the content to other platforms, therefore the Movie-on-demand and pay per view channels, which can be tomorrow sports per view or cricket per view may become exclusive channels. Tomorrow if they start showing news in this format, how will there be any controls? This is against the spirit of the non discriminatory provision of the content and the downlinking policy of the Government of India, thus Movie on demand or pay per view channels should not be owned by the DTH platforms, it is against their licensing conditions and which need not be amended. They can own the system of running the channels but not the content for which they pay the copyrights for a limited period.

Active stories, games etc which are non video but data services can be permitted with a clause that they cannot have an exclusive arrangement with any service provider prohibiting him from providing the content to other platforms

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 14), Uplinking and Downlinking guidelines be dealt with so that the availability of new content to consumer does not suffer for want of supporting regulatory provisions?

No need to amend the downlinking guidelines and the licensing regime, which is well thought of. Consumer will be benefited if the present regime of the downlinking, licensing conditions and non discriminatory access of the content is continued. Tomorrow if a cable operator also wishes to have this type of channel for his digital feed, his subscribers can also avail of those services so a wide range of consumers will be benefited.

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?

The services can be introduced , the same should be available to all the platforms, may be DTH, Cable, IPTV and retail pricing can be based on platforms. Content of these channels is

a universal commodity under different copyrights which can remain so and can be used by any after paying a fee.

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?

Movie on demand/ pay per view are all broadcast channels thus no deviation or relaxation in case of the uplinking, downlinking, programme code, advertisement code, non discriminatory provision and transparent pricing is required.

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 consideration such as security of state, public order etc.?

In case of a data service the intimation to the regulator and licensor is sufficient, if it is a paid service then the process of the notice and the refund of the money for the non used period to the subscriber is must. No automatic permission should be granted.

The programming code and advertisement code need to be adhered to.

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

No amendment required as the Movie-on-Demand and pay per view services are to be normal broadcast services.

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?

The DTH operator will transmit the content with the consent of the broadcaster only. Other wise as per the regulations, DTH operator has to transmit the content in the same form as he

receives and this should be made mandatory, else DTH operator will become a broadcaster and thus can create his own walled garden, DTH operator will use his data services for the advertisement purpose, which he has to ensure that he adheres to programming code and advertisement code.

A DTH company should arrange the content of Movie-on-Demand and other value added services under a different company adhering the rules of cross media ownership.

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 Regulations be reviewed, in case supply of clean feed is considered necessary?

Must provide regulations should be there in the case of the clean feed, tomorrow cable operators who have the capability of inserting the ads at his headend if wishes to have clean feed should not be denied. In this case though these are being inserted at the local level of the HE or the DTH operator HE, still it is being supervised by the broadcasters.

Radio Channels on DTH services

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?

FM licenses are a separate category of the services and incase DTH operator carry the radio channels then they are violating their licenses and may favour a particular FM radio station and thus putting the other in disadvantageous situation. More over, the networking in the case of the FM licenses is not allowed with some exceptions hence this will be circumventing the FM licensing conditions, this should not be permitted. Also, it will be as good as having a satellite radio transmission which is under a different license.

Secondly this is also a broadcasting service and by allowing this we are allowing the vertical monopoly to become more prominent and thus this is strictly not to be allowed.

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

Please see the question 6.2.3 it should not be allowed

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

Since this is not to be allowed hence no changes require.

The above may please be considered for further action.

Yours Truly,

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