

Counter Comments

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CP¹PR^{2,3}

A. Introduction:

1. Notwithstanding the fact that various issues related to Legal Framework, Licensing Framework or Regulatory Framework are **pending**⁴ in various courts in INDIA and as such are **sub-judice**⁵ TRAI constituted under the Act⁶ has gone ahead with CP⁷ as per PR⁸ in pursuance of a nudge⁹.

2. The considerations forming the basis of the said CP¹⁰ are:

2.1 ‘**Level Playing Field**’-phrase occurs ‘**13**’ times in (CP+Comments)¹¹.

‘**Non Playing Field**’-occurs ‘**8**’ times in comments¹².

2.2 ‘**The amendments carried out by DoT in October 2021**’ ‘**under telecom reforms** as announced by **Union Cabinet** on 15th September 2021’¹³ a subset^{14,15} of universal set¹⁶.

2.3 ‘**Section 4** of the Indian Telegraph Act’-phrase occurs ‘**17**’ times in (CP+comments)¹⁷.

3. “1.1 Television broadcasting is one of the most popular means for mass communication. Television channels beamed using satellites are referred to as satellite TV channels. In India, these satellite TV channels are permitted to be carried by different distribution platforms namely Direct to-Home (DTH), Cable TV services delivered through Multi-System Operator (MSO) and Local Cable Operator (LCO), Headend-in-the-Sky (HITS) services, and Internet Protocol Television (IPTV) services. Besides, there is a Terrestrial TV service which is provided by the Prasar Bharati under the brand name Doordarshan, the public broadcaster”¹⁸.

(a) “The television broadcasting sector presents a vibrant picture with more than 900 permitted satellite TV channels, 4 pay DTH operators, 174813 multi-system operators as on 31st December 2022 and around 81706 cable TV operators as on 01st January 2022 as communicated to MIB by Department of Posts.”¹⁹

(b) As per “Figure 1.3:Television subscriptions split (as on March 2022)”²⁰ is as follows:
Cable 39.9%, DTH 32.7%, Free Dish 25.6%, HITS 1.8%.This pie chart includes Free Dish a public distributor.

(c) “Figure 1.5: Percentage share of DTH operators”²¹.

3.1. “14 Predominantly, the pay TV services in India are being delivered through cable TV and DTH systems. Other modes of TV broadcasting such as IPTV and HITS have miniscule subscriber base-----”²².

4. There is no mention of any welfare that will accrue to customer/user/subscriber in the extant CP²³.

5. There are many references⁴⁹ regarding Legal Framework, Licensing Framework. Regulatory Frame Work mentioned in the CP.

B. ISSUES FOR CONSULTATION

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.

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?

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.

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.

Ans. No specific answers to **Q1. to Q8.**

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

Ans.9. The following may kindly be noted:

(a) In addition to “nudge” the following issues have are also behind the present CP²³.

(i) “DTH sector is showing a declining trend for the last two years”.²⁴

(ii) “Increasing Cost and Reducing Revenue impacting the viability and financial health of DTH Operators:” page ‘1’ BIF Comments.”²⁵

(iii) “recognising the DTH sector at par with Telecom sector” page ‘1’ Dish Tv comments²⁶.

(b) TRAI has circulated ex ante, a priori, axiomatic the extant CP based on ubiquitous phrase ‘Level Playing Field’²⁷, regarding Gross Revenue²⁸, Adjusted Gross Revenue²⁹, Bank Guarantee³⁰ as:

(i) Reference para ‘2’ of A, par (a) of **Ans. ‘9’** above indicate asymmetry.

(c) Although IPTV is one of the many distributors³¹ for delivery of satellite TV channels but the name of the same does not figure in subscription split³² and the same should have been included. However ‘Free Dish’ has been included but the same should have been excluded.

(d). The extant CP is exclusively for DTH has been initiated consultation to remove Rules based asymmetry to achieve a ‘Level Playing Field’ may be mitigating the effects mentioned in a(i),a(ii) above and as such the purpose of inclusion of A4(c) above is not clear.

(e). Regarding ‘Level Playing Field’ the following may please be noted:

(i). ‘the conflicting use of the term ‘level playing field’ we learn that it is not possible to give one **generally received definition**. Instead, we can introduce specifications that are common in level playing field discussions. In line with the two types of asymmetry, we introduce two specifications of the concept ‘level playing field’ in which firms compete fairly with each other. The first specification of level playing field focuses on rules, whereas the second specification focuses on heterogeneity between firms. The specifications make it possible to prevent conflicting use of the concept ‘level playing field’³³.

(a) ‘The specifications fit in with the ways in which concepts of ‘level playing field’ are generally used. Rules-based level playing field: the rules are the same for all firms. Outcome-based level playing field: all firms have the same expected profit. The specifications focus on firms, but can also apply to other players’³⁴.

(b) “When a government’s jurisdiction is the same as (or larger than) the market, the government is responsible for the rules and it can adjust the asymmetry if it wishes. An asymmetry in rules is more or less the intended result of policy measures.-----
example is -----with different rules for public and commercial broadcasting organisations.”³⁵

(i)“DoT has made a reference to TRAI regarding, convergence of carriage of broadcasting services and telecommunication services which is already under active consideration. Therefore, the Authority, after due consideration will deal with the issue of level playing field separately”³⁶.

C. Conclusion:

Kindly refer Ans9. (c) above:

1.No reasons have been provided for the same in CP³⁷ although the acronym is appearing '9' times in CP³⁸ perhaps as "IPTV is one example of network convergence where same IP enabled broadband network carries internet and TV broadcast traffic simultaneously"³⁹ and this acronym is appearing '52' times in⁴⁰.

(i)The CP mentioned in^{39,40} "Telecom Regulatory Authority of India Consultation Paper on Regulating Converged Digital Technologies and Services – Enabling Convergence of Carriage of Broadcasting and Telecommunication services" and the issue of "convergence of carriage of broadcasting services and telecommunication services is already under active consideration" of TRAI⁴¹.

Kindly refer item '4' of Para 'A' and Ans9. (d) above:

2. Whether any welfare of customer/user/subscriber will accrue in the extant CP⁴² is not clear."While markets are generally the most effective way to foster innovation and consumer welfare, they do not always deliver optimal outcomes. If market conduct is harming consumer welfare and regulatory intervention would create a net benefit, then regulations should be designed to achieve the greatest possible benefit at the lowest possible cost."⁴³This is perhaps due to lack of competition as only four players are dominating the 100% DTH market.⁴⁴

Kindly refer item a(iii) of A, '4' of Para 'A' and Ans9. (d) above:

3. Kindly refer Ans9. (a), item '35' of references, item '36' of references, item '26' of reference:

Notwithstanding that Asymmetry of rules already exist due to one reason or the other and the main emphasis is on 'Level Playing Field' as basis of CP⁴⁵ "recognising the DTH sector at par with Telecom sector"⁴⁶ the issue of "Level Playing Field" is yet to be considered by TRAI.

D. Suggestions:

Kindly refer C.'1' above:

1. The subscription split % ages after adding IPTV & removing Free Dish will be DTH-43.95, Cable Tv-53.629,Hits-2.42, IPTV. The evaluated percentages will slightly reduce as figures for IPTV could not be extrapolated as no DATA is available in CP for the same. Accordingly the said subscription % may be reevaluated.

2.Kindly refer C.'2' above:

There is a need to promote competition in DTH sector if need be to create asymmetry in Rules for existing Satellite Distribution Platforms and facilitate new entrants keeping in view of "Convergence of Carriage of Broadcasting and Telecommunication services" for the welfare of customer/user/subscriber.

Kindly refer C.'3' above:

3. The consideration of the extant CP⁴⁷ may be deferred and the same may be considered along with the one⁴⁸ to **achieve a competitive market in place of captive market in the hands of a few inter-alia for the welfare of the customer/user/subscriber who pays for all.**

E. Observations:

Kindly refer item '5' of A above.

1.No G.O.I gazette notification could not be discerned clearly to enable the date of,'coming into force' of relevant items needing this formality in the absence of the concerned URL. This information about relevant item will will be very helpful as the same will bring more TRANSPARENCY to 'Legal Framework. For example all the Amendments of the original of any/all of the following:

[https://traigov.in/sites/default/files/Indian Telegraph Act 1885.pdf](https://traigov.in/sites/default/files/Indian_Telegraph_Act_1885.pdf)

[https://traigov.in/sites/default/files/Indian Wireless Telegraphy Act 1933.pdf](https://traigov.in/sites/default/files/Indian_Wireless_Telegraphy_Act_1933.pdf)

<https://prasarbharati.gov.in/prasar-bharati-act/>

cannot be known from the information provided in the CP.

References

1. https://traigov.in/sites/default/files/CP_23122022.pdf

2. https://traigov.in/sites/default/files/PR_No.02of2023.pdf

3. https://traigov.in/sites/default/files/PR_No.15of2023_0.pdf

4. pages '21','24','26' supra '1'.

5. pages '30','31' supra '1'.

6. <https://dot.gov.in/sites/default/files/2019%2011%2026%20TRAI%20ACT%20%28Latest%29.pdf?download=1>

<https://dot.gov.in/sites/default/files/TRAI%20Amendment%20Act>

[%202014%20%281%29_0.pdf?download=1](https://dot.gov.in/sites/default/files/TRAI%20Amendment%20Act%202014%20%281%29_0.pdf?download=1)

[https://dot.gov.in/sites/default/files/TRAI amendment ACT.pdf?download=1](https://dot.gov.in/sites/default/files/TRAI_amendment_ACT.pdf?download=1)

https://traigov.in/sites/default/files/Annexure-I%20%28TRAI%20Act%29_0.pdf

[https://traigov.in/sites/default/files/The TRAI Act 1997.pdf](https://traigov.in/sites/default/files/The_TRAI_Act_1997.pdf)

<https://dot.gov.in/sites/default/files/Mobile%20Banking%20%28QoS%29%202nd%20Amendment%20Regulations%202016.pdf?download=1>

7. supra '1'.

8. supra '2','3'.

9. Annexure-I supra '1'.

10. supra '1'.

11. Pages '8' '3' times, '9' '2' times, '10' '1' time, '26' '1' time, '38' '2' times, '39' '1' time supra '1'

+pages '3' '1' time DishTv., '5' '1' time, '6' '1' time TataPlay

12. Pages '1' '2' times BIF, '2/17' '1' time AirTel, '3' '1' time DishTv, '2' '2' times SunTv, page '2' '2' times,

13. Page '7' '1' time CP.

14. <https://dot.gov.in/sites/default/files/Telecom%20Reforms%202021%20VOL%202.pdf?download=1>

15. Annexure III supra '1'.

16. <https://dot.gov.in>.

17. page '2' '2' times, page '10' '1' time, page '11' '1' time, page '24' '1' time, page 25 '1' time,

page '29' '1' time + page '3' '1' time, page '5' '1' time, page '9' '1' time BIF, page '3' '2' times, page '5' '1' time, page '8' '1' time, page '9' '1' time Air Tel, page '6' '1' time, page '7' '1' time Dish Tv.

18. page '1' supra '1'.

19. page '5','page '6' supra '1'.

20. page '6' supra '1'.

21. page '7' supra '1'.

22. para 1.4 page '5' supra '1'.

23. supra '1'.

24. Fig. 1.5 page '6' supra '1'.

25. https://traigov.in/sites/default/files/BIF_28022023.pdf

26. https://traigov.in/sites/default/files/Sun_Direct_28022023.pdf

27. supra '11', '12'.
28. occurs '65' times supra '1'.
29. occurs '49' times supra '1'.
30. occurs '16' times supra '1'.
31. occurs '53' times supra '1'.
32. supra '20'.
33. para 2.3.
https://www.researchgate.net/publication/4833784_Equal_rules_or_equal_opportunities_Demystifying_level_playing_field
34. page '21' ibid.
35. page '19' supra '33'.
36. para 2.64 supra '1'.
37. supra '1'.
38. ibid.
39,40. page '3' https://traf.gov.in/sites/default/files/CP_30012023.pdf
41. supra '36'.
42. supra '1'.
43. page '18', '19' <https://ccianet.org/wp-content/uploads/2016/06/Next-Gen-Comm-Level-Playing-Field.pdf>
44. supra '21'.
45. supra '1'.
46. supra '26'.
47. supra '1'.
48. https://traf.gov.in/sites/default/files/CP_30012023.pdf
49. GSR 18(E) dated 9th January 2001 issued by the Department of Telecommunications (DoT). <https://mib.gov.in/sites/default/files/GuidelinesforDTHServiceDated15.3.2001.pdf> Certain amendments therein have been notified on 1st June 2005, 11th May 2006, 31st July 2006, 29th May 2007, 10th September 2007 and 6th November 2007. 'DTH Guidelines' was made on 30th December 2020 (hereinafter referred to as 'DTH Amendment').
https://traf.gov.in/sites/default/files/Indian_Telegraph_Act_1885.pdf
https://traf.gov.in/sites/default/files/Indian_Wireless_Telegraphy_Act_1933.pdf
<https://prasarbharati.gov.in/prasar-bharati-act/> public broadcaster Prasar Bharati in December 2004 with the approval of the Union Cabinet
M/s Reliance Big TV (later named as Independent TV) and Services of M/s Independent TV was suspended by MIB vide its letter dated 31st July 2019.
Broadcasting and cable services came under the purview of Telecom Regulatory Authority of India (TRAI) with effect from 9th January 2004 as per Notification No. 39 dated 09.01.2004 bearing S.O. No. 44(E).
DTH operators were issued provisional licenses by MIB for providing DTH broadcasting services with effect from 1st April 2021.
16th September 2022 MIB issued operational DTH Guidelines in respect of license Fee, platform service channels and sharing of infrastructure by DTH operators.
Any Indian company registered under the Companies Act, 1956 or 2013, desirous of operating DTH services in India has to apply through the Broadcastseva portal (<https://new.broadcastseva.gov.in>) of MIB.
<https://telerb.railnet.gov.in/raw-attachment/wiki/UpLoads/WPC-Lt.No.P-11014-34-2009-PP%281%29dt.22032012.pdf>
<https://dot.gov.in/sites/default/files/NOCC%20charges%20order%20dated%2026102022.pdf>
https://dot.gov.in/sites/default/files/BG-UL-06-10-2021_0001.pdf
The amendments carried out by DoT in October 2021 with respect to Adjusted Gross Revenue (AGR) and Bank Guarantee (BG) under telecom reforms as announced by Union Cabinet on 15th September 2021.

