

RJIL/TRAI/2024-25/254

27th November 2024

To,

Shri Deepak Sharma,

Advisor (B&CS)

Telecom Regulatory Authority of India,

Tower-F, World Trade Centre,

Nauroji Nagar, New Delhi - 110029

Subject: RJIL's comments on TRAI's Consultation Paper on "Framework for Service Authorisations for provision of Broadcasting Services under the Telecommunications Act, 2023".

Dear Sir,

Please find enclosed the comments of Reliance Jio Infocomm Limited (RJIL) on the Consultation Paper dated 30.10.2024 on **"Framework for Service Authorisations for provision of Broadcasting Services under the Telecommunications Act, 2023"**.

Thanking you,

Yours Sincerely,

For **Reliance Jio Infocomm Limited**

Kapoor Singh Guliani

Authorized Signatory

Enclosure: As above

**Reliance Jio Infocomm Limited's comments on
TRAI's Consultation Paper on Framework for Service Authorisations for provision of
Broadcasting Services under the Telecommunications Act, 2023**

Preface:

1. We thank TRAI for providing us the opportunity to submit our comments on this Consultation Paper. This paper aims to develop recommendations for introducing an authorization regime for broadcasting services under the Indian Telecommunications Act, 2023 (New Act).
2. However, the outcomes of this consultation are likely to have wider implications, affecting not only entities being discussed in the Consultation Paper but also the entire broadcasting and Telecommunications ecosystem, as the transmission of media and content today happens through various mediums, such as DTH, HITS, Cable TV, and IPTV/content services over mobile/fixed line/fixed wireless access networks.
3. **Given this competitive environment, TRAI's recommendations must consider the consultation's broader impact on the broadcasting and telecommunications industry as a whole. Any decisions, based on narrow comparison between service providers, without discussing the underlying aspects is likely to result into uneven playing field and unhealthy competition in the sector.**
4. In view of the same, we strongly feel that the TRAI must consider following basic principles for framing its recommendations:
 - a) **Promote Level Playing Field:** The regulatory framework should promote level playing field through a holistic assessment of broadcasting and telecommunications sector. DPOs (or Distribution Service Providers in authorisation regime) like DTH, HITS, and Cable TV provide competing services but differ significantly in technology and infrastructure. Furthermore, today, media and content services are also delivered through IPTV/content over fixed /mobile/ fixed wireless access networks.

Given the same, all these service providers compete with each other, as users can use these mediums and platforms interchangeably for accessing content or TV channels.

In both broadcasting and telecommunications sectors, the service providers using spectrum enjoy specific advantages that are not available to service providers that do not use spectrum and thus, it is essential to ensure level playing field between the two. **To ensure the same, the regulatory framework should account for the spectrum price, benchmarked at market determined rates, and include provisions for its recovery either as upfront payment or through license fee or spectrum usage charges (SUC).**

Contrary to the above, the current scenario presents an anomaly wherein, for the DTH services that use spectrum at free of cost, it is being proposed to waive off license fee whereas fixed line services, who do not enjoy the same benefits as available to DTH, are required to pay license fee to Government. Furthermore, in wireless domain, the mobile operators providing IPTV/content services are required to procure spectrum through auctions and pay spectrum usage charges and license fee also. Any move to waive or reduce the license fee for DTH would only exacerbate this disparity, further skewing the competitive balance in favour of DTH over other service providers.

It is deeply concerning that, while the Consultation Paper seeks views on the authorization fee to be applied across various distribution service providers, it simultaneously proposes, in the draft terms and conditions, reducing the license fee for DTH to 3% and eventually eliminating it after the end of 2026-27, based on prior recommendations.

We respectfully submit that the previous consultation did not fully address the competitive advantages granted to DTH over fixed-line, Cable TV services and mobile services, particularly due to the allocation of free spectrum to DTH. Therefore, this consultation should analyse this issue independently, without relying on earlier recommendations. Any proposal grounded in prior recommendations (which have not been accepted by the Government), as currently reflected in the draft terms and conditions, risks undermining the integrity of this consultation process.

The proposal to waive off license fee on DTH in previous consultation was based on analysis that DTH is the only platform that pays license fee. Notwithstanding the fact that other service providers (e.g. IPTV/fixed line/fixed wireless access/mobile networks), under Unified License, also require to pay license fee in addition to the spectrum charges paid for procuring the spectrum through auctions, **we wish to emphasize that Article 14 of the Indian Constitution, which enshrines the principle of “Equality before Law,” does not imply identical treatment for all individuals regardless of relevant distinctions. Rather, it requires that the law**

consider practical differences to ensure fairness. The proposal to waive the license fee for DTH services without acknowledging the distinctions between DTH and other competing fixed-line and mobile services, due to assignment of free spectrum to DTH, will amount to a violation of Article 14, as it disregards the need for a balanced regulatory approach across competing platforms and services.

b) Ensuring transparency in spectrum assignments: The regulatory framework must ensure that spectrum assignments for wireless services are done through auctions, ensuring transparency and discovery of market prices. The assignment of spectrum at market determined prices would also ensure level playing field and protect National Exchequer's revenue.

Currently, spectrum for broadcasting services like DTH is assigned administratively at free of cost. Furthermore, license fee paid by DTH is far below the estimated price of spectrum utilised by it. This **not only leads to loss of revenue to National Exchequer, but also puts the other service providers like Cable TV, IPTV/content services over mobile/fixed/fixed wireless access etc., at a disadvantage as DTH is able to utilise this spectrum, without paying market determined prices.**

Therefore, to correct the above anomaly, spectrum for all broadcasting services should be assigned at prices benchmarked at market determined rates; this will protect National Exchequer's revenue and will restore parity in the sector.

c) Ensuring Regulatory Certainty: The transition to an authorization framework under the New Telecommunications Act should prioritize regulatory certainty by minimizing disruptions. To ensure this, **it is essential to retain those provisions which have worked well for the sector and make only essential changes.**

In this regard, the consultation paper emphasizes the use of term 'authorisation' in the New Act in place of the term 'license' in the old Act and that the term authorisation has been defined in the New Act as granting permission for providing telecommunication services. Based on the use of different terminologies in the two Acts, the consultation paper concludes that there is a need to discontinue the current practice of incorporating the terms and conditions of the license within the license document.

We would like to humbly differ from this interpretation; as the concept of granting permissions is not new and even exists in the term 'license' used in the old Act.

Therefore, **mere use of different terms (authorisation and license) in the two Acts, which essentially mean the same, should not lead to any change in the framework and proven practices that have worked well for the sector. Introducing such changes, based on the incorrect interpretation of the terms, will lead to Regulatory Uncertainty in the sector.**

- d) **Holistic analysis:** Rather than a piecemeal or isolated approach, the recommendation on the authorisation framework should be grounded in a comprehensive assessment that considers the competitive landscape, the methodology for spectrum assignment and cost recovery, and the advantages certain service providers gain through resource allocation. For instance, the consultation paper references fees paid by various service providers without addressing these underlying factors.

Without a thorough and holistic assessment, there is a risk of reaching flawed conclusions that could undermine the protection of both service providers and consumers, which will be contrary to mandate by the TRAI Act.

5. Following the above mentioned broad principles, we would now proceed to address the specific issues raised in the Consultation Paper

Issues for Consultation:

Q1. Under Section 3(1) of the Telecommunications Act, 2023, the Applicant Entity may be granted an authorisation, in place of the extant practice of the grant of license/ permission from the Central Government. The terms and conditions governing the respective authorisation for broadcasting services may be notified by the Ministry of I&B as Rules to be made under the Telecommunications Act, 2023. In such a case, whether any safeguards are required to protect the reasonable interests of the Authorised Entities of the various broadcasting services? Kindly provide a detailed response with justifications.

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Q4. For the purpose of grant of authorisation under Section 3(1) of the Telecommunications Act, 2023, the Central Government may issue an authorisation document to the Applicant Entity containing the essential details viz. Name, Category and Address of entity, Scope of Service, Service Area, Validity etc. A draft format of authorisation document is given at Figure 2.2. Do you agree with the draft format or whether any changes are needed in the draft format of authorisation document? Please provide your response with necessary explanations.

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Q6. Draft structure for covering terms & conditions for provision of services after grant of authorisations to be included in the second set of Rules, namely, The Broadcasting (Television Programming, Television Distribution and Radio) Services Rules, is shown in Figure 2.4 above for consultation. Whether changes are required in the said structure? Please support your response with proper justification.

RJIL's Response:

We submit that there is no need to introduce structural changes by issuance of authorisation in form of an authorisation document containing only essential details. The current framework, and the existing practices should be maintained within the authorization regime, as these have served the sector effectively. For example, licenses or permissions for various broadcasting services, such as DTH, HITS, and Teleports, are presently granted through contractual agreements. This contractual nature provides service providers with protection against arbitrary changes in license terms and conditions. **Introducing changes to these established practices, without any need, would risk creating regulatory uncertainty.**

In the consultation paper, it has been suggested that under the new Act, the term authorization replaces license, and is defined as the granting of permissions under the Act. Therefore, it is important that authorizations be granted in the form of a basic

authorization document, with only essential information included, while detailed terms and conditions for each authorization should be set out in the rules.

We do not agree with the above as **the concept of permission for provisioning of telecommunication services is not new as the term “license” also inherently includes the concept of “permission”**. The dictionary meaning of the term license¹ is ‘to give someone official **permission** to do or have something’. Furthermore, the legislative² meaning of the term license is: *an authority to do something which would otherwise be inoperative, wrongful or illegal; a formal **permission** from a constituted authority to do something’.*

Further, the Section 59 of the Telecommunications Act, 2023 provides for amendment to the TRAI Act, 1997 for the definitions of licensee and licensor in the following manner:

“licensee” means an authorised entity providing telecommunication services under the Telecommunications Act, 2023, or registered for providing cable television network under the Cable Television Networks (Regulation) Act, 1995 or any other Act for the time being in force;”

““licensor” means the Central Government which grants an authorisation for telecommunication services under the Telecommunications Act, 2023, or registration under the Cable Television Networks (Regulation) Act, 1995 or any other Act for the time being in force;”

The above definitions imply that Act does not intend to make any distinction between the license and authorisation as the licensee and licensor have been respectively defined as the authorised entities and the Central Government, which grants authorisation.

Therefore, we humbly submit that there is no distinction between the terms “license” and “authorization” used in the two Acts and this cannot justify a shift from the current practices that have worked well for the sector for around 30 years.

Q2. The definitions to be used in the Rules to be made under the Telecommunications Act, 2023, governing the Grant of Service Authorisations and provisioning of the Broadcasting (Television Programming, Television Distribution and Radio) Services are drafted for consultation and are annexed as Schedule-I. Stakeholders are requested to submit their comments in respect of suitability of these definitions including any additions/ modifications/ deletions, if required. Kindly provide justifications for your response.

¹ <https://dictionary.cambridge.org/dictionary/english/license>

² <https://legislative.gov.in/legal-glossary/>

RJIL's Response:

We submit that the definitions available in the existing regulations can serve as reference to frame definitions under the New Act, to align with the terms used in the New Act. This would ensure continuity of existing services without any disruptions. Notably, most of the definitions in the Schedule, provided in the Consultation Paper, have been adapted from the definitions in the existing Regulations, which would serve the intended purpose.

Q9. A preliminary draft of Common terms and conditions for inclusion in the second set of Rules for Broadcasting (Television Programming, Television Distribution and Radio) Services is annexed as Part-I of Annexure-III for consultation. Stakeholders are requested to submit their comments in the format given below, against the terms and conditions and indicate the corresponding changes, if any, with necessary reason and detailed justification thereof. (Table and format for response has been provided)

RJIL's Response:

S No.	Description	Terms and Conditions No.	Proposed changes, if any	Reasons with detailed justification
2	Assignment of Spectrum	2	Proposed Clause: Assignment of spectrum for Broadcasting (Programming and Distribution) services shall be done as per Section 4 of Indian Telecommunications Act, 2023. The Authorised Entity shall adhere to the terms and conditions laid down by Department of Space and WPC Wing, Ministry of Communications including payment of applicable fee to WPC Wing for use of spectrum.	The draft terms and conditions specify that, as per Section 4(4) of the Telecommunications Act, 2023, spectrum assignments for broadcasting (Programming and Distribution) services will be done administratively. We respectfully disagree with this inclusion in the draft, for the following reasons: a. Section 4(4) specifies that auction is the default method for spectrum assignment, with the First Schedule listing exceptions.

				<p>b. The Section 4(5)(a) of the Act grants Government the authority to assign spectrum administratively in two specific instances i.e. for government use, and in cases where an auction is not economically or technically feasible. The condition specified in section 4(5)(a)(i) is redundant as both auction and administrative assignment are done in public interest.</p> <p>c. Each entry into the First Schedule must meet these criteria not only at the time of inclusion but should continue to meet the criteria prescribed in Section 4(5)(a) of the Act at all relevant points of time</p> <p>d. Additionally, under Section 57(1)(a), the Central Government has the authority to amend the First Schedule, allowing it to add or delete entries as necessary</p> <p>a. Given the potential for amendments to the First Schedule due to technological advancements in terrestrial and non-terrestrial services and changes in other conditions, it is inappropriate to specify in these rules that spectrum assignments for</p>
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				<p>broadcasting services will be conducted administratively.</p> <p>b. At most, the proposed rules could state that spectrum assignments will follow the provisions of the Indian Telecommunications Act, 2023, without specifying the method of assignment, which may evolve as per provisions of the Act.</p>
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Q11. Whether any changes are required in the extant processing fee (for new authorisation/renewal), annual authorisation fee (erstwhile annual permission fee) and other fees applicable on the following for the formulation of the terms and conditions of the authorisation for these services?

- i. Uplinking of a Television Channel**
- ii. Downlinking of a Television Channel**
- iii. News Agency for Television Channel(s)**
- iv. Teleport/ Teleport Hub**
- v. Any other services related to Television Channels**

Stakeholders are requested to provide their comments with detailed justification.

RJIL’s Response:

As outlined in the preamble and in our response to Question 9, spectrum for all broadcasting services should be assigned through an auction process to promote transparency and prevent discrimination in spectrum allocation. Auctioning will also ensure spectrum is assigned at market-driven prices, for most relevant technologies, safeguarding revenue for the National Exchequer.

Until spectrum assignments are conducted through auctions, the regulatory framework should mandate recovery of spectrum prices benchmarked at market determined rates. This approach will encourage optimal utilization of spectrum, aligning its use with the nation’s interests and for most relevant technologies. Therefore, all such service

providers, like Teleport etc., must pay market price of spectrum to account for the cost of the spectrum they utilise in their services either as, 1) upfront payment benchmarked with market price, 2) License Fee/Authorisation Fee, 3) Spectrum Usage Charges (SUC), as aligned with the other licenses.

Q15. Whether the following parameters applicable for DTH and HITS services should be reviewed while framing the terms and conditions of authorisation for these services? If yes, please suggest changes required, if any, on the following aspects, with detailed justifications:

a. Period of authorisation (erstwhile license/ permission)

b. Processing Fee

c. Entry Fee

d. Authorisation Fee (erstwhile License Fee)

e. Bank Guarantee

f. Renewal Fee

RJIL's Response:

- a. The Consultation Paper presents the fee structure of various DPOs in Table 3.6 and mentions that currently license fee is levied on DTH but not on HITS and the need for harmonising license fee for these service providers. In the draft 'Specific Terms And Conditions of The Broadcasting (Television Distribution) Services', it has been suggested that authorisation fee on DTH needs to be reduced to 3% of AGR that needs to be brought down to zero after the end of the financial year 2026-27.
- b. As mentioned in preface, it is deeply concerning that, while the Consultation Paper seeks views on the authorization fee to be applied across various distribution service providers, it simultaneously proposes, in the draft terms and conditions, reducing the license fee for DTH to 3% and eventually eliminating it after the end of FY 2026-27, based on TRAI's prior recommendations.
- c. **The previous consultation did not fully address the competitive advantages granted to DTH over fixed-line, Cable TV services and mobile services, particularly due to the allocation of free spectrum to DTH.** Therefore, this consultation should analyse this issue independently, without relying on earlier recommendations. Any proposal grounded in prior recommendations, as currently reflected in the draft terms and conditions, risks undermining the integrity of this consultation process.

d. **We strongly oppose the proposal for reduction or abolishment in license fee (or authorisation fee) on DTH services due to the following reasons:**

- i. **Violation of Level Playing Field principle:** DTH services currently operate using spectrum assigned administratively at free of cost. This arrangement provides DTH providers with a competitive edge over other service providers, such as Cable TV, IPTV/content provided over fixed line/fixed wireless access/mobile networks, which require substantial investments in spectrum and network, including the cable or fibre infrastructure to reach customers. In contrast, spectrum allows DTH operators to serve all of India without the high network deployment costs faced by terrestrial providers.

Moreover, DTH services enjoy network reliability that terrestrial networks cannot guarantee without making substantial capital and operational expenses, as they are susceptible to service disruptions from cable or fibre cuts. This fibre/cable infrastructure-free model, supported by free of cost spectrum assignments, enables DTH providers to offer a consistent Quality of Service (QoS) without the maintenance costs tied to terrestrial networks. This is possible only because of use of high quantity of scarce national resource (i.e. spectrum) which is assigned free of cost to DTH operators. For providing the same level of quality, other competing service providers have to invest extensively in building and maintaining terrestrial networks.

Therefore, to uphold a level playing field, it is essential to recover the spectrum price, benchmarked at market rates, from DTH operators, given the significant benefits they enjoy over providers that do not rely on spectrum.

Currently, DTH operators pay only nominal fees for spectrum use (compared with the market price of spectrum utilised by them) and the License Fee provides only partial compensation for spectrum costs. Conversely, despite investing heavily in terrestrial networks and spectrum, service providers providing IPTV/Content services over fixed/fixed wireless access/mobile networks are liable to pay license fee to the Government. **It is a complete anomaly wherein a service provider like DTH who is utilising free spectrum and not making investments in terrestrial fibre/cable networks is being considered for license fee waiver, whereas fixed line and mobile service providers, who invest heavily in terrestrial networks and spectrum are being subject to payment of licence fee.**

Proposing a license fee waiver for DTH solely based on comparisons with fees paid by other platforms—without accounting for the unique advantages DTH

gains through free spectrum assignment—would contravene Article 14 of the Indian Constitution. Article 14, which enshrines the principle of “Equality before Law,” does not mandate identical treatment for all parties irrespective of relevant differences. Instead, it requires the law to account for practical distinctions to ensure fairness. Such a waiver disregards the need for a balanced regulatory approach across competing platforms and services.

- ii. **Compromising revenue of National Exchequer:** Currently, DTH service providers pay a license fee of 8% of their Adjusted Gross Revenue (AGR). Last year (FY 2023-24), DTH providers collectively contributed approximately INR 692 crores in license fees, which only partially compensates for the spectrum they use.

DTH services utilize Fixed Satellite Service (FSS) spectrum in Ku band, which could otherwise support two-way telecommunications services. With advancements in both terrestrial and non-terrestrial technologies, this spectrum band has become highly sought after and has immense commercial potential.

To put this into perspective, typically, a DTH operator in India utilizes up to around 24 transponders, equivalent to 1,728 MHz (assuming 36 MHz per transponder for both uplink and downlink) in Ku Band.

Therefore, if the 8% license fee for DTH services were waived or reduced further, it would result in a significant revenue loss for the National Exchequer, removing even this partial compensation for valuable spectrum use.

- iii. **Inappropriate Comparison of License Fee for DTH with Unified License Fee:** We believe that the proposal to reduce the DTH license fee to 3% is based on a flawed comparison with the Unified License regime, where the applicable 8% license fee includes a 5% contribution to the Universal Service Obligation Fund (USOF). However, such a comparison is misguided, as the original 10% license fee for DTH was set independently of any USOF obligations. Even after reducing the license fee from 10% to 8%, the license fee on DTH is independent of USOF, and no part of it goes to the USOF. The DTH license fee helps in reducing the regulatory arbitrage due to assignment of free spectrum to DTH. Therefore, any reduction in the DTH license fee based on a comparison with telecom services would be inappropriate.

- e. **In view of the above, we submit that in order to avoid further regulatory arbitrage, which is already in favour of DTH, and to protect revenue of National Exchequer,**

license fee on DTH should not be reduced further. Since, HITS service providers also utilise spectrum for commercial services, TRAI may come up with suitable mechanism to recover cost of spectrum assigned to it.

- f. In this context, we submit that financial obligations, such as license fees, for service providers should be determined not by the type of service they offer but by the underlying infrastructure they use—**whether they are deploying terrestrial wireline networks to reach customers or utilizing spectrum, a national resource allocated by the Government.** Consequently, wireline and wireless services should not be directly compared for such determinations. Furthermore, any benefits extended to one spectrum-based service, while maintaining a level playing field with wireline services, should be uniformly applied to all spectrum-based services, including mobile services, considering the competitive landscape.

Q16. A preliminary draft of terms and conditions for inclusion in the second set of Rules for the Broadcasting (Television Distribution) Services in respect of Distribution Services (DTH/HITS), is annexed as Part-III of Annexure-III for consultation. Stakeholders are requested to render their comments in the format specified in the table given below, against the terms and conditions and indicate the corresponding changes, if any, with necessary reason and detailed justification thereof. (Table and format for response has been provided)

RJIL’s Response:

S No.	Description	Terms and Conditions No.	Proposed changes, if any	Reasons with detailed justification
1	Authorisation Fee	1	There should not be any reduction in the current license fee (8%) on DTH	Kindly refer to the detailed response to Q 15

Q17. The extant IPTV guidelines dated 08.09.2008 may be required to be amended to align with the provisions of the Telecommunications Act, 2023. A preliminary draft of terms and conditions for providing IPTV Services is annexed as Part-III of Annexure-III for consultation. Stakeholders are requested to provide their comments including addition/ modification/deletion required, if any, with detailed justification.

RJIL's Response:

Increasing investment in fixed-line infrastructure is essential for the country's connectivity growth. Although wireless services have made steady progress, India lags significantly in fixed-line services due to their high capital requirements and lengthy deployment timelines.

To illustrate this gap, India has only 0.6 million IPTV customers compared to approximately 62.2 million DTH subscribers. Similarly, in the telecommunications sector, there are only around 42 million wireline internet subscribers versus over 900 million wireless internet users. This disparity underscores the need for a major push to expand fixed-line services across the country.

TRAI's recommendation to waive the license fee on fixed-line services remains pending for the government approval. Approving this waiver of license fee would be a pivotal step toward bringing India's wireline services on par with global standards. **It is therefore essential for the government to consider TRAI's recommendation for a license fee waiver on fixed-line services, including broadband internet and IPTV services, at the earliest.**