

RJIL/TRAI/2024-25/259

04th December 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 counter 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 counter 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 counter comments on
TRAI's Consultation Paper on Framework for Service Authorisations for provision of
Broadcasting Services under the Telecommunications Act, 2023**

We appreciate the Authority for giving us the opportunity to provide our comments on the Consultation Paper. After reviewing the submissions made by various stakeholders, we take this opportunity to present our counter-comments on their submissions.

1. Need for continuation of license fee on DTH as per current framework:

- a. Certain stakeholders have asked for the abolishment/reduction of license fee on DTH. These stakeholders have supported this submission, by stating that DTH operators are the only ones that require to pay license fee whereas their competitors do not pay license fee, which creates regulatory imbalance and discrimination in the sector. Some of the stakeholders have suggested that there is a need for maintaining license fee parity for all stakeholders in broadcasting services (such as Cable TV, MSOs etc.) and OTT content services.
- b. At the outset, as explained in our response to the Consultation Paper, 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. Given this competitive environment, TRAI's recommendations must consider the consultation's broader impact on the broadcasting and telecommunications industry as a whole.
- c. We respectfully submit that the arguments presented by these stakeholders reflect a limited understanding of the competitive dynamics and the current regulatory obligations imposed on various service providers across the broadcasting and telecommunications sector
- d. It must be clarified that **DTH operators are not the only ones liable to pay license fee. IPTV services and fixed and mobile service providers (over which content services are delivered through Public Internet) are also liable to pay license fee. In addition, mobile service providers also pay market determined prices for spectrum and spectrum usage charges whereas DTH operators are assigned spectrum administratively at free of cost.**
- e. DTH services operate using administratively assigned spectrum at no cost, providing them a competitive edge over terrestrial services like Cable TV, IPTV/content provided over fixed line/fixed wireless access/mobile networks. These terrestrial service providers must invest heavily in network infrastructure (cables, fiber) and spectrum, whereas DTH operators attain coverage over the free

spectrum assigned to them. **The DTH license fee helps in reducing the regulatory arbitrage due to assignment of free spectrum to DTH to some extent.**

- f. Moreover, DTH operators currently pay an 8% license fee on Adjusted Gross Revenue (AGR), contributing around ₹692 crores in FY 2023-24, which partially compensates for their spectrum usage. **Given the increasing commercial potential of the Ku-band spectrum used by DTH operators, waiving or further reducing this fee would lead to significant revenue losses for the government. The spectrum assigned to DTH could otherwise be utilized for two-way telecommunications services.**
- g. **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, there cannot be a comparison of DTH with OTT Content services as DTH is benefits from assignment of spectrum.**
- h. **The inconsistency in the submissions of these stakeholders becomes evident from the argument of one stakeholder, who advocates for maintaining distinct net worth requirements for DTH and HITS services, citing differences in their structural and business requirements. However, in the same breath, the stakeholder calls for harmonizing the license fee requirements between DTH and HITS providers. This contradictory stance underscores the stakeholder's intent to prioritize its own business interests over fostering fairness and equity in the competitive landscape.**
- i. **Therefore, we earnestly request that the license fee on DTH should not be reduced or abolished. Any reduction in license fee on DTH would be a violation of Article 14 of the Constitution, which requires that the law consider practical differences to ensure fairness. Based on this principle, there cannot be any comparison of license fee on spectrum based service provider like DTH with other wireline service providers.**

2. In-applicability of Pass-through on DTH License Fee:

- a. Certain stakeholders have argued that the cost of channels, referred to as "Content Cost" by these stakeholders and paid by subscribers, should be treated as pass-through revenue for DTH operators since DTH operators ultimately transfer these charges to broadcasters.

b. One stakeholder contended that New Tariff Order (NTO) clearly delineates the revenue streams of DTH operators and broadcasters. This stakeholder further contends that DTH operators lack control over the Maximum Retail Prices (MRP) set by broadcasters and that this subscription income effectively belongs to broadcasters. DTH operators earn only up to 20% in margins and an additional 15% through incentives. **Based on this reasoning, the stakeholder suggested that if a license fee is to be levied on content revenue, it should be imposed directly on broadcasters, with a minimum license fee of 10% of the entry fee.**

c. **We respectfully submit that these assertions are misleading, flawed, and an attempt to shift DTH operators' obligations onto broadcasters under the guise of classifying the license fee payable by DTH service providers as a license fee on content revenue.** To address these arguments, we offer the following explanations:

i. Non-applicability of Pass-through on Channel costs paid to Broadcasters:

a) The suggestion to treat channel costs as pass-through revenue is untenable. In the telecommunications sector, pass-through is applicable to prevent the double levy of license fees on the same consumer revenue. It applies when consumer revenue flows between two service providers, both of whom pay a license fee.

b) For example, under the Calling Party Pays (CPP) regime, a voice call originates on one licensee's network and terminates on another's. The first licensee pays Interconnect Usage Charges (IUC) to the second, and can claim pass-through on the IUC amount to avoid a double license fee, since the second licensee also pays a license fee on the IUC amount received.

c) In the broadcasting sector, broadcasters receiving revenue from DTH service providers are not liable to pay license fees. Therefore, there is no instance of a double levy on consumer revenue, rendering the concept of pass-through inapplicable in case of DTH.

ii. Channel Charges are DTH revenues and broadcasters cannot be made to pay license fee:

a) Recognizing the inapplicability of pass-through in the DTH context, one stakeholder has instead proposed that broadcasters should pay a license fee on channel charges paid by subscribers to DTH operators. **This attempt to classify the levy as a “license fee on content revenue” is misleading and is an attempt to pass on DTH licensee’s obligations to broadcasters.**

- b) Firstly, there is no concept of a "license fee on content revenue" under the DTH licensing regime. As per licensing conditions, all revenues collected under DTH operations, which implicitly includes channel charges, are included in DTH revenues and are subject to a license fee.
- c) Secondly, DPOs, including DTH operators, have the exclusive right to serve customers as part of the broadcasting services value chain. According to the Uplinking and Downlinking Guidelines, broadcasters must mandatorily interconnect with DPOs to provide TV channel signals and cannot serve customers directly.
- d) DTH operators are solely responsible for all aspects of provision of services to subscribers, such as enrolling customers, addressing consumer grievances, and billing customers. Consequently, all revenues collected from customers are DTH revenues, and no portion can be reclassified as "Content Revenue." Therefore, the entire Adjusted Gross Revenue (AGR), exclusive of GST, is subject to the DTH license fee.
- e) **NTO provides regulatory framework for pricing of broadcasting and cable services but does not aim to segregate the revenues into broadcaster and DTH revenues.** The notion of content revenue has been artificially created by this stakeholder and is misleading. Notwithstanding this, **license fee is applicable on DTH as per licensing conditions and NTO does not supersede licensing conditions, which mandate that all revenues collected from customers be included in the revenue base for license fee calculation.**
- f) Thirdly, from a policy perspective, DTH operators benefit from the use of free spectrum. Imposing a license fee on DTH revenues serves to partially offset the regulatory arbitrage they enjoy compared to other service providers while ensuring a contribution to the National Exchequer, which partially compensates for the cost of free spectrum assigned to DTH. **Maintaining the existing license fee framework for DTH operators is therefore crucial to uphold fairness and equity. Shifting the license fee burden onto broadcasters would effectively transfer DTH operators' obligations onto broadcasters, which is neither justified nor rational.**

3. OTT Content Service cannot be brought under the Authorisation Regime under the Telecommunications Act:

- a. Some stakeholders have suggested to bring OTT Content services under the Authorisation framework under the Indian Telecommunications Act, 2023. We

do not agree with the suggestions of these stakeholders as these are based on their assumptions that OTTs need to be regulatory framework as applicable to the other DPOs due to the similarity of content.

- b. However, OTTs differ from other DPOs such as Cable TV, IPTV, DTH etc., as these latter deliver broadcasting services through broadcasting networks established by them. Furthermore, the licensed DPOs transmit licensed TV channels after acquiring these from broadcasters under the provisions of Uplinking and Downlinking Guidelines.
- c. Whereas OTT Content providers deliver content through Public Internet. Information Technology Act, 2000 governs the entities like OTTs that provide content services over the Public Internet. Accordingly, these are regulated under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 framed under the Act.
- d. Furthermore, Allocation of Business Rules grant an authority to MIB to regulate content made available by online content providers and there is no ground to bring OTT content services under the purview of authorisation under the Indian Telecommunications Act, 2023.
- e. However, we submit that there is a need to promote forbearance in the regulatory framework (Tariff Order and Interconnection Regulations) for broadcasting services. This will enable the Industry to stay competitive in market in which content delivery takes place through various mediums.

4. Broadcasting and Distribution services should be excluded from the definition of Authorisation under the Indian Telecommunications Act, 2023:

- a. A stakeholder has suggested that all stakeholders of broadcasting services (i.e. Broadcasting and its Distribution Services) must be brought within the definition of Authorisation under the Indian Telecommunications Act, 2023 by amending the definition of Authorisation.
- b. We submit that the above comment is irrelevant as the term authorisation is already defined under the Section 2 of the Act and the rules framed under the Act must be consistent with the provisions of the Act.