



Telecom Regulatory Authority of India



**Recommendations
on
Issues related to New DTH Licenses**

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Introduction

- i. Direct-to-Home (DTH) broadcasting service was opened up in 2001. On 15th March, 2001, the Government issued the 'Guidelines for obtaining license for providing Direct-to-Home (DTH) broadcasting service in India' (hereinafter referred to as 'DTH Guidelines'). These guidelines, inter alia, prescribe the eligibility criteria, the procedure for obtaining the license to set up and operate DTH services in the country, and the basic terms and conditions/obligations reposed in the operators.
- ii. A company desirous of operating DTH services has to apply in the prescribed form to the Ministry of Information and Broadcasting (MIB). MIB, after checking that the company meets the eligibility conditions, obtains the security clearance from the Ministry of Home Affairs (MHA) and clearance for usage of satellite from the Department of Space (DoS). Once the clearances are obtained, the company is asked to pay the entry fee of Rs. 10 crore. On payment of the entry fee, MIB communicates its intent to the company to issue a license. Next, the company has to approach Wireless Planning and Coordination (WPC) for SACFA¹ clearance. Once the SACFA clearance is obtained, the company has to give a bank guarantee of Rs. 40 crore and sign the license agreement with MIB. After this, the company has to apply to WPC for obtaining the Wireless Operating License (WOL). The duration of the DTH license is 10 years from the date of issue of the WOL. Licenses to establish, maintain and operate the DTH platform are granted under Section 4 of the Indian Telegraph Act 1885, and the Indian Wireless Telegraphy Act, 1933.
- iii. Presently, there are six pay DTH operators in the country. M/s ASC Enterprises (now M/s Dish TV India Ltd) was the first DTH licensee which got the WOL for starting its DTH services on 1st October 2003. The other five DTH operators got the WOLs during 2006 to 2008. The DTH Guidelines are silent on the course of action to be adopted after expiry of the 10 year license period.

¹ SACFA : Standing Advisory Committee for Frequency Allocation

- iv. The Ministry of Information and Broadcasting (MIB), through D.O. letter No. 8/3/2013-BP&L dated 3rd September 2013 (Annexure-I), sought the recommendations of TRAI, under section 11(1)(a)(ii) of the TRAI Act, 1997, on certain terms and conditions for extension of the period of DTH licenses, including an interim arrangement, since the first license was due to expire on 30th September 2013. In this regard, the Ministry sought recommendations of TRAI on the following issues:
- a) Whether the entry fee of Rs. 10 crore is required to be paid again by the DTH company for the extension of the validity period of the DTH license? If not, then whether no entry fee is required or a modified entry fee is required to be levied. In case of requirement of modified entry fee, what should be the amount of entry fee?
 - b) Whether the period of extension of validity of DTH license should be for another period of 10 years?
 - c) Whether the bank guarantee of Rs. 40 crore is to be renewed for the entire period of the license again on extension of validity period of license?
- v. The time left before the due date of expiry of the license period for the first licensee was not sufficient for TRAI to follow the due consultation process. Since protection of the interests of consumers is one of the mandates of TRAI, and keeping in view the large subscriber base of the said licensee, TRAI responded to the MIB reference by suggesting some interim measures through letter No. 24-01/2013 B&CS dated 11th September (Annexure II) to the Government. It was suggested that, in the interim, MIB may consider allowing the said DTH licensee to continue its operations/services on the existing terms and conditions subject to the following:
- a. The said DTH operator shall renew the existing bank guarantee.
 - b. The Government shall take a suitable undertaking from the said DTH operator to ensure that once the final policy in this regard is laid down by the Government, the said DTH operator will comply with that policy for the interim period also. Any financial obligations arising from the change in policy shall also be honoured.
- vi. The existing DTH Guidelines provide for the issue of a license for 10 years. There is no explicit provision for an extension or a renewal, implying that at the end of the 10-year period of validity, the license expires. Therefore, in

case, the Government intends to allow DTH operators to continue their business after the expiry of the stipulated 10 year license period, it will have to issue a new license.

- vii. While the Guidelines may be silent on the provision of an extension or a renewal, surely it could not possibly be the intent of policy to effectively disallow existing license holders from continuing their business beyond the initial license period of 10 years. Starting a DTH business entails a huge investment of resources. It would, therefore, be a reasonable expectation on the part of DTH licensees that, on the expiry of the initial 10 year license, they would be eligible to apply for issue of a new license, so that they could continue their business.
- viii. On 1st October 2013, TRAI issued a Consultation Paper (CP) on 'Issue/Extension of DTH License'. In the CP only those issues were taken up which were specifically referred to the Authority by MIB. These issues pertained to levying of entry fee and quantum thereof, period of extension of the DTH license and the renewal of bank guarantee on extension of the license period.
- ix. It was also stated in the CP that certain modifications will have to be carried out in the DTH Guidelines and the license agreement to reflect the policy changes that have taken place since 2001, such as the broadcasting sector coming under the purview of TRAI/TDSAT, in 2004. It was also stated that the issue of the annual license fee being presently sub-judice, any judicial pronouncements in this regard will also have to be appropriately reflected.
- x. During discussions with the Authority, as part of the consultation process, the DTH industry stakeholders requested that since a new license is to be issued, it would be in the interest of the sector that a comprehensive review of the existing DTH license conditions be taken up, not only taking into account the policy changes but also considering technological developments and overall performance of the sector since the notification of the DTH Guidelines in 2001. It also emerged that though the issue of license fee in the present licensing regime is sub-judice, the license fee that would be applicable in a new licensing regime could be separately deliberated upon and decided. Further, it was stated that the issue of devising a migration mechanism, as an option to licensees who have yet to complete existing license periods, would also be a natural corollary to the formulation of a new licensing regime.

- xi. Accordingly, the Authority decided to take up a comprehensive review of the provisions in the existing DTH Guidelines for which a supplementary consultation paper on 'Issues related to New DTH Licenses' was issued on 14th November 2013.
- xii. In response to these consultation papers, 25 comments/views were received from stakeholders. Subsequently, an Open House Discussion (OHD) was also held in Delhi on 10th December 2013, wherein 36 stakeholders participated. Based on the views/comments of the stakeholders and discussion with industry stakeholders, the issues have been analysed and these recommendations have been formulated. Chapter 1 of these recommendations covers the DTH licensing issues in the new licensing regime. The issues pertaining to cross-holding/control between broadcaster(s) and DPOs, and amongst DPOs, including those relevant for DTH licensees, have been dealt with comprehensively in Chapter 2. Chapter 3 forms summary of the recommendations.

Chapter I

DTH Licensing Issues

- 1.1 The analysis of the issues under consultation and formulation of the recommendations have been done taking into consideration the overall interest of the sector especially taking into account the provisions that were the primary impediments for the harmonized growth of the DTH industry. Financial data was obtained from the existing DTH operators and analysed to assess the financial health of the DTH sector. As per the data provided by the DTH operators, during the last five years (2008-09 to 2012-13), total expenditure of around Rs. 27250 crore has already gone into the industry and accumulated losses (after tax) during the same period are around Rs. 11400 crore. Further, none of the service providers has reached the break even mark.
- 1.2 There is growing convergence between the telecommunications and broadcasting and cable TV sectors. This convergence is happening on all fronts i.e. the carriage infrastructure, the services as well as the end user devices. Given this background, it is important that the regulatory regimes in these two sectors are in consonance and aligned to the maximum extent possible. This would not only ensure a level-playing field to stakeholders of the sectors but also propel overall orderly and harmonized growth, benefitting all stakeholders, including consumers.
- 1.3 In view of the above, it would be prudent that all these aspects are taken into consideration and suitable provisions incorporated in the license conditions to help improve the financial health of the sector and enable it to exploit the emerging opportunities due to changes in the policy framework, technological advancements, convergence, market expansion etc.
- 1.4 **Therefore, the Authority recommends that the existing DTH Guidelines be reviewed and a new DTH licensing regime be put in place for issue of new licenses and migration of existing DTH licensees.**
- 1.5 In these recommendations, a new DTH licensing regime is being proposed wherein the Authority has recommended a reduction in license fee. This is expected to provide substantial relief to the industry. Besides this, the new recommended licensing regime also provides for a longer license period with absolute clarity on further renewals. This would bring about a fair degree of

stability in the sector. These measures, put together, should propel overall growth of the sector as it will create a conducive environment for investment from strategic investors. This, in turn, will also spur innovation in terms of adoption of better technology and services.

- 1.6 In this backdrop, the provisions of the existing DTH Guidelines which require suitable amendments as well as certain other provisions which may also be required to be suitably incorporated in the new DTH Licensing Guidelines, are discussed in the subsequent paragraphs.

A. License Period

- 1.7 The duration of the existing DTH licenses is 10 years from the date of issue of the Wireless Operating License (WOL). In the other segments of the broadcasting sector different periods have been stipulated. The permission period is 10 years for Uplinking/Downlinking of TV channels with a provision of renewal of permission/ registration for a period of 10 years at a time. For telecom services, a license period of 20 years has been fixed for licensees under the UL with a provision for renewal of the period of license by 10 years at one time, upon request of the Licensee, on the terms specified by the Licensor, subject to extant policy.
- 1.8 Presently, we have a situation where the DTH Guidelines do not have an explicit provision for extension/renewal. A similar situation should not arise when the new licenses expire. So, it would be appropriate to incorporate in the DTH Guidelines, a provision that indicates the period of renewal and the procedure to be followed in future for the renewal of the DTH licenses. The licensor should have the flexibility to modify the terms and conditions at the time of extension/renewal of the license.
- 1.9 The issue is that, in the new DTH licensing regime, what should be the duration of the license and the period for which the licenses should be renewed.

Stakeholder comments

- 1.10 The existing DTH operators and their association have sought a longer license period and a definite provision on the renewal of the license to have confidence of license continuity. The DTH Association has requested the Authority to

consider an initial license of 20 years with a provision for renewal/extension of 20 years.

Analysis

- 1.11 There could be different views on the question of the duration of a new license to be issued to existing DTH licensees. One view could be that this period should not be so short that it creates uncertainty in the operators' business model and inhibits futuristic business planning. This could result in reluctance on the part of the operator in deploying new technologies or undertaking long-term capacity enhancement. Such a move could be detrimental to the interests of consumers as the benefit of new technologies and innovations would be denied. Investors, both, foreign and domestic, may want a certain minimum period which is not too short.
- 1.12 The counterview could be that too long a license period may not be the right approach from a policy perspective. Broadcasting is a sector where both technology and consumer demands for service are fast-changing. These are appropriately reflected in the license, when the license is renewed. Therefore, the license period should not be too long. The two contrasting viewpoints have to be judiciously balanced while looking at the license period of new licenses to be issued to existing DTH licensees.
- 1.13 In the telecom sector, the license period under the UL regime is 20 years. It prescribes that the Licensor may renew the period of License by 10 years at a time. It further states that on renewal, the Licensee may be required to pay a renewal fee as may be notified by the Licensor. In view of the growing convergence between the broadcasting and telecom sectors, it would be appropriate to align the license period for DTH sector with that in the telecom sector under the UL.
- 1.14 **Accordingly, the Authority recommends that under the new licensing regime for DTH, licenses should be issued for a period of 20 years. Upon request of the Licensee, the period of License may be renewed by 10 years at a time, on the terms and conditions specified by the Licensor in consultation with the Authority.**

B. Dues to the Government

1.15 In the subsequent paragraphs, issues related to various Government dues such as the entry fee, annual license fee, bank guarantee and migration fee that a licensee is required to pay, have been discussed. In the table given below, these parameters, as applicable today for various segments of broadcasting sector and for telecom services, have been summarized.

License parameters for broadcasting and Telecom Operators

Parameters	DTH	MSO	HITS	IPTV	Unified License
Entry fee (in Rs. crore)	10	Rs 1 Lakh ²	10	-	Maximum 15 crore ³ -
Migration fee	Not mentioned	Not mentioned	Not mentioned	Not mentioned	Equal to entry fee for new UL with a rebate on pro-rata basis (as per Table C- Annexure III)
Annual License Fee	10 % of GR	Nil	Nil	8% of AGR ⁴	8% of AGR ⁵
Bank Guarantee (in Rs. crore)	40 Crore	Not mentioned	40 Crore ⁶	-	FBG and PBG as per Table –B (Annexure III)

Entry fee

1.16 The existing DTH Guidelines prescribe the entry fee of Rs.10 crore. The issue is: What should be the quantum of entry fee to be paid by a licensee in the new DTH licensing regime?

Stakeholder comments

1.17 The DTH operators as well as the DTH Association have opposed the charging of an entry fee from the existing licensees at the time of issue of new license/migration to the new DTH licensing regime. The DTH Association has

² Registration fee

³ depending upon service area and services offered Refer Table B (Annexure III)

⁴ If Telecom service provider registers itself as Cable Operator, then it is considered under telecom license and based on its IPTV revenue

⁵ For the first year- 8% of AGR subject to minimum of 10% of the Entry Fee, if offered by telecom access service provider

⁶ valid for period of 3 years of the license (Roll Out obligations)

requested for levying an administrative charge of Rs. 1 crore, instead of any entry fee on the existing DTH licensees and an entry fee of Rs. 10 crore to be charged from new entrants to maintain parity. On the contrary, some of the cable operator associations have stated that the entry fee should be enhanced.

Analysis

- 1.18 As discussed earlier, we are talking of a new license and not the extension of an earlier license. This is because existing licenses have no provision for an extension. Therefore, even existing licensees will have to obtain a new license.
- 1.19 In the telecom sector, under the UL, the total amount of Entry Fee is subject to a maximum of Rs. 15 crore for all the services for all the license service areas. The services that can be offered under the UL are Access Services, ILD, NLD, VSAT, PMRTS, ISP, GMPCS and Resale of IPLC licenses. The UL prescribes an initial license period of 20 years which can be renewed for a period of 10 years at a time. It also provides that, on renewal, the Licensee may be required to pay a renewal fee as may be notified by the Licensor.
- 1.20 The telecom services that can be offered under the UL are highly capital intensive and the investments required and the revenues generated are much higher as compared to the DTH services. Also, the scope of services that can be offered under the UL is much larger. Therefore, for the same license period of 20 years (for UL as well as the recommended license period for the new DTH licensing regime), the entry fee for the DTH services in the new DTH licensing regime should be lower than Rs. 15 crore. The Authority is of the view that the current value of entry fee in DTH sector may be maintained for the new DTH licensing regime.
- 1.21 **Accordingly, the Authority recommends that a one-time entry fee of Rs. 10 crore should be charged in the new DTH licensing regime. The Authority also recommends that the renewal shall be on the terms and conditions, including renewal fee, specified by the Licensor, in consultation with the Authority.**

License Fee

- 1.22 Presently, a DTH licensee is required to pay 10% of gross revenue⁷ (GR) as license fee. It was discussed in the CP that in view of the growing convergence between the broadcasting and telecom sectors and the fact that the DTH licenses are also granted under section (4) of Indian Telegraph Act 1885, as is the case of telecom licenses, the license fee and the definition of AGR for the DTH sector should be aligned with that in the UL. Accordingly, it was proposed in the consultation paper that for DTH services, license fees may be charged at 8% of the AGR where AGR could be calculated by excluding Service Tax and Sales Tax, actually paid to the Government, from the GR.

Stakeholder comments

- 1.23 Stakeholders have welcomed the proposal for charging of annual license fee, calculated on AGR basis, at 8% of the AGR. Two DTH operators have, however, requested that, keeping in view the financial health of the DTH industry, initially, it should be pegged at 6% of AGR and can be reviewed later, based on the financial state of the industry. For calculating the AGR, it has been requested that deduction be made for content costs, Service Tax, Entertainment tax, sales tax, transponder costs, hardware sales revenue etc. One cable operator association has stated that it should also be ensured that any “carriage fee” collected by a DTH company in the form of cash or barter deal should be reflected in the AGR.

Analysis

- 1.24 The license fee is basically non-tax revenue being collected from a service provider against the privilege of being permitted to perform a particular licensed activity. The DTH service providers are presently supposed to pay sales tax, service tax and the entertainment tax on the goods and services provided by them to their subscribers, apart from the license fee. The revenue on which the license fee is levied should not include the revenue which actually goes towards payment of other forms of taxes. Therefore, the license fee should not be charged on the GR; rather, it should be charged on AGR, computed by deducting the amount of the above mentioned taxes from the GR.

⁷ Gross Revenue, as described in the existing “Guidelines for Obtaining License for providing Direct-To-Home (DTH) Broadcasting Service in India” dated 15.03.2001, as amended from time to time.

- 1.25 As far as the percentage of the AGR that should be charged as license fee, in view of the growing convergence of telecom and broadcasting services, it would be logical to align it with the percentage prescribed in the UL. In the UL, the AGR is arrived at by excluding the taxes and the charges of pass through nature paid to other telecom service provider(s) to whose network, the licensee's network is interconnected. However, in the case of DTH, other than taxes, there is no such pass through component analogous to pass through for interconnection charges applicable for telecom services.
- 1.26 The UL also provides that the Licensor reserves the right to modify the License fee as percentage of AGR any time during the currency of the license agreement. Another provision of UL, related to license fee, prescribes that, the License fee shall be subject to a minimum of 10% of the Entry Fee.
- 1.27 Currently, the license fee is paid on an annual basis. During the consultation process, the DTH operators have requested for payment of license fee on a quarterly basis. The payment of license fee on a quarterly basis will be in the interest of both the Government as well as the service providers. For the operators, this will be so because they would be required to deposit a lower-value of BG as it would be linked to license fee due for two quarters rather than to the annual license fee.
- 1.28 **Accordingly, the Authority recommends that :**
- i. The license fee in the new DTH licensing regime should be charged as 8% of Adjusted Gross Revenue (AGR) where AGR is calculated by excluding, Service Tax, Entertainment Tax and Sales Tax/VAT actually paid to the Government, from the Gross Revenue (GR).**
 - ii. The DTH licensees shall be required to pay license fee on a quarterly basis, the quantum thereof shall be equal to the actual license fee payable for the preceding quarter. The annual settlement of the license fee shall be done at the end of the financial year.**
 - iii. The annual License Fee shall be subject to a minimum of 10% of the Entry Fee.**
 - iv. The license should include a provision that prescribes that the Licensor reserves the right to modify the License Fee as a percentage of AGR any time during the currency of the agreement.**

The schedule of payment of License Fee should be amended accordingly.

Bank Guarantee

- 1.29 As per the existing DTH Guidelines, a licensee is required to submit a Bank Guarantee for an amount of Rs.40 crores valid for the duration of the license. The issue is: What should be the quantum of the bank guarantee and its validity period in the new DTH licensing regime?

Stakeholder comments

- 1.30 In response to the issue of quantum and validity period of the bank guarantee (BG) raised in the CP, the DTH Association as well as a couple of DTH operators have submitted that the present quantum of BG should be maintained and its validity should be the entire term of the license.

Analysis

- 1.31 The bank guarantee is a safeguard against the non-payment of license fee and non-compliance of the license conditions by the licensee. Under the UL, a financial BG, as safeguard against the non-payment of license fee, is to be provided for a fixed amount equivalent to the estimated sum payable, equivalent to License fee for two quarters and other dues not otherwise securitized.
- 1.32 Now the license fee is recommended to be paid on quarterly basis and a BG is to be submitted for an amount equivalent to amount of license fee payable for the previous two quarters. In case of a new DTH entrant, a BG amount needs to be prescribed, at least for the first two quarters. As per the data provided by MIB, the annual license fee paid by the DTH operators in their first year of operation was up to around Rs. 10 crores. Accordingly, it would be appropriate that the amount of BG for the new entrants, be kept at Rs. 5 crore for the first two quarters of their operations, and thereafter, for an amount equivalent to estimated license fee for the preceding two quarters and other dues not otherwise securitized.

1.33 **Apropos the above, the Authority recommends as under:**

- i. DTH licensees shall be required to furnish a Bank Guarantee for an amount equivalent to the estimated sum payable, equivalent to License fee for two quarters and other dues not otherwise securitized.**
- ii. The bank guarantee should be valid for a year which should be renewed year-on-year basis in such a manner that the BG remains valid during the entire license period.**
- iii. For new entrants, a BG for a fixed amount of Rs. 5 crore shall be taken for the first two quarters, and thereafter, for an amount equivalent to the estimated sum payable, equivalent to License fee for two quarters and other dues not otherwise securitized.**

C. Migration Scheme and Migration Fee

1.34 Once a new licensing regime is put in place, there would be a situation where two licensing regimes are simultaneously in operation. So as to ensure a level-playing field between the two sets of DTH operators (operating under two different regimes), it would be but natural to make available a migration scheme to the operators, working in the old regime to migrate to the new regime.

1.35 The issue is: What approach should be adopted for migration of exiting DTH operators to the new DTH licensing regime?

Stakeholder Comments

1.36 As far as migration scheme is concerned, some stakeholders have supported the proposal that all existing DTH operators should migrate to the new DTH licensing regime by a specified migration date.. Two DTH operators have stated that the existing operators should have the choice to either migrate to the new licensing regime or to remain in the existing one. During the open house discussions the DTH operators requested that existing operators may be allowed to continue in the existing regime and should have the option of voluntarily migrating at any time during the validity of the present license.

Analysis

- 1.37 With reduction in the license fee, substantially longer license period alongwith a provision for renewal of license etc., migration to the new DTH licensing regime appears to be in the interest of the service providers, under all circumstances. However, in case an operator wants to migrate to the new regime at its convenience, during the currency of its existing license, the licensor may permit the same. All the terms and conditions, including the license period, on migration to the new DTH licensing regime, should be the same as prescribed in the new licensing regime. In the case of the DTH operator whose license has expired on 30th September 2013, the effective date of the new license should be 1st October 2013. However, it is important that all the existing DTH licensees who opt for the new DTH license shall, before being granted DTH license in the new regime, clear all the dues and fulfill all obligations under the existing license terms and conditions. Moreover, the obligations and dues, arising out of the legal cases pending before various courts of law, shall also be required to be fulfilled/cleared by the DTH operators.
- 1.38 **Apropos the above, the Authority recommends as under:**
- i. **Once the Government notifies the new DTH licensing regime, a DTH operator shall be allowed to migrate to the new regime at any time during the currency of its existing license. Before obtaining a license under the new regime, the DTH operator shall clear all the dues and fulfill all obligations under the existing license terms and conditions as well as those arising out of legal cases pending before various courts of law.**
 - ii. **For the DTH operator whose license period under the existing DTH licensing regime has already expired on 30th September 2013, the effective date of new DTH license shall be 1st October 2013.**

Migration fee

- 1.39 Existing DTH operators who wish to continue their operations beyond the stipulated license period would be required to pay the entry fee and obtain a new license. However, a rebate, commensurate to the remaining license period, may be granted to migrating licensees who, at the time of migration to the new DTH licensing regime, have some left over period in the existing DTH license.

The net entry fee payable by the migrating DTH licensee would be the 'migration fee'. Accordingly, in the supplementary CP a formula for rebate was proposed and the stakeholders were asked to respond with their views/comments on the same.

Stakeholder comments

- 1.40 DTH operators are divided on the issue. One DTH operator has stated that no migration fee should be charged. Three DTH operators have suggested that it should be kept at a minimal level to just account for any administrative charges; two other operators and a broadcaster have suggested that a maximum of Rs. 1 crore as migration fee may be charged from existing operators on their migration to the new DTH licensing regime. These two DTH operators, a HITS operator and a cable operator association have also supported the proposed mechanism for calculating the migration fee.

Analysis

- 1.41 In the new DTH licensing regime, the entry fee shall be applicable for both new entrants and existing DTH operators migrating to the new regime. However, in case of an existing licensee who has not yet completed the entire period of its license, it would be a logical expectation of such an operator to get compensated for the unused period of the license. For example, if a licensee has been in operation for a period of 6 years out of the 10 years license period, then he will have to be compensated for 4/10th of the entry fee paid. The net entry fee (i.e. entry fee applicable for the new licensing regime - the compensation) would in effect be the 'migration fee'. Similar approach has been followed for migration to UL.
- 1.42 **In view of the above, the Authority recommends that a 'migration fee' should be charged from existing DTH operators who wish to migrate to the new DTH licensing regime. The quantum of 'migration fee' should be arrived at as per the following formula:**

Migration fee = [Entry fee in the new DTH licensing regime - (Entry fee under existing License/existing license period i.e. 10 years) x (No. Of years remaining in the existing regime at the time of migration)]

In this formulation part of a year is not to be counted.

D. Interoperability of DTH STBs

- 1.43 The existing DTH Guidelines prescribe conditions for set-top-boxes in order to ensure technical compatibility and effective interoperability among different DTH service providers. The intention of putting this condition was to ensure that the subscribers have the option to change the DTH operator without having to buy another STB.
- 1.44 The existing provision at clause 7.1 of the existing DTH Guidelines has been interpreted in two ways. Operators have interpreted it to mean that they have to comply with specifications prescribed by Bureau of Indian Standards (BIS) which, in turn, ensures technical compatibility and effective interoperability among different DTH service providers. In contrast, there is a view that these provisions mandate the service providers to ensure technical compatibility and effective interoperability among different DTH service providers while complying with the BIS specifications.
- 1.45 Over a period of time, the technology in respect of compression and transmission standards has evolved at a very fast pace. Since different operators entered the sector at different stages of evolution of compression and modulation technologies, a variety of technologies co-exist. Unfortunately, the BIS standards have not kept pace with technological developments. As a result, although the STBs offered by an operator may be compliant with the BIS standards, this does not ensure technical compatibility and effective interoperability across networks of all DTH operators, thereby hampering easy migration of the subscriber from one operator to another without re-investing in a new STB.

Stakeholder comments

- 1.46 Some of the DTH operators have stated that technical interoperability is not possible/viable because different technologies have been adopted by different operators and the cost of conditional-access-module (CAM) is almost the same as that of a new STB. They have further mentioned that this condition in the existing DTH Guidelines be dispensed with because such a condition is not imposed in any other country; the common interface (CI) slot unnecessarily adds around US\$ 2 to the cost of STB, the STBs offered are highly subsidised and the cost to the consumer are already low. Further, commercial interoperability option is already available to consumers to switch operators.

1.47 Mandated compliance to the latest BIS specification for the STBs to be offered to all the new subscribers has also been opposed by operators. It has been stated that DTH operators, by virtue of their business model, will keep adopting the latest technologies by themselves, however, the operators may be asked to declare the level of interoperability of their boxes, transparently to the consumers. A consumer can, thereby, choose the service provider, he feels is right for his needs.

Analysis

1.48 Two important aspects related to STB/CPE are (1) ensuring that the STBs are of good quality and (2) their technical interoperability. The Authority is of the view that, independent of the aspect of technical interoperability, the service providers should offer CPE/STBs of standard technical quality only. For this, compliance with certain prescribed specifications is necessary. In this regard, DTH operators have already been mandated to offer CPE/STB that is compliant with BIS specifications, if any. This, in turn, requires that the BIS keeps pace with the fast evolving technological standards and comes out with new/updated specifications, enabling the operators to adopt efficient technology and, at the same time, offer standard quality equipment to their subscribers.

1.49 Interoperability is meant to provide an easy exit option to a consumer who, due to any reason, intends to move to another service provider for availing the services. Interoperability can be achieved either through technical interoperability or commercial interoperability.

1.50 Technical interoperability as provided for in the existing BIS specifications/DTH Guidelines, is expected to be achieved by means of a combination of Common Interface (CI) slot in the STB and pluggable Conditional Access Module (CAM). In this arrangement, it is envisaged that services of any particular operator can be availed by simply plugging in the CAM of that operator into the CI slot of the STB of any another operator. However, technical interoperability, as envisaged in the existing DTH Guidelines, has, so far, not proved to be effective due to various techno-commercial issues.

1.51 Commercial interoperability basically refers to availability of such scheme(s) wherein consumers can obtain STB from a service provider, at such terms and conditions that they can exit the services of the service provider at any point of time and gets adequately compensated on return of the STB. Commercial

interoperability has the advantage that it does not involve any technological issues. It also has the advantage that a consumer has a wider choice in terms of operators; consumers can migrate to operators across the platforms.

- 1.52 In this backdrop, on 27.5.2013, TRAI issued the Telecommunication (Broadcasting and Cable) Services (Sixth) (The Direct to Home Services) Tariff Order, 2013 (No. 2 of 2013). This tariff order provides an easy exit option to subscribers, ensures availability of consumer-premises-equipment (CPE - that primarily consists of STB and Dish antenna) at reasonable prices, easy to understand terms and conditions and, at the same time, protects the interests of the service providers. A similar tariff order was also notified for the STBs offered by the operators, providing cable TV services through digital addressable cable TV systems (DAS). These Tariff Orders prescribe standard tariff packages for making available a CPE/STB to the consumers. These packages are in addition to and not to the exclusion of other rental schemes, hire purchase schemes or outright purchase schemes offered by the DTH operator/MSO. In essence, these tariff orders provides for commercial interoperability. However, the tariff order, applicable for DTH services, has been challenged by a couple of DTH operators in the TDSAT and the matter is sub-judice.
- 1.53 However, it is important that there should not be a situation where neither technical nor commercial interoperability is available to the consumers. This is not only important from the point of view of making available an easy exit option to the consumers but also to avoid accumulation of e-waste, in the form of redundant STBs.
- 1.54 **Apropos the above, the Authority recommends the following:**
- i. **The license condition prescribed at clause 7.1 of the existing DTH Guidelines should be replaced with the following clause:**

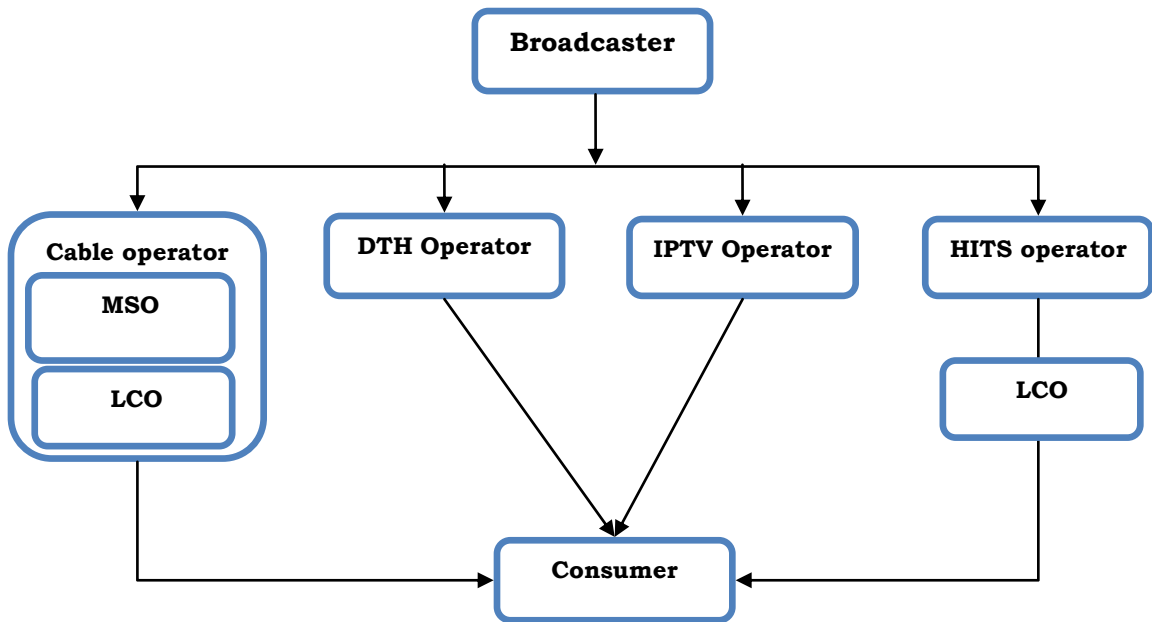
“The Set Top Box offered by a DTH service provider shall have such specifications as laid down by the BIS from time to time.”
 - ii. **BIS should come out with updated specifications for STBs from time to time and while doing so, BIS shall consult TRAI.**
 - iii. **The license conditions should mandate the licensee to comply with the tariff order/scheme prescribed by TRAI for commercial interoperability.**

1.55 Certain other modifications will also be required to be carried out in the DTH Guidelines and the license agreement to reflect the policy changes that have taken place since 2001, such as the broadcasting sector coming under the purview of TRAI/TDSAT, in 2004. In addition, taking into account these recommendations, the other provisions in the existing DTH guidelines which have not been discussed here will also be required to be incorporated in the new DTH licensing regime with appropriate modifications.

Chapter 2

Cross-holding/Control

- 2.1 The value chain of the TV channel distribution market comprises broadcasters, Distribution Platform Operators (DPOs) and consumers. Broadcasters, who have permission to downlink their satellite TV channels, distribute them to the consumers through various categories of Distribution Platform Operators (DPOs). The DPOs can be categorized into MSO, DTH, HITS and IPTV operator. This value chain can be depicted as below:



Broadcasting and Distribution Value Chain

- 2.2 Here, for the purpose of cross-holding/'control', a broadcaster includes the broadcaster itself, its subsidiary companies /associate companies/ companies of its relatives, its holding company and subsidiary companies /associate companies/ companies of its relatives of its holding company and any other broadcaster in its 'control'. Similarly, a DPO includes the DPO itself, its subsidiary companies /associate companies/ companies of its relatives, its holding company and subsidiary companies /associate companies/ companies

of its relatives of its holding company and any other DPO in its 'control'. The term 'control' has been discussed and defined in subsequent paragraphs.

- 2.3 An MSO or HITS operator provides TV channel distribution services to the end consumer through the cable TV network only; so for the purpose of cross-holding restrictions, MSO and HITS operators would be considered under the same category and their combined market share would be considered for assessing the level of competition in the relevant market. Further, as on date, the market share of the IPTV operators is insignificant. So, it is not considered for defining the cross-holding restrictions in the relevant market. In effect, for the purpose of cross-holding restrictions, the DPOs can be categorized into two categories i.e. (1) DTH and (2) MSO and HITS together.
- 2.4 The 'cross-holding' between Broadcasters and DPOs, and amongst DPOs has been discussed in detail in the Supplementary Consultation Paper (SCP) on 'Issues related to new DTH licenses' and Consultation Paper on 'Issues related to Media Ownership'. Cross-holding can result in vertical integration; horizontal integration; or both. Vertical integration means a common entity, which can be a Broadcaster itself or a stakeholder having 'control' over the Broadcaster, "controls" a DPO in the same relevant market and vice versa. Similarly, horizontal integration means that a common entity, which can be a DPO itself or a stakeholder having 'control' over the DPO, "controls" multiple categories of DPOs in the same market. In order to ensure orderly growth of the broadcasting and distribution sectors, and to avoid compromises or limitations on competition, certain cross-holding restrictions may be required to be put in place.
- 2.5 The existing restrictions, in respect of the cross-holdings between Broadcasters and DPOs and amongst DPOs have been prescribed in the DTH and the HITS guidelines. The existing Cable TV Rules and Uplinking/ Downlinking Guidelines for Broadcasters do not provide for any restrictions on cross-holding.
- 2.6 The restrictions provided for in the present form in various licenses/ guidelines have had limited success. In some cases, cross-holding/ 'control' by a common entity, both in the broadcaster and multiple categories of DPOs have been reported. This has often given rise to complaints, litigation as well as concerns pertaining to a non-level playing field, adversely affecting the non-integrated broadcasters/DPOs.

- 2.7 It was also mentioned in the SCP that in order to bring uniformity in licensing/ regulatory framework for various segments of the broadcasting and TV channels distribution sector, similar provisions pertaining to cross-holding/ 'control' will also be required to be incorporated in the Cable TV Networks Rules, Uplinking/Downlinking Guidelines and Policy guidelines for HITS.
- 2.8 At present, the aspect of ownership/ control over a company/ operator, engaged in a particular licensed / permitted activity in the media and, broadcasting and distribution sectors is a subject matter of the on-going consultations on media ownership also. In order to ensure that the principle remains the same across all the policies/ guidelines governing various segments of these sectors so as to help ensure a vibrantly competitive level-playing-field amongst various players and platforms of these sectors, a definition of 'Control' has also been proposed in the SCP. This definition is similar to what has already been recommended by the Authority in its recommendations on "Monopoly/ Market dominance in the cable TV services".
- 2.9 In view of the above, comments of the stakeholders were sought through the SCP in respect of the following modifications in the DTH Guidelines pertaining to cross-holdings/ 'Control':
- i. "1.4 The Licencee shall not allow any entity controlling Broadcasting and/or any TV channel distribution operator to control it.*
 - ii. 1.5 Any entity controlling the Licencee should not control any broadcasting and/or any TV channel distribution operator."*
- 2.10 Further, stakeholders were also required to suggest a suitable timeframe for existing broadcasters and DPOs to comply with the modified conditions.

Stakeholder Comments

- 2.11 In the comments/inputs received from the various stakeholders and the discussions during the Open House Discussions (OHD), a sizable number of the stakeholders have argued in favour of cross-holdings between distribution entities and broadcasting entities while some others have argued against it.
- 2.12 The arguments put-forward by the stakeholders in favour of cross-holdings are:
- i. DTH industry is marked by a requirement for huge investments over a long period which can only be provided by strategic investors. This requires*

flexibility to have a strategic investor, familiar with the nature of the business. Strategic investors with prior experience in the business leads to easy and speedy implementation of technological advances from day one rather than the learning curve required in a Greenfield venture.

- ii. Investment in the DTH industry is done by entities involved in the some part of the value chain of the media industry. It is natural for businesses to expand in related business, and therefore, any restriction of either 20% or any control will only retard the pace of growth of the DTH industry in India.
- iii. Existing TRAI Regulations and the Competition Act preempt any foreclosure effects that may arise out of vertical integration resulting in denial of carriage to rival content owners. It would purely be in the business interest of vertically integrated distribution platforms to offer diversified content in order to be relevant to a varied consumer base that characterizes India rather than only offer its own channels at the risk of being shunned by a majority of viewers. It does not appear that plurality is compromised by vertical integration.
- iv. Vertical integration and vertical mergers are less harmful than horizontal mergers. Unlike horizontal mergers, vertical or conglomerate mergers do not entail the loss of direct competition between the merging firms in the same relevant market. As a result, the main source of the anti-competitive effect in horizontal mergers is absent from vertical and conglomerate mergers.
- v. Vertical Integration presents the opportunity for efficiency enhancements that can provide benefits to the firms integrating and the consumers they serve.
- vi. A blanket prohibition on vertical integration may deny the opportunity to realize efficiencies and associated consumer benefits. Whereas, permitting vertical integration would provide incentives to invest and innovate.
- vii. In TRAI's recent consultation exercise on media ownership, majority of stakeholders had called for liberalizing the vertical restrictions in the DTH sector.

2.13 The arguments put-forward by the stakeholders against cross-holdings are:

- i. Cross holdings between broadcasters and service providers and amongst service providers themselves have become a serious issue of concern. To add to it, there is no 'Must Carry' obligation upon DTH service providers considering their channel carrying capacity/ bandwidth challenges.
- ii. Parity between equally placed stakeholders across the distribution chain including but not limited to pay TV operators such as digital and analogue cable MSOs, OTT platform needs to be achieved by applying similar principles.
- iii. The interpretation taken by the Authority of the term 'Control' and the ancillary terms, therein is comprehensive and shall sub-serve for the purposes of DTH License/ Guidelines. The definition of 'control' and its ancillary terms, as suggested by the Authority, should be adopted and the conditions pertaining to the cross-holdings in the DTH Guidelines may, therefore, be suitably modified.

2.14 Some other stakeholders have suggested that existing cross-holdings provisions in the DTH guidelines need not be amended/ modified. In case they are modified, then this should be made applicable to new licensees and not to existing licensees.

2.15 As mentioned earlier, this is a subject matter of consultation on media ownership issue. Some of the comments given by stakeholders in that context, which are relevant in this case also are as follows:

- i. The Government should allow vertical integration while putting in place rules that ensure that there is fair-play by such vertically integrated media groups and "third parties" are not treated unfairly or disadvantaged with this. There should not be any restrictions at level of ownership; instead there should be clear-cut rules in place at level of last mile to prevent abuse and to ensure last mile neutrality. In an era of convergence, media companies are required to leverage existing capacities and capabilities just in order to survive. If an entity is allowed to have such an interest, it must be along with strict common carriage regulations and close monitoring by the regulator to ensure that there is no abuse of market power.

- ii. Broadcasters should not be allowed to invest in distribution platforms like DTH, MSO, IPTV, HITS, Mobile TV and Broadband and vice versa. DTH Operators, HITS, MSOs, Mobile TV, IPTV operators also should not be investing in each other business. Restrictions must be put in place in respect of investment by the same Venture Capital (VC) and Foreign Institutional Investors (FIIs) in more than one media / broadcasting / Distribution Company.
- iii. There should be a cross holding restriction between broadcaster and distribution companies so as to avoid any creation of monopolies through vertical integration by the broadcaster. Any broadcaster having more than 20% equity in a company could block the content of a competitive broadcaster in the DTH distribution network by citing the reason of insufficient bandwidth. Similarly with more than 800 channels that are being broadcasted, similar anti-competitive behavior is possible from the broadcasters who may have a stake in DTH/MSO/Cable operators.

Analysis

Restructuring of cross-holding/'control'

- 2.16 Wide variations exist in the present policy framework on cross-holding. At one extreme, there are no restrictions on the cable operators while at the other extreme, there are strict restrictions on the HITS operators. The restrictions on DTH operators are somewhere in between. There is a need to bring in policy uniformity on cross-holding/'control' restrictions across the broadcasters and the DPOs. This is essential to ensure orderly growth of the broadcasting and distribution sectors.
- 2.17 **Accordingly, the Authority recommends uniformity in the policy on cross-holding/'control' between broadcasters and DPOs, and amongst DPOs, in the broadcasting and distribution sectors.**

Control

- 2.18 The first step in this direction would be to have a comprehensive definition of 'control' which can be uniformly applied across all policy frameworks for different segments of the broadcasting and distribution sectors.
- 2.19 In the recommendations on "Monopoly/Market dominance in cable TV services" dated 26.11.2013, the Authority has already worked out a comprehensive definition of 'control' for the cable TV sector. The Authority is of the view that the same definition can be adapted with suitable changes to cover entities in general, in the broadcasting and distribution sectors.
- 2.20 **Apropos the above, the Authority recommends the following definition of 'control':**

An entity (E1) is said to 'Control' another entity (E2) and the business decisions thereby taken, if E1, directly or indirectly through associate companies, subsidiaries and/or relatives:

- (a) **Owns at least twenty per cent of total share capital of E2. In case of indirect shareholding by E1 in E2, the extent of ownership would be calculated using the multiplicative rule. For example, an entity who owns, say, 30% equity in Company A, which in turn owns 20% equity in Company B, then the entity's indirect holding in Company B is calculated as 30% * 20%, which is 6%.** Or
- (b) **exercises de jure control by means of:**
- (i) **having not less than fifty per cent of voting rights in E2; Or**
 - (ii) **appointing more than fifty per cent of the members of the board of directors in E2; Or**
 - (iii) **controlling the management or affairs through decision-making in strategic affairs of E2 and appointment of key managerial personnel; Or**
- (c) **exercises de facto control by means of being a party to agreements, contracts and/or understandings, overtly or covertly drafted, whether legally binding or not, that enable the entity to control the business decisions taken in E2, in ways as mentioned in (b) (i) (ii) and (iii) above.**

For this purpose:

- (i) The definitions of ‘associate company’, ‘subsidiary’ and ‘relative’ are as given in the Companies Act 2013.**
- (ii) An ‘entity’ means individuals, group of individuals, companies, firms, trusts, societies and undertakings.**

Relevant Market

- 2.21 The uniform policy framework with regard to cross-holding/control restrictions mentioned above has to be in the context of a relevant market. The purpose of defining the relevant market is to measure the concentration and ensure that the market remains competitive. Therefore, the next logical step would be to define a relevant market.
- 2.22 The term ‘relevant market’ in general comprises the geographical area where the conditions of competition are distinctly homogeneous for interchangeable or perfectly substitutable products. Taking a cue from this broad concept, the Authority has already recommended the definition for the term ‘relevant market’ for the cable TV sector in its recommendations on “Monopoly/Market dominance in cable TV services”. The same definitions may continue for the cable TV sector. However, as mentioned above, in the present context, the MSOs and the HITS operators are to be considered as the same category of DPO. Therefore, for the purpose of measuring the market share in a relevant market, the combined market share of MSOs and HITS operators should be considered. For the DTH sector, the relevant market can be the entire country only as the services are on pan-India basis.
- 2.23 **Accordingly, the Authority recommends the following:**
- i. The State, with certain exceptions as mentioned in the Table 2.1, should be considered as the relevant market for assessing market share/ market dominance of MSOs (including HITS) in the TV channel distribution market.**

Table 2.1: Relevant markets for Cable TV channel distribution

1	Andhra Pradesh
2	Arunachal Pradesh
3	Assam
4	Bihar
5	Chhattisgarh
6	Delhi
7	Goa
8	Gujarat including UTs of Dadra & Nagar Haveli and Daman & Diu
9	Haryana
10	Himachal Pradesh
11	Jammu & Kashmir
12	Jharkhand
13	Karnataka
14	Kerala including UT of Lakshadweep
15	Madhya Pradesh
16	Maharashtra
17	Manipur
18	Meghalaya
19	Mizoram
20	Nagaland
21	Odisha
22	Punjab including UT of Chandigarh
23	Rajasthan
24	Sikkim
25	Tamil Nadu including UT of Puducherry
26	Telangana*
27	Tripura
28	Uttar Pradesh
29	Uttarakhand
30	West Bengal including UT of Andaman & Nicobar Islands

*Note: The state of Telangana has been included in the Table above, which was not figuring in the TRAI recommendations dated 26.11.2013 as its formation is a subsequent development.

- ii. In the case of DTH operators, the relevant market for assessing market share/ market dominance should be the entire country.
- iii. The market share of a DPO would be the number of active subscribers of that DPO, as a percentage of total number of active subscribers of that category of DPOs, in the relevant market. Here, active subscribers of a DPO would mean the subscribers who are registered with that DPO for provisioning of TV services and availing the same.

Broadcasters and DPOs to be separate legal entities

- 2.24 For ensuring a level-playing field between vertically integrated entities and independent entities (broadcasters/DPOs), it is necessary that vertically integrated broadcaster(s) and a DPO enter into agreement on arms length principle basis. Moreover, once the policy on cross-holding/control across broadcasters and DPOs is restructured, these entities may also be required to reorganize their company structure as well as their operations. In order to achieve this, it is important that the broadcasters and the DPOs are separate legal entities.
- 2.25 **Accordingly, the Authority recommends that Broadcasters and DPOs should be separate legal entities.**

Vertical/Horizontal integration

- 2.26 On analysis of stakeholders comments, it can be seen that one set of stakeholders are in favour of vertical integration. This set of stakeholders is of the view that vertical integration provides incentives to invest and innovate. Another set of stakeholders is concerned about the non-level playing field, monopolies, foreclosures etc. A third set of stakeholders are in favour of vertical integration with certain rules and regulatory checks to address the concerns that crop up because of vertical integration.
- 2.27 At present, the digitization of the cable TV network, in a phased manner, is in progress in the country. The cut-off dates for digitization of cable TV network in Phase I and II cities/ towns/ areas is already over. However, most of the cable

TV networks in these cities are still unidirectional and are not ready for triple play, including broadband and other interactive value added services. Conversion of these networks to bi-directional would require large investments and major upgradation. Till now, more than 20 million active subscribers are availing pay TV services through Digital Cable TV network in these cities. Further, digitization of the cable TV network in Phases III and IV areas is targeted for completion by 31st December 2014. Six private DTH operators are providing pay TV services to more than 37 million subscribers. In view of the increasing number of TV channels, specially HD channels, DTH sector requires further investments for augmenting satellite capacity and the distribution/ service network on the ground.

- 2.28 Market statistics indicate that the digital pay TV distribution market in India is still in a growth phase of its life cycle and requires lots of innovation and investment. For innovation, it is desirable that the producers of goods/ services (i.e. broadcaster in this case) have some direct access to end consumers so that they can understand the customer needs and produce the content accordingly. Further, during the growth phase, the internal accruals may not be sufficient to meet the capital investment required for expansion. One potential source for such capital can be the broadcasters, as they will be one of the beneficiaries of network upgradation and increase in channel carrying capacity of the distribution network.
- 2.29 In view of the above, a balance needs to be maintained between the conflicting need of large capital investment required for digitization and expansion of networks and promoting the efficiency in operations on the one hand and maintaining a level-playing field for competing broadcasters and TV channel distribution operators, on the other hand.
- 2.30 In case, cross-holding/'control' is permitted between broadcasters and DPOs, measures would be required to be put in place to address issues arising out of cross-holdings in order to provide a level-playing field to all service providers and ensure orderly growth of the broadcasting and distribution sector.
- 2.31 The Authority is of the view that rationalized and regulated vertical integration at this stage of the lifecycle, under close monitoring of the regulator is the need of the hour. Therefore, an asymmetric set of regulations may be required to be put in place. This, in effect, means that the vertically integrated broadcasters/ DPOs

would be subject to a additional set of regulations as compared to the non-vertically integrated broadcasters/ DPOs.

2.32 Accordingly, the Authority recommends the following:

- i. Rationalized and regulated vertical integration may be permitted between broadcasters and DPOs.**
- ii. The vertically integrated broadcaster or DPO, as the case may be, shall be subjected to an additional set of regulations vis-à-vis the non-vertically integrated broadcasters and DPOs.**

Restrictions on Vertically Integrated entities

2.33 The asymmetric set of regulations referred to above are basically intended to put in place a certain additional framework for the vertically integrated entities (broadcaster/DPO).

2.34 One of the main concerns arising out of vertical integration is that vertically integrated DPOs, while exploiting the features of vertical integration may become a dominant DPO in the relevant market and distort competition at the horizontal level. Here, a dominant DPO implies that, in a relevant market, the market share of such DPO, in its category, in terms of number of active subscribers, should not cross the threshold specified for this purpose. In the TV channel distribution market, the genuine competition at present is between the DTH and cable TV categories. Accordingly, it is necessary to restrict vertical integration of a broadcaster with any one DPO of any one category i.e. either DTH or cable TV. It will also help in ensuring that vertical integration does not result in reduction of horizontal competition.

Example: If in a market there are four DPOs-MSO A, MSO cum HITS operator B, HITS operator C and DTH operator D then a broadcaster can be allowed to have cross-holding/‘control’ only in any one of these DPOs i.e. either A or B or C or D. In order to ensure this restriction, it is also necessary that there should not be any kind of cross-holding/ ‘control’ amongst DPOs of different categories i.e. in the above said illustration, there cannot be any cross holding/‘control’ between A, B or C and D, while there could be controlling stakes amongst A, B and C subject to market share restrictions, as specified from time to time.

2.35 The Authority has, in its recommendations on “Monopoly/Market dominance in cable TV services”, already recommended that an MSO cannot acquire, inorganically, a market share of more than 50% in a relevant market i.e. in a State. It is natural that when an MSO (or MSO cum HITS operator) is vertically integrated with broadcaster(s), the market share restrictions should be made further stringent so that it does not exploit its dominance to the disadvantage of other independent players. The Authority is of the view that in a relevant market, a DPO should not be allowed to acquire, organically or inorganically, more than 33% of the market share. It would ensure that more than three players are operating in the relevant market.

2.36 **In view of the above the Authority recommends the following:**

i. The entity that controls a broadcaster or the broadcaster itself, shall be permitted to ‘control’ only one DPO (of any category i.e. either an MSO/HITS operator or DTH operator) in a relevant market and vice-versa.

ii. The entity that controls a vertically integrated DPO or the vertically integrated DPO itself, shall not be allowed to ‘control’ any other DPO of other category.

iii. If a vertically integrated DPO, while growing organically or inorganically, acquires a market share of more than 33% in a relevant market, then the vertically integrated entities will have to restructure in such a manner that the DPO and the broadcaster no longer remain vertically integrated.

2.37 While allowing vertical integration of a broadcaster with a DPO, it is important that the terms and conditions of the interconnection agreements of the broadcaster with a DPO vis-à-vis its integrated DPO are not to the disadvantage of the independent DPO. In order to achieve this objective, it is necessary that the commercial terms and conditions of the agreements are not only similar but comparable also. Therefore, a vertically integrated broadcaster should have only charge-per-subscriber (CPS) agreements with various DPOs which should be non-discriminatory. Further, the RIO of vertically integrated broadcaster should cover all scenarios for interconnection and the agreements with DPOs should be only on the terms specified in the RIO.

2.38 One of the main objectives behind allowing the vertical integration of a broadcaster with a DPO is to develop and expand the digital distribution network for TV channels. In order to ensure that a sizable portion of the channel

carrying capacity of the distribution network remains available for distribution of TV channels of competing broadcasters, it is necessary to restrict the self-utilization of the available capacity by a vertically integrated broadcaster(s). It can be either in terms of absolute number of channels or a percentage of the total channel carrying capacity of the distribution network. The Authority is of the view that the second option is better suited as the broadcaster needs to expand the capacity of the distribution network if it intends to expand its own operations.

2.39 A key argument against vertical integration of a DPO with a broadcaster is that such a DPO may provide access to its network to other competing broadcasters on discriminatory terms. The Authority is of the view that to prevent such situations, it is important that the DPO allows access to its network on a non-discriminatory basis to all the broadcasters and for that the access charge, if any, needs to be uniform. Here, the access charge means the charge levied by the DPO to recover the cost of re-transmission of a TV channel over its network. The vertically integrated DPO shall submit, with justifications, the details of the access charge to the Authority and, if need be, the Authority shall intervene.

2.40 **Apropos the above, the Authority recommends the following:**

- i. **A vertically integrated broadcaster can have only charge-per-subscriber (CPS) agreements with various DPOs which should be non-discriminatory.**
- ii. **A vertically integrated broadcaster shall file its RIO for its approval by the Authority. The RIO should cover all scenarios for interconnection and interconnection agreements should be only on the terms specified in the RIO.**
- iii. **A vertically integrated DPO will have to declare the channel carrying capacity of its distribution network. And, at any given point in time, it shall not reserve more than 15% of this capacity for its vertically integrated broadcaster(s). The rest of the capacity is to be offered to the other broadcasters on a non-discriminatory basis.**
- iv. **A vertically integrated DPO shall publish the access fees for the carriage of channels over its network. The access fee so specified shall be non-discriminatory for all the broadcasters. DPO shall file the specified access charge, with justification, with the Authority.**

Restrictions on Horizontal Integration

- 2.41 It is important that there is sufficient competition in the distribution sector. As mentioned earlier also, in the TV channel distribution market, presently, the genuine competition is between the DTH and cable TV categories. In the existing DTH guidelines, restrictions have been prescribed for a licensee for not holding equity beyond the specified threshold in a cable network company (cable sector DPO) and vice-versa. However, as these restrictions were placed on the companies, these were being circumvented. Similarly, in the HITS policy guidelines, restrictions have been specified for the HITS player for holding equity in a DTH company, beyond a threshold. Therefore, in order to make them effective, in letter and spirit, the restrictions should be prescribed based on entities controlling these operations. The meaning of an entity has already been defined in the definition of 'control'. There cannot be a common entity controlling a DTH operator and an MSO/HITS operator. However, as discussed earlier, MSO and HITS operators can have common control.
- 2.42 **Accordingly, the Authority recommends that any entity controlling a DPO or the DPO itself should not 'control' any DPO of other category. However, MSOs and HITS operators can have cross-holding/'control' amongst them, subject to market share restrictions, as specified from time to time.**

Time period for Compliance

- 2.43 In respect of time period required by the existing operators to comply with the modified cross-holding/'control' requirements, stakeholders have suggested varying timeframes, from as low as 3 months to as high as 5 years. It is a fact that such restructuring of cross-holdings/'control'/operations may involve a number of financial transactions and regulatory/legal clearances, for which adequate time period may be allowed to the vertically integrated entities to comply with the amended terms and conditions.
- 2.44 **Accordingly, the Authority recommends that vertically integrated entities be allowed a period of one year to comply with the amended cross-holding/'control' requirements.**

- 2.45 In order to bring consistency in licensing/ regulatory framework for various segments of the broadcasting and TV channels distribution sector, similar provisions applicable for cable network operators, broadcasters and HITS operators will also be required to be incorporated in the Cable TV Networks Rules, Uplinking/Downlinking Guidelines and Policy guidelines for HITS respectively. This is also important to bring clarity to existing as well as the prospective investors in these sectors. Similarly, a uniform definition of 'Control' across the licensing/ regulatory framework in the broadcasting and TV channels distribution sector is required.
- 2.46 **Accordingly, the Authority recommends that the policy decision on cross-holding/control to be appropriately reflected in all the existing rules/ policy guidelines/ licenses in the broadcasting and distribution sectors.**

Additional Regulations and Disclosures for vertically integrated entities

- 2.47 It has been discussed earlier that vertically integrated broadcasters and DPOs would be subjected to an additional set of Regulations. Also, certain Disclosure requirements would be prescribed by the Authority to closely monitor the conduct of vertically integrated broadcasters and DPOs. However, before the Authority comes out with Regulations or the Disclosure formats, the Government has to finalise the policy on the issues covered in these recommendations.
- 2.48 **After the decision of the Government on these recommendations, the Authority would finalize the additional set of regulations and disclosures for regulating the vertically integrated entities.**

Chapter 3

Summary of Recommendations

- 3.1 **The existing DTH Guidelines be reviewed and a new DTH licensing regime be put in place for issue of new licenses and migration of existing DTH licensees.**

License Period

- 3.2 **Under the new licensing regime for DTH, licenses should be issued for a period of 20 years. Upon request of the Licensee, the period of License may be renewed by 10 years at a time, on the terms and conditions specified by the Licensor in consultation with the Authority.**

Entry Fee

- 3.3 **A one-time entry fee of Rs. 10 crore should be charged in the new DTH licensing regime. The renewal shall be on the terms and conditions, including renewal fee, specified by the Licensor, in consultation with the Authority.**

License Fee

- 3.4 **The license fee in the new DTH licensing regime should be charged as 8% of Adjusted Gross Revenue (AGR) where AGR is calculated by excluding, Service Tax, Entertainment Tax and Sales Tax /VAT actually paid to the Government, from the Gross Revenue (GR).**
- 3.5 **The DTH licensees shall be required to pay license fee on a quarterly basis, the quantum thereof shall be equal to the actual license fee payable for the preceding quarter. The annual settlement of the license fee shall be done at the end of the financial year.**
- 3.6 **The annual License Fee shall be subject to a minimum of 10% of the Entry Fee.**

- 3.7 The license should include a provision that prescribes that the Licensor reserves the right to modify the License Fee as a percentage of AGR any time during the currency of the agreement.

The schedule of payment of License Fee should be amended accordingly.

Bank Guarantee

- 3.8 DTH licensees shall be required to furnish a Bank Guarantee for an amount equivalent to the estimated sum payable, equivalent to License fee for two quarters and other dues not otherwise securitized.
- 3.9 The bank guarantee should be valid for a year which should be renewed year-on-year basis in such a manner that the BG remains valid during the entire license period.
- 3.10 For new entrants, a BG for a fixed amount of Rs. 5 crore shall be taken for the first two quarters, and thereafter, for an amount equivalent to the estimated sum payable, equivalent to License fee for two quarters and other dues not otherwise securitized.

Migration Scheme and Migration Fee

- 3.11 Once the Government notifies the new DTH licensing regime, a DTH operator shall be allowed to migrate to the new regime at any time during the currency of its existing license. Before obtaining a license under the new regime, the DTH operator shall clear all the dues and fulfill all obligations under the existing license terms and conditions as well as those arising out of legal cases pending before various courts of law.
- 3.12 For the DTH operator whose license period under the existing DTH licensing regime has already expired on 30th September 2013, the effective date of new DTH license shall be 1st October 2013.
- 3.13 A 'migration fee' should be charged from existing DTH operators who wish to migrate to the new DTH licensing regime. The quantum of 'migration fee' should be arrived at as per the following formula:

Migration fee = [Entry fee in the new DTH licensing regime - (Entry fee under existing License/existing license period i.e. 10 years) x (No. Of years remaining in the existing regime at the time of migration)]

In this formulation part of a year is not to be counted.

Interoperability of DTH STBs

3.14 The license condition prescribed at clause 7.1 of the existing DTH Guidelines should be replaced with the following clause:

“The Set Top Box offered by a DTH service provider shall have such specifications as laid down by the BIS from time to time.”

3.15 BIS should come out with updated specifications for STBs from time to time and while doing so, BIS shall consult TRAI.

3.16 The license conditions should mandate the licensee to comply with the tariff order/scheme prescribed by TRAI for commercial interoperability.

Restructuring of cross-holding/‘control’

3.17 There should be uniformity in the policy on cross-holding/‘control’ between broadcasters and Distribution Platform operators (DPOs), and amongst DPOs, in the broadcasting and distribution sectors.

Definition of ‘control’

3.18 An entity (E1) is said to ‘Control’ another entity (E2) and the business decisions thereby taken, if E1, directly or indirectly through associate companies, subsidiaries and/or relatives:

(a) Owns at least twenty per cent of total share capital of E2. In case of indirect shareholding by E1 in E2, the extent of ownership would be calculated using the multiplicative rule. For example, an entity who owns, say, 30% equity in Company A, which in turn owns 20% equity in

Company B, then the entity's indirect holding in Company B is calculated as 30% * 20%, which is 6%.; Or

- (b) exercises de jure control by means of:
- (i) having not less than fifty per cent of voting rights in E2; Or
 - (ii) appointing more than fifty per cent of the members of the board of directors in E2; Or
 - (iii) controlling the management or affairs through decision-making in strategic affairs of E2 and appointment of key managerial personnel; Or
- (c) exercises de facto control by means of being a party to agreements, contracts and/or understandings, overtly or covertly drafted, whether legally binding or not, that enable the entity to control the business decisions taken in E2, in ways as mentioned in (b) (i) (ii) and (iii) above.

For this purpose:

- (i) The definitions of 'associate company', 'subsidiary' and 'relative' are as given in the Companies Act 2013.
- (ii) An 'entity' means individuals, group of individuals, companies, firms, trusts, societies and undertakings.

Relevant Market

- 3.19 The State, with certain exceptions as mentioned in the Table 2.1, should be considered as the relevant market for assessing market share/ market dominance of MSOs (including HITS) in the TV channel distribution market.
- 3.20 In the case of DTH operators, the relevant market for assessing market share/ market dominance should be the entire country.
- 3.21 The market share of a DPO would be the number of active subscribers of that DPO, as a percentage of total number of active subscribers of that category of DPOs, in the relevant market. Here, active subscribers of a DPO would mean the subscribers who are registered with that DPO for provisioning of TV services and availing the same.

Broadcasters and DPOs to be separate legal entities

3.22 Broadcasters and DPOs should be separate legal entities.

Vertical/Horizontal integration

3.23 Rationalized and regulated vertical integration may be permitted between broadcasters and DPOs.

3.24 The vertically integrated broadcaster or DPO, as the case may be, shall be subjected to an additional set of regulations vis-à-vis the non-vertically integrated broadcasters and DPOs.

Restrictions on Vertically Integrated entities

3.25 The entity that controls a broadcaster or the broadcaster itself, shall be permitted to 'control' only one DPO (of any category i.e. either an MSO/HITS operator or DTH operator) in a relevant market and vice-versa.

3.26 The entity that controls a vertically integrated DPO or the vertically integrated DPO itself, shall not be allowed to 'control' any other DPO of other category.

3.27 If a vertically integrated DPO, while growing organically or inorganically, acquires a market share of more than 33% in a relevant market, then the vertically integrated entities will have to restructure in such a manner that the DPO and the broadcaster no longer remain vertically integrated.

3.28 A vertically integrated broadcaster can have only charge-per-subscriber (CPS) agreements with various DPOs which should be non-discriminatory.

3.29 A vertically integrated broadcaster shall file its RIO for its approval by the Authority. The RIO should cover all scenarios for interconnection and interconnection agreements should be only on the terms specified in the RIO.

3.30 A vertically integrated DPO will have to declare the channel carrying capacity of its distribution network. And, at any given point in time, it shall not reserve more than 15% of this capacity for its vertically integrated

broadcaster(s). The rest of the capacity is to be offered to the other broadcasters on a non-discriminatory basis.

- 3.31 A vertically integrated DPO shall publish the access fees for the carriage of channels over its network. The access fee so specified shall be non-discriminatory for all the broadcasters. DPO shall file the specified access charge, with justification, with the Authority.**

Restrictions on Horizontal Integration

- 3.32 Any entity controlling a DPO or the DPO itself should not 'control' any DPO of other category. However, MSOs and HITS operators can have cross-holding/'control' amongst them, subject to market share restrictions, as specified from time to time.**

Time period for Compliance

- 3.33 Vertically integrated entities be allowed a period of one year to comply with the amended cross-holding/'control' requirements.**
- 3.34 The policy decision on cross-holding/control to be appropriately reflected in all the existing rules/ policy guidelines/ licenses in the broadcasting and distribution sectors.**

- After the decision of the Government on these recommendations, the Authority would finalize the additional set of regulations and disclosures for regulating the vertically integrated entities.
- Certain other modifications will also be required to be carried out in the DTH Guidelines and the license agreement to reflect the policy changes that have taken place since 2001, such as the broadcasting sector coming under the purview of TRAI/TDSAT, in 2004. In addition, taking into account these recommendations, the other provisions in the existing DTH guidelines which

have not been discussed here will also be required to be incorporated in the new DTH licensing regime with appropriate modifications.

Legend:

- *For the purpose of cross-holding/'control', a broadcaster includes the broadcaster itself, its subsidiary companies /associate companies/ companies of its relatives, its holding company and subsidiary companies /associate companies/ companies of its relatives of its holding company and any other broadcaster in its 'control'.*
- *For the purpose of cross-holding/'control', a DPO includes the DPO itself, its subsidiary companies /associate companies/ companies of its relatives, its holding company and subsidiary companies /associate companies/ companies of its relatives of its holding company and any other DPO in its 'control'.*
- *Vertical integration means a common entity, which can be a Broadcaster itself or a stakeholder having 'control' over the Broadcaster, "controls" a DPO in the same relevant market and vice versa.*
- *Horizontal integration means that a common entity, which can be a DPO itself or a stakeholder having 'control' over the DPO, "controls" the two categories of DPOs in the relevant market.*
- *Cross-holding means vertical integration; horizontal integration; or both.*
- *The two categories of DPOs are – (1) MSO/HITS operator and (2) DTH operator.*

Glossary

Sl. No	Abbreviation	Description
1	AGR	Adjusted Gross Revenue
2	BG	Bank Guarantee
3	BIS	Bureau of Indian Standards
4	CAM	Conditional Access Module
5	CAS	Conditional Access System
6	CI	Common Interface
7	CMTS	Cellular Mobile Telephone Services
8	CP	Consultation Paper
9	CPE	Consumer Premises Equipment
10	DoS	Department of Space
11	DTH	Direct-to-Home
12	DVB	Digital Video Broadcasting
13	ETSI	European Telecommunication Standards Institute
14	FBG	Financial Bank Guarantee
15	GMPCS	Global Mobile Personal Communications by Satellite
16	GR	Gross Revenue
17	HITS	Headend-in-the-Sky
18	IDTV	Integrated Digital Television
19	IEC	International Electrotechnical Commission
20	IEEE	Institute of Electrical and Electronics Engineers
21	ILD	International Long Distance
22	IPLC	International Private Leased Circuit
23	IPTV	Internet Protocol Television
24	ISO	International Organization for Standardization
25	ISP	Internet Service Provider
26	ITU	International Telecommunication Union
27	MIB	Ministry of Information and Broadcasting
28	MPEG	Moving Picture Expert Group
29	NLD	National Long Distance
30	OHD	Open House Discussion
31	OTT	Over the Top
32	PBG	Performance Bank Guarantee

33	PMRTS	Public Mobile Radio Trunking Service
34	SACFA	Standing Advisory Committee on Frequency Allocation
35	STB	Set-top-Box
36	TDSAT	Telecom Disputes Settlement and Appellate Tribunal
37	TRAI	Telecom Regulatory Authority of India
38	UASL	Unifies Access Service License
39	UL(AS)	Unified License (Access Service)
40	UL	Unified License
41	VSAT	Very Small Aperture Terminal
42	WOL	Wireless Operating License
43	WPC	Wireless Planning and Coordination

Reference from the Ministry of Information and Broadcasting

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सत्यमेव जयते

भारत सरकार
सूचना एवं प्रसारण मंत्रालय
शास्त्री भवन, नई दिल्ली-110001
GOVERNMENT OF INDIA
MINISTRY OF INFORMATION & BROADCASTING
SHASTRI BHAWAN, NEW DELHI - 110001

D.O. No.8/3/2013-BP&L

3rd September, 2013

Dear Mr Khullar,

As you are aware, the "Guidelines for obtaining license for providing Direct-to-Home (DTH) broadcasting service in India" were issued on 15.03.2001. The Ministry has so far granted licenses to six companies to operate DTH services in the country. The first DTH license was granted to M/s Dish TV India Pvt. Ltd. on 16th September, 2003.

2. As per clause 2.1 of Article 2 of DTH guidelines, DTH license is valid for a period of 10 years from the date of issue of Wireless Operational License to the DTH operators. The validity period of license of DTH operation of 10 years of one of the licensees is coming to end on 30th September, 2013.

3. The Guidelines for DTH License are silent on the course of action to be adopted after expiry of 10 years. In this regard, following issues entail consideration of the Authority:

- Whether the entry fee of Rs.10 crores is required to be paid again by DTH Company for the extension of validity period of DTH license? If not, then whether no entry fee is required or a modified entry fee is required to be levied. In case of requirement of modified entry fee, what should be the amount of entry fee?
- Whether the period of extension of validity of DTH license should be for another period of 10 years?
- Whether the bank guarantee of Rs.40 crores is to be renewed for the entire period of the license again on extension of validity period of license?

4. In case the recommendations of the Authority take time, the Ministry may be advised as to what should be the interim arrangement for continuation of services of M/s Dish TV India Pvt. Ltd. beyond September, 2013.

5. The Authority may furnish its recommendations as per Section 11(1)(a)(ii) of the TRAI Act, 1997.

Best Regards.

Yours sincerely,


(Bimal Julka)

Shri Rahul Khullar
Chairman
Telecom Regulatory Authority of India (TRAI)
Mahanagar Doorsanchar Bhawan
Jawaharlal Nehru Marg (Old Minto Road)
New Delhi-110 002.



सत्यमेव जयते

राजीव अग्रवाल, भा.दू.से.

RAJEEV AGRAWAL, I.T.S.

सचिव/Secretary

भारतीय दूरसंचार विनियामक प्राधिकरणमहानगर दूरसंचार भवन, जवाहर लाल नेहरू मार्ग,
(पुराना मिनटो रोड) नई दिल्ली-110002**TELECOM REGULATORY AUTHORITY OF INDIA**

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E-mail : secretary@traigov.in

F. NO. 24-01/2013-B&CS

Dated 11th September, 2013

Sh. Bimal Julka,
Secretary,
Ministry of Information and Broadcasting,
'A Wing', Shastri Bhawan,
New Delhi -110001.

Sub:Extension of DTH licence period - reg.

Dear Sh. Julka,

Please refer to your D.O. letter No. 8/3/2013-BP&L dated 3rd September 2013, addressed to Chairman, TRAI, wherein the Ministry of Information and Broadcasting (MIB) has sought recommendations of TRAI on certain terms and conditions for renewal of DTH licences, including an interim arrangement, since the first licence is due to expire on 30th September 2013.

2. Surely, MIB was well aware that the DTH licences would start expiring from 30th September 2013 onwards. What is more, we are given to understand that the first DTH licensee, M/s Dish TV India Ltd., has been pursuing the case for renewal of their licence with the Ministry since April 2013. However, MIB chose to refer the matter to TRAI only in September 2013 and that too less than 4 weeks before the first licence is due to expire. MIB knows full well that TRAI has to follow an exhaustive public consultative process before giving its recommendations. The time left now is simply not sufficient for TRAI to conduct full consultation process and give its recommendations by 30th September 2013.

3. Protection of the interests of the consumers is one of the mandates of TRAI. Accordingly, considering the large subscriber base of the said licensee, the Authority is of the view that, during the interim period, MIB may consider allowing the said DTH licensee to continue its operations/services on the existing terms and conditions subject to the following:

- a. The said DTH operator shall renew the existing bank guarantee.
- b. The Government shall take a suitable undertaking from the said DTH operator to ensure that once the final policy in this regard is laid down by the Government, the said DTH operator will comply with that policy for the interim period also. Any financial obligations arising from the change in policy shall also be honoured.

4. In accordance with provisions of the TRAI Act 1997, we shall start the consultation process immediately. However, it will take time before a consultation paper is released for stakeholders comments.

5. As per the practice, a copy of this letter is being placed on the website of TRAI www.trai.gov.in

with best regards,

Yours faithfully,

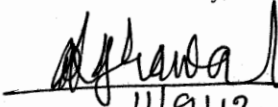

11/9/13
(Rajeev Agrawal)

Table -B

Details of Minimum required Equity, Minimum Network, Entry Fee, PBG, FBG and Application Processing Fee for various service authorisations

Sl No.	Service	Minimum Equity (Rs. Cr.)	Minimum Network (Rs. Cr.)	Entry Fee (Rs. Cr.)	PBG (Rs. Cr.)	FBG (Rs. Cr.)	Application Processing Fee (Rs. Cr.)
1	UL(All services)	25.000	25.000	15.000	220.000	44.000	0.010
Service Authorisation wise requirements							
1	Access Service (Telecom Circle / Metro Area)	2.500	2.500	1.000 (0.5 for NE & J&K)	10.000	2.000	0.005
2	NLD (National Area)	2.500	2.500	2.500	2.500	5.000	0.005
3	ILD (National Area)	2.500	2.500	2.500	2.500	5.000	0.005
4	VSAT (National Area)	Nil	Nil	0.300	0.500	0.300	0.005
5	PMRTS (Telecom circle/Metro)	Nil	Nil	0.005	0.010	0.010	0.0015
6	GMPCS (National Area)	2.500	2.500	1.000	2.500	1.000	0.005
7	INSAT MSS-R (National Area)	Nil	Nil	0.300	0.020	0.020	0.005
8	ISP "A" (National Area)	Nil	Nil	0.300	2.000	0.100	0.005
9	ISP "B" (Telecom circle/Metro Area)	Nil	Nil	0.020	0.100	0.010	0.0015
10	ISP "C" (SSA)	Nil	Nil	0.002	0.005	0.001	0.001
11	Resale IPLC(National Area)	2.500	2.500	1.000	2.000	1.000	0.005

Table C

Sl. No.	Type of Existing License	Rebate
1	ILD / NLD	Rs 12.5 lakh x No of years remaining for existing NLD/ ILD License validity.
2	UL(AS)/UASL/ CMTS in various service area	Rs 5 lakh for each service area except J&K and NE and Rs. 2.5 lakh J&K and NE service area x No of years remaining for existing UL(AS)/UASL/CMTS License validity subject to maximum limit of Rs. 15 crore.