



14th October 2013

Telecom Regulatory Authority of India,
Mahanagar Door Sanchar Bhawan,
Jawahar Lal Nehru Marg,
(Old Minto Road),
New Delhi-110002.

Sub: Response of the DTH Association on the Consultation Paper – 9/2013-
on Issue / Extension of DTH License

Attn: Mr. WASI AHMED

Dear Sir,

The DTH Association, comprising of six private DTH Service Providers, licensed by the Government of India submit their response to the captioned Consultation Paper for the consideration of the Authority. The response submitted is Without Prejudice of the rights of all individual service providers who may submit additional responses in addition to this response.

Preliminary:

At the outset we would like to take this opportunity to appreciate the endeavor put in by the Authority in seeking the consultation process for determining the issue related to the extension of the DTH License through the captioned consultation paper.

In the hindsight this issue would not have arisen but for obvious fact of absence of renewal clause in the License Agreement. Having said that we are of the view that the issue has been answered by the Authority on earlier



occasions as well and the Authority had actually streamlined the process further to renewal of any given license to existing players, like it has done whilst recommending the Policy for FM Radio Licenses and their renewals.

The use of Ku band was restricted until January 2001 under the Telegraph Act of 1885. On 9th January, 2001, the Government of India issued a notification, whereby the prohibition on the reception and distribution of television signals in the Ku Band was withdrawn. The issuance of the notification paved the way for introduction of DTH Services in India.

The Government of India issued guidelines for obtaining license to provide DTH Services in India in 2001 and has since amended the same in 2007. Terms & Conditions contained in the License Agreement are prescribed, which every DTH Service Provider has to adhere to. Noncompliance of the licensing conditions gives the right to the Government to cancel / revoke or suspend the license.

The fee prescribed by the Government – 10 crores for obtaining the license and a Bank Guarantee of 40 crores - valid during the tenure of the license – assures the Government of the credibility of the Service Provider. The fee is levied as an initial non-refundable entry fee. The DTH guidelines, after it was amended, did not contemplate that a fresh license fee would be levied on a service provider once he applied for renewal of his existing license. The amount of ten crores was a onetime entry fee and therefore now asking the service provider to pay any amount for renewing his existing license would be contrary to the guidelines. In addition, it would be casting further financial hardships to the service provider who has invested huge sums of monies to provide the service and compete with cable, particularly when digitization in the country is in progress.

Besides, the annual license fee is chargeable from all service providers ever since the launch of the service. While the issue of what portions constitute to make up the license fee is sub-judice and pending in the Supreme Court, the Service Providers have been paying the Government annually at 10%. This is despite the recommendation of the TRAI by its letter dated 15th April 2008, that license fee from DTH should be reduced from 10% to 6%. Copy of the letter is attached here as **Annexure A**.



Every DTH Service Provider, after obtaining his license, has invested vast sums of into the business to get subscribers. It has often been repeated and we reiterate it once again, the cost involved for providing the service to subscribers is very heavy. The reasons for this are mainly due to the following :

1. DTH is paying the Central Government Service tax at 12.36%. Apart from this, State Governments are levying Entertainment Tax, VAT and Entry Tax (in some States). The rates of these levies are not uniform and vary from State to State. Despite representations to the State and Central Governments to reduce these tax burdens, there is no positive movement for the benefits of the DTH industry.
2. The set top boxes that are made available to subscribers have to be imported and are heavily subsidized, in order to compete with cable effectively. This is because of lack of / non availability of quality set top boxes manufactured in India. The import duty on these set top boxes rose from 5% to 10% in the new budget (2013-14) – making it a 100% hike. Despite seeking a respite from the Government to roll back the import duty, the Government has once again chosen to remain silent.
3. Currently the DTH industry is incurring losses worth thousands of crores cumulatively, which needs to be taken into account whilst envisaging any provisions impacting the financials of a DTH Player. There are other outflow of taxes and other charges like the spectrum charges, NOCC charges, annual license fee, customs duty on imports, value added tax to name a few, which is making the entire DTH business economically unviable and it is high time that we strike balance and minimize the burden and allow it to at least sustain itself and recover the investments made into the business before it begins to recover.

Every DTH service provider has to contract with agencies for getting transponders for providing the service. Transponder costs are increasing, which is also affecting the service provider. Capacity constraints faced by the service provider is known to the Government and the Authority.



Nothing has been done to enhance the capacity for the service provider or address the issue on a more serious note. Lack of capacity effectively denies DTH the opportunity to carry more channels and be an effective alternate to cable, who are not dependent on transponders to carry channels.

We would like to further assert that the DTH unlike Telecom is not getting any natural resource (spectrum) along with license and once the DTH service provider commissions its DTH platform its operations start.

In the backdrop of the above, and despite the hardships faced by the DTH Service Providers, we now submit our response to the issues raised for Consultation:

1. Should an entry fee be charged at the time of issue of a new licence to the existing DTH licencees?

Response: It is our submission that an Entry fee for obtaining a DTH License must be charged to a new applicant wanting to provide DTH Service. This would act as a deterrent to potential persons who are not serious to provide the service.

In this regard we would like to state that the concept of Entry Fee is a one-time fee and not payable at the time of any renewal of the license. The words **“initial non refundable entry fee”** appearing in the clause 3.1 of Article 3 to the License Agreement clearly vindicate the stand that the entry fee is onetime and not repayable at any time thereafter including at the time of renewal of the License. As rightly observed by the Authority in the Consultation Paper on Issues related to Entry Fee and Annual License fee for ISP License with Virtual Private Network (VPN) dated 24th June 2005, the entry fee is normally determined with a view to attract new players, deter non serious players. We are one with the view of the Authority in this regard. The corollary of the above means the concept of Entry fee once paid as a non refundable fee has to be necessarily one time and is not supposed to be once again paid at any point thereafter including at the time of renewal of any kind of License. Similarly, the prime objective of the Entry Fee is to dissuade the non serious players and attract new and eligible players to boost competition with the existing players who are already in



the fray. We are of the view that the same principal applies to the DTH License as well.

In the Consultation Paper for Phase II FM Radio dated 14th April 2004 the Authority has rightly observed that Entry Fees are a onetime fees imposed by the Government to allow entry into the market and/or allocate licensees under competitive situations. Again the Authority is correct in expressing its view that if the entry fee levied at the time of granting the DTH license was solely to judge the seriousness of the entities seeking the DTH license and to cover the cost of inducting of a service provider, then at the time of issue of a new license to an existing licensee the entry fee ought not to be levied as the DTH operator has already proved its bonafides in the sector and the cost of inducting a service provider is not a recurring cost to the Licensor.

We further opine that the process envisaged under the License Agreement clearly sets out the chronological steps right from applying for a DTH license to the actual starting operations by the Licensee in coordination with the Licensor and as such once the operations and services are commenced there is no re-entry and consequently, we state that there is no question of any kind of modification to the Entry Fee at the time when the term of the License gets over and the DTH Service Provider needs to continue its operations as before. The maximum which could be done is to extend the term by an addendum to be executed between the Ministry of Information and Broadcasting and the Licensee and leaving all other clauses of the existing License agreement to continue as before.

During the initial period of the license, the service provider has been paying an annual license fee to the Government at 10%, despite recommendations of the TRAI that this should be at 6 %. This issue has been elaborately stated in paragraph 1.7 of the consultation paper.

In case an entry fee is to be charged, what should be the quantum of such entry fee?

Response: In our submission, the fee of ten crores being charged presently as an initial entry fee should be maintained. As elaborated above, for renewal there should not be any fee charged from the service provider as this is only a renewal of the existing license and not an issue where a fresh license is being issued. A service provider who has already been licensed by the Government should not be made to pay any fee for renewing his license after the initial period has expired. The Bank Guarantee provided at the time of obtaining a license may be renewed and kept alive during the period of license.

2.2 What should be the period of the DTH Licences to be issued to existing DTH licencees on the expiry of the licence period of 10 years?

Response: Providing services through DTH is capital intensive. Each of the service providers have invested about Rs 5000 crores already into the business. These investments are increasing and will continue to rise as costs involved in providing the services are rising. Despite the hardships faced by the DTH Service Provider, as detailed above, the number of subscribers opting to take a DTH connection is increasing. The assurance of quality and transparency in the operation of a DTH service are among the driving factors that tempt subscribers to switch to DTH.

We would like to elaborate the above response with the following justifications.

It would not be out of place to refer to the recommendation of the Authority for renewal in **FM Radio Broadcasting License**, where the Authority has also laid down in no uncertain terms the exact process of renewal. The observations of the Authority can be broadly captured as follows:-

- There should be provision for automatic renewal of permission to district level permission holder of FM Radio broadcasting.
- Interested permission holders shall seek extension in writing from Ministry of I & B 4 months in advance of expiry of their permission period.



- Ministry of I&B shall inform to such permission holders within one month from the date of application seeking extension of permission for another 10 years.
- The amount for extension of the permission for another 10 years shall be equal to initial bidding amount or the highest bid price in the same area (District), whichever is higher, provided such permission is not denied.
- Permission holder shall pay the required amount within one month from the date of receipt of such demands from Ministry of I & B.
- Ministry shall issue permission for extension of operation period for another 10 years in one-month time from the date of receipt of such payment.

Since the DTH services are of a nature where every service provider has invested huge sums of monies, the term of any license needs to be more than 10 years.. The DTH industry has now come a long way from the days when it was launched for the first time in the country. We would like to state that the periods for the FM Radio as well as for the Unified Licenses have been longer than the period of 10 years for DTH. Our view is that the period of 10 years is too short as it creates a certain amount of uncertainty in the operator's business model and inhibits future business planning which in turn could result in the reluctance on the part of an operator in deploying new technologies or undertaking long term capacity enhancement or big investment in the business. We are of the view that the short duration licenses are also not ideal from the point of view of consumers at large inasmuch as the same would be detrimental to the interests of consumers as the benefits of new technologies and innovations would be denied. Additionally, investors both foreign and domestic may want a certain minimum period which is not too low. Thus, our view is that the minimum period of the DTH License needs to be and should be 15 years with a certain renewal clause in the License Agreement.

DTH service providers who have been licensed to provide the service are paying an annual license fee of about 100 crores to the Government of India, despite the matter being subjudice. The investments made by the service providers into the business have to be protected. Keeping all these



factors in mind, it is our submission that the renewal of license already granted should be automatic for such periods that he discharges his obligations under the License Agreement signed with the Government.

2.3 What should be the period of extension/renewal of the licences, to be prescribed in the DTH Guidelines, for the extension/renewal of the new DTH licences on their expiry?

Response: The extension, as submitted above, should be automatic, so long as there is no violation of the terms and conditions of the license agreement by the service provider. The period of license should be such that only if the Government withdraws the license for DTH for reasons stated in the guidelines or the Service Provider wilfully defaults in adhering to the license conditions, should the license be revoked. Otherwise, in our submission, the license should be permanent once the same is issued to a service provider.

2.4 What should be the quantum and the validity period of the bank guarantee to be furnished by an existing DTH licensee on the issue of a new licence?

Response: Presently, the Bank Guarantee provided by the service provider is alive so long as the license given to a service provider is valid. It is our submission that the present quantum of the Bank Guarantee should be maintained, considering the burdens on a DTH service provider and for reasons stated more elaborately above.

Our view in this regard is that the Bank Guarantee needs to be refurbished once the period of the license expires. It needs renewal simultaneously along with the license itself. However, we opine that the value of such bank guarantee should be kept at 40 crores only as before valid during the entire period of the license term. The existing DTH players have proved themselves and there has not been a single occasion during the last decade when such bank guarantee was required to be invoked.

We repeat and confirm our submissions above that existing license holder's license are merely a renewal and not an issue of a fresh license. While renewing the license, the Government may seek fresh / renewed bank Guarantees of the ones already provided.

SUGGESTIONS:-

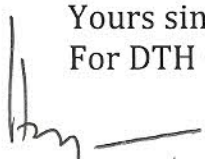


- a. There is no need for any modification to the entry fees (it being basically a onetime payment) enshrined under the License Agreement.
- b. The Bank guarantee can be refreshed and asked to be renewed with the same amount when the License Agreement expires due to efflux of time and the time of renewal of such License Agreement.
- c. It would be ideal if the Authority introduces renewal process for DTH as well and enshrine thereunder a period of renewal as 15 years.
- d. It is high time that we align all Digital Players policies on matters like entry fee, license fee, entertainment tax, SMS, other regulatory and legal regimes etc

Any other relevant issue you would like to comment upon

Response: Please see our preliminary submissions above.

Yours sincerely,
For DTH Operators Association of India


Harit Nagpal
President

Encl: aa

नृपेन्द्र मिश्र

Nripendra Misra

अध्यक्ष/Chairman

भारतीय दूरसंचार विनियामक प्राधिकरण

Telecom Regulatory Authority of India



D.O.No. 17-01/2008-FA
April 15, 2008

Dear Madam

This is with reference to your D.O. No.8/12/2006-BP&L.Vol.II dated 17th March, 2008 requesting TRAI to furnish its comments on Government's proposal for reducing the annual licence fee in respect of DTH service providers from 10% of GR to 6% of GR.

2. The Authority has considered the decisions/observations of the Government and its comments are enclosed as annexure with this letter. As you are aware section 11(1) requires the Authority to make recommendations on specified matters. **The decision of the Government should follow TRAI's recommendations.**

3. Your D.O. No. 8/12/2006-BPL&L.Vol.II dated 17th March, 2008 and the comments of TRAI on the issues raised in your letter under reply alongwith the text of this letter are being placed on the TRAI's website (www.traigov.in) for public information as per usual practice.

With regards

Yours sincerely,


(Nripendra Misra)

Smt. Asha Swarup,
Secretary,
Ministry of Information & Broadcasting,
Shastri Bhawan,
New Delhi.

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Comments of TRAI on reference made by the Ministry of Information & Broadcasting on the issue of reducing the Licence fee for DTH service Providers.

Issue 1: With reference to TRAI recommendation no 7.9 relating to rationalization of license fee and taxation the Ministry of Information and Broadcasting has conveyed its decision to continue with the concept of Gross revenue for the purpose of charging license fee.

TRAI's Recommendation 7.9

The Authority's Recommendation on the "Issues relating to broadcasting and Distribution of TV Channels" dated 1st October 2004 (Recommendation 7.9 - Rationalization of License fee and taxation) is reproduced below;

"a) A reduction of 2% in the license fee for DTH as already proposed by the Authority in its recommendations on "Accelerated growth of internet and broadband penetrations", in line with the reduction in the license fee given for other telecom operators.

b) The principle of application of license fee on the Adjusted Gross Revenue (AGR) as in the case of telecom may also be followed. The AGR in case of DTH service should mean total revenue as reflected in the audited accounts from the operation of DTH, as reduced by

- (i) Subscription fee charges passed on to the pay channel broadcasters;
- (ii) Sale of hardware including Integrated Receiver Decoder required for connectivity at the consumer premise;
- (iii) Service/Entertainment tax actually paid to the Central/State Government, if gross revenue had included them."

I&B Ministry's Decision:

After due consideration , it has been decided not to adopt the concept of AGR after allowing tax and other deductions as recommended by TRAI as allowing such deductions is likely to enable the companies to conceal their actual shareable revenue rather than making the system transparent. It has also been noted that TRAI has itself been proposing a percentage of gross revenue in its recommendations for other broadcasting services such as Mobile TV.

TRAI's Comments:

The Authority recalls its recommendations on the various issues of broadcasting sector where the Authority has recommended that the license fee shall be levied on the gross revenue .The Authority has further noted that since the beginning, the DTH service providers are required to pay license fee as a percentage of their Gross revenue. The I&B ministry has stated that the deductions proposed by the TRAI are likely to enable the companies to conceal their actual shareable revenue rather than making the system transparent .TRAI while analyzing this aspect agrees that the I&B ministry will have to scrutinize all the details of the revenues and deductions submitted by the DTH operators which not only will be time consuming but may also require skilled staff to ensure proper and legitimate revenue to the Government.

The gross revenue concept will make the calculation and verification of License fee straight forward through effectively discouraging scope for manipulating revenue figures. It is also noted by the Authority that the ministry has adopted gross revenue concept for other broadcasting services. Moreover, the pass-through of some components arising from interconnection mode as prevalent in telecom is not the key feature in DTH .**In view of above TRAI has no objection if the I&B Ministry continues with the concept of Gross Revenue for license fee.**

Issue 2: I&B Ministry has further sought comments on its proposal to reduce the License fee from 10% of Gross Revenue to 6% of Gross Revenue from DTH service providers.

I&B Ministry's Decision:

*The I&B Ministry **has decided** to reduce the license fee calculated as percentage of GR for DTH service providers to bring them at par with most of the other sectors. Since it **has been decided** to impose fee on GR instead of AGR it is therefore proposed to prescribe annual license fee as 6% of gross revenue instead of 10% of gross revenue as charged presently.*

TRAI's Comments:

The Authority would like to mention its earlier recommendations that the broadcasting services should not be treated as a major revenue stream for the Government. Imposing lower license fee on the service providers is likely to encourage higher growth. With increased growth, it would be a win- win situation for the industry and the Government. The earlier recommendation of 2% reduction was in the context of AGR as the principle for fee estimation. Perhaps the gross revenue concept would make a case for higher relief. **Therefore, the Authority is in agreement with the proposed reduction in license fee of DTH service providers.**