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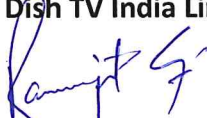
**Sub: Response of Dish TV India Limited to Consultation Paper dated 08.12.2021 on
Consultation Paper on Ease of Doing Business in Telecom and Broadcasting Sector**

Dear Madam,

We hereby submit our response to the TRAI Consultation Paper dated 08.12.2021 on
Consultation Paper on Ease of Doing Business in Telecom and Broadcasting Sector.

Thanking you,

Yours truly,
For Dish TV India Limited



**Ranjit Singh
Corporate Head – Secretarial, Legal and Regulatory**

Enclosed: as above

RESPONSE OF DISH TV INDIA LIMITED TO THE CONSULTATION PAPER DATED 08.12.2021 ON EASE OF DOING BUSINESS IN TELECOM AND BROADCASTING SECTOR

At the very outset, we, Dish TV India Limited, thank the Authority for coming up with this consultation paper as ease of doing business goes a long way in growth and development of the concerned sector which in turn has positive impact on all the stakeholders across the industry.

The 'Ease of Doing Business' implies much more than streamlining the procedural requirement as the very term has multi facet meaning and objective. The idea is noble and therefore to make it a success, there is an urgent need that impetus should be given on the wholistic implementation of the same. This should, in its ambit, cover laying down level playing field and non-discriminatory policies in order to establish a healthy, transparent transpiratory and effective competitive environment.

Also, this objective of easing down the business structures and policies can be achieved only with uniform licensing and regulatory requirement. Therefore, like in banking or insurance, there is an urgent need that uniform policies are applicable for all the stakeholder irrespective of whether there is a private player or a government organization.

While as a DTH operators, we are at the losing end on many fronts and the DTH operators, either jointly or otherwise have been raising these issues in various forums time and again, which issues are yet to be considered and decided. This is despite the fact that in the broadcasting industry, it was in fact the DTH industry which brought transparency in declaring the number of subscribers which ultimately led to digitization of the entire industry.

We are therefore of taking this opportunity to highlight the long pending issues which needs immediate and urgent redressal as a part of "ease of doing business" for the DTH operators, for the industry and for all.

1. DISCRIMINATORY LICENSE FEE REGIME FOR DTH CREATING NON-LEVEL PLAYING FIELD

TV Channels are distributed through various distribution platform operators (DPO) to the end consumers using various technologies, however, the content (TV Channel programme) remains unchanged. The present regime for the license fee is discriminatory against the DTH Operators and is designed to provide the leveraged position to Cable Operator, HITS, IPTV,, MSO and OTT platforms. On account of such additional burden the DTH subscriber is discriminated who has to bear higher burden, compared to cable/HITS subscriber.

Discriminatory license fee vis-à-vis other DPOs

The present licensing regime is against the DTH operators vis-à-vis other operators. The license regime with regard to similarly placed DPO's are tabulated in the table below:-

Parameters	DTH	MSO	HITS	Cable	OTT
Entry fee	<i>Rs 10 Crores</i>	<i>Rs. 1 Lakh</i>	<i>Rs. 10 crores</i>	<i>Nil</i>	<i>Nil</i>
Annual License Fee	<i>8 % of AGR, excluding only taxes</i>	<i>Nil</i>	<i>Nil</i>	<i>Nil</i>	<i>Nil</i>
Bank Guarantee (in Rs. crore)	<i>An amount equivalent to the estimated sum payable, equivalent to License Fee for two quarters and other dues not otherwise securitized</i>	<i>Nil</i>	<i>Rs. 40 crore (Refundable)</i>	<i>Nil.</i>	<i>Nil</i>
WPC license fee and royalty	<i>As prescribed.</i>	<i>Nil</i>	<i>As prescribed</i>	<i>Nil</i>	<i>Nil</i>

In this context it is pertinent to point out that HITS delivery platform is totally similar to DTH platform in as much as:

- (i) in the HITS platform the signals of TV channels are delivered through a satellite as in the case of DTH;
- (ii) both DTH and HITS are digital delivery platforms and have pan India reach;
- (iii) HITS can also be operated in Ku band as is the case with DTH;
- (iv) In both the distribution technologies the signals are delivered in an encrypted form which can be accessed by a viewer only through set top box.

While notifying the HITS policy, the Government did not levy any license fee on the ground that the service needs to be incentivized to bring down the cost of digitization of cable and to effectively compete with DTH while no such incentive/support has ever been provided to DTH sector which was the first sector to usher the era of digitization in this country.

DTH operators fall into the same category as other operators viz. MSO, HITS, LCO and OTT as all of them providing the same services and are competing for the same set of consumers. In such circumstances, imposition of higher license fee on DTH operators and providing exemption for others similarly situated operators, is highly discriminatory.

Thus, the current regime is arbitrary, unreasonable and discriminatory qua the DTH operators which denies level playing field to the DTH operators. All the DPO's are providing the same services in the form of same TV channels. However, the differential in license fee has created uneven playing field putting the DTH operators in disadvantageous vis-à-vis other DPO's. There is no reason or rationale for burdening the DTH Operators with the higher license fee as compared to its competitors.

2. EXCLUSION OF REVENUE FROM NON-LICENSED ACTIVITIES FOR CALCULATION OF AGR

DTH industry has long been requesting for rationalization of license fee and to make it applicable only on the revenue generated by services provided under the scope of the DTH license. While this is applicable for telecom sector since long, wherein various pass through

items were excluded for the purpose of calculation and determination of AGR, in DTH sector similar provision were introduced only in the recent amendments, however the scope of the same is still limited to taxes and levies payable to the Government.

Recently, DoT on 25.10. 2021, issued amendment in the Unified Access License conditions, which modified the definition of Adjusted Gross Revenue (AGR) to remove non-telecom revenues while calculating License Fee. The provision of Applicable Gross Revenue (ApGR) which has been introduced will be arrived at by removing the non-telecom revenues earned by Telcoms from their gross revenue such as property rents, dividends and interests for the calculation of AGR.

TRAI, in its letter dated January 8, 2020 addressed to MIB acknowledged the fact that the amount collected by the DTH operators for channel/bouquet subscription is broadcaster's revenue and the DTH operator's revenue is confined only to (i) distribution margin, (ii) Network Capacity Fee and (iii) revenue from value added services. Therefore, the license fee applicable for the DTH operator should also be limited to only the revenues earned under these three headers

In addition to the above, in the absence of any provision, the revenues earned by a company from non DTH related business are also amenable to license.

There is therefore an urgent requirement that similar amendments are made in the DTH license conditions by removing revenue not generated vide licensed activity as well as pass through items like content, for the calculation of License Fee and bring a uniform and Industry friendly licensing policy.

3. NETWORK CAPACITY FEE (NCF)

Under the new Tariff regime, TRAI fixed the Network Capacity Fee @ 130 (excluding taxes) for initial 100 channels considering the cost of carrying 100 SD channels by a distributor of television channels at around Rs 80/- per month and cost of other activities like subscriber management, billing, complaint redressal, call center etc. to be Rs. 50/- per month. Under the tariff Order, NCF slab was prescribed under which for an additional 25 SD channels each, beyond initial 100 channels capacity, Rs. 20/- (excluding taxes) was allowed to be charged by a DPO. During various discussion it was conveyed that these charges would be revisited considering how the market behaves and the factors impacting the cost of carrying business. In the Explanatory Memorandum to the Tariff Order, TRAI also stated that it will keep a watch on the developments in the market and may review the ceiling on the Network Capacity Fee in a time period of about 2 years.

After the implementation of new tariff regime, the distribution platform operators implemented the prescribed NCF. However TRAI in its Amended Regulatory Framework, increased the number of channels within the prescribed amount of Rs. 130 (excluding taxes) to 200 channels and that too excluding the channels mandated by the Government. In addition to the same, TRAI also prescribed a ceiling of Rs. 160 (excluding taxes) on NCF for more than 200 channels.

Therefore, for the last more than 3 years, there has not been any increase on the NCF. On the contrary the same has been effectively decreased. There is therefore an urgent need that the NCF should be increased.

4. REQUIREMENT OF TRAI REGULATIONS AND LICENSING PROVISIONS TO BE MADE APPLICABLE TO OTT PLATFORMS

We all are aware that OTT services have been proliferating at a very rapid pace and have become a part of life of a large sections of society in India. These are the services where the subscribers can avail the channels and content through internet on their mobile handset/computer or any digital display device through an application (app) e.g. Netflix, Amazon Prime, Hotstar, Voot, ZEE5, Sony Liv etc. With advent in the technology, now the subscribers are even streaming and projecting the content available through OTT from their mobile handset on the television screens.

TRAI in its presentation in 'The Claridges Hotel', Delhi on Regional Standardization Forum for Bridging the Standardization Gap (BSG) held on 20.09.2016 has acknowledged the following facts:

1. The rapid growth of OTT services has raised a number of national policy issues relating to regulatory imbalances & security concerns that need to be addressed.
2. The regulatory imbalances need examination at various levels by different agencies of Government.
3. In addition, public safety and privacy issues require attention.

We, therefore, take this opportunity to highlight that as in the case of consultation paper on the issue of renewal of DTH licenses, when the Authority *suo moto* and without any reference from the Ministry of Information and Broadcasting extended the scope of consultation to inter-alia cover various issues, the present consultation provides the Authority an ample opportunity to also include the broadcasting services provided by the OTT players within its ambit.

The policy guidelines for Uplinking and downlinking of channels as well as the TRAI regulations requires the broadcasters to provide its channels to the distribution platform operators. However, under the garb of the OTT services, the broadcasters are bypassing the regulatory provision and are directly distributing there channels. It is thus necessary that the broadcasters should be restrained from directly districting their channels through their OTT platform.

Another but more glaring issue to note in this regard is the pricing at which the channels/content is being offered by the OTT platforms. TRAI has always been of the view, and rightly so, that the content which are premium in nature and provided without any intervening advertisements, would be costlier than the other channels. We have witnessed this at the time of launch of the HD channels containing the high definition version of the same content but with no advertisement. These channels were launched at a higher price as compared to the standard definition version of the same channels. It is a different matter that the broadcasters who took the benefit of this leeway, later in started introducing commercial

advertisements also in the HD channels while continue charging higher prices for the same, but the fact remains that the HD channels were priced higher than the SD channels.

However, the situation is completely different in case of content/channels being provided by the DPOs vis-à-vis the OTT players. While the premium content/channels are provided by the OTT players without any advertisements and that too with value added features like pause, fast forward, repeat etc. at a much cheaper cost, the DPOs are providing the same at a much higher price without no scope for any value addition. This is a gross discrimination against the DPOs which needs to be corrected on urgent basis.

It is noteworthy in this regard that while the TRAI regulations have been made applicable for IPTV services by bringing them under the definition of distributor of TV channels, the OTT broadcasting services have completely been left untouched. In effect, the OTT services are a small segment of IPTV services with the only difference that while in IPTV service, the content as well the internet services provider is same whereas in OTT, the Internet service provider may not be the one which provides the channel and the content. Except this there is no other difference between these two services – technologically both the services are same. IPTV and OTT are technologies to deliver audio/visual content to users. Both technologies use the Internet to deliver TV and other audio/video content. Both IPTV and OTT are applications designed to transmit TV content over the Internet, which is an IP network, and hence have strong similarities at the Application Layer. Both require reliable data transfer and hence would employ TCP at the transport layer. Both are IP-based, and can also use the same DLL and Physical layer technology. Thus, the set of protocols, and hence the channel of transmission for both technologies is in terms of the set of protocols is the same.

The definition of IPTV as per the 2006 order by Government of India, Ministry of Information & Broadcasting (notification - F.No. 16/03 /2006-BP&L Vol.III, Ministry of I&B) states:

“IPTV (Internet Protocol Television) is a system where a digital television service is delivered using the Internet Protocol over a network infrastructure, which may include delivery by a broadband connection. A simpler definition would be, television content that, instead of being delivered through traditional format and cabling, is received by the viewer through the technologies used for computer network. In case of IPTV, it requires either a computer and software media player or an IPTV set top box to decode the images in real time.”

Clearly, as per the definition of IPTV services given by MIB, OTT falls under the definition of IPTV, since it delivers TV and other multimedia content using the Internet Protocol over network infrastructure. Therefore, the Regulations made by the TRAI in respect of IPTV services should be made applicable to OTT services as well.

5. PAY CHANNELS ON DD DIRECT PLUS DTH PLATFORM

Prasar Bharti launched ‘DD Direct Plus’, Government’s own DTH arm, in December 2004 after Cabinet approval was granted to launch DD Direct Plus. While one of the primary objectives of the vey need for creation of Prasar Bharti i.e. to pay special attention to the fields of education and spread of literacy, agriculture, rural development, environment, health &

family welfare and science & technology, the newest approach of Prasar Bharti is diluting the very same objective which is also causing imbalance in the DTH industry.

As a DTH platform, DD Direct Plus is akin to any other private DTH platforms which required a License from the Ministry of Information and Broadcasting under Section 4 of the Indian Telegraph Act, 1885 and it is a matter of record that such license was provided by the Central Government by way of a letter, post which DD Direct was granted a WPC License. While the DTH Platform initially was undertaking the function of distribution of Doordarshan channels, barring few private channels, and thereby effectively discharging the government functions. However subsequently, DD Direct started entered into commercial transactions to carry on its platform more and more private channels against payment of hefty carriage fee.

The issue, whether DD Direct Plus should be treated as a Licensee under Section 4 of the Indian Telegraph Act, 1885 or not, has long been decided by the Hon'ble Telecom Disputes Settlement and Appellate Tribunal in its judgment dated 15.12.2008 in the Petition No. 183 (C) of 2008 titled as Total Telefilms Private Limited vs. Prasar Bharati and Anr. wherein the Hon'ble Tribunal held that Prasar Bharati is a licensee u/4 of the Indian Telegraph Act and being a licensee Prasar Bharati is covered under the definition of 'Service Provider' in Section 2(j) of TRAI Act. The Hon'ble Tribunal further held that that the provisions of TRAI's regulations are applicable to Prasar Bharati as a DTH Operator. The above judgment was never challenged and has thus attained finality.

As long as DD Direct was furthering the welfare objective of the Government and thereby discharging the sovereign functions as a 'State' article 12 of the Constitution of India, it was understandable that the regulatory framework was not applicable to it totally. However, if an arm of the Government engages into commercial activities, the licensing and regulatory framework and other applicable laws of the land should be made applicable to the same and there should not any exception between DD Direct and private DTH operators.

Since as per the above judgment of Hon'ble TDSAT, TRAI's regulations are applicable to Prasar Bharati as a DTH Operator, it follows that all the Broadcasters are mandatorily required to offer their channel to all the DPO's on the same terms and conditions on which they are offering their channels to the DTH Platform of Prasar Bharati.

However contrary to the provisions of the regulations, on one hand, the pay TV broadcasters are offering their channels to DD Direct Plus completely at free of cost whereas they continue to charge other DPO's for the said channels. By doing this the broadcasters are offering their channels on differential terms, i.e, free for DD Direct Platforms and Pay for other DPO, which action is in complete violation of the extant TRAI Regulations. The provisioning of channels in Free to Air mode on DD DTH platform whereas charging customers of other DPO is not only discriminatory towards the platforms but is also a discrimination towards the consumers of such DPO's.

It is worth mentioning in this regard that the as per the extant Regulation, pay channel is defined as under:

“pay channel” means a channel which is declared as such by the broadcaster and for which a share of maximum retail price is to be paid to the broadcaster by the distributor of television channels and for which due authorization needs to be obtained from the broadcaster for distribution of such channel to subscribers;”

Similarly, the free to air channel has been defined as under:

“free-to-air channel” or “free-to-air television channel” means a channel which is declared as such by the broadcaster and for which no fee is to be paid by the distributor of television channels to the broadcaster for signals of such channel;

It is apparent from the above, a DTH operator has to pay to the broadcaster some price for availing its pay channel and it is only in the case of free to air channel that no charge is paid by the DTH operator or any other DPO. As a natural corollary, if a broadcaster offers its channel without any charge to a DPO, such channel is a free to air channel and such channel is required to be offered to all DPO's as Free to Air Channel. It is absolutely clear that a channel “CANNOT BE” a Pay Channel as well as a Free to Air Channel at the same point in time.

The Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017, requires every broadcaster make its offerings on the basis of fair, transparent and non-discriminatory terms and accordingly, no price can be charged by a Broadcaster from a DPO if the said Broadcaster is offering its channel free of cost to the DTH platform of Prasar Bharti.

In addition to the above, while the broadcasters charge MRP of the pay channels towards availability of the same on the DTH platform of the pay DTH operators, the same channels are made available on DD Direct's DTH platform by paying huge carriage fee. This is an apparent double whammy on the pay DTH operators which further magnifies the magnitude of discrimination.

The new tariff regime was the result of the observation made by Hon'ble TDSAT in the matter of Noida Software Technology Park Ltd. vs. Media Pro Enterprise India Pvt. Ltd. (NSTPL) & Ors. and other connected matters regarding the need to have a comprehensive restructuring of the Regulations wherein the Hon'ble Tribunal also held that reasonableness, parity and non-discrimination are essential and un-violable elements of an interconnect agreement and that provision of TV signals by a broadcaster to a distributor is mandated by the Regulations to be based on fairness, reasonableness, transparency and principles of non-exclusivity and parity.

However, the availability of pay channels on the DD Direct Plus DTH platform, absolutely at no cost is not only grossly illegal but has caused huge discrimination in the broadcasting and cable industry.

In view of the above, TRAI must issue immediate direction to the broadcasters to declare all channels which are available on DD Direct DTH platform as Free to Air Channels and offer the

same to all DPO's on same terms and conditions on which the said channels are being offered to DD Direct DTH Platform.

Apart from the above policy issues, we would like to highlight on some of the procedural aspect which also needs attention for to achieve the overall objective of 'ease of doing business' which are as under:

1. **Amendments in the requirement for submission of information on the BIPS portal:** The DPOs are required to submit monthly as well as quarterly information to TRAI. The process is being followed for long without any difficulty. Such information inter alia includes the broadcasters bouquets opted by the DPOs, DPOs own bouquets, subscriber number, costing, revenue etc. The same information is again required to be uploaded on the BIPS portal. However the procedure of uploading such information on BIPS portal is very exhaustive, tedious and cumbersome which require uploading of the price of each and every channel opted by the DPOs separately despite the same.

For the ease of submission of such information, TRAI therefore needs to relook at the way the information are required to be uploaded on the BIPS portal and should device a mechanism so that the required information can be submitted by uploading a pdf/excel sheet. TRAI may also make the process of online provision of monthly as well as quarterly reports.

2. **Toll free charges:** TRAI is aware that the DPOs, specially the DTH operators are paying hefty towards maintaining the call centre. In addition to the infrastructural cost required towards establishing and maintaining the call centres along with the cost towards human resources and other facilities, the DPOs are also required to pay the call charges w.r.t the calls made by the customer. While most the business engaged in provision of other services like banking industry, insurance industry etc. have made the calls of the customers chargeable, DPOs. Necessary amendments therefore needs to be made in this regard so that the requirement of toll free charges should be done away with.