

NDS Response to Consultation Paper on Headend-In-The-Sky (HITS) – No. 8 / 2007

Introduction

NDS believes in and has consistently promoted a level playing field for all types of delivery platform in India – using cable, DTH satellite, IPTV, microwave distribution, powerline, terrestrial, wireless and yet to be developed technologies.

NDS welcomes any regulatory development that will facilitate the growth of new free-to-air and pay TV services, provided that the regulatory development will not:

- significantly impair the ability of content providers and platform operators to make reasonable returns on their investments, nor
- significantly favour one type of service platform or delivery method over the others, or disfavour one compared to the others.

Response to Consultation Paper Questions

4.53 From the foregoing, the following issues have emerged for consultation:

4.53.1 What should be the scope of the HITS operations? Whether the scope of the HITS operator should include both the models as stated under heading “scope of HITS operation” in paras 4.5 and 4.6?

In this response, the generic term Managed Delivery Via Satellite (MDVS) will be used in place of HITS, since HITS is a registered trade mark for a specific US-based service in operation using specific business models and delivery technologies that are not necessarily the same as those proposed for India.

The scope of MDVS operations should include both the models stated and other models including, but not necessarily limited to, hybrids of these two models.

The definition of the scope of MDVS operations should be wide enough to allow any distribution by any satellite to any number of Cable Television Network headends and/or to any number of Internet Protocol Television (IPTV) Network headends.

As an example of the latter type of service, SES Americom offers its recently launched IP-Prime service to telecom service providers, rural telcos and private networks – see: <http://www.ip-prime.tv/ipprime/index.php> for details. Services include both simple

NDS Response to Consultation Paper on Headend-In-The-Sky (HITS) – No. 8 / 2007

bundled delivery of content to headends, for customers that will provide their own conditional access and middleware, and managed delivery to the set top box – see:

http://www.ip-prime.tv/ipprime/siteSections/overview/turnkey_solutions/index.php.

These two models are similar to those offered by Comcast's HITS¹ service in the US, the main difference being that IP-Prime delivers to telcos; HITS to cable operators. Note that these are not the same as the two models suggested in the Consultation Paper.

In both cases, the customer of SES Americom (be it telecom service provider, rural telco or private network) and the customer of Comcast maintain the commercial service relationship with the end subscribers for billing, local support and maintenance, and to meet US FCC regulatory requirements on telco and cable franchise areas.

4.53.2 Whether HITS operations should be allowed in C-band or in Ku-band or in both?

MDVS operations should be allowed in both and indeed in any other frequency bands for which sufficient capacity is or may be available with adequate coverage of India.

The distinction between this type of service and DTH should be made by reference to whom the service is offered, **not** by reference to technical parameters such as frequency band and effective isotropic radiated power (EIRP).

There is no need to constrain this type of service to be receivable on large antennas only. A suitable, agreed audit process of subscriber records from the central conditional access and subscriber management systems, together with subscriber records from the participating Cable Operators, can be used to ensure that only legitimate Cable Operators' subscribers receive the delivered content, or to track the number of direct subscribers, if any, as appropriate to the conditions of the MDVS licence.

¹ Comcast acquired AT&T Broadband in 2002 and HITS is now a registered trade mark of Comcast. The information on the US situation in the Consultation Paper is approximately five years old.

4.53.3 Whether a HITS operator should be restricted to offer services only to the cable operator? Alternatively, should HITS operator be allowed to serve the end customer also directly? If yes, then whether the restriction on DTH to service end customer only needs any review?

In order to provide a level playing field for DTH Operators, Cable Operators, IPTV Operators and Managed Delivery Via Satellite Operators, this should depend on and be considered with the other licence terms including those discussed in 4.53.1 above and 4.53.4 to 4.53.13 below.

For example, if the entry and licence fees are priced towards the lower end of the scale, or the balance of other regulations is more similar to cable than to DTH, then MDVS operations should certainly be restricted to offer services only to cable operators. In this case, the MDVS licence could be considered as an extension to, or a special class of multi-system Cable Operator licence.

On the other hand, if the entry and licence fees are priced towards the upper end of the scale **and** the overall balance of other regulations is more similar to DTH than to cable, then MDVS operations could be allowed to serve end customers directly. In this case, the MDVS licence could be treated like as an extension to, or a special class of DTH licence.

If the latter approach were taken (MDVS licence treated as an extension to or special class of DTH licence under the conditions above), then it should also be possible for DTH licence holders either to secure an MDVS licence for a very low or nominal fee, or to secure the removal of the restriction on DTH to service end customers only.

Taking another example from the US, where the MDVS type of service is most developed and most used, both US DTH platforms – DirecTV² and EchoStar³ / DISH Network – provide similar content distribution services to telcos including BellSouth and AT&T, in addition to their better known and much larger scale DTH services.

² SEC Report: <http://www.sec.gov/Archives/edgar/data/944868/000104746907001506/a2176097z10-k.htm>

³ SEC Report: <http://www.sec.gov/Archives/edgar/data/1042642/000095013407004997/d44219e10vk.htm>

NDS Response to Consultation Paper on Headend-In-The-Sky (HITS) – No. 8 / 2007

Whether or not DTH operators are allowed to offer MDVS services, the licence to provide MDVS services should not under any circumstances be allowed to become a “low-cost”, or “lightly-regulated”, or “backdoor” DTH licence.

4.53.4 What should be the limit of Foreign Direct Investment (FDI) for HITS licenses? Should there be any restriction on the maximum limit on the composite figure of FDI and FII?

In order to provide a level playing field for DTH Operators, Cable Operators, IPTV Operators and Managed Delivery Via Satellite Operators, this should depend on and be considered with the other licence terms including those discussed in 4.53.1 and 4.53.3 above and 4.53.5 to 4.53.13 below.

Any limits should be the same across all delivery media. The limit for this type of service should be no greater than the limit for DTH and no smaller than the limit for both cable and IPTV services and these three limits should themselves be brought into line to simplify the overall regulations and level the overall playing field.

Alternatively, if TRAI (or MIB) insists on maintaining different FDI limits for different types of delivery technology – which NDS sees no merit in – then if the entry and licence fees are priced towards the lower end of the scale, **and** the balance of other regulations is more similar to cable than to DTH, then the FDI limits should be more similar to cable.

On the other hand, if the entry and licence fees are priced towards the upper end of the scale, or the overall limit of other regulations is more similar to DTH than cable, then the FDI limit should be similar to DTH.

The same level playing field principles should apply to all limits on all forms and combinations of foreign investment.

4.53.5 What should be the entry fee and the annual license fee for HITS?

These should be determined using the principles set out in the responses to 4.53.3 and 4.53.4 above and should depend on and be considered with these terms and the other licence terms including those discussed in 4.53.1 above and 4.53.6 to 4.53.13 below.

There should be a level playing field across all types of delivery platform and no discrimination on balance either against any one type of platform or for another.

4.53.6 Whether HITS operator should be allowed to uplink from outside India also?

This should be determined using the principles set out in the responses to 4.53.3 and 4.53.4 above and should depend on and be considered with these terms and the other licence terms including those discussed in 4.53.1 and 4.53.5 above and 4.53.7 to 4.53.13.

There should be a level playing field across all types of delivery platform and no discrimination on balance either against any one type of platform or for another.

4.53.7 If yes, what are the safeguards needed for monitoring the system? What are the checks and balances required to be put in place to address the level playing field issue with the operators uplinking from India?

Unlike the situation with DTH, any MDVS type system involves an intermediary Cable Operator or IPTV Operator in Indian territory and indisputably subject to Indian laws and regulations as well as any additional State or Union Territory laws and regulations.

The presence of these intermediaries in significant numbers across India provides one very significant level of check and balance on content monitoring and technical service quality monitoring. With a simple transmodulator arrangement, as described in the Consultation Paper, it would be impracticable for a Cable Operator or IPTV Operator to remove a single channel without disrupting others. This would, however be an ultimate and drastic sanction, which could be undertaken at the request of a competent authority.

NDS Response to Consultation Paper on Headend-In-The-Sky (HITS) – No. 8 / 2007

The “fear” of this and of consequent loss of revenues from subscribers and advertisers should alone be enough to ensure that operators uplinking from outside India would very carefully comply with all the relevant laws, regulations and content norms.

4.53.8 Should any interconnection issues be addressed in licensing conditions?

This should be determined using the principles set out in the responses to 4.53.3 and 4.53.4 above and should depend on and be considered with these terms and the other licence terms including those discussed in 4.53.1, 4.53.5 to 4.53.7 and 4.53.9 to 4.53.13.

There should be a level playing field across all types of delivery platform and no discrimination on balance either against any one type of platform or for another.

4.53.9 Should spectrum charges be recommended to be done away with for HITS service provider?

This should be determined using the principles set out in the responses to 4.53.3 and 4.53.4 above and should depend on and be considered with these terms and the other licence terms including those discussed in 4.53.1, 4.53.5 to 4.53.8 and 4.53.10 to 4.53.13.

There should be a level playing field across all types of delivery platform and no discrimination on balance either against any one type of platform or for another.

4.53.10 Should there be any cross holding restriction? If yes, please suggest the nature and quantum of restrictions.

This should be determined using the principles set out in the responses to 4.53.3 and 4.53.4 above and should depend on and be considered with these terms and the other licence terms including those discussed in 4.53.1, 4.53.5 to 4.53.9 and 4.53.11 to 4.53.13.

There should be a level playing field across all types of delivery platform and no discrimination on balance either against any one type of platform or for another.

4.53.11 Should HITS operator be allowed to offer value added services?

This should be determined using the principles set out in the responses to 4.53.3 and 4.53.4 above and should depend on and be considered with these terms and the other licence terms including those discussed in 4.53.1, 4.53.5 to 4.53.10, 4.53.12 and 4.53.13.

There should be a level playing field across all types of delivery platform and no discrimination on balance either against any one type of platform or for another.

4.53.12 Whether “must carry/must provide” conditions be imposed on HITS operation?

They should not be imposed on MDVS, nor on any other platform. However, to the extent that they are applied to other platforms, they should also be applied to MDVS.

This should be determined using the principles set out in the responses to 4.53.3 and 4.53.4 above and should depend on and be considered with these terms and the other licence terms including those discussed in 4.53.1, 4.53.5 to 4.53.11 and 4.53.13.

There should be a level playing field across all types of delivery platform and no discrimination on balance either against any one type of platform or for another.

4.53.13 Whether a stipulated networth of specified amount be made as an eligibility criteria to avoid any non-serious applicant?

No, there is no precedent for this among the regulations for the other platforms.

There should be a level playing field across all types of delivery platform and no discrimination on balance either against any one type of platform or for another.

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10 August 2007.