

February 5, 2010

**The Secretary  
Telecom Regulatory Authority of India  
Mahanagar Door Sanchar Bhawan  
Jawahar Lal Nehru Marg  
New Delhi**

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**Subject: Supplementary Consultation Paper No7/2009 dated December 24, 2009  
on Tariff Related Issues for DTH Services (“Consultation Paper”)**

Dear Sir

Enclosed is our preliminary response to and recommendations regarding the above-referenced Consultation Paper.

We submit that we are filing this preliminary response “Under Protest and Without Prejudice” to our rights and contention in the Special Leave Petitions (SLPs) filed by IBF, Star Den and MSM Discovery Private Limited MSMD, before the Hon’ble Supreme Court against the orders of the Hon’ble Punjab and Haryana High Court in C.W.P. No.16097 of 2007, whereby the Authority had been directed to decide on the representation of Tata Sky Limited on the issue of price fixation for DTH services in terms of Section 11(2) of the TRAI Act and consequent to which the Telecom Regulatory Authority of India (“Authority”) has issued the Consultation Paper.

Yours truly,

**For STAR DEN Media Services Private Limited**



**V.SHYAMALA  
Head – Legal & Regulatory Affairs**

Enclosure : As Above

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**RESPONSE OF STAR DEN MEDIA SERVICES PRIVATE LIMITED ON THE SUPPLEMENTARY CONSULTATION PAPER NO 7/2009 ON TARIFF RELATED ISSUES ON DTH SERVICES DATED DECEMBER 24, 2009, ISSUED BY THE TELECOM REGULATORY AUTHORITY OF INDIA (“Authority”).**

At the outset we wish to reiterate our submissions in our Response to the Consultation Paper No 4/2009 dated March 6, 2009, on DTH Issues Relating To Tariff Regulation And New Issues Under Reference (“Original Response”) and once again stress our belief, that market forces provide the best form of regulation in an industry such as broadcasting, and legislative intervention in the form of tariff fixation should be restricted to incidences of proven market failure or when public protections are absolutely necessary.

**ISSUES FOR CONSULTATION**

**4.1.2 Whether there is a need to differentiate various packages for the purpose of wholesale tariff determination?**

**Comments :**

In the event the Authority decides to fix tariffs at the wholesale level, there is a need to differentiate various packages for the purpose of wholesale tariff determination for the following reasons :

- **Existing Regulatory framework restricts Broadcasters from seeking any preferred placement of its channels from the DTH Operators:**

Globally the broadcasters and DTH operators negotiate on the placement of channels on different packages and accordingly decide on the License Fee. However, the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation (“Regulations”) restricts the broadcasters from compelling any DTH operator to offer the entire bouquet or bouquets offered by the broadcaster to such operator in any package or scheme being offered by such DTH operator to its subscribers. This gives complete freedom to the DTH operators to decide the packaging and takes away the rights of the broadcasters to negotiate the same.

- **The package in which a channel is placed determines the subscriber base of the channel and hence gives DTH Operators the power to control the subscriber base of the channels :**

The entry level packages commonly termed as “Basic Package” comes with the DTH connection i.e every DTH subscriber has to compulsorily opt for any one of the Basic Packages to avail the DTH connection.

The “Add on packages” are those packages which can be subscribed for by the DTH subscribers at their choice at an extra charge. Unlike a Basic Package which the DTH subscribers have to avail compulsorily in order to avail the DTH connection, the DTH subscribers have the option to not avail the Add on Packages.

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Hence, the channels that are placed on the Basic Package enjoys higher subscriber base than the add on packages and is directly linked to the actual connections of a DTH operator. On the other hand, the subscriber base for channels placed in the Add on packages are lower than the Basic Package and is in no way linked to the connections of the DTH operator.

Since DTH operators have complete freedom to decide the composition of the both basic and add on packages, this places them in an advantageous position to drive the viewer ship and subscriber base of each of the channel. In fact since there is no "Must Carry" mandated by the Regulations, the DTH operators can also demand huge amounts as carriage fee to carry a particular channel. In fact, the decision of the DTH operators on the composition of basic and add on packages is to a large extent driven by the carriage fee that they can get from the broadcasters. DTH operators are in a position to demand higher carriage fee to carry a particular channel on a preferred entry level Basic Package.

Even while the Regulations requires the broadcasters to provide signals to the DTH Operators on a "Must Provide" basis in a non discriminatory manner, there is no statutory mandate the DTH Operators to carry and package the channels of broadcasters in a non discriminatory manner.

In fact, it is pertinent to highlight that the 'must provide' regulation was introduced to ensure that the end consumer gets the benefit of 'all the content on a non discriminatory basis'. However without a corresponding 'must carry', and exorbitant carriage fees, the very objective of the legislation is defeated. Hence, we submit that any public policy legislation that fails to meet its objectives should be either reviewed or modified to ensure the same is achieved.

**Viewer ship/Subscriber Base a very important consideration for tariff fixation for DTH Operators :**

The judgments of the Hon'ble TDSAT in ASC and Tata Sky cases three years ago, directing that rate to DTH operators should be 50% of non cas rate was only an ad-hoc measure. Even this ad-hoc measure was derived on the basis that 100% subscribers are paying the rate of subscription i.e all channels will be paid subscription fee for all the subscribers of the concerned DTH Operator. The judgments did not envisage a situation when channels are placed on add on package. Hence, if 100% subscribers of the DTH operators are neither subscribing nor paying for the channel, the whole basis of the 50% discount which was linked to volumes i.e subscriber base loses its sanctity.

The Authority while making the 50% rate the norm for DTH Operators, through its press Release dated 18<sup>th</sup> April 2008 (allegedly through general consensus) did not take into account the fact that the Regulations of 2007 empowered the DTH Operators with freedom to package at the retail level which was not prevalent at the time of the ASC and Tata Sky judgments.

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In this context we also rely on the findings of the Hon'ble TDSAT in Appeal no 10(C) of 2008 in M/s ESPN Software India Private Limited vs Telecom Regulatory Authority of India.

**4.1.2 If yes, how to define a basic package and add-on package for the purpose of wholesale tariff differentiation in relation to DTH services? Please elaborate your comments with appropriate reasoning.**

**Comments :**

We recommend the following definitions

“Basic Package” means the package of television channels which a DTH subscriber has to subscribe compulsorily in order to avail the DTH connection, without additional obligation to subscribe to any other television channel or package of television channels, and has the largest number of subscribers to the DTH Platform.

“Add On Package” means a package of television channels which is a direct buy through (i.e., there is no intermediary packages) from a Basic Package, at the option of the DTH subscriber for an additional charge.

In this context, we further submit that the Authority also needs to review clause 13.2A.13 of the Regulations, which stipulates the manner in which subscriber base is to be determined for the purpose calculation of license fee in the event the DTH operator subscribes for the channels on a-la-carte or bouquet basis.

In the event the Authority intends to fix tariffs and differentiate between “basic” and “add on” packages, it is necessary to determine the methodology for determination of subscriber base and the rate in the event the DTH Operator subscribes for the channels on bouquet basis from the broadcasters and places some channels of the concerned bouquet in the Basic Package and some channels in the Add on package.

**4.1.3 Whether there is a need for different wholesale price formulation for a TV channel/bouquet depending upon its inclusion in different packages offered to the subscribers by the DTH operators. You may also suggest any other option for differential wholesale price formulation. Please elaborate your comments with appropriate reasoning.**

**Comments:**

We submit that wholesale price determination should be left to negotiations between parties driven by market forces of demand and supply. As explained in our Original Response, since DTH is an addressable platform which offers viewers the option to exercise choice that enables them to subscribe for channels of their choice as per their needs and means. It

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would be highly impractical and counter productive to aspire to make available all channels to subscribers at a lower price. For example, a reader cannot expect to buy a best seller for the price of a daily newspaper.

We further submit that given the numerous packages that are offered by different DTH operators, it is highly impossible and impractical to design a ready made wholesale price structure for all the packages. Hence, there should be no restrictions on the whole sale pricing and broadcasters should be permitted to negotiate the whole sale price with the DTH operators basis the manner in which the DTH operator subscribes for the channels i.e a-la-carte or bouquet and the package in which DTH Operator intends to place the channels. This will also enable the broadcasters to design a reasonable discount structure after reviewing the subscriber base trend of each of the retail packages of the DTH operators and the subscriber base for each of the channels.

**4.1.4 If the wholesale price is to be linked with packaging of the TV channels then what should be the relationship between wholesale prices of a TV channel/bouquet offered by a broadcaster to a DTH operator, if the channel/bouquet is packaged as a part of a basic package, or as a part of add-on-package or both by a DTH operator? Please elaborate your comments with appropriate reasoning.**

For the reasons explained in the Original Response and the preceding paragraph, it is submitted that, wholesale price should be left to determination through negotiations and market forces.

**4.1.5 Why should not a DTH operator extend *a-la-carte* mode of service provisioning of a TV channel at the level of subscriber?**

Currently, the broadcasters are mandated to extend a-la-carte option to the DTH operators at the wholesale level. In order that the benefit flows to the end consumer, we submit the DTH operator must extend a-la-carte mode of service at the level of subscriber.

**4.1.6 Can the DTH operator offer a-la-carte option as one of the entry level options for subscribers?**

We do not see any reason for the DTH Operator to not offer a-la-carte as one of the entry level options for the subscribers. If the same can be offered as “add on”, it can be offered at the entry level as well.

**4.1.7 If the DTH operators are required to make available the channels on *a-la-carte* basis to the subscriber, then what could be the minimum number of channels and/or minimum subscription price and/or minimum subscription period for subscribing to the channels? Please elaborate your comments with appropriate reasoning**

DTH Operators must make available all the channels on a-la-carte basis. The subscription price should be left to market forces at both wholesale and retail level. However, if the subscription price is fixed at the wholesale level, it should be fixed at the retail level also.

- 4.1.8** In case of *a-la-carte* provision to the subscribers, should there be a maximum permitted time frame for servicing request of a DTH subscriber? If so what should be such time frame? Please elaborate your comments with appropriate reasoning.
- 4.1.9** In case of *a-la-carte* offering of any TV channel by a DTH operator, whether there is a need to identify relationship between wholesale and retail price of that channel? Please elaborate your comments with appropriate reasoning.

While our submission is to complete forbearance, however, in the event the Authority intends to fix the prices at both wholesale and retail level, there has to be a relationship between wholesale and retail price in case of a-la-carte offering.

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