

COMMENTS ON TRAI CONSULTATION PAPER No 4/2009
ON
DTH Issues relating to Tariff Regulation
&
new issues under reference
Lt Col (Retd) VC Khare

5.2 Tariff fixation for DTH services

5.2.1 Whether there is a need to fix tariff for DTH?

DTH has been promoted as a technically superior alternative to Cabled Broadcast Services across the country, delivering better picture and sound quality, subscriber system managed, revealing true connectivity, de-void of an intermediary, like a cable operator, who is branded inferior, and QoS compliant. Such superiority has to come at a cost. These costs, for the same content on cable TV networks, should naturally be different (higher or lower than Cable TV rates) depending upon market forces centering on judgment of users. Hence Govt involvement should only remain confined to facilitating licencing, sharing of revenue and recovery of taxes due. Therefore, there is no case for DTH tariff fixation by Govt. DTH Service providers must go out to customers and demand affordable tariff on merits of their superior quality and Govt support.

5.2.2 If yes, whether tariff regulation should be at wholesale level or at retail level or both, i.e., whether tariff should be regulated between broadcasters and DTH operators or between DTH operators and subscribers or at both the levels?

The answer is NO, hence no comments on 5.2.2.

5.2.3 Whether tariff regulation for DTH at wholesale level should be in terms of laying down some relationship between the prices of channels/ bouquets for non-addressable platforms and the prices of such channels/ bouquets for DTH platform? If yes, then what should be the relationship between the prices of channels/ bouquets for non-addressable platforms and the prices of such channels/ bouquets for DTH platform? The basis for prescribing the relationship may also be explained.

Before deriving any relationship, the basis for fixation of prices by the Broadcaster needs to be revealed. The cost has elements such as cost of content paid to the owner of content, up and downlinking operational expenses, inventory carrying costs of leased CPEs and reasonable contribution on these costs for the service provider distributed over number of 50 % TV homes in the foot print in India

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and neighbouring countries. Basic cost of the channel so derived can then be indexed on anticipated demand and price per subscriber arrived at. Layered with taxes, these would then be the prices chargeable to the end user. Since all content cannot be viewed at the same time on all TV receivers, the demand variation will be adequately compensated by the 50% factor mentioned above.

- 5.2.4 Whether tariff regulation for DTH at wholesale level should be in terms of fixation of prices for different bouquets/channels? If yes, then the prices for different bouquets/channels may be suggested. The methodology adopted for arriving at the prices for such bouquets/channels may also be elucidated. Further, the methodology to fix price for a new pay channel may also be given**

Wholesale level should be calculated backwards from the maximum retail price derived from the suggestion above. Since there are no intermediaries in DTH services, the difference so arrived at shall accrue to the DTH service provider. DTH being an addressable system with mandatory CAS, bundling should be prohibited. DTH subscriber too should have the option of 'a-la-carte' modes of ordering.

- 5.2.5 Whether retail regulation of DTH tariff should be in terms of maximum retail prices of various channels or is there any other way of regulating DTH tariff at retail level?**
Retail regulation should be on Maximum Retail Price (MRP) indexing system in view of absence of intermediaries in DTH business

- 5.2.6 In case DTH tariff is to be regulated at both wholesale and retail levels, then what should be the relationship between the wholesale and retail tariff?**

Fixation of MRP only is recommended. Wholesale price will depend upon deduction of incentive to service provider (DTH Operator) since there are NO intermediaries like Cable Operator.

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5.3 Comparison with CAS

- 5.3.1 Whether the basic features of tariff order dated 31st August, 2006 for cable services in CAS areas, namely fixing of ceiling for maximum retail prices of pay channels, at the level of the subscriber fixing of ceiling for basic service tier and standard tariff packages for renting of Set Top Boxes should be made applicable to DTH services also?**

CAS is mandatory in addressable uni-directional delivery systems like DTH and cable TV. Hence features should be alike in both platforms, including provision for 'a-la-carte' choice for DTH user. In order to eliminate issues of inter-operability, mini-dish antenna, LNB and connecting coaxial cable may be purchased by DTH subscriber, as part of installation charges, Set Top Box should be given on lease against a non-interest bearing refundable security deposit. The DTH subscriber would then have a choice of changing the Service. Should the subscriber desire viewing services from more than one service provider (subject to availability of satellite window to intended satellite from which alternate service is desired and pointing, manual or actuated, is feasible through CI module), terms would be settled for subscription (a-la-carte) with the alternative service provider and charged for. The subscriber should get itemized bill showing details of ordered channel charges, STB lease and maintainability service charges, taxes and so on.

- 5.3.2 Whether the ceiling for maximum retail prices of pay channels for DTH should be the same as laid down for cable services in CAS areas?**

No. Addressable cable networks (CAS notified areas) have intermediaries such as CAS Headend Operator and LCO. The

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ceiling fixation, with a bearing on revenue sharing by intermediaries, including cost of revenue collection, could be understood. But DTH has no intermediaries, the system is pre-paid and hence MRP fixation only is recommended. DTH, with mandatory CAS, is operative across the foot-print while CAS applies only to notified areas. The practice of comparison with Cable Systems must, therefore, cease.

- 5.3.3 Whether DTH operators should be mandated to provide a basic service tier of FTA channels and if so, what mechanism should be adopted by DTH operators to provide the service of unencrypted Basic Service Tier, which is available in CAS areas without having to invest in a Set Top Box?**

This issue is un-tenable. In cable systems, un-encrypted analog content and addressable encrypted digitally compressed content travel together on fiber and co-axial cable, which are transparent to both analog and digital transportation. Hence end-viewer can access un-encrypted analog train without a set top box, as per statute. DTH is NOT backed by any statute and operates only on guide lines, which are not statutory. Since CAS is mandatory in DTH, un-encrypted signal cannot be transported in DTH system. Hence STB for DTH viewing is a compulsion. Investment in set top box is an off-shoot of business practice and NOT technology. DD Direct is a service without CAS, contrary to guidelines, but still requires investment in a KU Band receiver. Hence an interface for consumer's TV set to view digital signals remains a technical compulsion. If DTH operator is required to transport un-encrypted analog content, the stipulation of mandatory CAS shall have to be repealed, but technically the requirement of an interface cannot be dispensed with. Un-encrypted service without requirement of a set top box would imply loading transponders with a single program, which will be cost prohibitive in DTH business.

- 5.3.4 Whether the DTH operators should be required to make available the pay channels on a-la-carte basis to the subscribers as the**

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Cable operators are required to do in the CAS areas?

Yes to create a level playing field with Cabled TV services whenever service with addressability and SMS is provided.

5.3.5 Whether standard tariff packages for renting of Set Top Boxes should also be prescribed for DTH operators?

QoS guide lines for DTH have provided for outright sale, hire-purchase and leasing of Set Top Boxes in DTH services. Since STBs with CI module for interactivity and VAS are being talked about, existing provisions are considered adequate to mitigate DTH viewer being required to invest upfront for CPE.

5.4 Other Relevant Issues

5.4.1 Whether the carriage fee charged by the DTH operators from the Broadcasters should also be regulated? If yes, then what should be the methodology of regulation?

Carriage fee is a fall-out of bandwidth constraint on the transponder for DTH against visibility of content on a poorly designed cable TV network transporting analog signal. In cable TV, Broadcasters desire visibility to attract advertising revenue for themselves, and hence pay a premium for visibility as deep in the cable network as possible. In case of DTH, it is a matter of availability of a place on scheduled priorities, in statistical multiplexing, for good quality vision (free from artifacts, jitter and freezing). As such this practice cannot be stopped. This factor can be engineered in the MRP fixation, suggested earlier in these comments.

5.4.2 Whether any ceiling on carriage fee needs to be prescribed? If yes, then whether the ceiling should be linked with the subscriber base of the DTH operator or should it be same for all DTH operators?

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No ceiling needs to be fixed. Potential subscriber base for a DTH foot print is the number of TV homes in the coverage area (NOT cable homes). At least 50% of this figure should form the basis for calculation of pricing of content and determination of MRP. It will automatically become the same for all DTH operators.

5.4.3 Comments may also be offered on the prayers made in the writ petition of M/s Tata Sky Ltd.

Issues raised by TATA Sky reflect frustration against intended penetration in areas, where Cable TV provides same content at a more affordable price to the customer, preference of cable TV services (QoS), in terms of personalized proximity of technicians, cable casting of latest movies at no extra cost and some local coverage. Further, it appears to be aggravated by the fact that, according to information available in public domain, the service is running in loss. Business arena of DTH has advantage over Cable TV in areas where cable TV is non-existent. DTH can have a different pricing package for such areas since they will not be compared. As far as comparison with CAS notified areas is concerned, Rs 5.00 per channel was fixed after defiance in declaration of 'a-la-carte' rates by PAY TV Broadcasters by due dates in 2003 and 2006. Rs 2.25 per channel is what broadcaster gets out of Rs 5.00 per channel out of amount chargeable from the CAS subscriber, rated as Rs 5/- per channel, with 'a-la-carte' option, and NOT bundling, in DTH. Since DTH is being propagated as superior service, the charges should naturally be higher for marketing teams in DTH to recover from service provider (on the analogy of any Indian cooked food dish sold at different rates in a road side dhaba and a 5 star restaurant). The core issue here is the basis for determining the cost of PAY TV content by the Broadcaster. Some elements of this mechanism, for example, are as under :-

- (a) Price of a 30 minute episode paid to content owner.
- (b) Cost of satellite casting to viewership (DTH+CABLE+IPTV) – to be computed from 50% of the data of cable homes+100% of DTH homes +100% of IPTV homes)
- (c) Cost of turn around transportation – Per subscriber per channel cost in Cable TV, DTH and IPTV.

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- (d) Carriage fee paid by the same content to Cable TV Headend, DTH Earth Station and Central Office in IPTV.
- (e) Sum of (b)+(c)+(d) distributed over 50% cable homes + 100% DTH and IPTV homes) to arrive at average per potential TV home cost.
- (f) 40% mark up on (e) above to arrive at maximum chargeable rate by satellite casted pay content for Cable TV DTH and IPTV.
- (g) This figure to be reduced by 25% because of commercial breaks in the content air time yielding advertisement revenue.
- (h) Figure to be marked up by number of repeats in a day (i.e. time allocated out of 48 x 30 minute slots). The figure so computed will suggest MRP to customer to be weighted against TRP.
- (i) Such computations can give a fair idea of reasonable charges for content for a study on realities. These computations are based on tangible figures from documents. Further, they will vary according to genre and may reduce the heart burn of DTH operators.
- (j) All taxes will naturally be charged extra and mentioned in the interconnect agreements and billing transactions.

Regarding packaging of Set Top Box, one problem is a dynamic location of STB. In cabled connection, STB resides on a known location on a fixed network. In DTH, STB (with or without dish) can be moved out from the place where installed. Hence security of the STB, particularly if it is leased or provided on hire-purchase, remains problematic.

Regulation of Pay TV rates for content to DTH service providers will get solved by market dynamics if 'a-la-carte' choice is provided to the user, against DTH operator's thrust of bundles, and rates making business sense for service provider and value sense for the user. Any consideration based on genre will only promote bundling, contrary to 'a-la-carte'

6.1.5 (a) Whether Movie-On-demand, Video-on-Demand, Pay-per-view or other Value added services such as Active Stories should be recognized as a broadcast TV channel?

While DTH and Cabled TV constitute multi channel broadcast, at present CAS Service providers and DTH Operators are not treated as broadcasters since they are not generating original content. They are aggregating content from licensed broadcasters and re-transmitting the same. All the items listed above shall fall under

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the category of stored content delivered as unicast or, at best, time deferred access.

Hence Movie-On-demand, Video-on-Demand, Pay-per-view or other Value added services such as Active Stories cannot be recognized as broadcast channel because these shall not fall under the 'One to Many at the same real time'.

(b) In case these are termed as broadcast TV channels, then how could the apparent violation of DTH license provision (Article 6.7, Article 10 and Article 1.4), Uplinking and Downlinking guidelines be dealt with so that availability of new content to Consumer does not suffer for want of supporting regulatory provisions?

There is no case for such content to be treated as broadcast TV channels. Such content would be exclusive, PAY and for a particular demand to be viewed in viewer's own time. Further such content would differ from DTH operator to DTH operator. However, this should be termed as DTH Service provider's exclusive content, to be granted special permission under the licence covering uplinking and downlinking permission for viewers in the foot print of that particular DTH service provider.

c) What should be the regulatory approach in order to introduce these services or channels while keeping the subscriber interest and suggested alterations in DTH service operations and business model?

Each DTH operator obtains requisite permissions to offer such services and these services are not treated as broadcasting channels, but merely as value added services. Provision may also be made to keep such content to be devoid of commercial advertisements. However, the requirement of keeping 90 days record of such content must be applicable to such content labeled with date and time of downlink and ID of the user.

d) In case these are not termed as broadcast TV channels, then how could such a channel be prevented from assuming the role of a traditional TV channel? How could bypassing of regulatory

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**provisions- Uplinking/ Downlinking, Programme Code, and
Advertisement Code be prevented?**

Movie-On-demand, Video-on-Demand, Pay-per-view or other Value added services such as Active Stories, will have to be delivered to specific subscriber IDs only at their choice as 'UNI CAST ON DEMAND PAY TV'. In such a case, all subscription packages to the subscribers shall need to present an option where any subscriber is free to choose the offer with or without these services. The responsibility for Programme Code may have to be cast upon the DTH operator, except where content has been certified by competent agencies such as Censor Board etc. Such content should be mandated to be flagged with VSLDF coding (i.e. V-Violence, S-Sex, L-Language, Dialogue and FV-Fantasy Violence), on 1 to 5 point rating by the DTH Service providers at ingest level. Such content delivery must be prohibited from advertisements insertion to relieve the liability from Advertisement Code. Such content may be defined as 'Exclusive content from the storage bank of the particular DTH Operator, not constituting Turned Around Re-Broadcast TV content, distinctly different from Broadcast TV channels. The number of such services may grow each day and, therefore, periodic review would be required.

(e) Whether it should be made mandatory for each case of a new Value added service to seek permission before distribution of such value added service to subscribers? Or whether automatic permission be granted for new services on the basis that the services may be asked to be discontinued if so becomes necessary in the subscribers' interest or in general public interest or upon other considerations such as security of state, public order, etc.?

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The permissions should to be granted, in principle, for the first time, with amendments endorsed in the licence, against a set of similar Services or channels, and be deemed extended universally to subsequent proposals on similar lines. Allowing only post-facto reporting for purposes of documentation after the commencement of service.

f) In view of above, what amendments shall be required in the present DTH license conditions and Uplink/ Downlink guidelines?

Article 10.1 may be amended to read 'The DTH facility shall not be used for other modes of communication, including voice, fax, data, tele-communication, Internet, etc. unless specific license for these value-added service has been obtained from the competent authority. However, DTH facility may be used to transmit 'UNICAST ON DEMAND VALUE ADDED PAY TV SERVICES', exclusively broadcasted by the DTH operator for their registered subscribers, with a unique ID, when such permissions have been endorsed in the licence conditions by the competent authority.

g) How could the selling of advertisement space on DTH channel or Electronic Program Guide (EPG) or with Value added Service by DTH operators be regulated so that cross-holding restrictions are not violated. In this view, a DTH operator may become a broadcaster technically once the DTH operator independently transmits advertisement content which is not provided by any broadcaster. How could the broadcaster level responsibility for adherence to Program code and Advertisement Code be shifted to a DTH operator, in case the operator executes the sale and carriage of advertisements?

Advertisements embedded in satellite casted content, created and downlinked by Broadcaster, shall be treated as primary content from which ripping of advertisements may or may NOT be permitted in the interconnect agreement. EPG or Value added services are generated at the Earth Station of the DTH Service Providers. Such a content should be prohibited from carriage of advertisements because these are paid services by the viewer who would NOT like diversions such as advertisements on paid content viewing.

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h) Traditionally advertisements as well as program content fall in the domain of the Broadcasters. In case, DTH operator shares the right to create, sale and carry the advertisement on his platform, then the channels are necessarily distinguished on the basis of who has provided the advertisement with the same program feed. In what way any potential demand to supply clean feed without advertisement by a DTH operator is attended to (by a broadcaster)? Should 'must provide' provision of the Interconnect Regulation be reviewed, in case supply of clean feed is considered necessary?

DTH Service provider should not be allowed to rip advertisements from Broadcast content turned around at their Earth Station. 'UNICAST ON DEMAND VALUE ADDED PAY TV SERVICES' originating at DTH Earth station, or delivered through storage devices thereat, should be prohibited from carrying any advertisements. This will relieve the DTH service provider from the accountability in terms of Advertising Code.

6.2: Radio channels on DTH services

(a) Whether carriage of radio channels by a DTH operator be permitted? Should such permission cover all kind of radio channels to be carried?

Only satellite casted Radio Channels, NOT terrestrially broadcasted digital or analog, may be turned around and permitted on DTH platform. Terrestrial Radio content if allowed to be delivered on DTH or National wire line TV (IPTV and CATV), shall violate the license condition of territory.

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(b). In case this is permitted, whether DTH license, Uplink/ Downlink guidelines, Conflict of business interests conditions with existing radio system operators, should be amended keeping in view, the incumbent or new DTH operators?

Permission to carry Satellite casted Radio Channels should be backed up by signed inter-connect agreements between the DTH Service provider and the DTH Operator, like the agreements between Satellite TV Broadcaster and the DTH Operator.

(c). If so, what changes are needed in the existing regulatory provisions so that the general policy of must provide and a non-discriminatory offering of channels be extended to between radio channels and DTH operators?

Satellite casted Radio Channels may be exempted from 'Must Provide' category and DTH guide lines should specifically include this content