

Consultation Paper No. 8/2007

Response to TRAI Consultation Paper

On

Headend-In-The-Sky (HITS)



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WWIL Response to Consultation Paper issued by TRAI on HITS

- Because of severe capacity constraints in analogue cable distribution, digitalization of cable networks is inevitable. It is of utmost importance that the digitisation of the cable system should be pragmatic and profound which addresses the issues of country wide roll out (though in a phased manner) so as to bring consequent cost benefits to enable opening up the market for new digital usage, competition and advent diverse innovative processes.
- The main objective of initiation of digitalization is to ensure that the country remains attractive as an investment destination, provides for optimal bandwidth usage, growth in terms of introduction of value added services and the Indian companies / the service providers are not left behind in adopting latest technologies in broadcasting & distribution sector. Not only this, digital broadcasting will promote growth and employment in this dynamically developing sector.
- We would like to mention that significant cost savings can be made with appropriate selection of technologies of delivering broadcast signals which would result not only in lower investment in digital headend infrastructure at cable operator level but also ensure quality delivery throughout the country. Headend-In-The-Sky (HITS) is one such mode which confers benefits of wider reach even in far- flung and rural areas and also ensure digital delivery in most effective and economical manner. With HITS technology, the digitization can be achieved throughout the country at one stroke

and with an investment far lower than what is needed to establish terrestrial digital headends in each city.

- Selecting HITS based delivery technology paves way for uniform delivery of signals throughout the country with high flexibility and low cost per headend. It also provides for easy migration of customers from city to city as well as protection of investment in Customer Premises equipment (CPE).

In the above mentioned background, the Consultation Paper issued by TRAI is quite timely and seeks to address various technical, policy and regulatory issues pertaining to HITS services.

Our response to various issues raised in the Consultation Paper is being given hereinafter:-

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?

Response:

- In the Consultation Paper two kinds of models for HITS operation are being envisaged. In one model, the HITS operator contacts with different broadcasters for buying content, aggregates the same at an earth station and then uplinks with his own encryption to a satellite hired by him in the sky. The uplinked channels are then permitted to be downlinked by the cable operators using a large dish antenna for onward distribution through last mile cable

network to the TV homes. In this model, the HITS operator works like a conventional MSO.

- In the second model, the HITS operator merely provides infrastructure facilities to one or more MSOs or to a consortium of cable operators /MSOs desirous of uplinking TV channels to his HITS satellite for downlinking and further transmission to the TV homes by the cable operators across the country. The infrastructure facilities would normally consist of transponder space on satellite, earth station facilities and the provision for simulcrypt/multicrypting of channels aggregated by different MSOs with different encryption systems.
- HITS operator in this second model does not contract with the broadcaster for content. He only enters into the contracts with one or more MSOs or consortium of cable operators desirous to uplink their aggregated channels from HITS earth station(s) to the HITS satellite. In this model the HITS operator acts as a facilitator by providing facility of a satellite for the aggregated content to be uplinked and subsequently downlinked by the cable operators.
- We are of the view that both the above mentioned models should be included in the scope of HITS operation. While Model 1 envisages end-to-end provision of HITS services, Model 2 which basically pertains to the provision of infrastructure facilities as detailed above for intending MSOs, also has lot of advantages and benefits.
- In this context, it is pertinent to point out that heavy investments are required to be made in HITS infrastructure. Once these investments are made, it would provide a ready platform for

intending MSOs, who are desirous of offering digital services, to utilize the services offered by such platform. It may be mentioned that 4-5 MSOs can simultaneously utilize the HITS infrastructure facilities by simulcrypting their content and uplinking to a common satellite, to be received by their respective affiliate cable operators. This would also result in optimum utilization of available satellite capacity besides resulting in significant savings in cost.

- By using the common SMS, the cost of providing billing services etc can also be shared which shall ultimately result in providing the cost effective and quality digital services to the consumer. The availability of shared HITS infrastructure would result in savings - both in capital as well as recurring cost, thus making the HITS operations economically viable, both for operators as well as consumers.
- In this context, it is also pertinent to mention that a HITS infrastructure provider (a passive HITS operator) can at any time become a full-fledged HITS service provider by entering into contractual arrangements with content providers on the one hand and by delivering the encrypted digital content to the cable operators/subscribers on the other. Accordingly, in such a scenario the so-called “Passive” HITS operator would become an “Active” HITS operator by undertaking end-to-end operations and providing HITS services to the intending cable operators/subscribers.

Accordingly, we reiterate that the policy framework of HITS should have the enabling provisions for setting up and operating the HITS

platforms/ services both on “Active” as well as “Passive” models as referred to above.

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

Response:

(i) Technological Issues:

- We would like to draw the attention of the Authority to the guidelines issued for HITS, under which the ASC Enterprises holds a HITS license to operate the HITS platform. As per the said license the HITS operators are required to use only C-Band for transmission with EIRP of less than 33 DBw (which requires antenna sizes by cable operators of 4 meters (12 feet) or above). Such dishes can only be mounted by cable operators and the provision was kept in order to maintain a firewall between the cable operators and DTH operators and the intention has been that HITS is mainly meant for MSOs/cable operators for delivering the contents to the customers on cable.
- The reason for using the C-Band lies in the Physics of transmission in the Ku Band. The frequencies in the Ku band of 11/14 GHz are severely affected by rain, snow, hail, storms and atmospheric moisture. The result is that the quality and availability of received signal is not such that it may be used for large scale cable distribution. It should also be recognized that the DTH signals go direct to the TV sets whereas the cable signals after reception need to traverse many Kilometers of cable with repeaters

and inherent error rates even in digital systems, thereby further degrading the quality.

- In case of DTH, the operators are aware that it will suffer rain impairment and Ku band signals may be not receivable in some coastal areas or borders of India where the EIRP is low. It is taken as a known factor in the reach to customers. However the broadcasters are not willing to compromise the signal quality by having the distribution to cable operators being done by the Ku Band.

Today in coastal, rainfall prone areas and areas with snowfall and fog, the signals are still available via cable due to use of C-band. It may not be out of place to mention that such areas may be deprived off the TV transmissions if the cable delivery through HITS is carried out in Ku band.

- We would like to reiterate the said position by saying that the broadcasters are transmitting in the C-band to ensure quality reception across India including all its border and coastal areas, and all territories and rural areas. None of the stakeholders would agree to have the entire benefits of C-band transmission stripped off by the final leg of transmission to cable operators being in the Ku band through HITS.

(ii) Piracy Issues:

We need to recognize that “Piracy” is a burning issue in India and will remain so in the near future. The technologies which are introduced, need to ensure that this objective continues to be furthered. It is our opinion that piracy using Ku band is very

difficult to detect or to eliminate as both HITS and DTH would be using the Ku band and at the customers end it may be difficult to distinguish the transmission feed.

(iii) Regulatory Issues:

- In addition there are lot of regulatory issues involved in providing HITS service in Ku band, the major being the license fee /revenue sharing issue and the pricing of services in CAS areas. A subscriber enjoying DTH service in a CAS notified area may be paying subscription fee which would be totally different from his neighbor who has opted for CAS through cable(as cable price are regulated by TRAI) though both the subscriber may be getting the same content feed through the Ku band. Hence it is our submission that the firewall be continue to be maintained and the HITS operations be restricted to solely the C-band.
- Since there is a specific guideline and eligibility conditions of DTH, it was thus envisaged that HITS should not be used as a vehicle for a back-door entry bypassing the licensing norms for a DTH service provider.
- In DTH there is a revenue share with the licensor on the gross revenue of the DTH operator. By adding HITS on the Ku Band there could exist a possibility that the revenue share on the DTH services does not remain to be transparent and will create another area of conflict. It may be mentioned that HITS service being akin to MSO service where the revenue is shared by three stakeholders viz. broadcaster, multi system operator & cable operator, there cannot be any revenue sharing in HITS. If HITS services are allowed in Ku band, DTH operators may also demand exemption

from annual revenue sharing stipulations on the pretext that since both the services are using the same Ku-band, they cannot be treated differently and in a discriminatory manner.

- In the CAS scenario there is regulatory intervention on the end pricing to the consumers which does not apply to DTH. In case of single band usage the need will be that pricing on both the services are brought at par which is not the ultimate intention of this Consultation Process.

Accordingly, we are of the firm view that HITS operations should be allowed in C-Band only and DTH services should be provided exclusively in Ku-Band.

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?

Response:

- As observed in the Consultation Paper also, HITS is nothing else but a delivery of digital signals through a headend situated in the sky whereas in a normal cable transmission the signals are transmitted by an MSO to a cable operator through land based digital headend. It may be mentioned that at present the MSOs are supplying their signals to cable operators as well as directly to the subscribers. There is no restriction, whatsoever on MSOs supplying their services directly to the consumers. Accordingly, we do not see any reason whatsoever, in restricting the provision of

HITS services, only to the cable operators and not directly to the consumers. As already pointed out hereinabove, HITS operator is offering MSO service and as such should be allowed to provide its services not only to the cable operators but also directly to the subscribers.

- In this context, it is also relevant to point out that even if the services are directly provided to the subscribers, it will be through cable network only. In that scenario the HITS provider itself would act as last mile operator (LCO) in providing the services to the consumers. The DTH on the other hand as the name itself indicates is meant for providing the services directly to homes through satellite which are received by a household through a small dish installed in its premises. Accordingly, in DTH there is no use of cables to effect delivery of signals and as such there is no comparison so far as the services through HITS & DTH are concerned. It may be reiterated in case of HITS the delivery of signals till the headend/control room of the MSOs/cable operators is through satellite and thereafter the signals are re-transmitted to the ultimate subscribers through cable only. Hence, there is absolutely no justification for denying the direct access to the subscribers by HITS service provider who in fact is an MSO serving its direct points.

- In this context, it is also pertinent to point out that when an MSO avails the services of a HITS infrastructure provider (Passive HITS), there is no bar in providing services directly to the subscribers by the said MSO. It would be illogical to impose such a restriction/bar when a HITS operator itself (Active HITS) provides end-to-end digital cable service and seeks to service the subscribers directly.

- In the light of the above, the definition of HITS operator as given in the Interconnect Regulations dated 10th December 2004 needs modification. The existing definition reads as under:

“head ends in the sky operator” means any person permitted by the central government to distribute multi channels TV programmes in C band by using a satellite system to the intermediaries like cable operators and not directly to subscribers.”

The amended definition should read as under:-

“head ends in the sky operator” means any person permitted by the central government to distribute multi channels TV programmes in C band by using a satellite system to the intermediaries like cable operators and/or to subscribers through cables.”

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 ?

Response:

- At the outset it may be pointed out that though establishment of HITS infrastructure requires substantial investment in the form of setting up of earth-station, hiring of satellite space/transponder, laying down extensive cable network so as to reach consumers homes and investment in STBs etc, the existing permitted FDI limit of 49% is sufficient to take care of this investment.

- It may be mentioned that mere increase in the FDI cap is not going to bring additional/new investment in this sector. In this context, it is pertinent to point out that at present the cable sector is totally un-organized and fragmented. There is neither any transparency in the system nor any well-defined revenue share mechanism at each stage of the distribution chain because of lack of transparency. Most of the cable plants are analogue and result is the poor cable quality transmission. The main issue because of lack of addressability is ARPUs i.e. the amount payable by a subscriber (which is on lump sum basis) for availing cable services, which vary from state-to-state, city-to-city and even locality-to-locality in the same state. All these factors act as deterrent in attracting the FDI. The solution lies in initiating the process to organize the sector rather than increasing the FDI limits.

- It may be mentioned that in DTH sector also, 49% of Foreign Investment is permitted with a further restriction on FDI component at 20%. This has not deterred the inflow of foreign investment in DTH sector. It is pertinent to point out that two DTH operators are already functional and another two are shortly going to launch their services. In addition, it is reported that three more entities have applied for DTH license. This is an ample proof that this sector is continuously growing despite caps on foreign investments. The investors these days are not very particular about the “management & control”. They are more concerned with the security of their capital investment and a reasonable return thereon in the long run. Thus in our view FDI limit of 49% is adequate to take care of the investment required in HITS.

- Another argument which is advanced is that in Telecom the FDI has been relaxed to 74% and therefore in view of convergence, this sector also may be treated the same. As has been pointed out earlier also, the media sector is a very sensitive sector and therefore it has been recognized that a different treatment is needed as is the case in other countries as well. As we have also pointed out that the foreign countries continue to maintain a differential policy on ownership of media assets and services such as DTH. USA which permits 100% FDI in telecoms still requires strict controls in media sector, including the need for citizenship of USA. This should be enough to reply to foreign companies which under the garb of “convergence” try to seek dispensations which are not permitted in their own countries.

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

Response:

- The establishment of HITS platform involves substantial investment in infrastructure such as setting up of earth station, encryption system, SMS facilities and recurring expenditure in the form of hiring of satellite capacity/transponders. In order to ensure that only serious players who have adequate financial resources as well as manpower, become eligible for HITS license, entry fee/license fee of Rs. 10 crores, as is levied in case of DTH license be stipulated for HITS as well. Keeping in view the fact that an MSO/cable operator is not required to pay any license fee for starting a terrestrial digital headend, a provision be made in the HITS policy that license fee be refunded to the HITS licensee once

the HITS operator successfully completes setting up of HITS platform and commences its services. A maximum period of 18 months should be provided to HITS licensee to set up and commence HITS platform, failing which the license fee should be forfeited.

- There is absolutely no justification for levying any annual license fee for HITS. As already submitted hereinabove, HITS is nothing else but a headend situated in the sky as compared to a land based headend set up by an MSO to re transmit the content received from the broadcasters to cable operators/subscribers. In HITS only at the initial stage the content is delivered through satellite mode to the control room of an MSO/cable operator and thereafter the delivery of the signals takes place through the same cable network as in case of the delivery of signals through terrestrial digital headend. Accordingly, it is absolutely wrong to treat the HITS operations differently from cable services just because of the fact that while delivering an integrated encrypted signals to MSO/cable operators a satellite is used. Therefore any proposal to levy the annual license fee/revenue share on HITS services as in case of DTH is entirely misconceived and unjustified.
- It may also be pointed out that HITS operators would also provide their services in the CAS areas and shall have to compete with the MSOs delivering signals through land/terrestrial digital headends and which are not subject to any kind of license fee whether initial entry fee or annual revenue sharing fee. If the annual license fee is imposed on HITS services, such a move besides being discriminatory would render the entire HITS operations economically unviable. Thus a service which has potential to roll out digitalization throughout the country in shortest possible time,

may not even take off because of heavy financial burden and uneconomical & unviable business model.

We are therefore of the view that no annual license fee be prescribed for HITS.

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

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 ?

Response:

5.3 HITS implementation from outside India;

- Some of the foreign operators are planning to put HITS infrastructure outside India and provide related services through foreign satellite. This is undesirable as the implementation of HITS from a foreign country will give undue advantage to such a platform as they will not required to pay any spectrum fee, monitoring charges and taxes etc. and shall also be out of purview of various regulation pertaining to Broadcasting & Cable Sector. This is a cause for serious concern as it will adversely affect the competitiveness of Indian HITS Operators. This should not be allowed.

- In this context, it is pertinent to point out that Teleport license issued by the Ministry of Information & Broadcasting, Govt. of India contains various provisions which are required to be followed by the licensees. An illustrative list of such provisions is given as under:-

“5. Application of the Indian Telegraph Act and other Laws

5.1 The Permission shall be governed by the provisions of the Telecom Regulatory Authority of India Act, 1997, Indian Telegraph Act, 1885 and Indian Wireless Telegraphy Act, 1933 as amended from time to time and any other law as applicable to broadcasting which has or may come into force.

6. Prohibition of Certain Activities

6.2 The Permission Holder shall not carry out the uplinking in any other band except C-Band or Ku Band as permitted. In case of uplinking in Ku Band, the Permission Holder shall not use the teleport to run/ operate DTH service without proper and prior license, to which separate guidelines apply.

6.3 The Permission Holder shall not uplink TV channels, which have not been approved or permitted by the Grantor for uplinking by the Permission Holder.

6.4 Notwithstanding any agreement entered into between the Permission Holder and TV channel, the Permission Holder shall stop forthwith uplinking of the channel as and when the approval/permission granted for the uplinking of that channel is withdrawn/suspended.

7. National Security and Other Conditions

7.1 The Grantor shall have the right to suspend the permission of the company for a specified period in public interest or in the interest of national security to prevent its misuse. The Permission Holder shall immediately comply with any directives issued in this regard.

7.2 In the event of a teleport/SNG/DSNG found to have been/ being used for transmitting/ uplinking any objectionable unauthorized content, messages, or communication inconsistent with public interest or national security or failing to comply with the directions as per para 7.1 above, the permission granted shall be revoked and the Permission Holder shall be disqualified to hold any such permission for a period of five years, apart from liability for punishment under other applicable laws.

7.3 All foreign personnel likely to be deployed by way of appointment, contract, consultancy, etc. by the Permission Holder for installation, maintenance and operation of its services shall be required to obtain security clearance from the Grantor prior to their deployment.

8. Programme Content and Quality of Broadcast

8.1 *The Permission Holder shall be exclusively liable for the consequences of the programme broadcasted and shall indemnify and keep the Grantor indemnified for any damage, loss or claim occasioned by use of the teleport for broadcast of any programme by the Permission Holder.*

9. Monitoring and Public Complaints

9.1 *The Permission Holder at its own cost shall, (a) preserve the recordings of broadcast material for a period of three months from the date of broadcast and produce the same to the Grantor or its authorized representative, as and when required and (b) on demand by the Grantor, provide the necessary equipment, services and facilities at designated place(s) for continuous monitoring of the broadcasting service by or under supervision of the Grantor.*

9.2 *The Permission Holder shall submit such information with respect to its broadcast as may be required by the Grantor from time to time.*

9.3 *The Permission Holder shall furnish any such information at periodic intervals as may be required by the Grantor concerning Programme Content and Quality, Technical Parameters etc. relating to the broadcast in the format as may be prescribed by the Grantor from time to time.*

Miscellaneous

18.1 Notwithstanding anything contained anywhere in this Agreement, the grant of Permission shall be subject to the condition that as and when any regulatory authority to regulate and monitor the Broadcast Services in the country is constituted, the Permission Holder shall adhere to the norms, rules and regulations laid down by such authority or any Applicable Law to regulate and monitor the Broadcast Service in India.”

It is submitted that if the HITS is allowed to be implemented from outside India, the HITS operator shall not be bound to follow the above-mentioned stipulation of HITS/Teleport license/permission and also any of the rules & regulations, notification etc of Regulatory Authority, which are required to be mandatorily followed by an Indian HITS operator. The same is not only inequitable but may also give rise to the concerns for National security etc. Accordingly, no permission for HITS operations for India should be given to a platform operating from the foreign soil.

➤ **HITS from foreign country and Downlinking Policy**

The Ministry of Information & Broadcasting, Govt. of India notified “Policy Guidelines for Downlinking of Television Channels” on 11th November 2005. The relevant extract of the said Policy reads as under:-

*"Ministry of Information and Broadcasting, Government of India, has formulated policy guidelines for downlinking all satellite television channels downlinked / received / transmitted and re-transmitted in India for public viewing. Consequently, no person/entity shall downlink a channel, which has not been registered by the Ministry of Information and Broadcasting under these guidelines. **Henceforth, all persons/ entities providing Television Satellite Broadcasting Services (TV Channels) uplinked from other countries to viewers in India as well as any entity desirous of providing such a Television Satellite Broadcasting Service (TV Channel), receivable in India for public viewership, shall be required to obtain permission from Ministry of Information and Broadcasting, in accordance with the terms and conditions prescribed under these guidelines**".*

A detailed eligibility criteria and procedure for obtaining registration/Downlinking permission has also been prescribed in the said Guidelines. The obligations to be observed by the downlink registered channel have also been prescribed which inter alia include:

“5.5 *The applicant company shall obtain prior approval of the Ministry of I & B before undertaking any upgradation, expansion or any other changes in the*

downlinking and distribution system/network configuration.

5.6 *The applicant company shall provide Satellite TV Channel signal reception decoders only to MSOs/Cable operators registered under the Cable Television Networks (Regulation) Act 1995 or to a DTH operator registered under the DTH guidelines issued by Government of India.*

5.7 *The applicant company shall ensure that any of its channels, which is unregistered or prohibited from being telecast or transmitted or re-transmitted in India, under the Cable Television Networks (Regulation) Act 1995 or the DTH guidelines or any other law for the time being in force, cannot be received in India through encryption or any other means.*

5.8 *The Union Government shall have the right to suspend the permission of the company/registration of the channel for a specified period in public interest or in the interest of National security to prevent the misuse of the channel. The company shall immediately comply with any directives issued in this regard.*

5.9 *The applicant company seeking permission to downlink a channel shall operationalise the channels within one year from the date of the permission being granted by the Ministry of I&B, failing which the permission will liable to be withdrawn without any notice in this regard. However, the company shall be afforded a reasonable opportunity of being heard before such a withdrawal.*

- 5.10** *The company/channel shall adhere to the norms, rules and regulations prescribed by any regulatory authority set up to regulate and monitor the Broadcast Services in the country.*
- 5.11** *The applicant company shall give intimation to Ministry of I & B regarding change in the directorship, key executives or foreign direct investment in the company, within 15 days of such a change taking place. It shall also obtain security clearance for such changes in its directors and key executives.*
- 5.12** *The applicant company shall keep a record of programmes downlinked for a period of 90 days and to produce the same before any agency of the Government as and when required.*
- 5.13** *The applicant company shall furnish such information as may be required by the Ministry of I&B from time to time.*
- 5.14** *The applicant company shall provide the necessary monitoring facility at its own cost for monitoring of programmes or content by the representative of the Ministry of I&B or any other Government agency as and when required.*
- 5.15** *The applicant company shall comply with the obligations and conditions prescribed in the downlinking guidelines issued by the Ministry of I&B, and the specific downlinking permission agreement and registration of each channel.*

5.16 *In the event of any war, calamity/national security concerns, the Government shall have the power to prohibit for a specified period the downlinking/ reception/ transmission and re-transmission of any or all channels. The Company shall immediately comply with any such directions issued in this regard”.*

If HITS is allowed to be implemented from abroad, since HITS operator would be uplinking the channels for the purpose of downlinking in India, it is not clear as to how the provisions of Downlinking Guidelines and the obligations prescribed thereunder would be complied with.

In addition if a HITS operator operating from abroad uplinks channels which are not permitted to be downlinked in India or are prohibited /banned in India, it will not be possible for the MSOs /cable operators to block these channels as they would receive an integrated digital stream of channels including prohibited / banned channels. This would give rise to lot of operational as well as legal and regulatory issues. Accordingly it is recommended that HITS platform should not be allowed to operate from a place outside India.

- In this regard it is pertinent to point out that keeping in view all the above mentioned sensitivities, security concerns and monitoring issues, DTH licenses compulsorily require uplinking from the earth station situated within India. Permitting HITS operators to uplink from abroad may result in DTH operators also

demanding similar privilege, which may not be advisable keeping in view the above mentioned concerns.

4.53.8 Should any interconnection issues to be addressed in licensing conditions?

Response:

- It is pertinent to point out that though the first license for HITS platform was issued in the year 2003, however on account of lack of any regulatory framework at that time, the said HITS platform, though technically ready, could not become operational because some of the leading broadcasters refused to be a part of HITS distribution platform by providing their content. The aggrieved HITS operator could not get any relief even from MRTP Commission at that time because of the absence of required legal and regulatory mechanism.

- Now The Telecommunication (Broadcasting & Cable Services) Interconnection Regulation 2004 dated 10/12/2004 has included Headend-In-The-Sky in the definition of “distributor of channels” and has also defined the Headend-In-The-Sky operator vide clause 2(l) of the Regulation which reads as under:-

“Headends in the sky operator” means any person permitted by the central government to distribute multi channels TV programmes in C band by using a satellite system to the

intermediaries like cable operators and not directly to subscribers.”

Accordingly, clause 3.2 of the said Interconnect Regulation which mandates that every broadcaster shall provide on request signals of its TV channels on non-discriminatory terms to all the distributors of TV channels applies to “Headend-In-The-Sky” operator also. In fact a specific reference to “Headend- In-The- Sky operator has been made in the said clause.

- It is submitted that despite the above mentioned regulatory position, the broadcasters are quite reluctant to provide their content on HITS platform. The TRAI while notifying the Standard Interconnect Agreement for the CAS notified areas on 24th August 2006 has specifically excluded HITS mode of digital delivery of channels from the purview of the said Interconnect Agreements. In the Explanatory Memorandum while commenting on the changes suggested in the Interconnect Agreement by the stakeholders, the Authority has observed the following in response to the specific query regarding HITS:

“3. The agreement should also cover other modes of distribution also specially HITS.

The broad features of this agreement can be applied to HITS also. However, HITS can also reach the entire country and therefore there may be need for other clauses to protect the IPR of the broadcasters. Those operators who want to use HITS should use this standard interconnection agreement and finalise the same with the broadcasters with whatever

changes may be necessary for HITS. In case of any difficulty they can come back to the Authority for issue of appropriate directions or regulations.”

- However, since the broadcasters are reluctant to provide their content/channels on HITS platform, it is imperative that the Authority should immediately start an exercise for standardization of Interconnect Agreement in respect of HITS mode of delivery and after taking the feedback from all the stakeholders, should finalise the Standard Interconnect Agreement for HITS as soon as possible.

The Standard Interconnect Agreement should cover the revenue sharing arrangement also so as to ensure the smooth implementation of digitalization initiative.

- In addition, as submitted in response to issue 4.53.3 pertaining to provision of service directly to the subscriber by a HITS operator herein above, it has been categorically emphasized that a HITS operator should be permitted to provide the services directly to subscribers as it is nothing else but MSO service. Accordingly, necessary amendment is required to be carried out in the definition of HITS operator in the Interconnect Regulations dated 10/12/2004. The relevant extract of the said response is reproduced below:

“The definition of HITS operator as given in the Interconnect Regulations dated 10th December 2004 needs modification. The existing definition reads as under:

“head ends in the sky operator” means any person permitted by the central government to distribute multi channels TV programmes in C band by using a satellite system to the intermediaries like cable operators and not directly to subscribers.”

The amended definition should read as under:-

“head ends in the sky operator” means any person permitted by the central government to distribute multi channels TV programmes in C band by using a satellite system to the intermediaries like cable operators and/or to subscribers through cables.”

(iv) There should be a provision in the HITS license on the lines similar to the stipulations contained in DTH license to ensue the availability of content. A model clause in this regard is given below:-

The Licensee shall not carry the signals of a broadcaster against whom any regulatory body, tribunal or court have found the following:

- (i) *refused access on a non-discriminatory basis to another HITS operator contrary to the Regulations of TRAI;*
- (ii) *violated the provisions of any law relating to competition including the Competition Act.*

Explanation: It shall be the sole responsibility of the licensee to ascertain before carrying its signals on its platform whether any broadcaster(s) has been found to be in violation of the above conditions or not . In respect of TV Channels already being carried on the platform, the licensee shall ascertain from every source including the licensor, TRAI, Tribunal or a court, whether concerned broadcasters or the channels is in violation of the above conditions. If any violation so comes to its notice, the licensee shall forthwith discontinue to carry the channels of the said broadcaster

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

Response:

- It is pertinent to point out that spectrum chargers and NOCC charges which are being levied at present are arbitrary, as in case of HITS it is a vertical frequency allocation and that too specific to a particular satellite. There are no limitations for other satellites using the same frequency and has no boundaries. Accordingly, there is no logic for levy of spectrum charges & NOCC charges as HITS involve only one way transmission.

- At present the HITS Operators are subject to very high spectrum royalty and monitoring charges which affects the economic viability. These should be removed so as to encourage development and promotion of alternate & most modern mode of distribution such as HITS.

- The attention in this regard is invited to the recommendations dated 20th April 2004 of the Authority on “Accelerated Growth on Internet and Broadband Penetration” which provides that spectrum charges should not be levied on DTH operators. The recommendations read as under:

“ The use of internet over DTH become more expensive because of certain levies, all of which may not be justified. They must pay annual per transponder as spectrum royalty when uplinking to satellites from within India. Since the cost of usage of the transponder is paid for by transponder fees, the spectrum charge should not apply. Additionally, this cost is zero when the same is done from abroad, specially since the spectrum being used in this application does not block others form using it in the same geography. Furthermore, since uplinking from within India is required as part of the license agreement, DTH operators are placed in a situation where the services they provide to customers has to be more expensive to cover the cost imposed on them.....”

It is therefore recommended :

3.6.4.6 Finally DTH operators should be exempted from spectrum royalty fees for uplinking from within India.”

The above mentioned recommendations of the Authority squarely apply to HITS operator as well.

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

Response:

In order to address the concerns expressed by certain segments regarding the vertical integration, the cross holding restrictions as are prevalent in DTH policy may be prescribed for HITS also. In other words, no broadcasting company should hold more than 20% of the total paid equity capital of the HITS company. Similarly, HITS company should not hold or own more than 20% equity shares in a broadcasting company. This will adequately take care of the apprehensions regarding the vertical integration between content providers and content distributors. However, there should not be any restriction so far as the holding or owning of equity share capital by a cable company in a HITS company is concerned. It is obvious because of the fact that the HITS is nothing else but an MSO/cable service.

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

Response:

HITS is essentially a digital delivery platform. The digital delivery enables an operator to offer host of value-added-services such as EPG, Gaming, Interactive services etc. for the benefit of consumers. Moreover, establishing HITS platform needs substantial financial investment. In order to realize a reasonable return on the investment, HITS operator

should be allowed to offer various value-added-services so that the business model becomes economically viable.

It may be added that provision of value added services shall be subject to obtaining separate specific license wherever applicable e.g. internet services etc.

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

Response:

Availability of content is a prerequisite for the success of any distribution platform. The Authority has rightly observed in detail in the Consultation Paper itself as to how the non-availability of content has acted as an impediment for the take off of HITS platform in 2003. Accordingly, in order to ensure the availability of content on HITS platform on equitable and non-discriminatory basis, “must provide” obligations are required to be stipulated. In Interconnect Regulations 2004 there is already a reference to HITS operator as “distributor of channels”. All regulatory provisions of Interconnect Regulations must squarely apply to HITS operators as well. So far as “must carry” is concerned, we would like to point out that as of now no such stipulations have been stipulated for MSOs providing digital services through terrestrial digital headend. As already submitted hereinabove, HITS is nothing else but an MSO service wherein at an intermediary stage an integrated encrypted content is delivered to cable operators through satellite. Accordingly, we agree with the Authority that no “must carry” obligations are required to be imposed on HITS platform/operator. Limited availability of transponder space which is a scare and valuable resource, is also one of the factors because of which no “must carry”

ought to be stipulated on HITS operator as the platform involves the use of satellite space.

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

Response:

Regarding the stipulation of networth eligibility criteria, it is submitted that in order to dissuade non serious players who do not have adequate financial backing, from entering into this segment, a high entry fee/license fee of Rs. 10 crores has already been proposed. The license fee coupled with the fact that huge investment is required for setting up of earth station, encryption system, SMS and hiring of transponders etc it can reasonably be presumed that entities having sufficient financial resources to invest in the sector would only enter into the HITS distribution. Accordingly, prescribing too may eligibility criteria is likely to create both ambiguity and confusion. It is therefore, suggested that in order to keep the eligibility criteria as simple, prescription of networth or any other such criteria is not warranted as the purpose sought to be achieved by prescribing such criteria can be achieved by keeping the license fee at 10 crores.

Revenue Share

In addition to the above vide Para 4.36 and Para 4.37 of the consultation paper, an issue has been raised as to whether the existing revenue share model made applicable to CAS areas be extended to HITS also. Another issue in this regard is whether the inter se share between MSO and HITS operator be also stipulated or be left for mutual negotiations.

In this context it may be mentioned that not only the existing revenue share mechanism in the CAS areas be extended to HITS platforms but the same should also be reworked and improved so as to enhance the share of HITS service provider from the revenue stream because of higher expenditure involved in hiring the satellite transponders, setting up of earth station etc. This will provide the necessary incentive for HITS operator to provide the economical viable digital services

So far as the revenue share between the HITS operator (infrastructure provider) and the MSO is concerned, it should be left to the MSO & the HITS platform operator to be decided through mutual commercial negotiations.
