

November 26, 2024

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Nauroji Nagar, New Delhi-110029**

**Sub: Response of Dish TV India Limited to the Consultation Paper on
Framework for Service Authorisations for provision of Broadcasting
Services under the Telecommunications Act, 2023**

Dear Sir,

We hereby submit our response to the TRAI the Consultation Paper on Framework for Service Authorisations for provision of Broadcasting Services under the Telecommunications Act, 2023.

Please find enclosed the same.

Thanking you,

Yours truly,
For **Dish TV India Limited**


Authorized Signatory

Enclosed: as above

Response of Dish TV India Limited on Consultation Paper on Framework for Service Authorisations for provision of Broadcasting Services under the Telecommunications Act, 2023

While we understand the rationale and necessity for the reference of the Ministry and the issuance of the present consultation paper, we, at the very outset, as a DTH Operator, express our serious apprehension that with current situation, in which the DTH operators are in because of heavily tilted licensing regime against them and other factors mentioned herein, there could well be a possibility that by the time this entire mechanism of authorization is implanted, the DTH industry could well be extinct

The DTH Operators have time and again been raising their voice against the tilted licensing regime against them. The present regime for the license fee is discriminatory against the DTH Operators and is designed to provide the leveraged position to Cable Operator, HITS, and MSO etc. in the marketplace as they are not required to pay any annual license fee. On account of such additional burden the DTH subscriber is discriminated who has to bear higher burden, compared to cable/HITS subscriber. The DTH industry has been raising this issue from the time the industry has come into being. The TRAI and the Ministry of Information & Broadcasting is well aware that the DTH has played a very critical role in making the digitization dream a success in addition to providing a world class experience to the consumers. Despite this, the DTH industry has always been accorded a step motherly treatment. There is an urgent need to remove these anomalies and create a level playing field for the DTH operator.

Not only that, while the step motherly treatment of the Ministry continued against the DTH operators, its two biggest rivals were allowed to grow and expand

their business without any requirement of following any rules and regulations and payment of any license fee. The first being Prasar Bharati's DD Direct DTH platform and second, the OTT platforms.

DTH operators are facing lot of challenges, both from the other distribution platform operators including DD Direct DTH platform due to continuous discriminatory treatment meted out to the DTH operators and also from OTT operators where the broadcasters are providing same content to the same subscribers in the absence of any regulatory mechanism. All this have long been agitated by the DTH operators, albeit without any success.

TRAI, finally realizing the plight of the DTH operators, gave its recommendation for reduction of license fee to 3% in the first three years and then to zero after the said period, DTH operators are still waiting the same to be actioned by the Ministry.

Due to continuous lack of attention or rather deliberate ignorance to the problems of the DTH operators, the situation, today, has become such where the DTH industry, which in fact and in deed brought digitization in the country, is facing tremendous subscriber churn and until and unless the Ministry takes cognizance of the issues faced by the DTH operators and implement uniform rules and regulations for all stakeholders, the day is not far that not only DTH industry but the entire distribution industry will be extinct. This will definitely have direct impact on the broadcasters too as without the distribution industry to carry their channels to the subscriber's homes, there will be no takes for their channels. The India today is seeing mergers between big broadcasters. No one can deny the above also has its own contribution in this regard. By way of this response, we thus sincerely request the Authority to also consider this aspect and include the same while giving its recommendation to the Ministry.

Hoping some positive actions on this front, we provide our response as under:

- 1. Under Section 3(1) of the Telecommunications Act, 2023, the Applicant Entity may be granted an authorisation, in place of the extant practice of the grant of license/ permission from the Central Government. The terms and conditions governing the respective authorisation for broadcasting services may be notified by the Ministry of I&B as Rules to be made under the Telecommunications Act, 2023. In such a case, whether any safeguards are required to protect the reasonable interests of the Authorised Entities of the various broadcasting services? Kindly provide a detailed response with justifications.**

Dish Response: Subject to providing level playing field for all the similarly situated service providers and maintaining the very essence of the nature of licenses, which is more in the nature of contracts between the parties, Dish TV does not have any objection in the proposed mechanism. However, we understand that the change will only be in nomenclature and will not relate to any scope or applicability of the words as the term 'license' has a broader connotation and also includes transfer of right, as compared to the term 'authorisation'.

- 2. The definitions to be used in the Rules to be made under the Telecommunications Act, 2023, governing the Grant of Service Authorisations and provisioning of the Broadcasting (Television Programming, Television Distribution and Radio) Services are drafted for consultation and are annexed as Schedule-I. Stakeholders are requested to submit their comments in respect of suitability of these definitions including any additions/ modifications/ deletions, if required. Kindly provide justifications for your response.**

Dish Response: The definition should also include the services being provided by Prasar Bharati's DTH services and the OTT platform operators including 'waves'.

- 3. A preliminary draft of Scope of Service for various Broadcasting services and the corresponding Service Area is provided in Table 2.1 for consultation. Whether the same appropriately covers the Scope of Service and Service Area? If not, stakeholders are requested to submit their comments, if any additions/ modifications/ deletions are required in the Scope of Service and Service Area, along with necessary justifications.**

Dish Response: The scope of services should also include the services being provided by the OTT platform operators and also Prasar Bharati's DTH and OTT operations.

- 4. For the purpose of grant of authorisation under Section 3(1) of the Telecommunications Act, 2023, the Central Government may issue an authorisation document to the Applicant Entity containing the essential details viz. Name, Category and Address of entity, Scope of Service, Service Area, Validity etc. A draft format of authorisation document is given at Figure 2.2. Do you agree with the draft format or whether any changes are needed in the draft format of authorisation document? Please provide your response with necessary explanations.**

Dish Response: While the draft format seems fine, the following should be shifted from The Broadcasting (Grant of Service Authorisations) Rules and should be included in the Terms and conditions to be included in the broadcast section under draft 'The Broadcasting (Television Programming, Television Distribution and Radio) Services' as the same is a more service specific.

Name of the Channel:** _____

Category of the Channel*:** News & Current Affairs/
Non-news & Current Affairs

5. A preliminary draft of terms and conditions to be included in the first set of Rules i.e., for Grant of Service Authorisations is annexed as Annexure-II. Stakeholders are requested to submit their comments in the format provided below, against the terms and conditions and indicate the corresponding changes, if any, with necessary reason and detailed justification thereof.

Dish Response: The Authorizations to be issued should be in the nature of contracts as prevailing in the current scenario and should not be in the nature of unilateral impositions of the terms on the DTH operators. Except for the terms required for operations of the DPOs which necessities from different in technology adopted for operations of their business, all other terms specifically the applicable fees, such as processing fees, entry fees, bank guarantees, and security deposits, platform fee, entry fee etc. should be same for all DPO without there being any difference in such terms and conditions.

S. No.	Description	Terms and Conditions No.	Proposed changes, if any	Reasons with detailed justifications
1.	Definitions		<i>The definition should also include OTT services and should also cover the services provided by Prasar Bharati through its DTH and OTT platform.</i>	<i>For the reasons mentioned earlier.</i>

2.	Scope of Service and Service Area		Same as above	For the reasons mentioned earlier.
3.	Eligibility conditions		No changes required from the present scenario.	
4.	Provision of Broadcasting Services <ul style="list-style-type: none"> • Television Programming Services • Television Distribution Services • Radio Broadcasting Services 	(1) Television Programming Services: The Authorised Entity, i.e. a Broadcaster, shall provide its channel to Distribution Service Providers for onward retransmission to the end consumer.	(1) Television Programming Services: The Authorised Entity, i.e. a Broadcaster, shall provide its channel only to registered Distribution Service Providers for onward retransmission to the end consumer.	Policy Guidelines mandates that any satellite TV channel can only be distributed through a registered distribution platform operator which can either be an MSO/cable, DTH, HITS or and an IPTV operator only. To remove any doubts in this regard, the Ministry also issued an Office Memorandum on 04.03.2023 clarifying the same
5.	Processing Fee, Entry Fee, Bank Guarantee, Security Deposit and Renewal Fee	As stated in the preliminary paragraph, license fee conditions should be done away with in case of DTH operators and provision of payment of license if made applicable for one kind of the service provider, the same provision should be made applicable for all the service providers including the HITS operators and broadcasters. This is because of the reason that broadcasters also use spectrum like DTH and others and therefore there is no justification for exclusion of the broadcasters. In addition to the above, other the license conditions, no changes are required in the from the present scenario.		
6.	Process of Application to obtain the Service Authorisations			
7.	Grant of Service Authorisations			
8.	Validity Period		No changes required from the present scenario.	
9.	Non-exclusivity clause		No changes required from the present scenario.	

10.	Conditions for assignment and use of Spectrum		<i>No changes required from the present scenario.</i>	
11.	Migration of Existing service providers of old regime in the new Authorisation Framework		<i>Proposed migration of the existing licensees should be done simultaneously with bringing parity in the license fee terms of the DTH operators with other service providers. For the teleport operators, the conditions may be continued for them till the remaining validity period of the licenses issued as mentioned in the MIB reference letter.</i>	
12.	Security Conditions			

6. Draft structure for covering terms & conditions for provision of services after grant of authorisations to be included in the second set of Rules, namely, The Broadcasting (Television Programming, Television Distribution and Radio) Services Rules, is shown in Figure 2.4 above for consultation. Whether changes are required in the said structure? Please support your response with proper justification.

Dish Response: As on date, different services have continued to be operated under different license conditions because of different nature of business, different business and operational requirements. The Authority has already prescribed Grant of Service Authorisations to bring minimum common conditions at one place. Bifurcating “The Broadcasting (Television Programming, Television Distribution and Radio) Services” into two further

categories will make the terms and conditions complex. Instead of doing the same, it is suggested to keep the terms and conditions specific to different service authorizations separate. While doing so, specific provisions should be made to include the services provided by the OTT Platforms and Prasar Bharati included in the same. As stated hereinabove, and repeatedly by the DTH operators, License Fee conditions should be same for all similarly situated operators and broadcasters should also be made liable to pay license fee on the revenue generated by the DTH operators on their behalf.

- 7. The two possible approaches for migration from the existing regime of license/ permission to the authorisation framework under the Telecommunications Act, 2023, has been discussed in the Section D of Chapter II. Which of these two or any other approach should be adopted for migrating the existing licensee/ permission holders to the service authorisation framework? Stakeholders are requested to provide their comments with detailed justifications.**

Dish Response: While all the DTH operators are currently operating on the basis of provisional licenses issued to them by MIB, remaining license period under the license issued to different broadcasters and teleport operators are different. Making the migration mandatory for all these operators with/without any additional fee/charges will be a nightmare for all these operators. More so, the Telecommunication Act, 2023 only makes it an optional exercise. Therefore, migration from the existing regime of license/ permission to the authorisation framework should only be options.

Further, we must also bear in mind that the current requirement has necessitated because of the change in statute and for no other reason. Therefore, there should not be any change in the licensing requirement in case of migration from the current regime to the proposed regime, subject

to the conditions being fair to all and providing level playing field to the stakeholders.

8. Contravention of the terms and conditions contained in the Rules to be made as well as non-adherence to the Programme Code and Advertising Code is likely to invite penal provisions.

- a. **Whether the extant penal provisions for breach of terms and conditions of license/ permission are appropriate or required to be modified to align with the provisions of the Telecommunications Act, 2023? If so, please provide a detailed response with justifications. If not, whether the same should be adopted *mutatis mutandis*? Please provide a detailed response with necessary justifications.**
- b. **Further, in respect of violation of Programme Code and Advertising Code, whether the penal provisions should be adopted *mutatis mutandis*? If not, what modifications are required? Please provide your comments with necessary justifications.**

Dish Response: When the statute has a mechanism for actions in case of breach of the terms of authorization, any breach in case of different services authorizations should be aligned with the same except where the same needs to be different because of different nature of any platform. For example, a DTH platform cannot be punished for breach of 'programme code' in respect of any channel since the channels are downlinked and then uplinked by DTH operators on as is where is basis.

9. A preliminary draft of Common terms and conditions for inclusion in the second set of Rules for Broadcasting (Television Programming, Television Distribution and Radio) Services is annexed as Part-I of Annexure-III for consultation. Stakeholders are requested to submit

their comments in the format given below, against the terms and conditions and indicate the corresponding changes, if any, with necessary reason and detailed justification thereof.

Dish Response: We reiterate that all financial conditions including but not limited to License Fee conditions should be made same for all similarly situated operators, while broadcasters should also be made liable to pay license fee on the revenue generated by the DTH operators on their behalf.

Further, for the reasons mentioned many times in our earlier communications and also in the preceding paragraphs, provision related to mandatory carriage of Doordarshan channels by the distribution platform operators. The very objective of keeping this provision in the license agreement – because during the said period, Prasar Bharati’s DTH platform was at a very nascent stage and there was not much alternative to propagate the message of the Government – has now met. More so, the situation today has changed drastically. While Prasar Bharati has got maximum subscriber base, by its own declaration, the thrust of the said platform has been to on-board more and more on private TV channels. So, in effect there remains no reasons for DPOs to still carry Doordarshan channels by consuming bandwidth against which it has to pay to the satellite operators.

Also, for the reasons stated hereinbefore, Prasar Bharati’s DTH and OTT operations should be brought within the ambit of service authorizations along with other OTT platforms.

- 10. Whether any changes are required in the extant eligibility conditions in respect of minimum net worth for inclusion in the Rules to be made under the Telecommunications Act, 2023 for the following service authorisations?**

- i. News & Current Affairs Television Channel**
- ii. Non-news & Current Affairs Television Channel**
- iii. Teleport/ Teleport Hub**

Stakeholders are requested to provide their comments with detailed justification.

- 11. Whether any changes are required in the extant processing fee (for new authorisation/renewal), annual authorisation fee (erstwhile annual permission fee) and other fees applicable on the following for the formulation of the terms and conditions of the authorisation for these services?**

- i. Uplinking of a Television Channel**
- ii. Downlinking of a Television Channel**
- iii. News Agency for Television Channel(s)**
- iv. Teleport/ Teleport Hub**
- v. Any other services related to Television Channels**

Stakeholders are requested to provide their comments with detailed justification.

- 12. Whether any changes are required in the extant security deposit and performance bank guarantee applicable on the following for the formulation of the terms and conditions of the authorisation for these services?**

- i. Uplinking of a Television Channel**
- ii. Downlinking of a Television Channel**
- iii. Teleport/ Teleport Hub**
- iv. Purchase/hiring and use of SCG equipment**

Stakeholders are requested to provide their comments with detailed justification.

Dish Response: We suggest no change in the existing conditions applicable for the teleport operators. All the terms and conditions forming part of extant 'Grant of Permission Document' should be incorporated in the Authorization framework. Further, all other conditions forming part of extant 'Guidelines for Uplinking and Downlinking of Satellite Television Channels in India, 2022' should be adequately covered in the Authorization framework. However, broadcasters should also be made liable to pay license fee on the revenue generated by the DTH operators on their behalf.

- 13. A preliminary draft of terms and conditions for inclusion in the second set of Rules for Broadcasting (Television Programming) Services is annexed as Part-II of Annexure-III for consultation. Stakeholders are requested to furnish their comments in the specified format given below, against the terms and conditions and indicate the corresponding changes, if any, with necessary reason and detailed justification thereof.**
- 14. Whether the extant eligibility requirement in respect of minimum net worth is required to be harmonized under the terms and conditions of authorisation for DTH and HITS services?**
- i. If yes, what should be the quantum of minimum net worth for these services?**
 - ii. If no, reasons thereof.**

Stakeholders are requested to provide their comments along with detailed justification.

Dish Response: We suggest no change in the existing conditions in relation to minimum net worth requirement for DTH operators.

5% cap on the number of Platform Service should be done away with. In fact, there should not be any limit on the number of Platform Services being operated by a DPO. It may be stated that since a platform launches a Platform Services keeping in mind the requirements of the subscribers, there is no rationale for fixing any limit on the number of Platform Services. Such a decision is a commercial decision which should be left to the commercial wisdom of the DPO.

License Fee conditions should be specifically done away with immediate effect.

Authorisation for DTH service should also include and govern the DTH platform being run by Prasar Bharati.

15. Whether the following parameters applicable for DTH and HITS services should be reviewed while framing the terms and conditions of authorisation for these services? If yes, please suggest changes required, if any, on the following aspects, with detailed justifications:

- a. Period of authorisation (erstwhile license/ permission)**
- b. Processing Fee**
- c. Entry Fee**
- d. Authorisation Fee (erstwhile License Fee)**
- e. Bank Guarantee**
- f. Renewal Fee**

Dish Response: While period of authorization may be kept same, there should not be any requirement for any renewal fee as this will only impose further financial burden on the DTH operators. As regards the financial conditions, we reiterate that all financial terms and conditions for the DTH operators must be same as applicable for other similarly situated service

providers. License Fee conditions should be specifically done away with, if not immediately, then as per the recommendation given by TRAI.
