

To,

14<sup>th</sup> October 2013

The Chairman  
Telecom Regulatory Authority of India  
Mahanagar Doordarshan Bhawan  
Jawaharlal Nehru Marg  
New Delhi-110 002

Ref: - Consultation Paper No.9/2013 dated 1<sup>st</sup> October 2013

Sub:-Our comments on the issue/extension of the Direct to Home (DTH) License

Dear Sir,

At the outset we would like to take this opportunity to appreciate the endeavor put in by the Authority in seeking the consultation process for determining the issue related to the extension of the DTH License through the captioned consultation paper.

In the hindsight this issue would not have arisen but for obvious fact of absence of renewal clause in the License Agreement. Having said that we are of the view that the issue has been answered by the Authority on earlier occasions as well and the Authority had actually streamlined the process further to renewal of any given license to existing players, like it has done whilst recommending the Policy for FM Radio Licenses and their renewals.

#### **1. ENTRY FEE IS ONE TIME NON REFUNDABLE FEE**

In this regard we would like to state that the concept of Entry Fee is a one-time fee and not payable at the time of any renewal of the license. The words "initial non refundable entry fee" appearing in the clause 3.1 of Article 3 to the License Agreement clearly vindicate the stand that the entry fee is onetime and not repayable at any time thereafter including at the time of renewal of the License. As rightly observed by the Authority in the Consultation Paper on Issues related to Entry Fee and Annual License fee for ISP License with Virtual Private Network (VPN) dated 24<sup>th</sup> June 2005, the entry fee is normally determined with a view to attract new players, deter non serious players. We are one with the view of the Authority in this regard. The corollary of the above means the concept of Entry fee once paid as a non refundable fee has to be necessarily one time and is not supposed to be once again paid at any point thereafter including at the time of renewal of any kind of License. Similarly, the prime objective of the Entry Fee is to dissuade the non serious players and attract new and eligible players to boost competition with the existing players who are already in the fray. We are of the view that the same principal applies to the DTH License as well.

It is also a well settled principal that the entry fee is always onetime payment as has been held in many Judgments of TDSAT as the very prime objective of the same being to act as a deterrent to non serious players. In the Consultation Paper for Phase II FM Radio dated 14<sup>th</sup> April 2004 the Authority has rightly observed that Entry Fees are a onetime fees imposed by the Government to allow entry into the market

and/or allocate licensees under competitive situations. Again the Authority is correct in expressing its view that if the entry fee levied at the time of granting the DTH license was solely to judge the seriousness of the entities seeking the DTH license and to cover the cost of inducting of a service provider, then at the time of issue of a new license to an existing licensee the entry fee ought not to be levied as the DTH operator has already proved its bonafides in the sector and the cost of inducting a service provider is not a recurring cost to the Licensor.

We further opine that the process envisaged under the License Agreement clearly sets out the chronological steps right from applying for a DTH license to the actual starting operations by the Licensee in coordination with the Licensor and as such once the operations and services are commenced there is no re-entry and consequently, we state that there is no question of any kind of modification to the Entry Fee at the time when the term of the License gets over and the DTH Service Provider needs to continue its operations as before. The maximum which could be done is to extend the term by an addendum to be executed between the Ministry of Information and Broadcasting and the Licensee and leaving all other clauses of the existing License agreement to continue as before.

In view of the above we would answer the issues for consultation as follows:-

- i. **Should an entry fee be charged at the time of issue of a new license to the existing DTH licensees?**

**Our Response:- No**

- ii. **In case an entry fee is to be charged, what should be the quantum of such entry fee?**

**Our Response:- Does not survive**

## **2. ALREADY SET ANALOGY FOR THE PROCESS OF RENEWAL IN THE FM RADIO POLICY**

The issues for consultation as to the period of the DTH licenses and their renewals are as follows:-

- i. **What should be the period of the DTH Licenses to be issued to the existing DTH licensees on the expiry of the license period of 10 years?**
- ii. **What should be the period of extension/renewal of the licenses, to be prescribed in the DTH Guidelines, for the extension/renewal of the new DTH licenses on their expiry?**

**Our Response:-**

- i. **The minimum period of the DTH licenses to be issued to the existing DTH licensees on the expiry of the license period of 10 years should be minimum 15 years**
- ii. **We are of the view that the period of extension/renewal of the licenses to be prescribed in the DTH Guidelines for the extension/renewal of the new DTH Licenses on their expiry should be automatic by a further period of 15 years**

We would like to elaborate the above response with the following justifications.

It would not be out of place to refer to the recommendation of the Authority for renewal in FM Radio Broadcasting License, where the Authority has also laid down in no uncertain terms the exact process of renewal. The observations of the Authority can be broadly captured as follows:-

- There should be provision for automatic renewal of permission to district level permission holder of FM Radio broadcasting.
- Interested permission holders shall seek extension in writing from Ministry of I & B 4 months in advance of expiry of their permission period.
- Ministry of I&B shall inform to such permission holders within one month from the date of application seeking extension of permission for another 10 years.
- The amount for extension of the permission for another 10 years shall be equal to initial bidding amount or the highest bid price in the same area (District), whichever is higher, provided such permission is not denied.
- Permission holder shall pay the required amount within one month from the date of receipt of such demands from Ministry of I & B.
- Ministry shall issue permission for extension of operation period for another 10 years in one-month time from the date of receipt of such payment

Since the DTH services are of a permanent nature the term of any license needs to be more than 10 years as was the case in the initial stage. The DTH industry has now come a long way from the days when it was launched for the first time in the country. We would like to state that the periods for the FM Radio as well as for the Unified Licenses have been longish than the period of 10 years for the DTH. Our view is that the period of 10 years is too short as it creates a certain amount of uncertainty in the operator's business model and inhibits futuristic business planning which in turn could result in the reluctance on the part of an operator in deploying new technologies or undertaking long term capacity enhancement or big investment in the business. We are of the view that the short duration licenses are also not ideal from the point of view of consumers at large inasmuch as the same would be detrimental to the interests of consumers as the benefits of new technologies and innovations would be denied. Additionally, investors both foreign and domestic may want a certain minimum period which is not too low. Thus, our view is that the minimum period of the DTH License needs to be and should be 15 years with a certain renewal clause in the License Agreement.

### **3. PERIOD OF BANK GUARANTEE**

The Consultation Paper seeks our view as to the period of bank guarantee and the quantum, its validity etc. to be provided by the existing DTH licensee on the issue of a new license and the specific question in this regard is reproduced as follows:-

- What should be the quantum and the validity period of the bank guarantee to be furnished by an existing DTH licensee on the issue of a new license?**

#### **Our Response:-**

Our view in this regard is that the Bank Guarantee needs to be refurbished once the period of the license expires. It needs renewal simultaneously along with the license itself. However, we opine that the value of such bank guarantee should be kept at 40 crores only as before valid during the entire period of the license term. The existing DTH players have proved themselves and there has not been a single occasion during the last decade when such bank guarantee was required to be invoked. It is the

rarest of the rare circumstance which would never happen and as such we state that although the bank guarantee needs to be renewed at the end of the term, the value of the same needs no modification.

#### ADDITIONAL SUBMISSIONS

##### 4. NO NATURAL RESOURCE OR MARKET DYNAMICS IMPACT

We would like to further assert that the DTH unlike Telecom is not getting any natural resource (spectrum) along with license and once the DTH service provider commissions its DTH platform its operations start.

Secondly, in case of spectrum value of natural resource changes over time hence the license fee is again charged whereas in case of DTH the annual license fee is recurrent annually. There is no license supply issue from government unlike telecom due to above reasons only.

##### 5. FINANCIAL STATUS OF DTH INDUSTRY

As commercial things stand today for DTH industry, they are very bleak to say the least. After huge capital investment worth Crores, there are other outflows to be incurred annually.

Additionally, the DTH industry is exposed to multiple tax regimes which are another road-block towards the growth and achieving the break even and profit. The way, in which the taxation burden is taking its toll on the DTH industry, we are afraid if we would be able to grow at any time at a faster rate than present tardy rate.

Currently the DTH industry is incurring losses worth thousands of Crores cumulatively, which needs to be taken into account whilst envisaging any provisions impacting the financials of a DTH Player.

States across the country are levying entertainment tax at different exorbitant rates by covering DTH services as entertainment. There are other outflows of taxes and other charges like the spectrum charges, NOCC charges, annual license fee, customs duty on imports, sales tax, value added tax to name a few, which is making the entire DTH business economically unviable and it is high time that we strike balance and minimize the burden and allow it to blossom. Ministry of Information and Broadcasting by letter dated 17 March 2008 had sought comments from TRAI on its proposal to reduce License Fees from 10% to 6% and this Authority vide its letter dated 15<sup>th</sup> April 2008, that license fee from DTH should be reduced from 10% to 6%. It be noted that in this letter TRAI has shown its agreement to proposal to reduce license fees from 10% to 6% however despite this the DTH License Condition in that relation is remained to be modified, which can also be included while making recommendations.

##### 6. CONSOLIDATION OF THE LICENSING AND REGULATORY REGIMES FOR ALL DIGITAL SERVICE PROVIDERS

As per our view, the licensing and regulatory regimes for all equally placed digital service providers need to be one and the same and ideally should not be different since it apart from creating lot of confusion in the open market also opens up cross debates amongst the stakeholders. In order to achieve parity of sorts it is therefore suggested that some steps need to be taken forward in this regard too. The disparity

Between the rules and regulations governing the MSOs in DAS and a DTH players is enormous to say the least and this needs quick attention.

**Any other relevant issue you would like to comment upon:-**

**Response:-**

As stated in our earlier submissions above, as mentioned in letter dated 15<sup>th</sup> April 2008, MIB's decision to reduce License fee from 10% to 6% be recommended to implement forthwith and accordingly relevant clauses of payment of License fees be modified in existing DTH License.

Considering multiple taxation, investment and huge loss suffered by DTH industry and it be again recommended to MIB to charge License Fees on Adjusted Gross Revenue (AGR) instead of Gross Revenue as being charged to Telecom operators and further consider to reduce license fees from 6% to 4% of AGR.

It may be considered that maintenance of the level playing field amongst all Digital Service Providers therefore additional burden including payment of License fees on DTH be substantially reduced.

**SUGGESTIONS:-**

- a. There is no need for any modification to the entry fees (it being basically a onetime payment) enshrined under the License Agreement.
- b. The Bank guarantee can be refreshed and asked to be renewed when the License Agreement expires due to efflux of time and the time of renewal of such License Agreement.
- c. It would be ideal if the Authority introduces renewal process for DTH as well.
- d. It is high time that we align all Digital Players policies on matters like entry and annual license fees, entertainment tax, SMS, Regulatory regime etc
- e. MIB's decision and Authority's recommendation dated 15<sup>th</sup> April 2008, to reduce License fee from 10% to 6% be recommended to implement forthwith and accordingly relevant clauses of payment of License fees be modified in existing DTH License.
- f. Considering multiple taxation, investment and huge loss suffered by DTH industry, it be again recommended to MIB to charge License Fees on Adjusted Gross Revenue (AGR) instead of Gross Revenue as being charged to Telecom operators and further consider to reduce license fees from 6% to 4% of AGR
- g. It may be considered that for maintenance of the level playing field amongst all Digital Service Providers additional burden including annual License fees and other burdens applicable only on DTH require to be substantially reduced.

Trust we have made our stand point terse enough to assist the Authority to drive the process further please.

Thanking you

Yours faithfully,

For Bharat Business Channel Limited



S.K. Singh  
Head- Regulatory & Compliance