

BY COURIER/EMAIL

CONFIDENTIAL

October 15, 2013

Telecom Regulatory Authority of India,
Mahanagar Door Sanchar Bhawan,
Jawahar Lal Nehru Marg,
(Old Minto Road)
New Delhi-110002

Kind Attention: Shri. Wasi Ahmad, Advisor (B&CS)

Dear Sir,

Please find enclosed our response to the consultation paper no. 9/2013 on "*Issue/Extension of DTH License*" dated October 1, 2013, on which comments have been sought from stakeholders.

Please note that this response is without prejudice to our rights and contentions with regard to the matters discussed. We reserve the right to furnish additional comments/ counter comments for the purpose of further clarifying our position on the proposals set out in the consultation paper.

Yours truly,

For Sun Direct TV Private Ltd



R. Mahesh Kumar
Managing Director



Encl: Our response to the consultation paper no. 9/2013 on "*Issue/Extension of DTH License*" dated October 1, 2013.

October 15, 2013

Submissions of Sun Direct TV (P) Ltd ("Sun Direct") to Telecom Regulatory Authority of India ("Authority) in response to the Consultation Paper no. 9/2013 on "Issue/Extension of DTH License" dated October 1, 2013 ("Consultation Paper")

RESPONSE TO ISSUES FOR CONSULTATION

1. Should an entry fee be charged at the time of issue of a new license to the existing DTH licencees? In case an entry fee is to be charged, what should be the quantum of such entry fee?

Response:

To arrive at a justified response to this issue, we first need to examine and understand the purpose behind levy of an entry fee. The DTH Guidelines in this regard are as under:

"3.1 The Licensee shall pay an initial non-refundable entry fee of Rs.10 crores before the issue of letter of intent to him by Licensor, and, after the issue of the Wireless Operational License by the Wireless Planning and Coordination (WPC) Wing of the Ministry of Communications, an annual fee equivalent to 10% of its gross revenue in that particular financial year within one month of the end of that year."

Based on perusal of the above, it is clear that an entry fee has to be paid only in respect of new licenses and not in respect of renewal of existing licenses or issuance of new licenses to existing licensees as the existing licensees have already paid the initial non refundable entry fee of Rs.10 crores.

It must be kept in mind that the entire concept of charging an entry fee is generally applicable for new players who plan to procure a particular license for the 1st time.

It is therefore submitted that in accordance with the clear DTH Guidelines, the new licensees should be continued to charge the entry fee at the same fee or such higher fee as the licensor may deem fit, however so far as the existing licensees are concerned who have already complied with the requirement of an entry fee, such existing licensees should not be charged an entry fee again as they are not obtaining a new license but merely renewing their license.



It needs to be kept in mind that entry fees are generally charged for the following reasons:

- (i) to establish the bonafides of prospective service providers,
- (ii) to act as a barrier for keeping out the non-serious fly-by-night entities,
- (iii) to ensure elimination of non-serious players only,
- (iv) to meet the cost of inducting a service provider,
- (v) raising resources for the budget,
- (vi) regulating scarce resources,
- (vii) recover cost of administering license.

So far as the existing licensees are concerned, all the above reasons have already been met with at the time of collecting the entry fee for the 1st time and to levy an entry fee again only for renewal of licensee would cause great financial hardship and burden on the existing DTH industry which is already reeling under the burden of intense competition from cable and other mediums, high and varying rates of taxation across different States and continuous investment of capital to bring new and improved technologies to the consumers.

Even otherwise, the Licensor is collecting an annual license fee from the licensees which runs into several crores of rupees every year and in view of the annual license fee, no further entry fee should be levied on existing licensees at the time of renewal of their licenses.

It is humbly submitted to the authority that even for telecom players which are also S.4 licensees like DTH as well as platforms competing with DTH like Cable, HITS, IPTV- Sun Direct is given to understand that no entry fee is levied a second time at the time of renewal of the licenses.

It is therefore in the interest of maintaining parity and level playing field amongst competing platform especially as the digitization process is underway in the country to not levy an entry fee again merely for the renewal.

At the most, a nominal renewal fee may be levied upon the existing DTH operators when their licenses come up for renewal to cover any administrative costs that may be incurred by the Licensor towards such renewal.



It is pertinent to observe the Authority's own views in this regard which also support the stand of Sun Direct that entry fee ought not to be levied on DTH operators at the time of renewing the license:

"1.6 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 had already provided its bonafides in the sector and the cost of inducting a service provider is not a recurring cost to the licensor.

1.7 As per the data provided by the DTH operators, the two leading DTH operators, who are in the DTH business for over 7 years, have paid an annual license fee of Rs.112 crore and Rs.121 crore for the year 2012-2013, and, till date, they have paid Rs.354 crore and 372 crore as license fee to the Government. Since the entry fee of Rs.10 crore paid by an existing DTH operator is quite small as compared to its recurrent payment in the form of annual license fees paid during the license period of 10 year license period , there could be a view that existing DTH operators may not be asked to pay the entry fee again at the time of issue of a new license; however, for the sake of parity, entry fee should continue to be levied on new players who seek licenses for the first time.

1.8 DTH operators, have time and again, advanced the argument that it is important to maintain a level playing field between providers of similar or substitutable services, especially services provided by MSO's through DAS. In this context, DTH operators have pointed out that various levies imposed by the Government, on DTH Operators are not levied on the operators of DAS."

- 2. What should be the period of the DTH Licences to be issued to existing DTH licencees on the expiry of the licence period of 10 years?**
- 3. What should be the period of extension/renewal of the licences, to be prescribed in the DTH Guidelines, for the extension/renewal of the new DTH licences on their expiry?**

Response:

Sun Direct submits that in the in the License Agreement for Unified License, the license period is 20 years.



It is therefore our view that the period should be a reasonable period and in any case not less than 15 years because if the renewal period is short, it will create anxiety in the mind of the DTH operator and its investors and act as a deterrent to the DTH operator's long term plans for growth and investing in new technologies and infusing substantial capital in the business as such capital investments can be recovered only long term.

Keeping in mind the interests of the DTH Consumers and the considerable benefits they will get through improved technologies and innovations; it is advisable to have a renewal period of atleast 15-20 years for the existing DTH licensees.

4. 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 licence?

Response:

Sun Direct submits that as the Bank Guarantee is towards non payment of license fee or violation of any of the license conditions, the existing DTH operators at the time of renewal of their respective licenses be required to renew the bank guarantee of Rs.40 crores as well with a validity period covering the period of the new license issued to the existing DTH licensees.

5. Any other relevant issues you would like to comment upon

Rationalization of license fee from 10% to 6% on AGR :

Sun Direct submits that alongwith the issues pertaining to extending of license for existing licensees, entry fee, Bank guarantee etc; it is imperative that the annual license fee for DTH industry be rationalized. It is pertinent to note that platforms competing with DTH such as HITS are not required to pay any annual fee. Even for IPTV-the annual license fee is in the range of 6% of AGR. For cable, the annual license fee is a few lakh rupees. In comparison, DTH operators are paying several hundreds of crores each year to the Licensor as annual license fee. This results in lack of level playing field for DTH and is greatly impacting competitive edge of DTH industry vis-a-vis other competing platforms and also increases the cost for the consumers. DTH industry which is already saddled with the burden of exhorbitant taxes cannot continue paying such high license fees. With the implementation of digitization across the country, the rationalization of license fee for the DTH industry will give a boost to the digitization process and come as a much sought after relief to the DTH industry.



Sun Direct submits that in this regard the Authority has already submitted its recommendations dated October 1, 2004 (Recommendation 7.9- Rationalization of License fees and taxation) is reproduced below:

- a) *"A reduction of 2% in the license fee for DTH as already proposed by the Authority in its recommendation on "Accelerated growth of internet and broadband penetrations" in line with the reduction in the license fee given for other telecom operators.*
- b) *The principle of application of license fee on the Adjusted Gross Revenue (AGR) as in the case of telecom may also be followed. The AGR in case of DTH service should mean total revenue as reflected in the audited accounts from the operation of DTH, as reduced by*
 - (i) *Subscription fee charges passed on to the pay channel broadcasters;*
 - (ii) *Sale of hardware including Integrated Receiver Decoder required for connectivity at the consumer premises;*
 - (iii) *Service/ Entertainment tax actually paid to the Central/ State Government, if gross revenue had included them."*

Sun Direct submits that the recommendations made by TRAI, which carry great weight, should, be accepted. The Supreme Court of India in Cellular Operators Association of India vs. Union of India [(2003) 3SCC 186] held as under:-

"Due weight has to be attached both to the recommendations of TRAI which consist of an Expert body as well as to the recommendations of GOT-IT, a committee of eminent experts from different field of life which has been constituted by the Prime Minister. It further held that the regulatory bodies exercise wide jurisdiction. They lay down the law. They may prosecute. They may punish. Intrinsicly, they act like an internal audit..... Statutory recommendations made by it are normally accepted by the Central Government, as a result of which the rights and obligations of the parties may seriously be affected...."



Also in P. No. 5 of 2002, in terms of its judgment dated 27.9.2003, Hon'ble TDSAT has made the following observations:-

“Could it be said the Government can treat that recommendation as a scrap of paper and consign it to the waste paper basket? Certainly not. Otherwise also the Government will have to give reasons for not accepting the recommendations of the Authority, even if we accept the argument of Mr. Salve. Otherwise, the Authority will look absolutely ineffective and its functions can as well be performed by any of the Departments of the Central Government..... To us it appears that we have to adopt a constructive and purposeful approach in interpreting the provisions of Section 11 and we cannot accept an argument which strikes at the bottom of very existence of the Authority. It is undeniable that Authority is an expert body constituted under the Act and it has been held to be so by the judgment of the Supreme Court in the case of Cellular Operators Association of India & Ors Vs. Union of India & Ors – (2003)3 SCC 186.”

In regard to the question of jurisdiction of TRAI having regard to Second proviso, vis-à-vis the Fifth proviso, this Tribunal held—

The recommendations of the TRAI therefore should be given due weight.”

It is of some significance to note that the Central Government by a letter dated 17.3.2008, during pendency of the petition of Tata Sky before TDSAT has stated as under:-

“This is with reference to recommendations of TRAI dated the 1st October, 2004 on the issues relating to broadcasting and distribution of TV channels.



2. *The recommendation No. 7.9 was regarding rationalization of license fee and taxation. After due consideration, it has been decided not to adopt the concept of AGR after allowing tax and other deductions as recommended by TRAI as allowing such deductions is likely to enable the companies to conceal their actual shareable revenue rather than making the system transparent. It has also been noted that TRAI has itself been proposing a percentage of gross revenue in the recommendations for other broadcasting services such as Mobile TV.*
3. *In view of the above, the Government has decided to reduce the license fee calculated as percentage of GR for DTH service providers to bring them at par with most of the other sectors. TRAI has recommended a license fee of 8% on AGR. Since it has been decided to impose fee on GR instead of AGR, it is therefore proposed to prescribe annual license fee as 6% of gross revenue instead of 10% of gross revenue as charged presently. It is cheer feeling that this will be broadly in line with the proposal of TRAI (8% on AGR) in terms of actual revenue accruals to the Government. At the same time there will be ease in calculation and less scope for manipulating revenue figures.*
4. *TRAI is requested to furnish its comments on the above proposal of the Government at the earliest."*

The said action on the part of the Licensor was brought to the notice of TDSAT. However, the Licensor/ Central Government withdrew the same. It, therefore, is evident that at no point of time, the recommendations of TRAI were rejected and the judgment of the Hon'ble TDSAT dated 28th May 2010 in Petition no.92(C) of 2009 lays down that :

"For DTH the license fees should be applied on the adjusted gross revenue – i.e. total revenues excluding items that are of a pass through nature. This would also be consistent with the government's policy for the Telecom Sector to apply license fee on



the adjusted gross revenue and not on the total revenue....Therefore the Authority recommends:

b) The principle of application of license fee on the AGR as in the case of telecom may also be followed. The AGR in case of DTH service should mean total revenue as reflected in the audited accounts from the operation of DTH, as reduced by

- i) subscription fee charges passed on to the pay channel broadcasters;*
- ii) sale of hardware including integrated receiver decoder required for connectivity at the consumer premise;*
- iii) service/entertainment tax actually paid to the central/state government, if gross revenue had included them,*

While Sun Direct is given to understand that the Licensor/ Central Government has preferred an appeal to the Hon'ble Supreme court and the appeals are pending, it is important that the Central Government takes a decision on implementing a reduced annual license fee (6% on AGR) to provide a level playing field and ensure parity for the DTH operators vis-a-vis competing platforms. This measure shall also be in conformity with the DoT stated policy which stresses on affordability and Not revenue maximisation. Sun Direct humbly submits that Rationalisation of levies will serve this key objective.

