

## **BIF Response to TRAI CP on License Fee and Policy Matters of DTH Services**

### **Preamble**

BIF would like to thank the Authority for initiating this much needed consultation paper on the **"License Fee and Policy Matters of DTH Services"**.

The DTH sector has been facing increased costs and shrinking margins for the past several years now. These challenges are discussed below in detail.

### **Increasing Cost and Reducing Revenue impacting the viability and financial health of DTH Operators:**

- The subscriber acquisition cost is very high due to high subsidy extended on Set Top Box given to customers. Further, increase in numbers of HD channels necessitated the requirement for transponders the cost of which has also increased manifold in past few years. These huge costs of upgradation of the services coupled with high regulatory cost have scuffed the margins for DTH operators.
- Due to the regulated tariff for DTH operators, there has been no revision in Network Capacity Fee (NCF), which is the principal source of revenue of the DTH operators, for last 4 years. Concomitantly, there has been steep increase in cost of operations of DTH services as a result of which the DTH operators are put to great hardship.

### **Uneven regulatory framework creating a non-level playing field vis-a-vis competition:**

- The DTH industry is reeling under excess regulation, complex as well as dis-balanced regulatory framework. Today, in the broadcasting sector's entire value chain, DTH operators are the only ones subjected to license fees. This creates a non-level playing field and is somewhat discriminatory and against the basic premise of TRAI's endeavor to have a balanced regulatory framework.
- No License Fee is being paid by other competitors of DTH Operators, such as Cable and HITS operators, despite providing the same set of service to the same market. Some recent media reports also suggest that DoT is likely to consider the **waiver of the license fee on wireline broadband services (including IPTV) offered by Telecom Service Providers for the next 10 years.**
- The table below explains the financial obligations borne by the DTH operators in comparison with the OTT players/Broadcasters & other LCOs and MSOs:

## BIF Response to TRAI CP on License Fee and Policy Matters of DTH Services

DPOs	DTH	Broadcaster OTTs and other OTTs	HITS	LCOs [Local Cable Operators]	MSO [Multi-System Operators]
<b>Entry Fee</b>	INR 10 crores	Nil	INR 10 crores	INR 500/- (One-time)	INR 1 Lakh (one-time registration Fee)
<b>Annual License Fee</b>	8% of Gross Revenue	Nil	Nil	Nil	Nil
<b>BGs</b>	INR 5 crores	Nil	INR 40 crores	Nil	Nil

- This pressure from unregulated market, combined with the increased cost of operations and the very high regulatory levies, has led to most DTH operators suffering from operating losses even after 12-15 years of operations.

Therefore, we humbly submit that DTH operators, be either subject to no regulation (entirely exempt from paying LF ) or a very light touch regulation.

### **Imposition of a license fee on DTH Operators for Broadcasters' Share of Revenue is incorrect and requires immediate review:**

- The DTH operators have always been collecting the revenue from subscribers and passing on the broadcasters' share to them. The new regulatory framework ( NTO 3.0) has clearly spelt out the mechanism for sharing of revenue stream between DTH operators and the broadcasters. Being a distributor for the broadcasters, a DTH operator only gets a distribution margin and NCF. The same is for the investment made to create the network, whereas the content or channel subscription cost, is the broadcasters' revenue.
- TRAI, in its letter dated 8<sup>th</sup> January, 2020 to MIB, had stated that the new framework, to a large extent, has altered the structure of the value chain, the commercial relationships between the stakeholders and their revenue streams etc. It is now easier to identify the subscription revenue passed on to the broadcasters by DTH operators vis-à-vis other revenue streams. Through this

## **BIF Response to TRAI CP on License Fee and Policy Matters of DTH Services**

**new framework, TRAI has once again clearly stated that the amount collected by DTH operators for the channel/bouquet subscription is broadcasters' revenue and DTH operator's revenue is only other sources (e.g. NCF, VAS charges etc.).** Thus, imposition of license fee on DTH operators for part of the revenue earned by the broadcasters (being in the nature of pass-through) is not correct and needs immediate correction.

### **Incorrect and partial implementation of license fee structure for DTH Operators:**

- While recommending the 8% of AGR on DTH, TRAI has taken the reference of the telecom sector. Since both the services are derived from the Indian Telegraph Act, 1885, the license fee for DTH has been prescribed equivalent to the telecom operators. However, we humbly wish to submit that TRAI may have erred on two counts while comparing the same:
  1. In case of telecom, the annual License Fee rate of 8% is inclusive of USO levy of 5%. Thus, the actual License Fee rate for telecom is 3% and not 8%. The funds of USO levy come back to the Telecom Service Providers through subsidy granted for participation in eligible projects. However, since DTH does not form part of USO, this levy is disproportionate even if compared with telecom services.
  2. It has also not recognized the pass-through mechanism ( for the broadcasters' portion of the revenue ) as applicable for telecom operators.
- Further, the recent reforms approved by the Cabinet to boost sector investments and provide impetus to competition and consumer interests are restricted to only the telecom sector. One of the key decisions relates to the exclusion of non-telecom revenue (including revenue from DTH) from the definition of Adjusted Gross Revenue for the purpose of levying the telecom License Fee. The necessary license amendments have also been made by the concerned Department of Telecom and are effective from 1<sup>st</sup> October, 2021. However, no equivalent change has been brought about in the DTH license regime.

Therefore, there is an urgent need to review the definition of revenue for DTH services, rationalization of levies and the bank guarantees, in order to reduce the financial burden on the sector and also help in the proliferation of DTH services and help the industry both in the short and the long run.

## **BIF Response to TRAI CP on License Fee and Policy Matters of DTH Services**

In light of the above, we provide our detailed comments and answers to the specific questions in the following sections.

### **License Fee:**

**Q1. Whether the existing definition of Gross Revenue and Adjusted Gross Revenue as prescribed in the extant DTH Guidelines needs any modification? If yes, please provide revised definition of the revenue on which license fee should be applicable. Provide your comments with proper justification.**

**Q2. Is there a need to exclude certain revenue components from the definition of Gross Revenue in the DTH Guidelines? If yes, what income heads should be excluded from Gross Revenue to arrive at Adjusted Gross Revenue? What mechanism should be adopted to ensure that the revenue excluded reflect true value, without compromising the revenue streams that entail payment of license fee?**

**Q3. Please provide comments on the list of possible income heads as per Form-D'. Accordingly, apropos to Q2 above, provide a clear, precise and unambiguous format of Form-D containing:**

- i. Exhaustive income heads forming part of Gross Revenue**
- ii. Exhaustive list of revenue components (income heads) to be excluded from Gross Revenue**

### **BIF Response:**

There is an urgent need to address the unbalanced regulatory regime in order to promote free and fair competition and ease of doing business. The regulatory regime applicable for DTH industry should be the same as those who provide similar services like IPTV, cable, HITS offering same services. Further, while telecom reforms have ushered in a liberalized phase of growth in the telecom sector, similar reforms are required to alleviate the DTH industry from its sufferings. These reforms should look at abolishing of LF for DTH players or at least reducing the 5% USOF component in the LF, which is not relevant for DTH.

**Therefore, TRAI should recommend not to impose LF on the revenue from DTH operators since none of the other distribution platforms, both regulated and unregulated, are paying any LF to the Government.** It is reliably understood that the only other distribution platform, i.e., IPTV, that is subject to the LF regime under the Telecom licence, is likely to be exempt for the next 10 years as well.

## BIF Response to TRAI CP on License Fee and Policy Matters of DTH Services

In case this is not possible, then we wish to request that the definitions of Gross Revenue ('GR') and Adjusted Gross Revenue ('AGR') need to be revised immediately. Currently, the license agreement read with TRAI regulations (NTO) make for a double whammy for the DTH operators. On one hand, the DTH operators are required to pay License Fees on the total collection made from the subscribers. On the other hand, the share that the DTH operators are allowed to retain from such collection is also regulated (by fixing the margin between DTH operators and broadcasters).

In effect, while the License treats the total collection from subscribers as the revenue of DTH operators, almost 80% of this amount belongs to the broadcasters as per the NTO. As discussed in the Preamble, **even TRAI, in its letter to MIB, has clarified that the amount collected by DTH operators for the channel/bouquet subscription is broadcasters' revenue and DTH operator's revenue is limited to other sources (e.g. NCF, VAS charges etc.) only.** The NTO governs even the minutest aspects of charges that a DTH operator may collect from a subscriber for the provision of services and also prescribes the mandatory payments it has to make to broadcasters. Therefore, a DTH operator has neither the flexibility of deciding tariff nor any real bargaining power to negotiate a fair contract with the broadcasters.

In view of the above, we propose the following definition of Gross Revenue:

*"Gross Revenue (GR) is the amount charged from the customers in the course of ordinary activities of the Direct to Home [DTH] enterprise from rendering of services for which license has been granted under section 4 of the Indian Telegraph Act, 1885 and calculated on accrual basis as per the accounting standard notified under the Companies Act, 2013 as amended from time to time."*

Alternatively, in case it is desired to continue with the extant definition (read with the recent guidelines issued by MIB on 30.12.2020), it should be amended in the following manner:

*"Gross Revenue is the amount charged from the customers in the course of ordinary activities of the Direct to Home [DTH] enterprise from rendering of services and from the use by others of the enterprise resources yielding rent, interest, dividend, royalties, commissions etc. and calculated on accrual basis as per the accounting standard notified under the Companies Act, 2013 as amended from time to time. In the case of licensee providing or receiving goods and service from other companies that are owned or controlled by the*

## BIF Response to TRAI CP on License Fee and Policy Matters of DTH Services

*owners of the licensee, all such transactions shall be valued at normal commercial rates and included in the profit and loss accounts of the licensee to calculate its gross revenue."*

Further, the following items should be excluded from the GR to arrive at the Applicable Gross Revenue (ApGR):

- (i) Revenue from operations other than from the Direct to Home [DTH] business for which License has been granted by Ministry of Information and broadcasting.
- (ii) Revenue from activities under a license/authorisation issued by Ministry of Communications.
- (iii) OTT Revenue & other partnership revenue (involving third party products/services)
- (iv) Other revenues to be **excluded**:
  - a. Income from interest and dividend
  - b. Capital gains on account of sale of fixed assets (be it fixed or movable and tangible or Intangible) or Gain on sale of Securities/Investment
  - c. Capital Receipts
  - d. Gains from foreign exchange rates fluctuations
  - e. Income from Property Rent
  - f. Insurance Claims received
  - g. Bad Debts Recovered
  - h. Miscellaneous Income like Scrap Sales, Notice Pay, etc.
  - i. Capital Gains on account of business combinations, e.g., merger/demerger, slum sale, etc.
  - j. Other Income like management support charges (including knowledge sharing/ Auxiliary services like Insights on Customer, Content etc.), Manpower Services, treasury income including gains on mark to market, derivatives and any other notional gains
  - k. Margin / Commission (incl. adjustments) on the principal of revenue realised
  - l. Advertising revenue and rental of set-up boxes as these services can be facilitated by the non-licensed operator
  - m. Deduction towards cost of goods sold against sale of accessories

The same shall be in line with the amended telecom licensing regime, which allows for such/similar items to be reduced from the GR of the licensee to arrive at the ApGR.

In the matter of exclusion of items from the ApGR to arrive at the Adjusted Gross Revenue, the following deductions should be allowed:

## BIF Response to TRAI CP on License Fee and Policy Matters of DTH Services

### i. Content Cost charges paid to the broadcasters:

In the present regime (NRF), a distributor has to pay 80% of the amount collected from subscriber to broadcaster under statutory regulations. Since there is a statutory constraint on retaining more than the prescribed percentage from the price charged to a subscriber plus the additional fees, the amount that is not even allowed to be retained legally by DTH operators cannot form part of their GR.

Reference can be had to the principles of Revenue Recognition as contained in Para 47 of IndAS 115 (prescribed by the Institute of Chartered Accountants of India) are reproduced as below:

*"47. An entity shall consider the terms of the contract and its customary business practices to determine the transaction price. The transaction price is the amount of consideration to which an entity expects to be entitled in exchange for transferring promised goods or services to a customer, excluding amounts collected on behalf of third parties (for example, some sales taxes). The consideration promised in a contract with a customer may include fixed amounts, variable amounts, or both."*

As per this accounting standard, the DTH operator is entitled to credit its revenue only to the extent of 20% and cannot show the entire collection from the subscriber as its revenue. Since it is not entitled "to the entire amount", but only to 20% of the total amount collected from the subscriber. In the hands of the DTH operator, the gross revenue will be the total amount collected as network carriage fee plus 20% of the amount which is collected from the subscriber. The aggregate of these two will be the gross revenue in the hands of the distributor.

**As such since the revenue does not belong to the distributor it should be excluded from its revenue. Therefore, the deduction of content cost charges paid to the broadcasters should be allowed as deduction from GR/ApGR.**

- ii. Installation charges passed on to the service providers/third parties on the basis of number of customers acquired are in the nature of pass through.
- iii. GST, Entertainment tax or any other taxes actually paid to any central/state or local authority. Such taxes are collected on behalf of Government and are not considered as revenue of a Company.



## **BIF Response to TRAI CP on License Fee and Policy Matters of DTH Services**

TRAI itself in its recommendation dated October 1, 2004 in the matter of "Issues Relating to Broadcasting and Distribution of TV Channels" has recommended for such deductions from Gross Revenue of DTH operators. This would also be in line with the spirit of the recent reforms carried out for the telecom industry.

Further, in the case of the bundling of DTH services with any other licensed/unlicensed services or goods, the amount pertaining to revenue from the rendering of DTH services should be fair valued and certified by the statutory auditors of the Company.

A proposed format of Form D has been annexed as Annexure-I.

**Q4. What method of verification should be adopted by the licensor to verify the deductions claimed, if any, for the purpose of calculation of the license fee payable by the DTH operators?**

### **BIF Response:**

Please refer to our response to Q1 to 3 above.

If the revenue and cost are considered on an accrual basis following the Accounting Standards as prescribed under the Companies Act 2013, the same can be verified directly from the books of account of the Company.

Additionally, TRAI, in its letter dated 8<sup>th</sup> January 2020, has also stated that under the New Regulatory Framework it is easier to clearly identify the subscription revenue which is passed on by DTH operators to broadcasters and other streams of generation of revenue by DTH operators.

Thus, a certificate from Statutory Auditors in the prescribed proforma showing the revenue and the deductions (i.e. "Form D"), along with reconciliation of the same with the annual accounts of the Company duly certified by the Statutory Auditors, should suffice. Therefore, there is no need for a separate verification mechanism.

**Q5. Alternatively, should the license fee be levied on Gross Revenue in place of Adjusted Gross Revenue, or any other base be used? If yes, what should be the percentage/quantum of such base? Please support your response with proper reasoning.**

### **BIF Response**



## BIF Response to TRAI CP on License Fee and Policy Matters of DTH Services

Please refer to our response to Q1 to 3 above.

We humbly submit that no LF should be levied on DTH operators, since no other distribution platform is paying the LF and the Government is likely to waive the LF for IPTV operators as well for another 10 years. However, if that is not possible then LF should be levied not on GR, but on the AGR.

Moreover, while recommending LF rate of 8% on DTH, TRAI has taken the reference of telecom sector. Since both the services are derived from the Indian Telegraph Act, 1885, the license fee for DTH has been prescribed equivalent to the telecom operators. However, TRAI has done an incorrect comparison since in case of telecom, the annual License Fee rate is 3% and 5% is charged as USO levy. Thus, the actual License Fee rate for telecom is 3% and not 8%.

### Bank Guarantee:

**Q6. Is there any need to review the initial Bank Guarantee for the first two quarters, especially since the Bank Guarantee has already been reduced for the first two quarters vide amendments in DTH Guidelines notified on 30th December 2020?**

### BIF Response

We submit that there should not be any requirement of Bank Guarantees (BGs) in the DTH sector. The DTH operators have been operating in the sector for the last 15-20 years and thus, the requirement of huge bank guarantees results in unnecessarily blocking their capital/funds.

**Q7. Whether the amendments made by DoT in Unified License Agreement w.r.t. rationalization of Bank Guarantees should be extended for existing DTH licensees also? If yes, what should be the percentage of License Fee for the two quarters to be submitted as Bank Guarantee to the licensor?**

### BIF Response

Please refer to our response to Q6 above.

We submit that there is no need to continue with the practice of BGs in the DTH sector. However, in case it is retained, then the same should be reduced by 80% as has been done for telecom sector through cabinet reforms.

## BIF Response to TRAI CP on License Fee and Policy Matters of DTH Services

**Q8. Whether any alternate method should be adopted instead of Bank Guarantee for securitizing license fee and ensuring compliance of the DTH license conditions. If yes, please specify the details thereof.**

### **BIF Response**

Please refer to our response to Q6 above. We believe that there is no need to continue with the concept of BGs for DTH.

**The risk to government dues is actually emerging due to high levels of recurring and sector-specific LF levy. This levy itself should be substantially rationalized and only the cost of administration of license should be recovered**, since the direct and indirect contributions of the business to the overall economy surpass the recurring levy. Once this levy is rationalized, the risk to government dues is reduced and the need for securitization itself will not arise. However, in case the Licensor still feels the need to securitize the dues, it may be done through the mechanism of corporate guarantees instead of bank guarantees.

### **Any Other Issue**

**Q9. Stakeholders are requested to provide any other comments, if any, relevant to DTH policy matter.**

## BIF Response to TRAI CP on License Fee and Policy Matters of DTH Services

### Annexure-I

#### Proposed Format of Form D

Sl. No.	Income Heads	Notes Reference	Q1	Q2	Q3	Q4	Total
<b>1</b>	<b>Revenue from DTH services</b>						
1.1	Rental						
1.2	Subscription including Top-up Revenue						
1.3	Activation						
1.4	Carriage Fee						
1.5	Advertising						
1.6	Other Fees and Charges						
1.7	Any other income/miscellaneous receipt from subscribers						
<b>2</b>	<b>Related Party Transactions</b>						
<b>3</b>	<b>Revenue from Operations/Activities other than DTH Operations/Activities</b>						
<b>4</b>	<b>Miscellaneous revenue</b>						
4.1	Income from Dividend						
4.2	Income from Interest						
4.3	Capitals Gains on account of profit of Sale of fixed assets and securities						
4.4	Gains from Foreign Exchange rates fluctuations						
4.5	Income from property rent						
4.6	Insurance claims						
4.7	Bad Debts recovered						
4.8	Excess provisions written back						
4.9	Any Other						
<b>AA</b>	<b>Gross Revenue Of The Licensee Company (Add 1-4)</b>						
<b>BB</b>	<b>LESS:</b>						
<b>1</b>	<b>Revenue from Operations/Activities other than DTH Operations/Activities</b>						
<b>2</b>	<b>Miscellaneous revenue</b>						

## BIF Response to TRAI CP on License Fee and Policy Matters of DTH Services

2.1	Income from Dividend						
2.2	Income from Interest						
2.3	Capitals Gains on account of profit of Sale of fixed assets and securities						
2.4	Gains from Foreign Exchange rates fluctuations						
2.5	Income from property rent						
2.6	Insurance claims						
2.7	Bad Debts recovered						
2.8	Excess provisions written back						
<b>BB</b>	<b>Total (1+2)</b>						
<b>CC</b>	<b>Applicable Gross Revenue (ApGR) (AA-BB)</b>						
<b>DD</b>	<b>DEDUCT:</b>						
<b>1</b>	<b>Content Cost charges paid to Broadcasters</b>						
<b>2</b>	<b>Installation Charges</b>						
<b>3</b>	<b>GST or any other Taxes (if part of gross revenue)</b>						
<b>DD</b>	<b>TOTAL DEDUCTIBLE REVENUE (Add 1-3)</b>						
<b>EE</b>	<b>ADJUSTED GROSS REVENUE (CC-DD)</b>						
<b>FF</b>	<b>REVENUE SHARE ON ADJUSTED GROSS REVENUE</b>						