



Date: 18-1-2010

To,
The Secretary
The Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan
Jawahar Lal Nehru Marg, (Old Minto Road)
Next to Zakir Hussain College
New Delhi - 110 002.

Sub: Supplementary Consultation Paper on Tariff Related Issues for DTH Services, 24 December 2009

Dear Sir,

We take this opportunity to acknowledge the support and initiatives taken by TRAI for vigorously promoting digitalization and addressability of distribution networks. We also appreciate the issues floated for consultation in relation to the DTH operators, aimed to provide maximum benefit to the consumers of such advanced services. We believe that the outcome of the consultation along with the responses of the stakeholders in earlier consultations would provide support to formulate a wholesome policy that would have a significant impact on the DTH industry in the country from a Consumer, Regulatory and business perspective.

Introduction

In a short span of time DTH Services in India have become one of the most efficient and consumer friendly modes of delivery of popular content to the consumers. In a predominant market where the broadcasting services are primarily delivered by strong local cable operators and vertically integrated large MSOs, DTH is poised to give competition to traditional networks. Even though, the consumer base for pay television (C&S Households) has touched a striking figure of over 100 mn¹, digitalization, quality of services, choice of popular content, value for money, consumer satisfaction, remain the biggest issues for the Regulator, delivery platforms and the consumers.

In comparison to the cable networks, which predominantly have designed their business models on high level of under-reporting and under-declaration of the real subscriber base, DTH provides complete addressability of subscriber base. However, the initial investments in setting up and operating DTH operations are very high compared to traditional networks.

¹ TAM Annual Universe Update 2010 is 103 million

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DTH services work on the basic premise of a Pay Television Model. Therefore, it is necessary that DTH services operate on a revenue model which supports the key investments and challenges which are *inter alia*:

- creating a national infrastructure for distribution of signals;
- employing a huge workforce to support sales & marketing, installation and field services;
- supporting significant back-end functions with call centers 24x7 and customer relationship management systems and infrastructure;
- state of the art - high-tech uplink facility for providing consistent superior digital quality reception;
- scarce KU band capacity in the country;
- To be competitive to the consumers in the remote and rural areas at an affordable price; catering to national and regional consumer demands
- Prohibitive content acquisition costs;
- High level of Adjusted Gross Revenue (AGR) payable annually at the rate of 10%
- High incidence of Central and State taxation on DTH services and Set Top Boxes, including – customs, excise, service tax, entertainment tax, sales tax, entry tax, octroi etc.
- Differential regulatory treatment of addressable platforms for e.g. CAS networks in notified areas are regulated differently in comparison to DTH and like addressable platforms

It would be pertinent to mention that there is no level playing field for the DTH operators to support such high operating costs and bear the brunt of high expenditure on procurement of content. Accordingly, the need of the hour is that the Regulations ought to address the above issues and provide a level-playing field for a healthy competition.

Thus, we believe that unless the commercial principles, which are the pith and substance of the interconnect agreements between the Broadcasters and the DTH operators, are regulated, issues with respect to channels' packaging, terms, distribution rights, packaging etc. would not be effectively dealt with.

Thus, on the issues highlighted in the Consultation Paper, we wish to state as under:

Issues for Consultation

4.1.1 *Whether there is a need to differentiate various packages for the purpose of wholesale tariff determination?*

Response: - The Interconnect Regulations under clause 13.2A.13 appropriately provide the methodology to be adopted for packaging the channels by the DTH operator. The provision is wide in its scope to include the differentiations of whether a channel(s) is provided in an entry level tier, add-on tier or as a stand-alone *ala carte* channel. The present regulatory framework clearly provides for the method to be adopted for calculating the subscriber base for the packaged channel(s) whether availed by the DTH operator on a bouquet or an *ala carte* basis from the Broadcaster.

The said provision promotes healthy competition among the DTH operators to offer channels as per their assessment of consumer needs and market their services. Given that DTH services are pan India and are required to cater to diversified demographics of the Country, the base tier normally are designed not only to market the DTH services but also keeping the best interest of the consumers in a particular demographic region. Any initiative to define the base tier (which could be different for each DTH operator) or an add-on package which is based on the:

- (a) availability of the channels with the DTH operator;
- (b) interconnect terms and conditions between the broadcaster(s) and the DTH Operator for channels;
- (c) Transponder bandwidth, etc.

would be counter-productive, lead to ambiguity, disputes and adversely effecting the competition among DTH Operators and thereby, restricting the consumer choice to avail DTH services.

4.1.2 *If yes, how to define a basic package and add - on package for the purpose of wholesale tariff differentiation in relation to DTH services? Please elaborate your comments with appropriate reasoning.*

Response: As mentioned above, given that DTH is a completely addressable platform, we believe that the present regulatory framework addresses the aspects of packaging of channels and calculating the popularity of the bouquet or channel as per its/their subscriber reach. Thus, at this stage necessity to define Base Package or Add-on package is not desirable.

However, notwithstanding the above, for sake of clarity, "Basic Tier/ Package" could be referred to as:

"Basic Tier/ Package" is a bouquet of television channels offered by a DTH Operator to its subscribers or intended subscribers to be entitled to avail the DTH services and any other additional offerings/ services of the DTH Operator.

4.1.3 *Whether there is a need for different wholesale price formulation for a TV channel/ bouquet depending upon its inclusion in different packages offered to the subscribers by the Dth operators. You may also suggest any other option for differential wholesale price formulation. Please elaborate your comments with appropriate reasoning.*

Response: - The current regulatory framework provides adequate flexibility to the DTH operators to package the channels and price its services for its consumers keeping the aspects of its competition, penetration in target markets and consumer choice in the forefront. Differential pricing based on different packages is a matter based on popularity of the content, genre of the channel(s) and least to mention consumers' preference. Differential pricing model in a completely addressable platform works best between consumers and DTH service providers.

However, as regards, the differential pricing between the broadcasters and DTH operators is concerned, it could work provided there is revenue share between broadcasters and DTH operators of advertisement revenue and attractive commercial propositions beyond the standard price determined for channels by TRAI on DTH Services.

The regulations also adequately provide for volume discounts that the broadcasters and DTH operators may work out on case to case basis. Thus, at this stage, we believe the regulatory framework is adequate enough to address the issue of differential pricing between broadcasters and DTH operators.

4.1.4 *If the wholesale price is to be linked with packaging of the TV channels then what should be the relationship between wholesale prices of a TV channel/ bouquet offered by a broadcaster to a DTH operator, if the channel/ bouquet is packaged as a part of a basic package, or as a part of add – on – package or both by a DTH operator? Please elaborate your comments with appropriate reasoning.*

Response: - We believe that the wholesale pricing of the channels ought to be linked to the business models of respective broadcasters rather than the packaging of channels by DTH operator. The wholesale price of the channel ought to be fair and reasonable to address the market realities and consumers' choice. Each broadcaster has a different business model and to determine what package they wish to choose on being on a DTH platform, parties may determine on mutually agreeable terms and conditions. In the alternative, DTH operator ought to be left with a choice to avail the channels on a 'must provide' basis at a

price determined by TRAI keeping in view the popularity of channels and business models of the broadcaster(s). We also understand that TRAI has obtained necessary data from the broadcasters for determining the popularity and pricing of channels.

At the same time, it is submitted that the current Interconnect Regulations adequately provide for volume discounts that the broadcasters and DTH operators may work out on case to case basis. Thus, at this stage, we believe the regulatory framework is adequate enough to address the issue of differential pricing between broadcasters and DTH operators.

As regards the pricing of the wholesale pricing of the channels, we submit that DTH services are growing at a fast pace in India due to its efficient technical management, consumer experience and addressability, however, it is still in its nascent stage. In order to provide much needed impetus to the growth of DTH services, we submit that the scheme adopted by the Government to promote digitalization and CAS in notified areas by pricing the channels and determining the revenue share between the CAS operators and Broadcasters, the same ought to be extended to DTH operators till the Government determines that there is parity in the market and adequate level playing field for all players in the market.

While determining the wholesale price of the channels, the Authority may also consider the aspects of:

- (a) **alarming levels of under-declaration** in cable networks and broadcasters having priced their channels keeping the under-declaration levels in view. It is evident from several industry reports that broadcasters only get 5-10% of the total revenue earned in cable market. In an addressable scenario, going by such logic, the wholesale pricing of channels ought to be 5-10% of the current analog prices of the channels. The ills of under-declaration lead to tax evasion both in service tax and entertainment tax – a huge revenue evasion for both the Central and State Governments.
- (b) **Absence of level playing field** – DTH Services being completely transparent and addressable have to face the brunt of:
 - High infrastructure cost to set-up pan India operations;
 - high content cost (even if it is taken to be 50% of the rates for the analogue networks);
 - high incidence of AGR fees i.e. 10%;
 - Service Tax – 12.5% (approx);
 - Entertainment Tax – between 15-30% (differs for each State);
 - Other levies on Set-top-boxes, such as customs duty, excise duty, sales tax.

4.1.5 *Why should not a DTH operator extend a – la – carte mode of service provisioning of a TV channel at the level of subscriber?*

Response: While the Authority may appreciate that India is a country of diversity and DTH services cater to diversified demands of different demographics. It is technically unviable to provide all channels on ala carte basis to subscribers and it may not be prudent business model to invest in state of the art infrastructure for providing individual channels to subscribers. Even for the sake of argument, if individual channels are provided, the cost at which the DTH services reach the subscriber is very high. From a consumer point of view also, it is prudent to have variety at a minimum cost. In order to address such concerns, DTH operators provide an entry level package keeping the wholesome experience of the consumers in mind and leaving a choice with the consumer to avail any additional service as an add-on service.

4.1.6 *Can the DTH operator offer a – la- carte option as one of the entry level options for subscribers?*

Response: Please refer to the above response to 4.1.5.

4.1.7 *If the DTH operators are required to make available the channels on a – la – carte basis to the subscriber, then what could be the minimum number of channels and / or minimum subscription price and/ or minimum subscription period for subscribing to the channels? Please elaborate your comments with appropriate reasoning.*

Response: Please refer to the above response to 4.1.5. We also believe the present regulatory framework addresses the issue of packaging appropriately.

4.1.8 *In case of a a-la – carte provision to the subscribers, should there be a maximum permitted time frame for servicing request of a DTH subscriber? If so what should be such time frame? Please elaborate your comments with appropriate reasoning.*

Response: Consumer should have a choice depending on the situations to pick & choose channels they want. The only constraint of a time period is that, it must be linked to a consumer having the minimum basic pack, as a prerequisite.

4.1.9 *In case of a-la- carte offering of any TV channel by a DTH operator, whether there is a need to identify relationship between wholesale and retail price of that channel? Please elaborate your comments with appropriate reasoning.*

Response: The endeavor of the DTH Service providers is to make its services most attractive and cost effective for its consumers. Given that the content acquisition cost (i.e. channels rates) is based on the rates applicable to analogue cable networks – which are prohibitive

for any addressable platform, it becomes extremely challenging for DTH operators to earn their margins from the sale of ala carte offerings. Thus, most of the ala carte offerings are designed based on the anticipated consumer demand, marketing of such service(s) and financial viability, least to mention stringent conditions some of the broadcasters impose on the DTH operators for providing signals. Thus, given the market scenario at this stage, we believe, identifying relationship between wholesale and retail price of that channel would be an exercise in futility.

Hope the above meets your requirements.

If you would require any further information, we would be glad to assist.

Thanking You,

Yours Truly,
For Sun Direct TV Private Limited.



R.S. Lakshmi Priya
Authorized Signatory