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**Sub:** *Comments on Consultation Paper on "License Fee and Policy Matters of DTH Services".*

Dear Sir

Sun Direct is an Indian Direct-to-Home ("DTH") broadcasting service provider, which commenced its operations in the year 2007. Over the period of years, Sun Direct has invested significantly in advanced technology as well as infrastructure to offer value entertainment in a seamless, uninterrupted and diversified manner to its subscribers in line with the regulations prescribed by TRAI from time to time. Quality viewership over the period of years has however come at a cost, which unfortunately in the case of DTH Sector is not being set off due to the high share of revenue going to the Government towards License fee after passing an equally high revenue towards the broadcasters share. TRAI has limited the fee to be charged for the services provided by Distribution Platform Operators ("DPOs") including the DTH operators. The revenue is not commensurate with the challenges that are being faced by DTH Operators for providing its services. Sun Direct along with other DTH Operators have thus been voicing their depleting revenue concerns before the Government as well as the regulator from time to time.

In view of the long litigation history pertaining to the determination of appropriate basis for levy of license fee towards DTH services in India before various High Courts and Tribunals, Sun Direct would like to express its gratitude towards TRAI's consistent efforts for securing the interests of DTH Operators, which is evident from TRAI's recommendations from time to time and recognising the DTH Sector at par with the Telecom Sector to facilitate a favourable regulatory and policy environment for investments in the DTH Sector.

We take this liberty to express our views on TRAI's Consultation Paper on "License Fee and Policy Matters of DTH Services" on the three issues contained therein, i.e., License Fee Regime, Bank Guarantee and Introduction of a Uniform License Fee. In connection with the same, we would like to make the following submissions hereunder:

**1. License Fee Regime for DTH Operators:**

- 1.1 The license granted by the Central Government under Section 4 of the Indian Telegraph Act, 1885 ("Telegraph Act") to DTH Operators is for the privileges to be enjoyed by the Operator

in respect of Telegraphs, which includes establishing, maintaining and working the DTH infrastructure and services. The relevant provision has been reproduced as under for ready reference:

*"PART II*

*PRIVILEGES AND POWERS OF THE GOVERNMENT*

*4. Exclusive privilege in respect of telegraphs, and power to grant licenses.*

*(1) Within India, the Central Government shall have exclusive privilege of establishing, maintaining and working telegraphs: Provided that the Central Government may grant a license, on such conditions and in consideration of such payments as it thinks fit, to any person to establish, maintain or work a telegraph within any part of India:*

*Provided further that the Central Government may, by rules made under this Act and published in the Official Gazette, permit, subject to such restrictions and conditions as it thinks fit, the establishment, maintenance and working-*

*(a) of wireless telegraphs on ships within Indian territorial waters and on aircraft within or above India, or Indian territorial waters, and*

*(b) of telegraphs other than wireless telegraphs within any part of India.*

*(2) The Central Government may, by notification in the Official Gazette, delegate to the telegraph authority all or any of its powers under the first proviso to sub-section (1). The exercise by the telegraph authority of any power so delegated shall be subject to such restrictions and conditions as the Central Government may, by the notification, think fit to impose."*

- 1.2 The said license is common to all operators who establish, maintain or work a telegraph. It is however the case of the DTH Operators that while the nature of the license is the same for all operators, the License Fee being charged by the Central Government from each class of operators is discriminatory. The said treatment by the Central Government hits Article 14 of the Constitution of India as it fails to treat all licensees under Section 4 of Telegraph Act at par with each other.

**A. License Agreement executed with Ministry of Information & Broadcasting**

- 1.3 The License Agreement dated. 28.06.2006 ("**License Agreement**") executed between Sun Direct and the Ministry of Information and Broadcasting (**MIB**) for establishing, maintaining and operating DTH Platform in India records the licensing arrangement under Article 3 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 and Information Technology, an annual fee equivalent to 10% of its gross in that particular financial year within one month of the end of that year.*



*3.1.1 Gross Revenue for this purpose would be the gross inflow of cash, receivable or other consideration arising 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. Gross revenue shall, therefore, be calculated, without deduction of taxes and agency commission, on the basis of billing rates, net of discounts to advertisers. Barter advertising contracts shall also be included in the gross revenues on the basis of relevant billing rates. In the case of licensee providing or receiving goods and service from other companies that are owned or controlled by the 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."*

- 1.4 Under the said License Agreement, Sun Direct was being charged a License Fee of 10% of its Gross Revenue, in accordance with the provisions of the MIB Guidelines dated 15.3.2001 ("**MIB Guidelines of 2001**") on Licensing Agreement for operating DTH services in India. The MIB Guidelines of 2001 was the extant framework, under which the DTH Operators were being regulated and charged license fee by the Central Government.

#### **B. Change in the Licensing Regime for DTH Operators**

- 1.5 This Authority vide its Recommendations dated 01.10.2004 on Issues Relating to Broadcasting and Distribution of TV channels ("**2004 Recommendations**") was pleased to propose reduction of License Fee by 2% for the DTH Operators and also recommended application of the principle of License Fee on the Adjusted Gross Revenue (AGR) of the DTH Licensees, i.e. Gross Revenue excluding:

- Subscription fee charges passed on to the pay channel broadcasters.
- Sale of hardware including Integrated Receiver Decoder required for connectivity at the consumer premise
- Service/Entertainment tax actually paid to the Central/State Government, if gross revenue had included them.

Thus, revenue items of a pass through nature were specifically excluded from the total revenue accruing to the Licensee for the purpose of levy of license fee.

- 1.6 TRAI's Recommendations dated 01.10.2004 were a welcome step towards due recognition of equal & fair treatment between Telecom and DTH Operators, both class of Operators having been accorded the same license & privileges by the Central Govt. u/s 4 of the Telegraph Act yet being differentially charged in terms of license fee . At the same time, TRAI had also observed under para 7.9 of its Recommendations that "*DTH operators shall have to carry out detailed accounting separation so that revenues accrued from the DTH operations and from other services, sale of hardware could be separated. The operator should follow the Accounting Separation guidelines issued by the Authority from time to time.*"

- 1.7 The said 2004 Recommendations were however neither followed in principle nor in practice by the MIB and the License Agreement with Sun Direct was executed in the year 2006 as per the MIB Guidelines of 2001, which prescribed for License Fee at 10% of the Gross Revenue. Being an early entrant in the DTH Sector and having no platform to discuss/negotiate the conditions of the license, Sun Direct also submitted a Bank Guarantee for an amount of Rs.40 Cr. along with Entry fee of Rs.10 Cr., as per the mandate under the MIB Guidelines of 2001.
- 1.8 TRAI subsequently issued Recommendations dated 13.09.2006 (“**2006 Recommendations**”) on various components which in its considered opinion would be taken into account in computing AGR. Under the 2006 Recommendations, TRAI had duly recognised the following heads, for inclusion/ exclusion in AGR.

<b>Heads of exclusion from AGR</b>
Dividend
Interest on Investment
Capital gains
Foreign Exchange fluctuations
Reversal of bad debts
Property Rent
Standalone sale of equipment's
Service Tax

<b>Heads of inclusion in AGR</b>
Interest on Deposits by customers
Reversal of vendor credits
Rent from property connected with establishing, maintain and working of tele communication
Sale/ lease of passive infrastructure such as towers/ dark fibre
Income from telecom related activities such as commission received from services provided to ISP's, handset vendors, insurance etc, sale of tenders, directories , security deposit, management fees, consultancy fees, payment received from third party
Revenue from another licensed activity
Sale of equipment bundled with telecom service
ADC (applicable in case of BSNL)
Bad debts, waivers, discounts
Fixed monthly charges such as leased line, port charges, interconnection set up, signalling charges

- 1.9 In Petition No. 7 of 2003 titled Association of Unified Telecom Service Providers of India vs UOI, the Hon'ble TDSAT vide its order dated 07.07.2006 was pleased to recognise Government's entitlement to license fee only on the licensed activities of the Telecom Operators and vide its subsequent order dated 30.08.2007, TDSAT was further pleased to take



into consideration the 2006 Recommendations and independently identify the heads of the Revenue for exclusion from AGR.

### C. Application of AGR to the DTH Sector

- 1.10 The Hon'ble TDSAT was seized of the matter of application of AGR to the DTH Sector in Petition No. 129(C) of 2007, TATA Sky vs UOI, vide its order dated 27.08.2007, AGR was recognised as the basis for calculation of license fee for the DTH Sector at par with the Telecom Sector.
- 1.11 MIB vide its communication dated 17.02.2008 rejected TRAI's Recommendation dated 01.10.2004 to adopt the concept of AGR for the DTH Sector on the ground that AGR would enable operators to conceal their actual shareable revenue rather than making the system transparent. MIB however agreed to reduce fee from 10% to 6% of Gross Revenue for the DTH Operators.
- 1.12 MIB's decision to not consider TRAI's Recommendation was premised on the threat of manipulation of revenue figures. In our respectful submission, if the said logic is to be considered, then revenue figures were equally susceptible to manipulation in the case of Telecom Operators as well. To counter such nuances, Department of Telecommunications (DoT) has enforced necessary disclosures under its relevant forms and TRAI has prescribed accounting separation guidelines from time to time. MIB's concern about transparency in accounting and manipulation of revenue, is ill-founded, and there is no rational justification to treat the DTH Sector differently from the Telecom Sector.
- 1.13 The lack of consistency amongst the DTH Operators w.r.t. accounting practices and computation of license fee may arise out of an ambiguity in the definition of AGR. Under the Amendments to Guidelines for obtaining license dated 30.12.2020 ("**2020 Amendments**"), the application of License Fee has been revised to 8% of AGR excluding GST from the existing 10% on Gross Revenue. The DTH Operators have been adopting different accounting practices and factoring in revenue components & exclusions basis their own interpretation of Gross Revenue and AGR arising from 2004 Recommendations or basis the orders passed by the Hon'ble TDSAT from time to time. TRAI has observed at para 2.26 of the Consultation Paper that there is no common industry wide accounting practice, which is being followed in principle by the DTH Operators.
- 1.14 We firmly believe that the discrepancies and differential accounting practices are due to the absence of a precise and rational definition of AGR under the License Agreements for DTH Operators. DoT had specifically issued a Schedule to the Unified License Agreement which expressly laid down all definitions and terms & conditions & restrictions as part of the framework within which telecom operators were to operate. However, the same is not applicable to the DTH Sector. The MIB Guidelines of 2001 has been substituted by the Operational Guidelines dated 16.09.2022. The DTH Sector is witnessing a change in the licensing regime.

- 1.15 It is thus imperative that the licensing regime for the DTH Operators be succinctly and intelligibly laid down with express and unambiguous definitions of 'Gross Revenue' and 'Adjusted Gross Revenue'.
- 1.16 There appears to be hardly any basis for the MIB to extend the definition of gross revenue to include revenue from unlicensed activities as distinguished with the framework made applicable by DoT for the Telecom Operators.

**D. Developments in the DTH Licensing & Operational Regime in the last decade and cost impact on the DTH industry**

- 1.17 In 2017, TRAI notified the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017 ("**Interconnection Regulations**"), Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff Order, 2017 ("**Tariff Order**") and Telecommunication (Broadcasting and Cable) Services Standards of Quality of Service and Consumer Protection (Addressable Systems) Regulations, 2017 ("**QoS Regulations**"), which have been subsequently amended. The Interconnection Regulations, Tariff Order and QoS Regulations changed the rules under which the DTH Operators and other entities in the broadcasting sector as a whole, were earlier operating. While some of the provisions of the New Tariff Order Regime (along with amendments and directions) were designed to protect the interest of consumers and DPOs, there were changes in the operational and compliance parameters for DPOs, including DTH services, adding a significant cost to the already existing expenses of the DTH Operators. Some of the changes have been summarised as under:

- Bouquets were restricted from including any free-to-air channel and High Definition (HD) and Standard Definition (SD) variants of the same channel. Therefore, pay channels and free-to-air channels were not to be mixed.
- Cap on distribution fee with majority of the revenue of 80% or more passed on to the broadcasters.
- The maximum discount offered on bouquet of channels was capped at 15% over the sum of MRP of all the pay channels in that bouquet, thereby enabling customers to choose *al-a-carte*.
- Fixation of carrying cost of 100 SD channels by a DPO at Rs.80/- per month and cost of other activities such as subscriber management, billing, complaint redressal, call centre etc. as approximately Rs.50/- per month without considering a DTH's actual operating cost due to specialised technology and infrastructure.
- Mandatory adoption of Subscriber Management System (SMS) and Conditional Access System (CAS) for managing subscriptions, management of services, billing and payments - significantly contributing to operational expenses of DTH operators.
- To audit the SMS and CAS Systems by the TRAI empaneled Auditors apart from Sun Direct's Statutory Auditors.



The mandates under Interconnection Regulations, Tariff Order and QoS Regulations compelled the DTH Operators to upgrade their infrastructure and technology to ensure regulatory compliance and higher bandwidth. The number of TV channels available in India is approximately 859, i.e. 763 Standard Definition (“SD”) channels and 96 High Definition (“HD”) channels. In order to carry all such channels, the DTH Operators required at least 1500 MHz spectrum, whereas they were earlier equipped with a capacity of 200 MHz to 700 MHz.

1.18 We also humbly request TRAI to also draw its attention to the recent change in consumer practices on the onset of Covid-19. The spurge in OTT platforms as well as Internet TV with a new found subscriber base have also significantly impacted the DTH economy. Covid-19 has changed the dynamics of entertainment, leading to emergence of newly identified challenges for the DTH Sector to tackle, including but not limited to:

- i. Data rates having been substantially reduced by telecom operators, thus driving consumers to watch content online. For instance, one of the leading Internet Service Providers (“ISP”) connection starts as low as Rs. 399/- with unlimited data @ 30 MBPS. Most urban societies especially in metro cities have ported to well establish high speed fibernet networks for seamless streaming.
- ii. Low-cost data packages in rural and rural-urban areas in the last decade, have given way for a new subscriber base, dedicated to social media and online video sharing platforms. Thus, cable subscribers have had no occasion to migrate to DTH due to unaffordability of set-top-boxes and the new generation has driven towards social and video sharing platforms.
- iii. Work from Home regime which gained momentum during the Covid-19 lockdown and continues to be the preferable mode of working, has led the telecom companies to offer data packages and broadband at highly competitive rates for industrial as well as home consumption.
- iv. Working households with time constraints are making a gradual switch to OTT, due to exclusive & uncensored quality content for the sake of convenience.
- v. Migration to internet TV, has compelled the DTH Operators to provide internet TV along with their regular offers, thereby reducing their revenue in hand.
- vi. Telecom operators have paired with OTT service providers to offer bundled packages for internet as well as OTT content, the bundled service is being offered at highly competitive rates along with value added packages to attract the customers. For instance, one of the leading ISP offers a Fibre connection for practically no charges and the connection comes with a free 4K Set-top-Box (worth Rs. 6,000/-) along with free subscriptions of upto 16+ paid OTT Apps like Netflix, Amazon Prime Video, Disney+ Hotstar, Universal+, Lionsgate Play, SonyLiv, Zee5, Hoichoi, Voot Kids etc.

- vii. TRAI Recommendations on Platform Services offered by DTH Operators dated 13.11.2019 restrict that programme transmitted by the DTH Operator as a platform service shall be exclusive and the same shall not be permitted to be shared directly or indirectly with any other Distribution Platform Operator.

The above identified problems are supplemented with TRAI's quarterly report of subscriber figures for the DTH Sector in the quarter ended on 30.09.2022, which has reported a drop of 1.46 million subscribers. The consultation paper itself records under para 1.14 & 1.15 that the subscriber base for Cable TV as on date is higher than DTH.

- 1.19 The above mentioned challenges coupled with the high percentage of revenue going towards license fee were not unknown to TRAI as even the TRAI recommendations dated 01.10.2004 on issues relating to Broadcasting and Distribution of TV channels were progressive for the relevant time and indeed advocated for the application of license fee on AGR as in the case of telecom. TRAI has thus envisioned both DTH and the telecom industry at a level playing field since 2004.
- 1.20 In view of the challenges for the DTH Sector, it is necessary that the license regime for the DTH Sector is relaxed and put at par with the Telecom Sector so that both sectors can progressively grow and sustain themselves in a healthy yet competitive environment with equality in terms of subscription fees, taxes, exclusions and subsidies. Additionally, the undersigned DTH Operator also advocates in support of a uniform license regime for all DPO's, so that the financial burden on the DTH Operators can be balanced as well as secure various sources of revenue for the Government.

#### **E. Extant directions on License Fee calculation & discrepancies therein**

- 1.21 Until the amendment notified by MIB on 30.12.2020, DTH operators were paying license fee at 10% of Gross Revenue excluding subscription fee charges passed on to pay channel broadcasters, revenue from sale of hardware, entertainment and service tax, in line with the 2004 Recommendations. The undersigned DTH Operator has also been depositing license fee in accordance with the order passed by the Hon'ble TDSAT in Petition No.92(C) of 2009.
- 1.22 We do note TRAI's observations under para 2.41 of the Consultation Paper that telecom and broadcasting services are not strictly comparable as the telecom sector, has various revenue sources which are of a pass-through nature and revenue from such pass-through component becomes part of the AGR of another telecom service licensee. In our most respectful submission, we would like to draw the attention of TRAI to various pass-through components in the DTH Sector which are akin to the pass-through components in the telecom sector as under:
- i. Subscription fee payable to Broadcasters.
  - ii. Installation fee payable to third party vendors;
  - iii. Commission payable to thirty party vendor



1.23 It is thus incorrect to assume that the DTH Sector does not have revenue components that are in the nature of pass through. In fact, approximately 50% of the DTH Revenue comprises of such pass-through components. As a result, while the gross revenue of the DTH licensees is reflected on a higher side, the actual earning is only a small part of it. The 2017 Interconnection Regulations and QoS Regulations have further increased the share of pass through revenue towards Broadcaster's fee. The requirement to pay licensee fee on the pass-through components merely because they are collected by the DTH Operator, is grossly arbitrary and irrational.

1.24 In view of the submissions above, we address the issues for consultation as under:

**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.**

A1. In our respectful submission, the existing definition of 'Gross Revenue' and 'Adjusted Gross Revenue' as prescribed in the extant DTH Guidelines do require modification. We say so for the following reasons:

i. As per MIB Order No. 8/ 12/ 2006-BP&L dated 31.07.2006, the definition of 'Gross Revenue' as inserted under Clause 3.1.1 of the Schedule to the License Agreement for DTH Service, is as under:

*“3.1.1 Gross Revenue for this purpose would the gross inflow of cash, receivable or other consideration arising 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. Gross revenue shall, therefore, be calculated, without deduction of taxes and agency commission, on the basis of billing rates, net of discounts to advertisers. Barter advertising contracts shall also be included in the gross revenues on the basis of relevant billing rates. In the case of licensee providing or receiving goods and service from other companies that are owned or controlled by the 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.”*

ii. The said definition is very widely worded and can lead to ambiguity. While the words “*in the course of ordinary activities of the Direct to Home [DTH] enterprise*” should ideally refer to activities in furtherance to the DTH license. The DTH Operator may engage into more than one business activity at a given point in time. Unless the use of the word ‘ordinary activities’ is clearly restricted to the activities of DTH Operator that may be in furtherance to the DTH License, it may be construed to include ‘all activities’ engaged into by the operator, taking into account all possible sources of revenue, which otherwise may not be connected with the business activities of the DTH Operator under the DTH license. The inference of gross revenue

should be restricted to business/Licensed Activities of the DTH Operator accruing under the Telegraph License.

- iii. Likewise, items which are of a 'pass through' nature should be excluded while computing the license fee, as the same cannot be construed as revenue for the DTH Operator.
- iv. Even under the Accounting Standard (AS) 9, which deals with the basis for recognition of revenue in the statement of profit and loss of an enterprise, it has been explained in support of services that:

*"12. In a transaction involving the rendering of services, performance should be measured either under the completed service contract method or under the proportionate completion method, whichever relates the revenue to the work accomplished. Such performance should be regarded as being achieved when no significant uncertainty exists regarding the amount of the consideration that will be derived from rendering the service."*

- v. License Fee should be charged only on the services rendered under the license granted under the Telegraph Act, and not on any other activity which can be engaged into even in the absence of such license. Accordingly, we propose revision in the definition of 'Gross Revenue' to mean and only include:

*"All revenue accruing to the DTH licensee on account of the services rendered under the DTH license including activation and subscription fee, charges for value added services such as Movie on Demand and Pay per View, installation charges, late fee, advertisement revenue, commission received, royalties, marketing, carriage fees, customer support service, as well as ancillary revenue accruing to the DTH licensee due to the privileges connected with the DTH licensee, such as rent for use of telecom equipment's/ premises, revenue from sharing of infrastructure, capital gains on account of sale of such immoveable property, which has been established for maintaining and working of DTH, income from sale/ lease of passive infrastructure and any other charges which are of a fixed nature and payable monthly by the subscribers of the licensee."*

- vi. TRAI in the Consultation Paper has summarised the practices adopted in United Kingdom, USA and Singapore. In the United Kingdom, the Office of Communications (**OfCom**) itself categorises Television licenses in five categories. The License fees applicable on each category is a percentage of their Relevant Turnover depending on the prescribed Turnover bands. Relevant Turnover has been defined in the Communications Act, 2003 as "*the turnover made from carrying on any Relevant Activity after the deduction of sales rebates, value added tax and other taxes directly related to turnover*". The term Relevant Activity has been further defined as meaning any of the following:

- the provision of Electronic Communications Services to third parties;



- the provision of Electronic Communications Networks, Electronic Communications Services and Network Access to Communications Providers; or
- the making available of Associated Facilities to Communications Providers

The OfCom also released a Statement of Charging Principles (SoCP) on 08.02.2005. The SoCP lays down the principles to be adopted by OfCom while setting annual administrative charges and license fees pursuant to the Communications Act, 2003. The following factors are included for computation of Relevant Turnover:

- Advertising revenue derived from independent television services regulated by OfCom as recorded in the profit and loss accounts for the relevant calendar year computed on a normal accrual basis;
- Sponsorship income;
- Subscription revenue for pay-per-view services retailed by the licensee or by third party retailers;
- All sources of revenue generated from the licensee's interactive services / applications (call-to-action or any digital text service(s) launched from broadcast stream of any licensed service)

The following factors are to be excluded from consideration of Relevant Turnover:

- Non-broadcaster Revenues which includes any interactive revenues receivable by it in any capacity other than its capacity as an OfCom licensee or as a provider of a service licensed by OfCom;
  - Interactive Advertising Commissions;
  - Betting / Gaming Returns / Winnings and Prizes;
- vii. A similar approach in principle, should be adopted for computing GR and AGR.

**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?**

A2. It is respectfully submitted that there is a need to exclude certain revenue components from the definition of 'Gross Revenue' in the DTH Guidelines, in order to reflect and to arrive at the revenue that is fair and commensurate with the privileges enjoyed under the DTH license. Income from other business activities of the DTH Operators should be excluded from the definition of Gross Revenue. The 2017 Interconnection Regulations and the QoS have set out an elaborate mechanism for carrying out accounting of subscribers and the declaration and periodical audit of subscriber base and accounting systems. With the adoption of such practices, there remains very little scope of revenue leakage related to the licensed activity. Further, the Adjusted Gross Revenue should exclude those components of Gross Revenue which are either of a pass through nature or should be reasonably excluded from revenue.

i. ***Income from investments:***

Interest income, dividend income or any such income arising out of investments in fixed deposits, recurring deposits, Government saving schemes, etc. being invested by the licensee from the surplus funds of the DTH licensee should not be included in AGR for the following reasons:

- This kind of income has no connection with the activities performed under the DTH license.
- This is surplus income accruing to a licensee by virtue of efficient operations and prudent investment of the surplus fund by the licensee, which surplus fund would otherwise have fetched no returns.
- Levy of license fee on this component of revenue would discourage licensees from investments.
- TRAI recommendations dated 13.09.2006 also observe that such income even though part of the revenue, cannot be said to represent revenue from licensed activity and under the Accounting Standards (AS-9) such income relates to a separate activity.
- Subsequently, TDSAT vide order dated 30.08.2007 has also approved such income to be not falling under the category of Gross Revenue as the investment basis which such income accrues has already been subjected to deduction by the Government as per the revenue sharing regime.
- Verification of this revenue is rather convenient, in view of the specific disclosure under the P&L statement of a licensee.

ii. ***Income from property which is not connected with establishment, maintenance and working of telecommunications:***

Ancillary income that accrues to a licensee either on account of sale of moveable & immoveable property i.e., capital gains, securities, warrants, instruments or on account of rent from the use of assets / immoveable property should not be included in Gross Revenue for the following reasons:

- This income has no nexus with the licensed activities of the licensee.
- The investments in such immoveable property/ securities/ warrants/ instruments are done by the licensee out of savings and after meeting liability of license fee as well as income tax.
- This income can be easily verified as the source of income is mentioned in the P&L Statement.
- Licensees can be directed to disclose all immoveable properties which are being used for the purpose of DTH operations. Similar disclosure can be sought in respect of other moveable/ immoveable properties.

iii. ***Subscription charges payable to broadcasters, Commission paid to distributors \ dealers & Installation fee & other revenue of pass through nature***



Charges collected from subscribers and passed on to broadcasters, commission paid to distributors \ dealers, installation charges payable to third party vendors, payments temporarily held on behalf of third party and any other income which is not retained by the licensee should not reflect as part of its revenue.

- Imposition of license fee on such income would be akin to imposing a charge on zero (0) income.
- Whether a DTH operator is availing the services of a third party vendor for installation of its equipment's at the subscribers premises can be easily verified and necessary disclosures can be obtained from the operators through introduction of supplementary forms.

iv. ***Income from sale of equipment including set top boxes and dish antennas:***

As far as this component is concerned, it is pertinent to highlight here that TRAI vide recommendation dated 13.09.2006 had proposed removal of this component in computing AGR for telecom operators. The rationale adopted by TRAI at the relevant time was that in case of a sale where the equipment is transferred to the buyer, it would be akin to a trading activity and such trading activity is freely engaged into by third party manufacturers who sell equipment in the open market and enjoy the freedom of not paying any license fee. It would be thus unfair to impose a fee on such sale merely because the equipment is being directly sold by the telecom operator. TRAI was, however, mindful of the fact that most telecom operators also sell handsets bundled with the telecom service as a composite package, in which case it would not be deemed as a sale on standalone basis.

In the case of DTH operators, both equipment including the set top box and the dish antennas are now being sold in the open market and may not be exclusive to the concerned DTH Operator. Subscriber has the choice to obtain the equipment's matching the specifications and requirements of the DTH from third party vendor. The DTH Operator also incurs a substantial investment towards manufacturing of such hi-tech equipment, which cost is recovered upon purchase of a new subscription.

We understand that this component is directly associated with the licensed activity of the DTH Operator and is included under the gross income. We would however request that complete revenue from sale of equipment's may not be subject to levy of license fee. With a high percentage of revenue being passed on to the Broadcasters, there is hardly revenue surplus. The DTH Operators will be constrained to increase the cost of the equipment, which burden will ultimately pass on to the subscribers. On the contrary, higher value of equipment may discourage subscribers from purchasing subscriptions, ultimately, affecting the prospective sale of subscriptions itself.

v. ***Income from other activities not connected or associated with the license under Indian Telegraph Act, 1855***

It is most respectfully submitted that the license fee being imposed by MIB must have a direct nexus with the revenue earned under such license issued under section 4 of the Indian Telegraph Act, 1855. Revenue earned from unlicensed activities must necessarily be excluded in order to compute the license fee for the following reasons:

- Only activities of establishing, maintaining and working telegraphs can generate the income specified to these activities.
- For any other activity engaged by the licensee, which may include any kind of professional services, consultancy services, advisory services, no license is required under the Indian Telegraph Act, and revenue from such activities should be excluded from the Gross Revenue.

vi. ***Taxes paid to Central or State Government:***

As per the current license regime, this component already stands excluded from the AGR of the licensee. We wish to state that whether TRAI recommends switching to the old method of license fee imposition on gross revenue or recommends computation of license fee on AGR, in both cases, whether for arriving at Gross Revenue or AGR, the taxes paid to Central or State Government including GST may continue to be excluded.

vii. ***Fluctuating/ uncertain income:***

- TRAI vide under its recommendations dated 13.09.2006 has already recommended that the revenue arriving out of upward valuation or devaluation on account of fluctuation of foreign exchange should not be a part of AGR.
- The revenue on account of a fluctuation in foreign exchange rate may be very negligible and rare. Further, the cost of scrutiny required for this component does not qualify inclusion in AGR.
- TDSAT in its order dated 30.08.2007 passed in Petition No. 7 of 2003 has further appreciated that this fluctuation is a contingency which has impact on every business but has nothing to do with licensed activity of a telecom service provider. The same logic applies to the DTH segment also. TDSAT has also noted that the government is not willing to permit deduction from AGR if loss occurs on account of fluctuation.
- Selling of scrap may also be excluded from AGR, as this income is also uncertain and negligible.

viii. ***Income from reversal of bad debts and taxes and vendor credits***

- Revenue from reversal of bad debts is not actual inflow of revenue from licensed activities but only an adjustment in the accounting heads, it is created out of the revenue of the company which has already been subjected to license fee once.
- TDSAT vide order dated 30.08.2007 has appreciated that in case of expense transactions the amounts originally debited by vendors are not permitted to be deducted



while computing AGR, then in the event such amounts are credited back by the vendors then going by the same rationale, they cannot be included in the AGR.

**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 for working out Adjusted Gross Revenue

A3. We note that under present format of Form D enclosed under the Consultation Paper, the Revenue heads are classified into:

1. Revenue from Services
2. Revenue from sharing of infrastructure
3. Other income
4. Non-refundable deposits from subscribers
5. Revenue from franchisee/ resellers including all commissions and discounts etc activities
6. Revenue from Operations other than broadcasting activities/ operations
7. Revenue from activities under a license/ permission issued by DoT/ other Ministry

The format is in accordance with the MIB Amendment dated 13.12.2020, wherein License Fee is to be calculated at 8% of total of all 7 revenue components excluding GST to arrive at AGR. It factors in both pass-through income and income from unlicensed activities In this regard, we draw the attention of the Ld. Authority to the following factors:

1. Reference may be made to the Guidelines for the Reporting System on Accounting Separation Regulations, 2016 published by TRAI that lay down the framework for Accounting Separation for Telecom Operators. It mandates Accounting Separation Statements of Telecom Service providers to be generated into various segments like different types of services provided by the service providers under the various telecom licenses, licensed service / Geographical Area of Operation wise separation, products / components wise separation, etc. Accordingly, separate accounts are required to be maintained for the different activities.
2. With the comprehensive audit of digital addressable systems brought about under New Tariff Order and the detailed technical parameters mandated for maintaining accounts and consumer management systems, the DTH sector is now geared to maintain such separate accounts without possibility of revenue leakage.
3. In our view, to simplify the entries under Form D and make them distinguishable at the same time, we propose that revenue activities be classified under the following income heads:

### **Income heads forming part of Gross Revenue**

#### **A. Income from activities under the License Agreement**

- Revenue from subscription
- Revenue from Advertisement
- Revenue from activation
- Royalties
- Customer Support Service
- Carriage Income
- Interest earned on Security Deposit
- Commission received

#### **B. Ancillary income accruing on account of the privileges under the License Agreement**

- Rent against leased equipment /towers, infrastructure, offices
- Sale of equipment / infrastructure
- Income from value added services
- Revenue from sharing of infrastructure including:
  - Earth station uplinking facility
  - Satellite resources
  - Transport stream
  - CAS and SMS
  - Disaster recovery system in hot-standby mode
  - Any other income falling under this head

### **Income heads to be excluded from Gross Revenue**

#### **C. Income from activities unrelated to the License Agreement**

- Income from other business of the Licensee
- Income from capital gains
- Income from forex fluctuations
- Income from leasing of properties of the Licensee
- Sale of scrap material
- Income from professional activities such as consultancy, training etc.

#### **D. Misc Income from other sources**

- Interest on investments
- Interest on dividend

**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?**



A4. Verification can be done basis the disclosures made by the Licensees under various Forms. As per the current regime, only Form D has been prescribed, which may not be sufficient. Separate accounts have to be maintained under different heads.

**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.**

A5. License fee should not be levied on Gross Revenue but on Adjusted Gross Revenue, to ensure that the fee being imposed is only on the revenue generated from services rendered under the license granted under the Telegraph Act, and not on any other activity which can be engaged into even in the absence of such license. We suggest the Licensee fee to be charged @ 4% of the AGR earned by the DTH business from the License granted under the Telegraph Act. The process needs to be streamlined by requiring the DPOs to maintain separate and distinct accounts of the various licensed and non-licensed activities.

## **2. Bank Guarantee for the new entrants in the DTH Sector**

2.1 Sun Direct is one of the earliest entrants in the DTH Sector, when as per the MIB Guidelines of 2001, the undersigned paid an entry fee of Rs.10 Cr and a Bank Guarantee of Rs.40 Cr. The MIB Amendment dated 30.12.2020 prescribing the deposit of a lower Bank Guarantee of Rs. 5 Cr for the first two quarters, and, thereafter, for an amount equivalent to estimated sum payable and other dues not otherwise securitized, is a welcome step and a much-needed respite for the new entrants. It will influence the decision making for prospective entrants to a large extent. Moreover, the same standards should be applied to existing operators like Sun Direct.

2.2 We however recommend that that the advance Bank Guarantee may be further reduced to equivalent of one quarter instead of two quarters. We say so, for the following reasons:

- i. The OTT market in India is simultaneously & rapidly expanding. Leading OTT platforms in India, such as Netflix, Amazon Prime Video, and Disney+ Hotstar, have secured a substantial portion of the market and are witnessing significant consumer transition.
- ii. The new entrants may initially face a difficult time establishing base in a highly regulated domain, when entering the market of established Operators. In addition to the same, the recent subscriber trend transitioning from DTH/ Cable platform to internet TV will be an added competition.
- iii. There is lack of a comprehensive legal framework that governs the operations of such OTT platforms. The Information Technology (Intermediary Guidelines) Rules, 2011, which were framed to regulate intermediaries such as social media platforms, do not apply to OTT platforms as they are considered to be content providers rather than

intermediaries. This gives way to more OTT entrants in the market simultaneously along with DTH entrants.

- iv. The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, which were introduced to regulate the operations of OTT platforms, mostly cover a framework to regulate ethical content, provisions relating to the protection of minors, the prohibition of hate speech. There is no licensing regime or bank guarantee in force for such OTT Platforms and the entrants begin to make profits on the initial investment. The compliances and formalities are thus limited in comparison to the DTH Sector, where the initial permissions from Planning and Coordination wing alone drain a large number of resources.
- v. The proliferation of OTT platforms in India have affected the subscriber base for established DTH operators as well, and a drop in the number of subscribers has already been discussed above.

2.3 In view of the forgoing, the concerns under the consultation paper are addressed as under:

**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?**

A6. It is submitted that the Bank Guarantee may be reduced to one quarter instead of two quarters, as the revenue outstanding at any point would be one quarter only, to enable the new entrants adjust and offset losses while establishing base in a new market consisting of established DTH Operators and OTT platforms.

**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?**

A7. We do note that in comparison with the Telecom Sector, DTH has a consolidated Bank Guarantee which covers both Performance Bank Guarantee as well as Financial Bank Guarantee. However, we do not see the need or any compelling reason for extending the same to the DTH Sector.

**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.**

A8. We do not recommend any other alternate method in replacement of Bank Guarantee for securitizing license fee and ensuring compliance of the DTH license conditions. Any deviation in settled practices with respect to Bank Guarantee would relegate both Telecom and DTH Operations to a non-level playing field.



### 3. Uniform License Fee

3.1 We appreciate TRAI has taken cognisance of the issue of uniform license fee for different platforms. There is neither any intelligible differentiation nor reasonable classification as all the different platforms that are carrying television channels for viewing by the customers upon payment of subscription fee/ charges. The services provided are essentially similar in nature.

3.2 A company which wants to provide cable television network is required to obtain a registration under Rule 11A of the 1994 Rules and merely deposit a fee of Rs. 1 lakh only. An HITS operator is also granted license under section 4 of the Indian Telegraph Act, 1885 and Indian Wireless Telegraphy Act, 1933 and is only required to pay an entry fee of Rs.10 Cr. and spectrum usage charges. That the license regime with regard to similarly placed DPO's are tabulated in the table below:

Parameters	DTH (INR)	MSO (INR)	HITS (INR)	Cable (INR)
Entry Fee	10 Cr.	1 Lakh (for DAS)	10 Cr.	Nil
Annual License Fee	8% of GR	Nil	Nil	500/-
Bank Guarantee (in Rs. Crore)	40 Cr.	Nil	5 Cr.	Nil
WPC License Fee and Royalty	As prescribed	Nil	As prescribed	Nil

3.3 There is no reason or rationale for burdening the DTH Operators with higher license fee as compared to its competitors. The Government has till date not specified the object that they want to achieve by burdening specifically the DTH Operators with the said additional levy.

3.4 TRAI has rightly observed under para 2.61 of the Consultation Paper that service providers are governed under different Guidelines/Act and different charges are being levied by MIB for different set of service providers. We thus await TRAI's comments on the issue of convergence and uniform treatment of carriage of broadcasting services and telecommunication services.

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

A9. We request TRAI to recommend the Government to frame guidelines and lay down regulatory framework for the OTT Sector. Both DTH and OTT being comparable services in the same sector, do not have any parity with their regulatory treatment without any rationale for such differentiation. The presence of high-speed internet connectivity, the expanding middle-class

demographic, no regulatory framework and the growing prevalence of digital content consumption have fostered a new hope in OTT platform operators across the world to stream content in India. This will however come at the cost of reduction in revenue share for the DTH Sector.

Thanking You.

Yours sincerely

**For Sun Direct TV Private Limited**

  
(Authorized Signatory)

