

To
The Chairman
Telecom Regulatory Authority of India
New Delhi-110002

Kind Attention: Dr. Rahul Khullar

Comments on TRAI consultation on issues related to Extension of DTH Licence Dated 01 October 2013

Dear Sir,

Ref Consultation Paper No 09/2013 dated 01 October 2013 on issues related to Extension of DTH Licence.

DTH services started operating in the country in 2003 when CAS implementation had just been deferred. This gave an extra boost to DTH because of its digital quality more channels and value additions. However the industry could not flourish due to internal fights among the DTH platforms on account of content sharing since three major operators who entered the industry first, belonged to three major broadcasting groups who also owned many popular pay channels of all genres as well as MSO networks to distribute these channels. Due to fierce competition already prevalent on the ground they refused to abide by the law of the land i.e. 'Must provide' and 'Must Carry' regulations for content engaging each other in court battles.

So, to capture a critical mass of subscribers and beat the competition DTH operators used various means including violating many guidelines like:-

- a) No interoperable STBs were provided
- b) 'Must Carry' provisions for carrying TV channels were flouted. Many Broadcasters have gone to court.
- c) Not providing a-la-carte channels to subscribers.
- d) Cross Media ownership rules and FDI norms are violated.
- e) Not using BIS certified / complying STBs. No electrical safety norms followed as per Deity notification.
- f) STBs are still not given to subscribers in compliance with TRAI Tariff Order. They are given on a payment of activation fee and no ownership. Subscribers do not get any refund if they return the STB after a few months to change their service provider. (Please see on google for numerous complaints against the DTH operators for poor service.)
- g) Expenditure in procuring STBs is shown as Capex and depreciation claimed on the amount to save taxes as the large MSOs are doing in DAS.
- h) MDU services are being provided without there being any provision in the Guidelines.

Government is overlooking all these violations for reasons best known to them and wherever it tried to impose some restrictions of taxes and levies, DTH operators went to courts and made the issue subjudice so that they don't pay at all. DTH operators are large corporate who prefer to engage costly legal experts in learning how to exploit weakness/ loopholes in the law rather than follow the regulations.

Result is that central government as well as state governments has been taken to courts and matters like entertainment tax and annual licence fee (based on AGR) have been buried in legal wrangles. DTH operators don't pay any Entertainment Tax in many states whereas cable operators / MSO are made to pay hefty Entertainment taxes either fixed or in percentage terms which is as high as 30%.

The consultation paper talks of level playing field among different platform players but MSO loses on level playing field in the first instance when they have to pay minimum 35% of revenue towards LCO and LCO has to share 65% with MSOs and Broadcasters. Whereas DTH operators get away with paying just 10% annual licence fee & negligible amounts towards spectrum royalty to Government towards using the precious spectrum owned by people of India & in turn resulting in huge losses to the public exchequer.

Situation has not improved and DTH sector is still embroiled in endless litigations and enjoys the privilege of matters being sub-judice. TRAI must not ignore these all important issues before renewing / issuing fresh licenses of existing DTH players and reframe licensing conditions to ensure such avoidance tactics are not encouraged. Infact any renewal or fresh issuance of license should be put on hold in case where the licensee is not in conformity with the existing regulations until he brings in specific instructions from the court about renewal / fresh issuance of license from the court where the matter is subjudice.

Mandatory Digitisation of cable TV has further helped DTH operators to exploit the cable TV subscribers to the maximum when the cable industry was facing teething problems in Phase I & II, helping them acquire millions of cable TV subscribers. In the phase I of digitisation 20% market went to them. **All this could not have happened if the Ministry and the Regulator had taken care to protect the cable TV industry during its transition period adopting total digitisation from predatory tactics of DTH operators who were allowed to carry out misleading campaign to capture cable TV subscribers. Not only this, Ministry sponsored ads in the TV and radio also asked subscribers to approach there cable operator or DTH operator for a set-top-box.**

We are also surprised on TRAI's observation in Para 1.11 of Consultation Paper as given below:-

"1.11 There could be different views on the question of the duration of the period of a new licence to be issued to existing DTH licensees. One view could be that **this period should not be so short that it creates uncertainty in the operators' business model and inhibits futuristic business planning. This could result in reluctance on the part of the operator in deploying new technologies or undertaking long-term capacity enhancement. Such a move could be detrimental to the interests of consumers as the benefit of new technologies and innovations would be denied.** Investors, both, foreign and domestic, may want a certain minimum period which is not too low. "

This also aptly applies to cable operators but for the same reasons as given above TRAI has not recommended any increase of period of

registration/licensing more than one year for the LCOs. Since MSOs are licensed for ten years and cable operators for one year, there is always a mismatch and an effort on the part of the MSO to throw him out of the market at the soonest.

Conditions for renewal of license

Since the sector is matured and flourishing it is time that government treated it as a large scale industry and ensured that adequate revenue is collected from the industry commensurate with its earnings. Also the DTH players are all global companies with deep pockets having vertically integrated supporting companies but in the habit of cribbing all the times using various forums like FICCI, ASSOCHAM, CII, CASBAA that they are paying heavy multiple taxes and Govt levies. This is only to influence the mind of the policy makers. Small cable operators also pay entertainment tax and service tax and other levies as DTH operators do. Government has to understand the scope of their nationwide business. On one hand in the public forums they declare India as the largest DTH market in the world and on the other hand they crib that their business has become unviable due to multiple taxes which they have been actually avoiding paying by taking matters to the courts. If their condition was so bad, they should have quit the business. Hence we request the Regulator and the government not to listen to the double-side talks of DTH players and regulate them as an old established industry.

Now, for renewal we suggest the following conditions before a DTH licence is renewed:-

- 1.** All dues are required by existing regulations irrespective of whether a court case is going on should be cleared unless a stay has been given by the concerned court.
- 2.** There should not be any serious violations of licensing conditions at more than three occasions.
- 3.** If a matter is in the court for any purpose, an NOC from the Court should be obtained and submitted to the government .
- 4.** Details of investors including foreign investors, both individuals as well as institutional should be submitted to the Ministry.
- 5.** A fresh security clearance from Home Ministry and clearance from Finance Ministry should be obtained since ten years is a long period and many changes would have taken place.
- 6.** There should be an additional fee for advanced services like interactive television, games, 3D & HDTV services as they fetch higher subscriptions.

Issues for Consultation

Para 2.1 - Should an entry fee be charged at the time of issue of a new licence to the

existing DTH licences?

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

Comments

Yes, an entry fee must be charged even at the time of renewal. In fact as there is no provision of renewal in the original license / regulation so all the licenses must be issued afresh keeping in mind the past track record of the respective DTH operators regarding adherence with the regulations. Further renewal should be subject to approval from the respective court in case the DTH operator is in litigation with Government on any matter of revenue or otherwise.

Amount of entree fee of Rs 10 Crore for ten years was fixed when India just introduced the DTH services. Now the DTH operators have on the average about 10 million subscribers. Their networks are growing very fast and each one is collecting huge subscriptions, more than 2000 crores an year. DTH operators do not pay any entertainment Tax in many states and they do not even pay full licence fee taking every matter to the court.

Money collected by DTH operators from subscribers for STBs is not shown as their income and they earn depreciation on that without showing any sales.

Rupee value has also depreciated since 2003 when DTH commenced operations. Hence entree fee need to be enhanced to a minimum of 100 crores for ten years for new licences.

Para 2.2 - What should be the period of the DTH Licences to be issued to existing DTH

licenceses on the expiry of the licence period of 10 years?

Comments

Keeping in mind some players may like to get out of the sector earlier, the following two options could be given for renewal:-

- a) Five years renewal- Rs. 50 crores
- b) Ten year renewal – Rs. 100 crores

Para 2.3 - 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

licenceses on their expiry?

Comments

It should only be mentioned that renewal as per existing guidelines and policies at the time of renewal.

Para 2.4 - 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?

Comments

The bank guarantee should be in the form of performance bank guarantee & financial bank guarantee. Financial bank guarantee should be decided every year based on the revenue generated by the DTH company in previous year subject to some minimum figure.

As stated above the revenue collected by DTH operators are huge running in thousands of crores. Most of them are part of the vertical integrated large media groups and get preferential deals in content too.

Considering the above, a bank guarantee equivalent to one year's licence fee must be the quantum of their financial bank guarantee. Rs 100 crores should be minimum for the duration of the licence.

In addition to the above a performance bank guarantee of Rs 20 crores should be fixed.

Para2.5 - Any other relevant issue you would like to comment upon.

Comments

TRAI contention as in Para vii of Introduction that DTH business entails a huge investment of resources is not true in the present context as digital broadcast has reduced the transponder costs per channel tremendously. Also like Tata Sky, operators outsource all ground facilities rather than create their own infrastructure. But earnings per subscriber keep increasing with time as number of subscribers keeps increasing.

We feel that even if I&B Ministry has not asked TRAI for framing complete new regulations, it is time that TRAI does that as a technical expert since the sector has matured with six flourishing players and 54 million subscribers and cannot be treated with kid gloves as a new and upcoming industry with soft and easy initial terms. We have the following suggestions to make for changes in the DTH regulations/ policies:-

- a) **DTH Act** At present DTH is governed by only Guidelines. There is not enough deterrent for an operator who violates them. There is a need to have a DTH Act that would list out all rules and regulations in detail including fines and punishments for violation of the law.
- b) **Nodal Officers for DTH** Like in cable TV service, nodal officers should be deputed to deal with consumer complaints.
- c) **Security Issue** Security has been the main worry of the government while deciding a DTH policy.
 - i) Since it is a satellite based service and satellites can be foreign owned too, there is a need to ensure a regular security check on DTH operators and their investors including foreign investors. Home Ministry had rightly raised the issue asking for detailed information about foreign investors in DTH services to avoid tainted people like Rupert Murdoch to capture the media industry in the country. His phone hacking scandal last year had rocked the British Parliament. This is essential to check if funding is being procured from an illegal source, unauthorised individuals of underworld, undesirable persons or simply for money laundering.
 - ii) If DTH operator is offering any internet based interactive content service along with satellite data service, it must be informed to TRAI and security clearance may be taken for such services from Home Ministry. It may be remembered that **SMS service between DTH subscribers and bugging of the STBs is a possibility that may lead to compromise of security of the nation** as such services cannot be monitored.
 - iii) Some DTH satellites are so placed that DD Direct Plus unencrypted channels are also received through their STB. This means any other

unauthorised signals (Pak TV etc.) can also be received depending upon placement of the satellite. This must be looked into while giving DTH licence.

iv) Security clearance should be mandated even for renewal of licence to check the conduct of the operator in the last ten years.

v) There should be a provision for switching off the signals of a channel for a selected area if required to keep peace and harmony in the times of communal riots and for internal security purposes. In cable TV DMs or DCs generally pass orders to switchoff certain news channels or local channels like it happened in Jammu and Sikkim but DTH channels keep transmitting the inciting content leading to law & order situation.

d) Auction of Spectrum. DTH operators use the scarce public resource of air waves. As done in telecom industry, spectrum for DTH service should also be auctioned or sold at a basic price fixed by TRAI.

e) CAF/ KYC Forms DTH has an inherent security risk since it is wireless. Like Cable TV service and telecom and mobile services, DTH operators also must get CAF/ KYC forms filled from each subscriber before installing the CPE. Information in these forms should be conveyed to the regulator. As it has been found that more than **2.2 million DTH users of these DTH operators services are based in Nepal, SriLanka, Pakistan, Bangladesh and UAE**

f) Reports to TRAI DTH guidelines must ensure that DTH operators send monthly reports to TRAI in respect of the following:-

- i) Number of active and inactive subscribers as per the SMS system.
- ii) Carriage fee deals with various channels.
- iii) Channels removed and introduced.
- iv) Revenue paid to 'Pay' broadcasters and number of subscribers for which the payments have been made.
- v) Details of lumpsum/ fixed deals if any with the 'Pay' Broadcasters and reasons thereof since in addressable systems content deals must happen on actual viewership of channels as per SMS system of the operator.

We request that the above be considered before any new DTH licence is issued or a renewal is given henceforth

Yours Faithfully,

For National Cable & Telecommunication Association

Dated: 15th October 2013

Vikki Choudhry
President – NCTA
Email: vikki@ncta.in