

Bharti Telemedia Ltd.

Airtel Center, Plot No. 16,
Udyog Vihar, Phase - IV,
Gurugram - 122 015
Haryana, India

www.airtel.in
call+91 124 4222222
fax +91 124 4243252

dth services



RP/FY 22-23/075/123

February 13, 2023

To,
Mr. Anil Kumar Bharadwaj
Advisor (B&CS)
Telecom Regulatory Authority of India,
Mahanagar Doorsanchar Bhawan,
Jawahar Lal Nehru Marg,
Old Minto Road,
New Delhi-110002

Sub: Response to TRAI Consultation Paper on "License Fee and Policy Matters of DTH Services"

Ref: TRAI Consultation Paper dated January 13, 2023.

Dear Sir,

In reference to the captioned consultation paper, we are pleased to enclose our response for your perusal.

We hope that our submissions will merit your kind consideration.

Thanking You,
Yours Sincerely,
For **Bharti Telemedia Limited**

A handwritten signature in blue ink, appearing to read 'Rahul Vatts', is written over the signature line.

Rahul Vatts
Chief Regulatory Officer &
Authorized Signatory

Encl: As mentioned above.

Copy to:

- 1. Principal Advisor (B&CS), TRAI.**
- 2. Joint Advisor (B&CS), TRAI**

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

Preamble

At the outset, Airtel welcomes this step by the Hon'ble Authority to initiate such a critical and much-needed consultation paper on the DTH industry.

DTH operators have contributed immensely to the Indian broadcasting sector's growth and have helped actualize the Government's vision of creating a digital infrastructure through which to distribute TV channels. It is only due to their efforts that citizens residing in difficult terrains and far-flung areas have been able to view various television channels and keep themselves abreast of developments around the world. DTH services have also played a critical role in the ecosystem of disaster management by disseminating critical information through on-screen scrolls during emergencies and disaster situations.

However, despite all these contributions, for the past several years, the DTH sector has faced difficult challenges in terms of increased costs, constant declines in revenue which have, in turn, led to shrinking margins; while also having to fend off competition from regulated and unregulated players who are not burdened with licensing obligations including the regulatory levies. Furthermore, the industry's customer base and viewership of content has also been eroded by unregulated market.

We highlight some of these challenges and put forth our proposal for ameliorating the situation.

The viability and financial health of DTH Operators is a huge concern:

- The cost of acquisition of subscribers is very high due to the highly subsidized Set Top Box given to customers.
- With the increase in the number of channels and with most of the popular channels being in High Definition (HD), the cost of transponders has increased manifold. These costs, coupled as they are with high regulatory levies, have kept most DTH operators under negative net worth even after 12-15 years of operation.
- The Network Capacity Fee (NCF), which is the primary source of revenue for DTH operators, is capped as a ceiling price by TRAI, with no built-in flexibility for revision. Not only that, but there is also no provision in the TRAI Regulation to factor in the annual inflation rate. TRAI has also completely ignored the increase in costs of operation of DTH services and not allowed any increase in NCF for the past four years. This has exacerbated an already grave financial situation.

DTH operators are operating in an uneven regulatory framework vis a vis competition:

- Today, a discriminatory policy regime tilted towards OTTs, IPTV operators, cable operators, Free Dish and HITS operators has increased market pressure on the DTH business, challenging not only its survival but its very existence. In the Broadcasting sector's value chain, it is only the DTH operators that are subjected to LF. Even within the

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DTH industry, for the purposes of levying LF, different definitions of revenue are applied by MIB for different players. This creates a discriminatory situation and a non-level playing field and goes against the basic premise of TRAI's regulatory framework.

- TRAI has recommended an 8% LF for DTH operators as a result of equating them at par with telecom service providers. However, the actual competitors of these operators are the other distribution platform operators (DPOs), e.g., Cable and HITS operators, who have been left out of the ambit of LF altogether, despite providing the same service in the same market. This discriminatory regulatory approach has led to a grave distortion in the competitive environment making it increasingly difficult for DTH operators to compete and survive.
- What is more, this situation is only likely to worsen. As per some recent media reports, the DoT is likely to consider waiving the LF for the wireline broadband services (**including IPTV**) offered by TSPs for the next 10 years based on the TRAI's recommendations. Extending a benefit to one service and excluding another is arbitrary, unreasonable, and unjust, creating as it will a non-level playing field. Indeed, such a prejudicial exemption of LF for IPTV will have a detrimental impact on DTH service providers, particularly since DTH and IPTV are substitutable services.
- This is not all. Platforms like OTTs and Free Dish are, meanwhile, being allowed to provide the same content to subscribers with no cost implications from any kind of LF. This is the result of the same content either being made available for free (on DD Free to Air) or provided on the same screen through a broadband pipe at unregulated prices (on OTT platforms).
- These lacunae in the regulatory framework have crippled the DTH industry almost bringing it to the verge of total collapse. This is apparent by the shocking fact that most DTH operators, even after 12-15 years, are still operating under a negative net worth. **Therefore, it is critical that DTH operators, just like all the other regulated and unregulated distribution platforms in operation, should be entirely exempt from LF.**

Without prejudice to our rights and contention in the ongoing legal proceedings and our submission that there should be no LF on the revenue earned from DTH operators, a privilege being accorded to all other regulated and unregulated distribution platforms and which is also likely to be extended to IPTV operators, if the TRAI still decides to treat DTH differently and unfavorably and continues to impose the LF on them, then such a regime requires the following considerations:

Imposition of a license fee on DTH Operators for the identifiable revenue of Broadcasters through a regulated tariff is incorrect and requires immediate review:

- DTH operators collect revenue from subscribers and pass on the share of Broadcasters' revenue to them. The new regulatory framework has further spelt out the said demarcation of the revenue stream between DTH operators and Broadcasters.

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- Per this framework, being a distributor for the Broadcasters, a DTH operator only gets distribution margin & NCF. This is for the investment made to create network, whereas content or channel subscription cost, as decided by Broadcaster, is considered Broadcasters' revenue.
- **In fact, TRAI, in its letter dated 8th 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 stakeholders and their revenue streams, etc. It is easier to identify the subscription revenue passed on to the Broadcasters by DTH operators vis a vis the other revenue streams. As a result, TRAI has clearly stated that the amount collected by DTH operators for the channel/bouquet subscription is Broadcaster revenue which means that the DTH operator revenue is limited only to the other sources (e.g., NCF, VAS charges etc.). This imposition of LF on DTH operators for revenue earned by the Broadcasters (which is in the nature of pass-through and not the revenue of DTH operator) is erroneous and needs immediate correction.**

Wrong and partial implementation of license fee structure for DTH Operators:

- While recommending the 8% of AGR on DTH, TRAI has taken as its reference the Telecom Sector. Since both services are derived from the Indian Telegraph Act, 1885, the LF that has been prescribed for DTH is the same as that prescribed for Telecom operators. However, the pass-through mechanism, as applicable to Telecom operators, has not been extended to the DTH operators. It is submitted that the subscription revenue that is collected for and on behalf of the Broadcasters and passed to the Broadcasters is in the nature of 'pass through' item and hence should be deducted from the LF while calculating AGR.
- Last year, the Cabinet approved major reforms in the Telecom sector to boost sector investments and provide impetus to competition. One key decision of those reforms was the one related to excluding non-telecom revenue (including revenue from DTH) from the definition of Adjusted Gross Revenue when levying the License Fee. **The Government thus set in place the principle that since the License was being granted for the provision of telecom services only, the License fee should also apply only to the revenue being earned from the licensed telecom services and not from any other services/activities.** We believe that the principle adopted and implemented by the Government should also be extended to include the DTH Sector as both licenses are being granted under Section 4 of the Indian Telegraph Act.

Therefore, extending the reforms to DTH and having an integrated and seamless approach to the licensing & regulatory framework is pivotal to examining and resolving the issues faced by the DTH sector at present which, if remain unaddressed, will drive the industry to extinction.

It would not be an exaggeration to say that the industry has been brought to its knees due to the excessively skewed regulatory framework. The outcome of this discriminatory regime is evident in the shrinking customer base of DTH—a fact duly acknowledged by the TRAI in

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this consultation paper highlighting that the DTH subscriber base has reduced (Q.E. September 2020) to 65.58 million (Q.E. September 2022), i.e., a reduction of more than 5 million subscribers in a span of just two years.

Going forward, all regulatory disparities & discriminations should be brought to an end, and the playing field levelled. As a pre-requisite to this, all statutory, licensing, and regulatory requirements concerning the DTH industry at every step in the decision-making process should be reviewed, revised, integrated and harmonized, keeping in mind the interests of stakeholders and fair play.

It is only then that the DTH industry will be able to overcome the challenges it faces vis a vis MSOs, HITS, IPTV and OTTs, among several others competing in the same market, and get back in the reckoning in terms of being a serious participant.

There is also uncertainty in the sector with regard to pending litigations in terms of the DTH license fee ('LF'). This, too, has kept the fate of the already-struggling DTH industry hanging in the balance. This will also need to be resolved before the industry can function efficiently.

Therefore, there is an urgent need to take certain measures including the review of the definition of revenue for DTH services, rationalization of levies and bank guarantees, in order to reduce the financial burden on the sector and also help in the proliferation of DTH services.

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In summary, we recommend the following:

License Fee (LF):

- ✓ The DTH operators, just like all other regulated and unregulated distribution platforms in operation who offer the same services - should be entirely exempt from LF.
- ✓ Without prejudice, if TRAI still decides to treat DTH operators differently and unfavorably and continues to impose the LF on them, then in such a regime certain revision shall be made:
 - The Gross Revenue should only relate to revenue received/receivable directly from customer on account of provision of DTH services for license granted u/s 4 of Indian Telegraph Act, 1885.
 - Immediately correct the anomaly of imposition of LF on the amount collected by DTH operators for the channel/bouquet subscription, which revenue belongs to broadcasters. This will be consistent with understanding of TRAI shared in its letter dated 8th Jan 2020 to MIB.
 - Certain revenue items should be excluded from the GR to arrive at the Applicable Gross Revenue (ApGR), as explained in subsequent paragraphs.

Bank Guarantee (BG):

- ✓ No need to continue with the practice of BGs in the DTH sector. This should be dispensed with forthwith allowing funds to be deployed into network & services.
- ✓ Otherwise, the percentage of LF for the two quarters to be submitted as BG to the Licensor should not be more than 20% - just like the Telecom Reforms.

Other Important Issues:

- ✓ Enshrine and ensure Must Carry-Must Provide-at-Same Price across all modes of delivery for content across all platforms. The platforms must include wireline, wireless, satellite and cable.
- ✓ Ensure level playing field within the DPO industry by ensuring parity in Pay Channel Pricing across all platforms.
- ✓ Allow forbearance towards DTH and allow freedom of pricing/packaging in customer interest

It is within this context and based on the facts and rationale provided in Preamble, that we provide our detailed comments and answers to the specific questions in the sections that follow.

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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**

Airtel Response:

As explained in the Preamble, there is an immediate need to address the biased regulatory regime, ensure non-discrimination, promote fair competition and ease of doing business such that the regulatory regime applicable to DTH be the same as that of its competitors like OTTs, IPTV, cable, HITS, all of whom offer the same services.

Therefore, TRAI should recommend that no LF be imposed on the revenue from DTH operators since none of the other distribution platforms, both regulated and unregulated, are paying any LF to the Government. Indeed, the only other distribution platform, i.e., IPTV, that was subject to the LF regime under the Telecom license, is now likely to be exempted for the next 10 years as well.

Without prejudice to our rights and contentions, we would like to add to our above contention, that if the TRAI still decides to continue treating DTH operators differently and unfavorably and imposes the LF on them, **then there is a most pressing need to revise the current definition of Gross Revenue (GR) and Adjusted Gross Revenue (AGR) for the purposes of DTH services.**

The old regulatory framework has been replaced with effect from 1st April 2019 by the New Regulatory Framework (NRF). Under this new framework, the pricing mechanism is entirely regulated and the distributor (i.e., DTH operators) is only entitled to 20% of the “revenue of the subscriber”. The remaining 80% is for the Broadcasters. Additionally, the Broadcasters are responsible for deciding on the charges for the channels. The distributor has no role to play in this. Regulation 3 of the Tariff Order specifies that the Broadcaster has to declare

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whether the channels are “free to air” or “pay” and what the maximum retail price that is payable by the subscribers for each of these “pay channels” that have to be offered on an a-la-carte basis is. The Broadcaster can also offer them as a bouquet but no channel in the bouquet can contain a “pay channel” for which the MRP is more than Rs.19/- per month. There are further restrictions on the MRP which have not been set out herein for the sake of brevity.

As regards DTH operators, they are entitled to the “network capacity fee” as mentioned above and have to offer all the channels to all subscribers on an a-la-carte basis and cannot collect any amount in excess of the MRP for each channel. The distributor, in terms of Regulation 4(3), also has no choice in terms of altering the composition of any bouquet that is offered by the Broadcaster and the distributor’s retail price for bouquets cannot exceed the MRP being declared by the Broadcaster.

Thus, the TRAI regulations (NTO) makes it abundantly clear that since inception the entire amount collected by the DTH operator from the subscribers is not its revenue and a substantial portion thereof (as content cost) is pass through, being the revenue of the Broadcaster for which the DTH Operator is only a collector/conduit.

Technically, the DTH operators (distributors) are just a conduit / interconnect between Broadcaster and Subscriber wherein they as distributors have no control on either price or charges for the interconnection service that has been prescribed through regulation.

The NTO under NRF effectively affirms / clarifies that the DTH operator is merely a conduit / agent of the broadcaster and entire amount collected by the DTH Operator from the subscribers is not its revenue and a substantial portion thereof (as content cost) is pass through. **In fact, as explained earlier, TRAI, in its letter to MIB, clarified that the amount collected by DTH operators for the channel/bouquet subscription is the broadcasters’ revenue and that the DTH operator’s revenue is limited to other sources only (e.g., NCF, VAS charges, etc.).** Any attempt to impose LF on DTH operators for the revenue earned by broadcasters (which is in the nature of pass-through) is erroneous and needs immediate correction. This is also inconsistent with established accounting practices.

Thus, we believe that the current definition of GR under the license and of AGR under the extant Guidelines dated 16th September 2022 do require modification in terms of the **Scope of Revenue** as well as **Determination/Measurement of Revenue**. This would provide to the industry the much-needed regulatory clarity consistent with the intent of license and accounting practices.

Moreover, since there is no clarification as to the determination/measurement of revenue, it gives rise to the impression that the revenue is to be accounted for on a collection/cash basis whereas the other laws require it to be calculated on an accrual basis.

Therefore, in order to define the revenue, its scope and determination, we believe that there must be a clear set of principles as highlighted below:

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SCOPE OF REVENUE

1. The definition of GR should be amended and made consistent with the prevailing laws and accounting standards.
2. The constituents of revenue should be same for all, i.e., as has been recorded in the books under the prevailing laws. Accordingly, items which do not constitute revenue, e.g., Forex Fluctuations, Trade Margins, etc. should be excluded from GR.
3. The GR should only relate to revenue received/receivable directly from the customer on account of provision of DTH services for license granted under Section 4 of the Indian Telegraph Act, 1885.

DETERMINATION/MEASUREMENT OF REVENUE

1. The Accounting Standards notified under the Companies Act for recognition of revenue should be acknowledged to ensure consistency with other Financial Acts/Laws viz. Companies Act, SEBI regulations, Income Tax Act, GST, etc.
2. The following guiding principles may be applied for determination of revenue and cost:
 - i. License should mandate compliance with the accounting standards as prescribed under the Companies Act from time to time.
 - ii. The same yardstick that is applied to determination/measurement of revenue should be applied to cost. The revenue and permissible deductions should follow the accrual method of accounting.
 - iii. Since capital receipts are not revenue, they should not be considered for the purpose of GR and the resultant AGR.
 - iv. Revenue of others should not be treated as the licensee's own revenue.
3. In cases of bundling of Licensed Services with other Licensed/Unlicensed services or with the sale of goods, the concept of fair valuation may be applied. This would safeguard Government revenue. Reference can be taken from Income Tax rules/GST rules wherein different methods of arm's length pricing have been provided.

These principles will ensure that the true and correct revenue which can be reconciled directly with the books submitted under the Companies Act through various authorities is reflected and shall also ensure that the due License Fees has been paid without compromising the revenue streams that entail such payment.

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

“Gross Revenue (GR) is the amount charged; calculated on accrual basis as per the accounting standard notified under the Companies Act, 2013 as amended from time to time; 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

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section 4 of the Indian Telegraph Act, 1885. ”

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; calculated on accrual basis as per the accounting standard notified under the Companies Act, 2013 as amended from time to time; 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. 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.”

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

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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:

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. Once the statutory provision states that the DTH operator can retain only a prescribed percentage from the price charged to a subscriber plus the additional fees, only this amount can form part of the Gross Revenue of the DTH operator. As the distributor has no right on the 80% of the money collected from the subscriber, the same cannot be treated as its revenue.

The principles of Revenue Recognition as contained in Ind AS 115 and Para 47 thereof which is relevant 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.”

Following this accounting standard, the distributor is entitled to credit its revenue only to the extent of 20% and cannot show the entire sum collected from the subscriber as its revenue. He is not entitled “to the entire amount”, but only to 20% of the total amount collected from the subscriber. In the hands of the distributor, 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 the revenue which does not belong to the distributor should be excluded from its revenue. Thus, the deduction for content cost charges paid to Broadcasters should be allowed as deduction from GR/ApGR.

- i. 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.
- ii. 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.

These deductions are also in-line with para 7.9 of TRAI’s own recommendations dated 1st October 2004 in the matter of “Issues Relating to Broadcasting and Distribution of TV

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Channels". The same would also be in line with and in 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. Accordingly, a proposed format of Form D has been prepared by us and is provided at Annexure-I.

These much-needed changes would be in line with and in the spirit of the recent reforms carried out for the telecom industry and will further give a boost to an industry otherwise struggling with stiff regulatory challenges, litigation and a hyper competitive market

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?

Airtel Response:

Please refer to our response to Q1 to 3 above.

If the revenue and cost are considered on an accrual basis, the same can be verified directly from the audited books of account. TRAI, in its letter dated 8th 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 format showing the revenue and the deductions, which in this case is "Form D", along with a reconciliation of the same with the annual accounts of the Company duly certified by the Statutory Auditors, should suffice.

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.

Airtel Response

Please refer our submission in the Preamble, we believe that the current policy regime is highly biased against DTH operators in terms of the levy of LF.

Thus, it is recommended to have a zero license fees for DTH services in order to have a level playing field as all other distribution platforms are offering the same content and are real market competitors for DTH.

However, without prejudice to the above, **we suggest that in case any LF is levied, it should**

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be levied on the AGR and not on the Gross Revenue as suggested in our response to Q1 to 3 above.

Further, while recommending 8% LF for DTH, TRAI erred in comparing DTH with the telecom sector. It should, instead, have compared it with the other players offering similar services, who, as it currently stands, do not have to pay any LF. **Moreover, the 8% in question includes the USO levy of 5%, which is not relevant for DTH sector.** Thus, the actual licence fee rate for telecom companies 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?

Airtel Response

Yes. We firmly submit that there is no need to continue with the practice of Bank Guarantees (BGs) in the DTH sector.

A BG is a financial backstop offered by a lending institution as security for the debtor that if he/she fails to settle a debt or meet its obligation, the bank will cover it. At present, MIB requires bank guarantees (including on license renewal) to protect its interest towards securitization of payment of LF dues.

It is submitted that the industry has matured over the last 15-20 years and the existing players have ably demonstrated their performance and experience. Thus, the time has come to enable the industry to be able to mobilize and deploy the precious funds/capital in generating value for all stakeholders by putting more investments into digital infrastructure, networks, services.

Further, it is also to be noted that DTH operators are required to pay an entry fee of INR 10 crores. This entry fee is robust enough for preventing non-serious players from entering the market and for assuring the licensor/regulator that the players actually entering the market will be putting serious effort into spending on infrastructure and services post entry. Such serious players would be perfectly capable of paying their LF dues on time. **Thus, there is no need to obtain BGs for securitizing LF payment.**

The MIB took progressive steps in 2020 when it reduced the value of the BG for the first two quarters from INR 40 crores to INR 5 crores. However, the value of the BG thereafter has to be for an amount equivalent to the estimated sum payable, equivalent to License fee for two quarters and other dues not otherwise securitized. Thus, considerable amount still remains locked in BGs. On a conservative basis, we estimate that >Rs. 400 Cr. may still be locked in terms of BGs with MIB for the industry as a whole.

The amount blocked in BGs benefits no one (neither the DTH operators nor MIB), except

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perhaps the lenders. Rather, if such securities are released, it shall free up the working capital flow for the DTH operators, eliminate the infructuous payment of charges and generate value for the business. This benefit was seen recently when relaxation in BG norms unlocked the value for the telecom industry, where TSPs reciprocated the same by investing in heavy rollout and expansion of telecom services.

Imposition of BGs to securitize dues is also not consistent with other statutory dues like tax dues – there is no requirement of BGs under the Income Tax Act or under GST laws to securitise such due payments. Even DoT is moving towards a regime with no securitisation of dues. In the recent auctions, DoT decided to not securitise the deferred Spectrum Auction payments as well as the MROs, which was the norm previously. Also, no Bank Guarantees are required for registration of Other Service Providers (OSPs), Public Data Office Aggregators (PDOAs) and In-Flight and Maritime Connectivity Authorisations.

The risk to government dues is actually emerging due to high levels of recurring and sector-specific LF levy. The time has come to substantially rationalise this levy and recover only the cost of administration of license, since the direct and indirect contributions of the business to the overall economy surpasses the recurring levy. Once this levy is reduced, the risk to government dues is mitigated and the need for securitisation itself is eliminated.

Thus, there should not be any concern over securitisation of Government dues from established players. Their success and failure should be what has a bearing on the economy.

Therefore, we strongly recommend that:

- **There should not be any requirement of BGs of any sort. This will allow capital/funds to be deployed into network and services investments.**
- **Imposition of BGs to securitise dues is also not consistent with other statutory dues like tax dues. There is no requirement of BGs under the Income Tax Act or under GST laws to securitise such due payments.**
- **The need for securitisation itself can be eliminated by substantially reducing the regulatory levies (LF) to recover only the cost of administering the license.**

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?

Airtel Response

Please refer to our response to Q6 above.

We firmly submit that there is no need to continue with the practice of BGs in the DTH sector. However, in case it is retained, the number of BGs should be brought down and kept to a

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minimum. To begin with, the amendments made by DoT in the Unified License Agreement w.r.t. rationalization of BGs should be extended for the existing DTH licensees also.

In line with the same, the percentage of LF for the two quarters to be submitted as BG to the Licensor should not be more than 20%.

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.

Airtel 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 (rather than DTH specific) LF levy. The time has come to substantially rationalise this levy and recover only the cost of administration of license, since the direct and indirect contributions of the business to the overall economy surpass the recurring levy. Once this risk is mitigated, the need for securitisation itself is eliminated. However, in case the Licensor still feels the need to securitise 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.

Airtel Response

There is a policy paralysis wherein the DTH operators are only being given provisional licenses/renewals for the past several years, there is also no clarity over when or on what conditions the final licenses would be given. Besides this there are also issues related to differentiation in pricing induced by the NRF, discussed herein as below:

1. Ensure Must Carry-Must Provide-Same Price:

TRAI has an enabling regulatory framework for broadcasting that encompasses all DPOs, i.e., DTH, Multi-system operators, IPTV and HITS, under which principle of “must carry-must provide” is enshrined, in the interest of consumers watching the channel/content.

However, convergence of distribution platforms driven by wireless, wireline broadband and smartphone penetration has led to the same channel content being accessed on all available devices. Hence:

- Pricing for the same content should be identical across all platforms irrespective of the access technology.

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

- The framework of must carry-must provide-same price should be ensured across all modes of delivery for content across all platforms.
- Platforms must include wireline, wireless, satellite and cable.
- No player in the value chain should be allowed to block access. Transparency and a level playing field are imperative.

2. Level the playing field within the DPO industry by ensuring parity in Pay Channel Pricing across all platforms.

- DD Free Dish, which is the DTH service of Prasar Bharati, is providing DTH services similar to other DTH Operators, i.e., delivering television channels directly to subscribers' homes through a satellite with a small, personal dish antenna. Therefore, TRAI's Regulatory Framework is equally applicable to Free Dish.
- However, the Broadcaster's offer and supply pay channels (approximately 22 channels) are absolutely free of cost to the subscribers of Free Dish while the same channels are paid channels for other DTH Service Providers. We have highlighted this issue of classification and provisioning of the same television channel as a pay channel for private DTH service providers and Free to Air ("FTA") for the Prasar Bharti at the same time on several occasions.
- This blatant discrimination has resulted in DTH subscribers continuously migrating to the network of DD Free Dish (DD Direct Plus), thereby causing immense and irretrievable financial losses to private DPOs.
- The practice is clearly in blatant violation of the TRAI Tariff order which mandates that a channel "CANNOT BE" a Pay Channel as well as a Free to Air channel at the same point in time.
- It is submitted that said discrimination goes against the extant TRAI Regulations, principles of equality and level playing field.
- We earnestly request TRAI to disallow this discriminatory practice forthwith and bring parity in terms of applicability of its Regulatory framework for all operators.

3. Allow forbearance towards DTH and allow freedom of pricing/packaging in customer interest:

DPOs should be allowed to price and package their plans/bouquets/tariffs without any restrictions so as to meet the demands of the customers. The current complicated NTO has led to an increase in prices in terms of offerings to the subscribers. None of the stakeholders, be they customers, DPOs or Broadcasters have gained from the NTO. Hence, forbearance should be reintroduced for the industry.

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Annexure-I

Proposed Format of Form D

| Sl. No. | Income Heads | Notes Reference | Q1 | Q2 | Q3 | Q4 | Total |
|-----------|--|-----------------|----|----|----|----|-------|
| 1 | Revenue from DTH services | | | | | | |
| 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 | | | | | | |
| 2 | Related Party Transactions | | | | | | |
| 3 | Revenue from Operations/Activities other than DTH Operations/Activities | | | | | | |
| 4 | Miscellaneous revenue | | | | | | |
| 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 | | | | | | |
| AA | Gross Revenue Of The Licensee Company (Add 1-4) | | | | | | |
| | | | | | | | |
| BB | LESS: | | | | | | |
| 1 | Revenue from Operations/Activities other than DTH Operations/Activities | | | | | | |
| 2 | Miscellaneous revenue | | | | | | |
| 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 | | | | | | |

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| | | | | | | | |
|-----------|--|--|--|--|--|--|--|
| 2.8 | Excess provisions written back | | | | | | |
| BB | Total (1+2) | | | | | | |
| | | | | | | | |
| CC | Applicable Gross Revenue (ApGR) (AA-BB) | | | | | | |
| | | | | | | | |
| DD | DEDUCT: | | | | | | |
| 1 | Content Cost charges paid to Broadcasters | | | | | | |
| 2 | Installation Charges | | | | | | |
| 3 | GST or any other Taxes (if part of gross revenue) | | | | | | |
| DD | TOTAL DEDUCTIBLE REVENUE (Add 1-3) | | | | | | |
| | | | | | | | |
| EE | ADJUSTED GROSS REVENUE (CC-DD) | | | | | | |
| | | | | | | | |
| FF | REVENUE SHARE ON ADJUSTED GROSS REVENUE | | | | | | |