

Bharti's Response – Consultation Paper on HITS Service

1. *What should be the scope of the HITS operations? Whether the scope of the HITS Operator should include both the models as stated under the heading “scope of hits operation” in paras 4.5 and 4.6?*

Bharti's Response:

In order to enable extensive digitalization of TV services, both models of HITS operations should be permitted. This shall ensure that entities with sufficient financial resources will venture into Model 1 type HITS operations and those with limited resources would venture into Model 2 type HITS operations.

It is worth noticing that even in Telecom sector, the licensor has permitted registration of companies under IP-I (*Infrastructure Provider Category I*) category, who only provide passive infrastructure facility to other telecom service licensees to service the Subscribers and at the same time Regulations permit the licensees to establish their own infrastructure, namely, towers etc without being depended on infrastructure provider. On the same analogy, HITS operators may be allowed to operate on both the models and it may be left to the choice of HITS operator to choose between the two models.

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2. *Whether HITS operations should be allowed in C-Band or in Ku Band or in both?*

Bharti's Response:

In our opinion, HITS operators should be allowed to operate on both the bands. It should be left to the discretion of the concerned HITS Operator to choose between the two bands. If technology permits use of both the bands, then it may be left to choice of HITS Operator to exercise the choice. However, the HITS Operators should not be allowed to change the band at a later stage after having exercised the choice at the stage of licensing

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3. *Whether a HITS operator should be restricted to offer services only to the cable operator? Alternatively, should HITS operator be allowed to serve the end*

customer also directly? if yes, then whether the restriction on DTH to service end customer only needs any review?

Bharti's Response:

The Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004 (13 of 2004) dated December 10, 2004 draws a distinction between a HITS operator and a DTH operator. The definitions of these two distinct categories of operators are reproduced below:

Direct to Home (DTH) operator means an operator licensed by the central government to distribute multi channel TV programmes in KU band by using a satellite system directly to subscriber's premises without passing through intermediary such as CO/any other distributor of TV channels;

Head ends in the sky (HITS) operator means any person permitted by the central government to distribute multi channels TV programmes in C band by using a satellite system to the intermediaries like COs and not directly to subscribers;

In our opinion, this distinction between a HITS operator and a DTH operator must be maintained. If the HITS operator is allowed to give signals directly to subscribers, then the distinction between DTH and HITS would be obliterated. Conversely, DTH service by definition is "Direct to Home" and there is no logic in allowing an intermediary between the DTH operators and subscribers. In fact, such a move will conflict with the very objective and rationale for conceiving this platform. Secondly, there seems to be no reason to disturb or change the conscious and considered distinction drawn by the Authority between the two platforms at this stage, when Service Providers have started their businesses on the basis of the existing Regulations hoping that would continue. Any change at this stage would adversely affect the business models of DTH Operators. Thus, the distinction drawn between the two platforms must be maintained.

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4. ***What should be the limit of Foreign Direct Investment for HITS license? Should there be any restriction on the maximum limit on the composite figure of FDI and FII?***

Bharti's Response:

In our opinion, HITS service should be treated at par with DTH service in terms of Entry Fee, License Fee, Bank Guarantee requirements, FDI cap, cross holding, QoS norms etc. on account of the following similarities between HITS service and DTH service:

- Both use Satellite as the medium of transmission of TV channels
- Both have similar geographical reach
- Both deploy more or less similar technology

It is submitted that for the DTH license, the Ministry of Information & Broadcasting has imposed a ceiling of 49% on direct and indirect foreign equity with a ceiling of 20% on the FDI component within the foreign equity. Currently, the Ministry of Information & Broadcasting calculates the FDI component of foreign equity by taking into consideration the FDI + NRI + OCB investments in all investing companies of the DTH applicant company.

We recommend that this principle be applied to HITS License as well.

5. *What should be the entry fee and the annual fee for HITS?*

Bharti's Response:

Reference our response to Q.No.4, we reiterate that HITS and DTH should be treated at par for the purposes of Entry Fee and Annual License Fee. Accordingly, Entry Fee @ Rs.10 crores and Annual License Fee @ 10% of Gross Revenue should be imposed on HITS Licensees. In addition, bank guarantee @ Rs.40 crores should be mandated for securing due performance of the license obligations.

It is submitted that although we do not favour use of guarantees as a means for securitizing performance of license conditions, this condition should be imposed on HITS till it is done away with for DTH license to maintain level playing field.

It may be mentioned that the Authority had recommended a 2% reduction in Annual License Fee for DTH Operators and calculation of Annual License Fee on the basis of Adjusted Gross Revenue and not on the basis of Gross Revenue in its recommendations on *Issues relating to broadcasting and distribution of TV channels* dated October 01, 2004. We request that the Authority may reiterate its recommendations to the Ministry of Information & Broadcasting so that they may be applied to both HITS and DTH in a non- discriminatory manner.

6. *Whether HITS operator should be allowed to uplink from outside India also?*

Bharti's Response:

Broadcasting is a sensitive industry. About 70 million people in India, of diverse religion and castes, have access to the various TV channels. Programmes and advertisements must adhere to the Programming Code and Advertisement Code prescribed by Ministry of Information & Broadcasting Any content which has the potential to flare up religious sentiments or cause any communal tension should not be aired. Therefore, in order to exercise effective control, uplinking from outside India should not be allowed.

It may be mentioned that even a DTH operator is not permitted to uplink from outside India and the same conditions should hold good for a HITS operator. Uplinking from outside India would result in dilution of the control exercised by the Licensor, the Regulator, various Tribunals and courts over the HITS operator.

7. *Should any interconnection issues be addressed in licensing conditions?*

Bharti's Response:

In our opinion, all Interconnection issues should be addressed by the Regulator through its regulations as is the case for DTH service. The License must only deal with the terms and conditions which are a pre-requisite for acquiring and operating a HITS license and it must not deal with Interconnection issues.

8. *Should spectrum charges be recommended to be done away with for HITS service provider?*

Bharti's Response:

In our opinion, parity must be maintained between DTH and HITS services and the same terms and conditions should apply to both in respect of spectrum. There is no special reason to waive spectrum fee in case HITS service provider. Any special treatment without any basis and intelligible differentia would be in violation of principles of equality.

9. *Should there be any cross holding restriction? If yes, please suggest the nature and quantum of restriction?*

Bharti's Response:

As stated hereinbefore, the same cross holding restrictions as applicable to DTH operator should apply to HITS Licensee. Vertical Integration between Broadcasters, HITS Operators and Cable Operators would be against the interest of consumers as it would encourage discriminatory practices and price rise. Furthermore, it would effectively reduce the choice of delivery platform to the consumers which is one of the primary objectives of fostering competition among various service providers. Restriction on cross holding is one of the measures to check vertical integration and we therefore support imposition of identical standards on HITS operators as apply to DTH operators.

10. *Should HITS operator be allowed to offer value added service?*

Bharti's Response:

In our opinion, any Value Added Services that are technically feasible under the HITS platform should be permitted. However, the condition prohibiting exclusivity should be imposed on HITS operators as is applicable to DTH operators. Accordingly, HITS operators should be required to share their channels with all Cable Operators in a non-discriminatory manner. Further, they should not be permitted to enter into any exclusive contracts with any Cable Operator to the detriment of all other Cable Operators.

11. *Whether "must carry/must provide" conditions be imposed on HITS operations?*

Bharti's Response:

HITS operators would be using Satellite for transmission of TV channels to various Cable Operators across the country. Given the paucity of transponder capacity with a footprint over India, it is undesirable to impose a "Must Carry" obligation on HITS operators.

This is also at par with the obligations for DTH platform on which the Authority has not imposed any "Must Carry" obligation under the Telecommunications (Broadcasting & Cable Services) Interconnection Regulations dated December 10, 2004. The Hon'ble TDSAT in its Order dated March 31, 2007 in the case of Tata Sky Limited versus Zee Turner Limited has also held that it cannot read any "Must Carry" obligation under Clause 7.6 of the DTH license. Hence it is undesirable to impose any "Must Carry" obligations on HITS operations. However, the above view is subject to the outcome of the matter in Supreme

Court where it is currently being heard. Should the Hon'ble Supreme Court read any "Must Carry" obligations in the DTH License, the same should be applied on HITS licensees in a non-discriminatory manner.

However, the "Must Provide" condition should be imposed on HITS operators to ensure that they make available their content to Cable Operators in a non-discriminatory manner. The Authority may do so by extending the scope of the Interconnection Regulation of December 2004 to HITS operators.

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12. *Whether a stipulated networth of specified amount be as an eligibility criteria to avoid any non-serious applicant?*

Bharti's Response:

In our opinion, imposition of a minimum Net Worth precondition is a useful measure to disqualify non-serious applicants. Such a measure has been successfully deployed in the telecom sector over the liberalization phase. However, of late the government has been inclined to relax such Net Worth requirements in Telecom as a means to reduce entry barriers to usher competition. It may be noted that under the DTH license too there is no such requirement. In order to maintain parity between HITS and DTH, we suggest that no Net Worth requirement be imposed on HITS license as an eligibility condition.
