

Consultation Paper No. 01/2023



Telecom Regulatory Authority of India



Consultation Paper

on

**License Fee and Policy Matters
of DTH Services**

13th January 2023

Mahanagar Doorsanchar Bhawan

Jawahar Lal Nehru Marg

New Delhi-110002

Website: www.trai.gov.in

Written Comments on the consultation paper are invited from the stakeholders by 13.02.2023. Counter-comments, if any, may be submitted by 27.02.2023. Please support your comments with detailed reasons and justifications. Comments and counter-comments will be posted on TRAI's website: www.traigov.in. The comments and counter-comments may be sent, preferably in electronic form, to **Shri Anil Kumar Bhardwaj, Advisor (B&CS)**, Telecom Regulatory Authority of India, on the email advbcs-2@traigov.in and jtadvisor-bcs@traigov.in. For any clarification/information, Shri Anil Kumar Bhardwaj, Advisor (B&CS) may be contacted at Tel. No.: +91-11-23237922.



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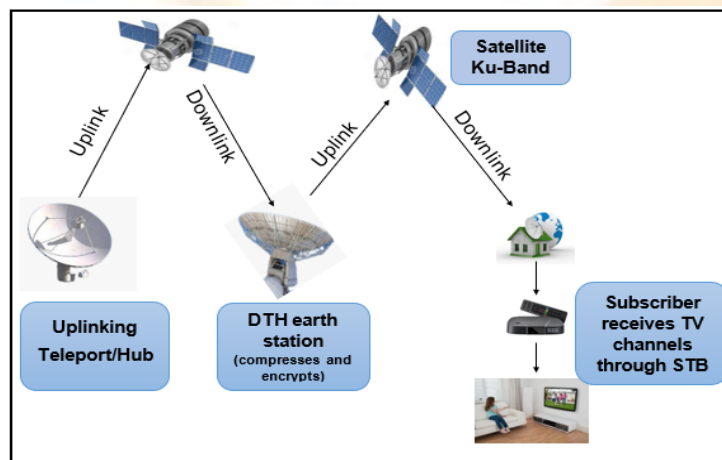
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CHAPTER I

INTRODUCTION

- 1.1 Television broadcasting is one of the most popular means for mass communication. Television channels beamed using satellites are referred to as satellite TV channels. In India, these satellite TV channels are permitted to be carried by different distribution platforms namely Direct-to-Home (DTH), Cable TV services delivered through Multi-System Operator (MSO) and Local Cable Operator (LCO), Headend-in-the-Sky (HITS) services, and Internet Protocol Television (IPTV) services. Besides, there is a Terrestrial TV service which is provided by the Prasar Bharati under the brand name Doordarshan, the public broadcaster.
- 1.2 Among them, DTH service is the one in which many channels are digitally compressed, encrypted, and beamed to the Ku band¹ satellites. From these satellites, the programs can be directly received at consumer premises as depicted in **Figure 1.1**. This mode of reception requires small dish antennas installed at convenient locations in the homes/buildings. DTH transmission does not need any commercial intermediary since an individual user is directly connected to the DTH operator. However, a digital receiver (set top box) is needed to receive the multiplexed signals and view them on TV.

Figure 1.1: Overview of the DTH System



¹ The Ku band is the portion of the electromagnetic spectrum in the microwave range of frequencies from 12 to 18 GHz

- 1.3 The Government of India permitted the reception and distribution of television signals in Ku band vide its notification no. GSR 18(E) dated 9th January 2001 issued by the Department of Telecommunications (DoT). This marked the beginning of Direct-to-Home (DTH) broadcasting services in India in Ku band.
- 1.4 Ministry of Information and Broadcasting (MIB) has laid down policy guidelines for obtaining license for providing DTH broadcasting service in India on 15th March 2001². Certain amendments therein have been notified on 1st June 2005, 11th May 2006, 31st July 2006, 29th May 2007, 10th September 2007 and 6th November 2007. These guidelines amended upto 2007 are hereinafter referred to as 'DTH Guidelines'. The 'DTH Guidelines' prescribe the eligibility criteria, the procedure for obtaining the license to set up and operate DTH services in the country, basic terms and conditions of the license and obligations of the licensee. The last amendment to the 'DTH Guidelines' was made on 30th December 2020 (hereinafter referred to as 'DTH Amendment').
- 1.5 The license is granted under Section 4 of the Indian Telegraph Act 1885³, and the Indian Wireless Telegraphy Act, 1933⁴ on the terms and conditions prescribed to establish, maintain and operate DTH platform.
- 1.6 M/s ASC Enterprises (now M/s Dish TV India Ltd.) became the first DTH licensee to start DTH services in India in October 2003. DD Free Dish (erstwhile DD Direct Plus), the only Free-to-Air (FTA) DTH service was launched by the public broadcaster Prasar Bharati in December 2004 with the approval of the Union Cabinet. Prasar Bharati is an autonomous body set up under Prasar Bharti Act, 1990⁵. M/s Tata Sky Ltd. (now M/s Tata Play Ltd.) launched its DTH services in August 2006. M/s Sun Direct TV Pvt. Ltd. and M/s Bharti Telemedia Ltd. launched services in 2007 and

² <https://mib.gov.in/sites/default/files/GuidelinesforDTHServiceDated15.3.2001.pdf>

³ https://traigov.in/sites/default/files/Indian_Telegraph_Act_1885.pdf

⁴ https://traigov.in/sites/default/files/Indian_Wireless_Telegraphy_Act_1933.pdf

⁵ <https://prasarbharati.gov.in/prasar-bharati-act/>

2008, respectively. M/s Reliance Big TV (later named as Independent TV) launched its services in August 2008. Videocon d2h launched its services in June 2009. Subsequently, M/s Videocon d2h Ltd. got merged with and into M/s Dish TV India Ltd. w.e.f. 22nd March 2018 and services of M/s Independent TV was suspended by MIB vide its letter dated 31st July 2019. Hence, presently there are four pay DTH operators providing their services in the country.

- 1.7 Broadcasting and cable services came under the purview of Telecom Regulatory Authority of India (TRAI) with effect from 9th January 2004⁶ by notification No. S.O.44(E) and 45(E) in the Gazette of India, Extraordinary, Part III, Section 4, issued by DoT.
- 1.8 As mentioned in Para 1.4, on 30th December 2020 (**Annexure-I**), the Government of India issued the amendments to the ‘DTH Guidelines’, considering the following TRAI recommendations on DTH services mentioned in **Table 1.1**.

Table 1.1: Recommendations considered for ‘DTH Amendment’

S. No.	TRAI Recommendations	Issued On
1.	Recommendations on Foreign Direct Investments (FDI) in Broadcasting Sector in India ⁷	22 nd Aug 2013
2.	Recommendations on Issues related to New DTH Licenses ⁸	23 rd Jul 2014
3.	Recommendations on Sharing of Infrastructure in Television Broadcasting Distribution Sector ⁹	29 th Mar 2017
4.	Recommendations on Platform Services offered by DTH Operators ¹⁰	13 th Nov 2019

- 1.9 The amendments dated 30th December 2020 were issued in respect of eligibility criteria, period of license, vertically integrated entity, reserving

⁶ Ministry of Communications and Information Technology vide Notification No. 39 dated 09.01.2004 bearing S.O. No. 44(E)

⁷ <https://www.traigov.in/sites/default/files/FDI%20%20reco%2020130822.pdf>

⁸ <https://www.traigov.in/sites/default/files/DTH-Reco%28New-Licensing-Regime%29-uploaded.pdf>

⁹ https://www.traigov.in/sites/default/files/Recommendation_broadcasting_29_03_2017.pdf

¹⁰ https://www.traigov.in/sites/default/files/Recommendation_13112019.pdf

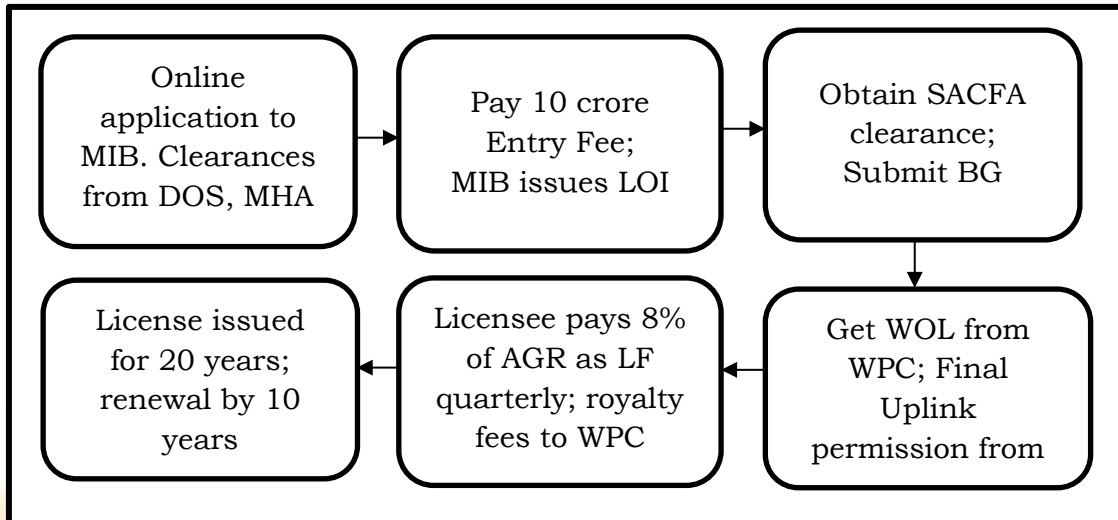
of operational channel capacity, entry fee, bank guarantee, license fee, platform service, sharing of infrastructure and set top box. Subsequently, the DTH operators were issued provisional licenses by MIB for providing DTH broadcasting services with effect from 1st April 2021. This provisional license is subject to adherence to the terms and conditions of the DTH Guidelines as amended up to 6th November 2007 and further amended on 30th December 2020.

- 1.10 Further, on 16th September 2022 ([Annexure-II](#)), MIB issued operational DTH Guidelines in respect of license Fee, platform service channels and sharing of infrastructure by DTH operators.
- 1.11 Any Indian company registered under the Companies Act, 1956 or 2013, desirous of operating DTH services in India has to apply through the Broadcastseva portal (<https://new.broadcastseva.gov.in>) of MIB. MIB, on verifying that the company meets the eligibility conditions, obtains the security clearance from the Ministry of Home Affairs (MHA) and clearance for usage of satellite from the Department of Space (DoS). Once the clearances are obtained, the company is asked to pay an entry fee of Rs. 10 crore. On payment of the entry fee, MIB communicates its intent to the company to issue the license.
- 1.12 Next, the company has to approach Wireless Planning and Coordination (WPC) for clearance from Standing Advisory Committee on Radio Frequency Allocations (SACFA). Once the SACFA clearance is obtained, the company has to submit a bank guarantee and sign the license agreement with MIB. After this, the company has to apply to WPC for obtaining the Wireless Operating License (WOL), and a final Uplinking permission from Networks Operation Control Center (NOCC).
- 1.13 The Licensee is required to pay license fee to the Licensor (MIB) and shall also, in addition, pay the royalty fees¹¹ for the spectrum used to WPC as prescribed by WPC. Further, DTH operators were required to pay NOCC

¹¹ <https://telerb.railnet.gov.in/raw-attachment/wiki/UpLoads/WPC-Lt.No.P-11014-34-2009-PP%281%29dt.22032012.pdf>

charges of Rs. 21 lakh per transponder per annum for the use of space segment. However, these charges have been removed vide DoT letter dated 26th October 2022¹² from all service providers using space segment including DTH operators. The process flow is described in **Figure 1.2**.

Figure 1.2: Process for DTH License



1.14 Predominantly, the pay TV services in India are being delivered through cable TV and DTH systems. Other modes of TV broadcasting such as IPTV and HITS have miniscule subscriber base when compared to the cable TV and the DTH universe. The television broadcasting sector presents a vibrant picture with more than 900 permitted satellite TV channels, 4 pay DTH operators, 1748¹³ multi-system operators as on 31st December 2022 and around 81706 cable TV operators as on 01st January 2022 as communicated to MIB by Department of Posts.

1.15 As per an industry estimate reported in 2022¹⁴, pay DTH and cable sector together has a subscriber base of 122 million as on March 2021. Out of the total 125 million paid subscribers of the TV industry, 67 million are cable, 55 million are pay DTH subscribers and 3 million are HITS

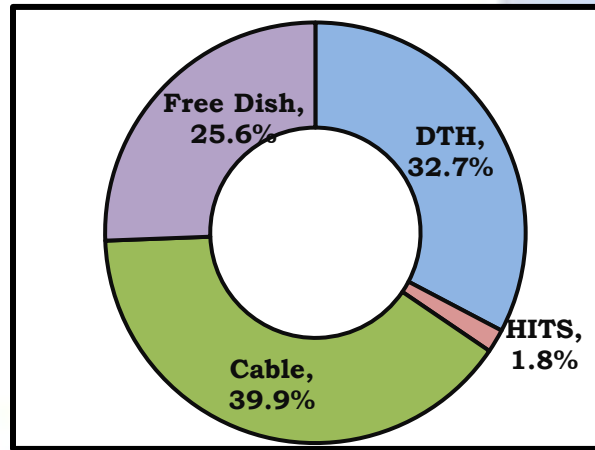
¹²<https://dot.gov.in/sites/default/files/NOCC%20charges%20order%20dated%2026102022.pdf>

¹³<https://mib.gov.in/sites/default/files/List%20of%20Registered%20MSOs%20as%20on%2031.12.2022.pdf>

¹⁴ https://assets.ey.com/content/dam/ey-sites/ey-com/en_in/topics/media-and-entertainment/2022/ey-ficci-m-and-e-report-tuning-into-consumer_v3.pdf

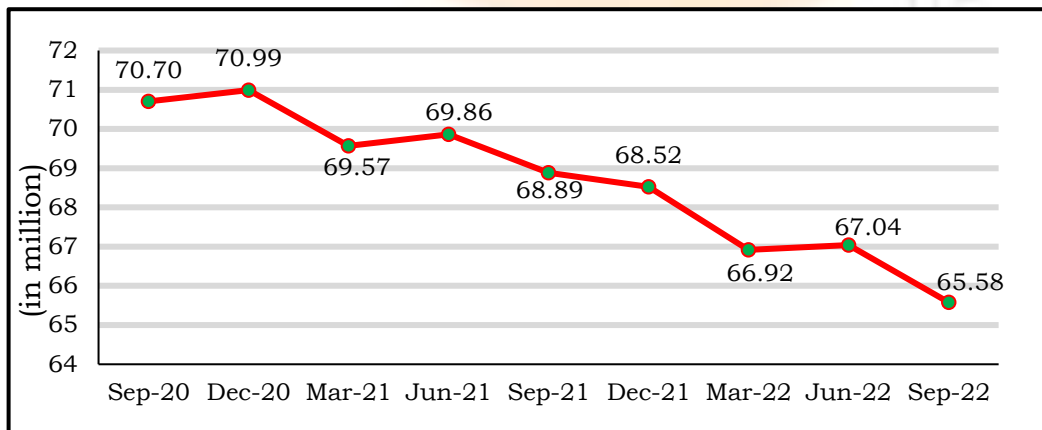
subscribers. Besides, there are 43 million viewers of free TV platform (DD Free Dish). The DTH and the cable sector presently cover more than 95 per cent of the total pay TV viewing universe. DTH services constitutes around 44% of the pay TV universe. However, in other countries, this ratio varies. **Figure 1.3** depicts the split percentage of TV subscriber base amongst the various distribution platforms including DD Free Dish.

Figure 1.3: Television subscriptions split (as on March 2022)



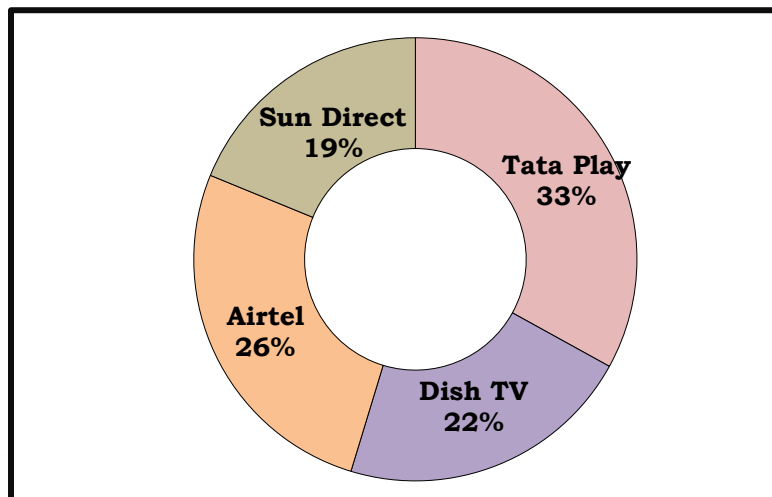
1.16 The trends of the total active subscriber base (including subscribers who have been inactive or temporarily suspended for not more than last 90 days) of the four existing DTH operators viz. Dish TV, Tata Play, Bharti Telemedia and Sun Direct for the last nine quarters as reported to TRAI is depicted in **Figure 1.4**. It may be seen that the DTH sector is showing a declining trend for the last two years.

Figure 1.4: Total Active Subscriber Base of DTH Sector



1.17 Pay DTH sector has attained a total active subscriber base of around 65.58 million in the quarter ending 30th September 2022. This is in addition to subscribers of DD Free Dish. The percentage share of each DTH operator is as shown in **Figure 1.5**.

Figure 1.5: Percentage share of DTH operators



The Present Reference

- 1.18 Section(11)(1)(a) confers power to TRAI to make recommendations, either suo motu or on request from the licensor, on various matters including terms and conditions of license of a service provider.
- 1.19 TRAI is in receipt of a reference from MIB in view of the amendments carried out by DoT in October 2021 with respect to Adjusted Gross Revenue (AGR) and Bank Guarantee (BG) under telecom reforms as announced by Union Cabinet on 15th September 2021. TRAI has received this reference from MIB on 2nd February 2022 vide their letter No. 2/33/2021-BP&L ([Annexure-III](#)), requesting TRAI to examine the following issues from policy angle and furnish its recommendations under section 11(1)(a) of the TRAI Act, 1997:
- i. Issue of exclusion of non-licensed activities from definition of Gross Revenue in respect of DTH License fee as in case of recent amendments carried out by Department of Telecommunications (DoT) and/or identify any other base for levy of the license fee. Accordingly,

the format of Form-D in DTH sector as per GR/AGR criteria may also be provided.

- ii. Percentage/amount of Bank Guarantees (BGs) in respect of private DTH services as in case of recent amendments carried out by Department of Telecommunications (DOT); and
- iii. Issue of Uniform License Fee (Level playing field) in respect of all Distribution Platform Operators (DPOs).

1.20 In the said reference, MIB has also mentioned that:

“DTH Association has also raised the matter of level playing field between Distribution Platform Operators (DPOs). It has been stated by HITS, while being licensed by this Ministry and security cleared by MHA, do not have to pay any license fee whereas DTH has to pay a License Fee @ 8% of AGR. To create a level playing field, they have requested the Ministry to charge 4% License Fee from all the DPOs viz. Cable, HITS and DTH while not being too harsh a levy on Cable. It would also be revenue neutral for the exchequer.”

1.21 **License Fee Structure:** As far as the license fee payable by the DTH licensee is concerned, the extant guidelines prescribe that Licensee shall pay an annual fee equivalent to 8% of its adjusted gross revenue (AGR), to be paid on a quarterly basis to MIB. MIB has also prescribed a format as Form-D in the ‘DTH Guidelines’ for the DTH operators to provide the statement of Gross Revenue. MIB has also requested TRAI to provide the format of Form-D in DTH sector as per GR/AGR criteria.

1.22 **Bank Guarantee Structure:** With respect to MIB reference on rationalization of BGs, it may be noted that the extant guidelines prescribe a Bank Guarantee for an amount of Rs. 5 crore for the first two quarters (for new entrants), and, thereafter, for an amount equivalent to estimated sum payable, equivalent to License fee for two quarters and other dues not otherwise securitized. Further, the Bank Guarantee shall be valid for a year, which should be renewed on a year-on-year basis in such a manner that the Bank Guarantee remains valid during the entire license period.

1.23 **Level playing field:** MIB vide its reference has also requested TRAI to examine the issue of uniform license fee for level playing field in the distribution sector. The Distribution Platform Operators (DPOs) are governed by different sets of policy guidelines or acts and rules, hence different fee structures are applicable to these entities as prescribed in their corresponding guidelines.

1.24 The Authority is issuing this consultation paper to seek the comments/views of the stakeholders on the relevant issues. Chapter I provides the introduction. Chapter II of the consultation paper discusses the issues related to license fee, the various court cases on the matter of the computation of license fee and the amendments carried out by DoT in respect of license fee and bank guarantee. It also discusses the other aspects pertaining to issues raised in the said MIB reference, identifies the issues for consultation and seeks comments from stakeholders. In Chapter III, all the issues for consultation have been listed out.

CHAPTER II

LICENSE FEE AND POLICY MATTERS OF DTH OPERATORS

2.1 This Chapter discusses the issues referred by MIB viz. amendments carried out by DoT w.r.t. License Fee and Bank Guarantees in the Unified License (UL) Agreement. The chapter also brings out the various court cases pertaining to computation of license fee in DTH sector, the new regulatory framework of broadcasting and cable services and the demand of DTH operators. The issues related to Bank Guarantee of the DTH operators and the uniform license fee amongst DPOs for level playing field are also discussed in this chapter.

A. License Fee payable by DTH Operators

2.2 License fee is a non-tax fee levied on a service provider against the privilege of being permitted to carry out a licensed activity. The license fee is levied on different kinds of licensees as the government delineates its right to carry out certain activities.

A.1 Recent amendments carried out by DoT for telecom operators

2.3 A license granted under section 4(1) of the Indian Telegraph Act is in the nature of the contract between the Central Government and the licensee. The terms and conditions of the license, including the definition of gross revenue and adjusted gross revenue in the license agreement, are also part of the contract.

2.4 The Government's power to grant licenses flows from the Indian Telegraph Act, 1885 (ITA). Section 4 (1) of ITA states:

'Within India, the Central Government shall have the 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:

...'

2.5 The license fee levied on DTH operators can thus be construed as the consideration for the license granted to DTH operators for providing DTH broadcast services.

2.6 Licenses for all kinds of telecom services are issued under Section 4 of the India Telegraph Act, 1885. Unified License (UL)¹⁵, granted by DoT under Indian Telegraph Act, includes authorization for the following services:

- (a) Unified License (All Services)*
- (b) Access Service (Service Area-wise)*
- (c) Internet Service (Category – A with All India jurisdiction)*
- (d) Internet Service (Category – B with jurisdiction in a Service Area)*
- (e) Internet Service (Category – C with jurisdiction in a Secondary Switching Area)*
- (f) National Long Distance (NLD) Service*
- (g) International Long Distance (ILD) Service*
- (h) Global Mobile Personal Communication by Satellite (GMPCS) Service*
- (i) Public Mobile Radio Trunking Service (PMRTS)*
- (j) Very Small Aperture Terminal (VSAT) Closed User Group (CUG) Service*
- (k) Audio Conferencing/ Audiotex/ Voice Mail Service*
- (l) Machine to Machine Service (M2M) (Category - A, B and C)*

Authorization for Unified License (All Services) covers all services listed at (b) in all the service areas, (c) and (f) to (l) above.

2.7 Unified License offers service-wise authorizations for establishing service specific network and to provide the authorized service(s). Only one Unified License is required for all telecom services in the entire country. The service provider may choose the services to be offered, which are called Service Authorizations. The allocation of spectrum is delinked from the license and it has to be obtained separately as per the prescribed procedure, for different services. The broadcasting services, such as satellite based DTH and Cable TV Services, are not included in the scope

¹⁵<https://dot.gov.in/sites/default/files/UL%20AGREEMENT%20with%20Audiotex%20M2M%20without%20INSAT%20MSSR%2017012022.pdf>

of authorizations under Unified License. However, under the scope of Access Service Authorization and Internet Service Authorization, the licensee is permitted to provide IPTV service, which is a broadcasting service.

2.8 UL prescribes conditions like general, commercial, financial, technical, operating and security which are common for all the authorizations. Additionally, the UL also prescribes specific authorization-wise conditions like service area, scope of service, financial conditions, security, technical, network interconnection, operating and different formats and norms which are specific to each authorization/service.

2.9 MIB in its reference has mentioned the amendments carried out by DoT vide their letter no. 20-271/2010 AS-I (Vol.-V) dated 25th October 2021¹⁶ on the subject 'Amendment in UL agreement for Adjusted Gross Revenue (AGR)'. These amendments were carried out considering TRAI's recommendations on 'Definition of Revenue Base (AGR) for the Reckoning of License Fee and Spectrum Usage Charges' dated 6th January 2015¹⁷. As per these DoT amendments made in various telecom license agreements, the definition of AGR have been changed by introducing a term called Applicable Gross Revenue (ApGR). The amendment carried out in respect of access service authorization of UL is listed in **Table 2.1**.

Table 2.1: Amendment made by DoT in UL Agreement w.r.t. AGR

S. No	Old Clause	Amended Clause (Amendments dated 25.10.2021)
1.	PART-I, CHAPTER-III, FINANCIAL CONDITIONS 19. Definition of 'Adjusted Gross Revenue': 19.1 The Gross Revenues and Adjusted Gross Revenue (AGR) for the purpose of calculation of	PART-I, CHAPTER-III, FINANCIAL CONDITIONS 19. Definition of Gross Revenue, Applicable Gross Revenue (ApGR) and Adjusted Gross Revenue (AGR):

¹⁶ <https://dot.gov.in/sites/default/files/AGR%20Amendment.pdf>

¹⁷ https://traai.gov.in/sites/default/files/Reco-AGR-Final-06.01.2015_0.pdf

	License fee for different services authorized under this license different in the respective chapters of the Service in PART-II of this Schedule.	19.1 The Gross Revenue, Applicable Gross Revenue (APGR) Adjusted Gross Revenue (AGR) for the purpose of calculation of License fee for different services authorized under this license different in the respective chapters of the Service in PART-II of this Schedule.
2	<p>PART- II, CHAPTER-VIII, ACCESS SERVICE</p> <p>3. FINANCIAL CONDITIONS</p> <p>3.1 GROSS REVENUE</p> <p>The Gross Revenue shall be inclusive of installation charges, late fees, sale proceeds of handsets (or any other terminal equipment etc.), revenue on account of interest, dividend, value added services, supplementary services, access or interconnection charges, revenue from permissible sharing of infrastructure and any other miscellaneous revenue, without any set-off for related revenue, item of expense, etc.</p> <p>3.2 Adjusted Gross Revenue (AGR):</p> <p>For the purpose of arriving at the "Adjusted Gross Revenue (AGR)", following shall be excluded from the Gross Revenue to arrive at the AGR:</p> <p>I. PSTN/PLMN/GMPCS related Call charges (Access Charges) actually paid to other eligible/entitled Telecommunication service providers within India;</p>	<p>PART- II, CHAPTER-VIII, ACCESS SERVICE</p> <p>3. FINANCIAL CONDITIONS</p> <p>3.1 GROSS REVENUE</p> <p>The Gross Revenue shall be inclusive of installation charges, late fees, sale proceeds of handsets (or any other terminal equipment etc.), revenue on account of interest, dividend, value added services, supplementary services, access or interconnection charges, revenue from permissible sharing of infrastructure and any other miscellaneous revenue, without any set-off for related revenue, item of expense, etc.</p> <p>3.1A Applicable Gross Revenue (ApGR)</p> <p>ApGR shall be equal to Gross Revenue (GR) of the licensee as reduced by the items listed below:</p> <p>i) Revenue from operations other than telecom activities/operations.</p> <p>ii) Revenue from activities under a license/ permission issued by Ministry of Information and Broadcasting.</p> <p>iii) Receipts from the USO Fund.</p> <p>iv) List of other income* to be excluded from GR to arrive at APGR</p> <p>a. Income from Dividend and;</p> <p>b. Income from Interest</p>

<p>II. Roaming revenues actually passed on to other eligible/entitled telecommunication service providers and;</p> <p>III. Goods and service tax (GST) actually paid to the Government If gross revenue had included as component of GST.</p>	<p>c. Capital Gains on account of profit of Sale of fixed assets and securities</p> <p>d. Gains from Foreign Exchange rates fluctuations</p> <p>e. Income from property rent</p> <p>f. Insurance claims</p> <p>g. Bad Debts recovered</p> <p>h. Excess Provisions written back *Subject to given conditions</p> <p>3.2 Adjusted Gross Revenue (AGR):</p> <p>For the purpose of arriving at the "Adjusted Gross Revenue (AGR)", following shall be excluded from the Applicable Gross Revenue (ApGR):</p> <p>I. PSTN/PLMN/GMPCS related Call charges (Access Charges) actually paid to other eligible/entitled Telecommunication service providers within India;</p> <p>II. Roaming revenues passed on to other eligible/entitled telecom service providers and;</p> <p>III. Goods and service tax (GST) paid to the Government if the Applicable Gross Revenue (ApGR) had included as component of GST.</p>
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A.2 Current license fee regime for DTH operators

2.10 As far as the license fee in the DTH services is concerned, according to the extant 'DTH Guidelines', Gross Revenue (GR) is *"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”.

2.11 Further in the said guidelines, MIB prescribes a Form-D ([Annexure-IV](#)) and states that “Every licensee shall maintain separate financial accounts for the channels which shall be audited by the statutory auditors. At the end of each financial year, the company shall provide the statement of gross revenue forming part of the final accounts of the licensee as per the format in Form D, duly certified by the Statutory Auditors. It has been further stated that the income heads specified in Form D are only indicative and illustrative and the Auditor would include all the relevant heads qualifying for gross revenue whether or not specifically included in the said format. To verify that the Gross Revenue is correctly disclosed to it, the Government of India shall have the right to get the accounts of any licensee audited by CAG or any other professional auditors at its discretion. In case of difference between the Gross Revenue determined by the Statutory Auditors and the Government appointed auditors, the views of the government appointed auditor, subject to opportunity of hearing to the licensee shall prevail and the expenses on such audit shall be borne by the licensee.”

2.12 Regarding the license fees payable by DTH operators, TRAI in its recommendations on “Issues related to New DTH Licenses” dated 23rd July 2014¹⁸ has inter-alia recommended that:

- i. The license fee in the new DTH licensing regime should be charged as 8% of AGR where AGR is calculated by excluding Service Tax, Entertainment Tax and Sales Tax/VAT actually paid to the Government, from the Gross Revenue (GR).

¹⁸ <https://tra.gov.in/sites/default/files/DTH-Reco%28New-Licensing-Regime%29-uploaded.pdf>

- ii. *The DTH licensees shall be required to pay license fee on a quarterly basis, the quantum thereof shall be equal to the actual license fee payable for the preceding quarter. The annual settlement of the license fee shall be done at the end of the financial year.*
- iii. *The annual License Fee shall be subject to a minimum of 10% of the Entry Fee.*
- iv. *The license should include a provision that prescribes that the Licensor reserves the right to modify the License Fee as a percentage of AGR any time during the currency of the agreement.*

The schedule of payment of License Fee should be amended accordingly.

2.13 MIB has accepted TRAI's recommendations on the matter of license fee and accordingly amended the guidelines vide its Order No. 8/7/2020-BP&L dated 30th December 2020 which came into effect from 01st April 2021. Further, MIB has issued 'Operational Guidelines for DTH services in India' vide Order dated 16th September 2022. **Table 2.2** compares the old provisions and the amended provisions of the 'DTH Guidelines' w.r.t. payment of License Fee.

Table 2.2: License Fee provisions in DTH Guidelines

Old provisions w.r.t. License Fee	New provisions w.r.t. License fee (Effective from 01.04.2021)
<ul style="list-style-type: none"> • The Licensee shall pay an initial non-refundable entry fee of Rs.10 crore 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, an annual fee equivalent to 10% of its gross revenue in that particular financial year in the manner. 	<ul style="list-style-type: none"> • The Licensee shall pay an annual fee equivalent to 8% of its Adjusted Gross Revenue, calculated by excluding GST from Gross Revenue (GR) as reflected in the audited accounts of the company for that particular financial year. • The minimum annual license fee shall be subject to 10% of the Entry Fee. • The license fee is to be paid on a quarterly basis, the quantum thereof to be equal to the actual License Fee payable for the preceding quarter. The annual settlement of the License Fee shall

	<p>be done at the end of the financial year.</p> <p>The licensor will have the right to modify the license fee as a fixed percentage of AGR during the validity of license period.</p>
<ul style="list-style-type: none"> • The First payment of Annual license fee for the financial year (FY) shall be made on the basis of provisional accounts for the FY certified by the Statutory Auditors, within one month of the end of that FY. 	<ul style="list-style-type: none"> • The first payment of license fee for the previous quarter shall be made on the basis of provisional account for the quarter within one month of the end of a particular quarter.
<ul style="list-style-type: none"> • Annual License fee for the FY shall be finally determined on the basis of final annual accounts of the FY audited by the Statutory Auditors, which shall not be later than 30th September of the following FY. 	<ul style="list-style-type: none"> • The payment of license fee for the 4th quarter shall be made after adjustments and settlements of accounts for the whole year and on the basis of the finalized audited statement of the entity and latest by 30th September succeeding the financial year.

A.3 International Practices

2.14 The Authority has also reviewed the license conditions in different countries regarding license fee. There is no discernable uniformity in charging LF or in the definition of revenue across countries and licensing jurisdictions. In some countries, LF is charged as a percentage of revenue, in others it is levied to cover regulatory and administrative costs and in some other countries, it is based on the subscriber base or population.

(i) United Kingdom

2.15 In the United Kingdom, the Office of Communications (Ofcom) provides a Television Licensable Content Service (TLCS)¹⁹ which is a television broadcasting service from a satellite, distributed using an electronic communications network (including the internet), or a service made available by a radio multiplex. There is no limit to the number of TLCS licenses which can be held by one company or individual.

¹⁹ https://www.ofcom.org.uk/_data/assets/pdf_file/0024/209409/tlcs-guidance-notes-for-applicants.pdf

2.16 If a license is granted, the licensee must pay an annual fee to Ofcom, as a condition of its license. The fees are revised annually and published no later than 31st March of each year²⁰. The annual fees for editorial services are based on a percentage of ‘Relevant Turnover’, which in the television sector relates to any turnover that is derived from advertising/ sponsorship, subscriptions and interactive activities. Ofcom prescribes different percentage for different categories of license (category A, B, C, D and E). For instance, the license fee prescribed on category A of television licensees which includes Channel 3, Channel 4, Channel 5, Local Digital Television Programme Service and the Public Teletext Service Licence is provided in **Table 2.3**.

2.17 Rates are expressed cumulatively, e.g., for Category A licensees, 0.17657% is charged on the first £10m of Relevant Turnover; 0.26485% on the next £25m; 0.39727% on the next £40m and 0.59591% on the next £225m. Further, the minimum fee is currently £1,000 (~₹ 95535)²¹ for the charging year. There is a maximum relevant turnover cap of £300m, beyond which no fee is payable. Also, if the annual licence fee calculated is more than £75,000, Ofcom will automatically allow payment of the amount due in monthly installments.

Table 2.3: License fee for Category A License

Relevant Turnover Bands	Cumulative sliding scale
£0m – £10m	0.17657%
£10m – £35m	0.26485%
£35m – £75m	0.39727%
£75m – £300m	0.59591%
Above £300m	0.00000%

²⁰ For 2021-2022: https://www.ofcom.org.uk/_data/assets/pdf_file/0027/216666/tariff-tables-2021-22.pdf

²¹ Exchange Rate: £1=₹ 95.5351

(ii) United States of America

- 2.18 According to Federal Communications Commission (FCC)²² of the United States of America, the Copyright Act requires cable operators to obtain a compulsory license for the carriage of programming. The cable operator pays the fee to the copyright office, for distribution to the copyright holders of the program material. The fee for each cable system is based on the system's "gross receipts" from the carriage of broadcast signals and the number of "distant signal equivalents" a term identifying non-network programming from distant television stations carried by the system.
- 2.19 The FCC assesses and collects regulatory fees every fiscal year to recover the Commission's costs of carrying out its functions. These functions include enforcement activities, policy and rule-making activities, user information services, and international activities.
- 2.20 Cable television systems must pay a regulatory fee per subscriber for all of the community units in which they operate. The number of basic cable subscribers that were served should be used as the basis to calculate the fee payment. Internet Protocol TV (IPTV) and Direct Broadcast Service (DBS) are to be included in the Cable Television Systems fee category and assessed a regulatory fee at the same rate as cable television fees²³.
- 2.21 Thus, the regulatory fees for a Cable System, including IPTV and Digital Broadcasting System (DBS) is paid based on a subscriber count. Further, Cable Television Relay Service (CARS) licensees are also required to make a fixed regulatory fee payment for all other non-billed holdings, such as cable systems and other fee services. For every year²⁴, the FCC releases a regulatory fees fact sheet which prescribes the factor by which the subscriber base has to be multiplied with. **Table 2.4** provides the regulatory fees due for FY 2022.

²² <https://www.fcc.gov/media/engineering/cable-television>

²³ <https://docs.fcc.gov/public/attachments/DOC-387268A1.pdf>

²⁴ For FY 2021-2022, <https://docs.fcc.gov/public/attachments/FCC-22-39A1.pdf>

Table 2.4: Regulatory fee payment chart

Type of Fee	Regulatory fee payment
Cable System Subscriber Fee, Including IPTV and DBS Subscribers	\$1.16 per subscriber
CARS License	\$1,715 per license

2.22 Further, the Full-Service Television Broadcaster pays a regulatory fee based on the population²⁵ covered by a full-service broadcast television station and the population-based fee is multiplied by a certain factor as prescribed by FCC every year.

(iii) Singapore

2.23 Infocomm Media Development Authority (IMDA), Singapore issues the Nationwide Subscription Television Service Licence. For this license, the license fee is levied at the rate of 2.5% of total revenue or S\$50,000 (~₹29,00,000)²⁶ per annum, whichever is higher²⁷. For international broadcasting services, Subscription International Television Service License is issued, for which the annual license fee²⁸ payable by the broadcasters is a fixed amount of \$5,000.

A.4 Issues raised by DTH operators in India

2.24 The 'DTH Guidelines' prescribed a license fee of 10% of the Gross Revenue before the DTH Amendments 2020. Accordingly, till March 2021, the DTH operators were required to pay an annual license fee of an amount equivalent to 10% of GR without making any deductions. However, it has been seen that the DTH operators have been making some or the other deductions under different income heads and arriving at a figure called "License fee payable GR" and paid 10% of that "License fee payable GR".

²⁵ For FY 2021-2022, <https://docs.fcc.gov/public/attachments/DOC-387021A1.pdf>

²⁶ At Exchange Rate: S\$1=₹58.62

²⁷ <https://www.imda.gov.sg/regulations-and-licensing-listing/Nationwide-Subscription-TV-Service-Licence>

²⁸ <https://www.imda.gov.sg/regulations-and-licensing-listing/subscription-international-television-service-licence>

- 2.25 After the amendment was notified on 30th December 2020 which came into effect from 1st April 2021, the licensees are required to pay license fee quarterly as 8% of AGR (April 2021 onwards) to MIB. TRAI has examined the Form-D²⁹ submitted by the operators to MIB for the last five years. The analysis revealed that the DTH operators are deducting taxes and some of the income heads from GR to arrive at “Net revenue on which License Fee is computed”.
- 2.26 From the Form-D²⁹, it has been seen that the DTH operators have been carrying out the deductions differently as per their own understanding and business model without following any common accounting principle. Some of the various heads of income being deducted are “Content cost charges paid to broadcasters”, “Installation charges”, “Miscellaneous income”, “Interest/dividend”, “Rent received”, “Others”, “Activation Revenue”, “Commission to distributors & dealers”, “Broadcasting fees paid to various channel providers”, “Sales of CPEs & accessories”, “Teleport services”, “a part of DTH subscription income”, “Lease rentals”, “Other operating income”, “Interest from investments”, “Liabilities written back” and the taxes paid on various income heads.
- 2.27 It has been learnt recently that MIB has requested Comptroller and Auditor General (CAG) of India to conduct an audit of the DTH service providers on payment of the license fee and the discrepancies arising in the revenue calculations.

A.5 Litigations by DTH operators

- 2.28 The issue of computation of license fee and the constitutional validity of ‘DTH Guidelines’, has been heard in various courts of India and pending since 2009. The DTH operators have been challenging the correctness and computation of the license fee levied by the Union of India. A petition was filed by one of the DTH operators (Sun Direct) before Telecom Disputes Settlement & Appellate Tribunal (TDSAT) against Union of India vide

²⁹ Form D is submitted to MIB by DTH operators. TRAI has sought the information from MIB for the purpose of this Consultation Paper.

petition No. 92 (C) of 2009. This petition is regarding the determination of gross revenue for the purpose of the license fee payable by the Company as per the terms of its License agreement entered into with MIB. The year-wise sequence of events since then has been briefly mentioned in the **Table 2.5.**

Table 2.5: Sequence of events in the court matters

S. No.	Date	Event
1.	24.04.2009	Sun Direct filed petition against Union of India (UoI) before TDSAT.
2.	28.05.2010	TDSAT allowed the petition and provided for payment of license fee on AGR basis with certain exclusion of non-licensed activities.
3.	17.09.2014	UoI filed an appeal in Hon'ble Supreme Court of India against TDSAT decision. The Hon'ble SC disposed of the appeal filed by the UoI by referring the matter back to the TDSAT for fresh adjudication.
4.	19.10.2015	Sun Direct filed Writ Petition before Hon'ble HC of Kerala assailing the clause 3.1.1 of the licensing agreement.
5.	20.10.2015	The HC of Kerala at Ernakulam passed an interim order allowing the prayer of petitioner in WP(C) No. 31856 of 2015 titled M/s Sun Direct TV (P) Ltd vs UoI.
6.	29.10.2015	Another similar WP(C) No. 33021/2015 was filed by Videocon D2h at HC of Kerala at Ernakulam.
7.	29.10.2015	The HC of Kerala at Ernakulam in WP(C) No. 33021 of 2015 titled M/s Videocon d2h Ltd. vs. UoI and others passed interim order allowing the prayer of the petitioner to continue to pay the license fee as they have been paying since the date

		of grant of license and not to take any coercive steps against the petitioner.
8.	16.12.2015	Another similar WP (C) No. 38271/2015 titled as M/s Bharti Telemedia Pvt. Ltd. vs UoI has been filed before the High Court (HC) of Kerala at Ernakulam.
9.	17.12.2015	The HC of Kerala in WP(C) No. 38271 of 2015 titled M/s Bharti Telemedia Pvt Ltd. vs. UoI and others passed interim order for three months allowing the prayer of the petitioner to continue to pay the license fee as they have been paying since the date of grant of license and not to take any coercive steps against the petitioner.
10.	18.02.2016	The HC of Kerala in WP(C) No. 38271 of 2015 titled M/s Bharti Telemedia Pvt Ltd. vs. Union of India and others extended interim order until further orders allowing the prayer of the petitioner to continue to pay the license fee as they have been paying since the date of grant of license and not to take any coercive steps against the petitioner.
11.	11.01.2018	Hon'ble TDSAT on 11.01.2018 ordered that the hearing of broadcasting petitions of DTH operators is adjourned <i>sine die</i> and be resumed on mentioning by either of the parties after the validity of relevant articles and other related issues decided by the High Courts.
12.	05.03.2018	M/s Tata Sky Ltd. (now Tata Play Ltd.) has filed a Transfer Petition (Civil) No. 463-466/2018 before Hon'ble SC seeking transfer of all above-mentioned cases to Hon'ble HC of Delhi.

13.	09.03.2018	Hon'ble SC of India has disposed of the Transfer Petition with a direction to Union of India, to file reply in the writ petition within the next two months and also requested the concerned High Courts to decide the cases as far as possible within six months.
14.	30.10.2018	Counter Affidavit filed by MIB in all the pending Writ Petitions but no progress has been made.
15.	04.07.2019	MIB filed the Transfer Petition in Hon'ble SC of India.

2.29 The said transfer petitions have been allowed by the Supreme Court (SC) on 23.09.2019 and the matters have been numbered as:

TC (C) No. 70/2019 titled as "M/s Sun Direct TV Pvt Ltd v Union of India"

TC (C) No. 71/2019 titled as "Dish TV India Ltd v Union of India" (earlier Videocon D2H Limited v Union of India)

TC (C) No. 72/2019 titled as "Bharti Telemedia Pvt Ltd v Union of India & Ors"

The matter is currently pending in the Supreme Court. From the information available on the website of the Hon'ble SC, it is seen that the above-mentioned cases were last heard on 08th December 2022. The Hon'ble Supreme Court has permitted the Respondents to file counter affidavit within four weeks. The above-mentioned cases are pending for final hearing.

2.30 The details of the Writ petitions filed at various High Courts and the contentions raised are as follows:

a. WP(C) No. 38271 of 2015 titled as "M/s Bharti Telemedia Pvt. Ltd. Vs Union of India & Ors" filed before the Hon'ble Kerala High Court at Ernakulam: The dispute in the matter is with regard to the power of Licensor (MIB) allegedly for bringing the revenue earned from non-licensed activities for the purpose of charging license fee under Section 4 of the Indian Telegraph Act, 1885. The petitioner has alleged that

powers of Union of India (MIB) for charging license fee under Section 4 of the Indian Telegraph Act, 1885 is limited only to revenue earned from licensed activities and has sought the relief to set aside clause 3.1.1 to the License Agreement as it is *ultra-vires*, Section 4 of the India Telegraph Act.

b. WP(C) No. 33021 of 2015 titled as “Videocon D2H Limited Vs Union of India & Ors” filed before the Hon’ble Kerala High Court at

Ernakulam: The issue involved in the present matter is similar to the WP(C) No. 38271 of 2015 titled as “M/s Bharti Telemedia Pvt. Ltd. Vs Union of India & Ors” filed before the Hon’ble Kerala High Court at Ernakulam. The petitioner has, inter alia, challenged the clauses 3.1, 3.1.1 & 3.1.2 read with Form-D of the ‘DTH Guidelines’ as allegedly the same requires the petitioner licensee to pay licensee fee on revenue generated from the activities other than the licenses activities.

c. WP(C) No. 31856 of 2015 titled as “Sun Direct TV Private Limited Vs Union of India & Ors” filed before the Hon’ble Kerala High Court

at Ernakulam: Vide the Writ Petition, the petitioner has prayed that the payment of license fee should be levied only on the licensed activities, and that MIB should not take any coercive steps till the disposal of Writ Petition. In this WP, Tata Sky has also filed an Impleadment Application (IA) via IA No. 13416 of 2018.

d. OWP No. 1502 of 2015 titled as “Dish TV India Ltd Vs Ministry of Information and Broadcasting, Government of India & Others” filed

before the Hon’ble High Court of Jammu & Kashmir at Jammu: The issue involved in the present matter is similar to the WP(C) No. 38271 of 2015 titled as “M/s Bharti Telemedia Pvt. Ltd Vs Union of India & Ors” filed before the Hon’ble Kerala High Court at Ernakulam. The petitioner has, inter alia, challenged the clause 3.1/3.1.1 of the DTH license as allegedly these are illegal to the extent that it includes revenue generated from non-licensed activities and pass-through expenses.

e. TP (C) No. 2305-2308 of 2019 filed by Ministry of Information and Broadcasting before the Hon'ble Supreme Court of India: Transfer Petition TP(C) No. 2305-2308 of 2019 filed by MIB for the transfer of the matters pending before the Hon'ble High Court of Kerala to the Hon'ble Supreme Court of India was allowed by the Hon'ble Supreme Court.

A.6 Changes brought in by amended regulatory framework of 2017

2.31 The digitization of TV distribution services began in 2011 with the Cable Television Networks (Regulation) Amendment Act. The countrywide deployment of digital addressable system (DAS) got completed in March 2017. In view of anticipated completion of DAS implementation, TRAI undertook a comprehensive review of the regulatory framework of the entire sector in 2016. After extensive consultation process, on 3rd March 2017, the Authority notified:

- a) *The Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff Order, 2017 (the "Tariff Order");*
- b) *The Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017 (the "Interconnection Regulations");*
- c) *The Telecommunication (Broadcasting and Cable) Services Standards of Quality of Service and Consumer Protection (Addressable Systems) Regulations, 2017 (the "QoS Regulations").*

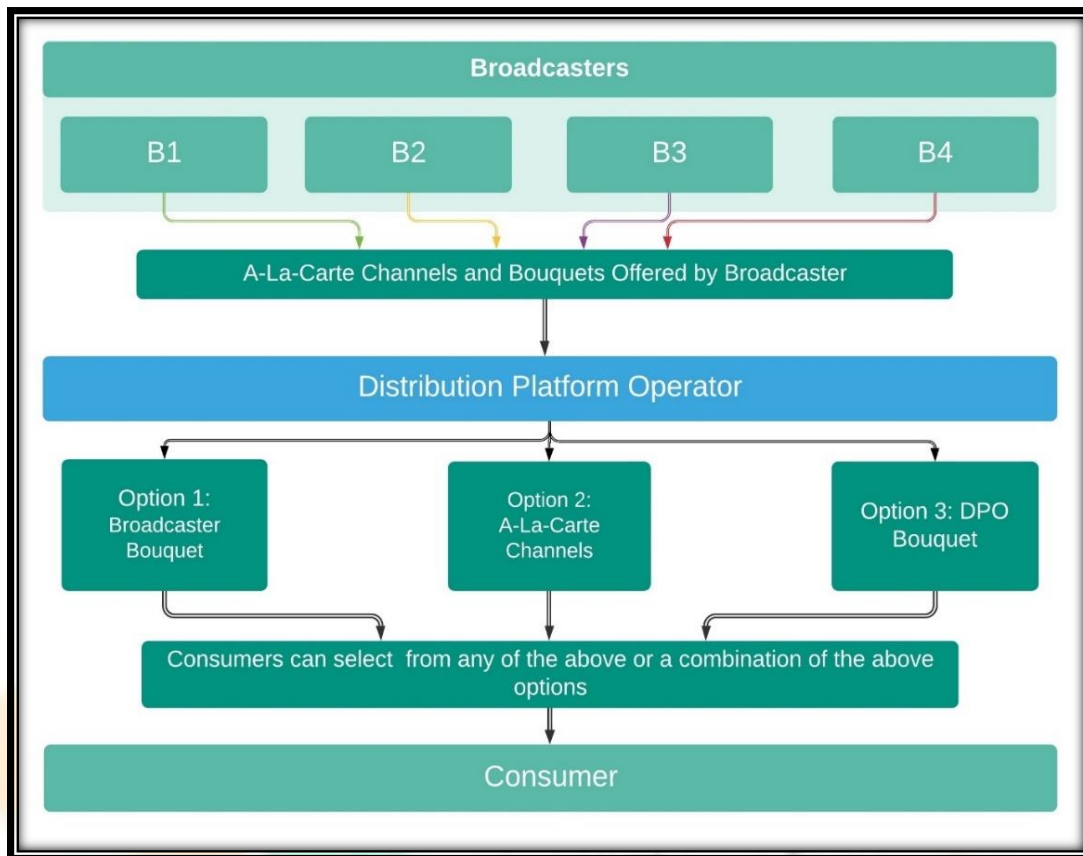
2.32 These combined constitute the new regulatory framework for the Broadcasting and Cable sector. The framework however came into effect on 29th December 2018 after satisfying legal pronouncement. The new regime seeks to ensure transparency, non-discrimination, non-exclusivity for all stakeholders in the value chain. Certain amendments were also carried out in the framework on 1st January 2020 and 22nd November 2022.

2.33 One of the hallmarks of the new framework is that it provides for greater transparency at every level of the value chain. The new regulations have brought in a level playing field between all DPOs, be it cable operators or

DTH operators, making the entire process of channel selection by the customer and the interconnection agreements between the operators and broadcasters completely transparent.

- 2.34 Presently, the agreements of the broadcasters and the DTH operators are based on Reference Interconnection Offer (RIO) of the broadcasters and DTH operator as distributor. RIO is a document published by a service provider specifying terms and conditions on which the other service provider may seek interconnection with such service provider.
- 2.35 The current regulatory regime has in-built checks and balances to ensure transparency in their operations. It prescribes the parameters of the Conditional Access System (CAS) and the Subscriber Management System (SMS) required to be maintained by the distribution platform operators. The subscriber number of each of the channels is derived from the SMS and is reported to the broadcasters by the distributors. The broadcasters have the right to audit the SMS and CAS of the distributors to check the veracity of the numbers reported to them by the distributors. TRAI regulations also contain provisions on reporting of numbers related to subscriber base, channel/bouquet subscription etc.
- 2.36 TRAI has also prescribed standardized audit process of systems of DPOs by independent agencies and an Audit Manual has been released by TRAI on 08th November 2019. These measures may ensure that DPO can't now under-report subscribers or revenue.
- 2.37 This framework to a large extent has redrawn and altered the structure of value chain, in terms of transparency in provisioning of channels and the commercial relationships among the stakeholders. In the new framework, the broadcasters decide the MRP of their pay channels on a-la-carte basis for the subscribers. They also form bouquets of their pay channels and declare the MRP of such bouquets payable by a subscriber. DPOs in turn, offer these a-la-carte channels and bouquets formed by broadcasters either at broadcaster declared MRP or at some discount on MRP. Subscribers make their choice of channels or bouquets.

Figure 2.1: Provisioning of channels under new regulatory framework



2.38 Distributors too can form bouquets from the bouquet of channels made by one or more broadcasters and/or a-la-carte channels and offer it to the subscribers. The distributors declare Distributor Retail Price (DRP) of DPO bouquets and a-la-carte channels. Such DRP has to be less than or equal to the MRP as per provisions of the framework. DPOs collect the subscription charges from the subscribers which include television channel price, cost of carriage in form of Network Capacity Fee (NCF) and applicable GST. DPOs charge NCF from subscribers for availing a distribution network capacity. Currently, the maximum ceiling for NCF is prescribed at Rs 130 for receiving 200 SD channels and Rs 160 for receiving more than 200 SD channels. The DPOs are also mandated to provide all the channels notified by Central Government to be mandatorily provided to all the subscribers, and all such channels shall be in addition to the number of channels which a subscriber is eligible to get for the NCF

paid. **Figure 2.1** depicts the provisioning of channels under the new regulatory framework.

- 2.39 It is pertinent to mention that distributors can also offer their own content, i.e., their own channels termed as platform services (PS) channels, exclusively available to its subscribers, however there is a limit prescribed, that such channels would be a maximum of 5% of its total channel carrying capacity of the distributor. The advertisement and the subscription revenue earned on the platform services channels entirely belongs to the DPOs.
- 2.40 MIB in its reference has requested TRAI to examine the issue of exclusion of non-licensed activities from the definition of Gross revenue in respect of DTH License fee as in case of recent amendments carried out by DoT and/or identify any other base for levy of the license fee and accordingly, to provide the format of Form-D in DTH sector as per GR/AGR criteria. However, the income heads that may be considered as exclusion and the mechanism to ensure that the revenue excluded reflect true value, without compromising the revenue streams that entail payment of license fee require examination. A sample [Form-D'](#) with possible income heads forming GR has been annexed for reference of stakeholders.

A.7 Difference in revenue components in telecom & broadcasting sector

- 2.41 The DTH operators are demanding to align the license fee and the definition of AGR to that of the UL Agreement of DoT. This demand is raised in view of the fact that the DTH licenses are also granted under section 4 of the Indian Telegraph Act, 1885 as in case of telecom licenses. Having said that, it is important to mention here that telecom and broadcasting services are not strictly comparable. In telecom, there is a “pass-through” component which altogether carries a different meaning. One set of telecom service licensees is being exempted to pay license fee on their *pass-through* component, and that *pass-through* amount becomes part of the AGR of another telecom service licensee and the license fee is paid thereon. In other words, pass through is allowed on such revenues

which a licensee pay to other licensee, who in turn pays the license fee on those revenues. Say for instance, in the access service authorization, the revenue components treated as 'pass-through' include:

- the PSTN/PLMN/GMPCS related Call charges (Access Charges) actually paid to other eligible/entitled Telecommunication service providers within India;
- roaming revenues passed on to other eligible/entitled telecom service providers and;

These charges are, however, added to the revenue of that other telecom service provider, on which they are liable to pay license fee. This avoids the payment of double license fee on the same revenue.

2.42 The recommendations on 'Definition of Revenue Base (AGR) for the Reckoning of License Fee and Spectrum Usage Charges' were issued by TRAI on 6th January 2015. However, the AGR matter of telecom sector at that time was sub-judice. The Supreme Court (SC) in the Civil Appeal Nos. 63286399 of 2015 titled Union of India vs Association of Unified Telecom Service Providers of India (AUSPI) relating to Telecom side AGR matter delivered its judgement on 24th October 2019³⁰. In the said judgement, it was mainly held that:

- a) interest and dividend earned from the licensing and non-licensing activities, have to form part of gross revenue for determination of license fee.
- b) all discounts and commissions allowed on international roaming, and to distributors on sale of prepaid vouchers, trade discounts, subscribers' discounts, and volume rebates form part of gross revenue for the purpose of payment of license fee.
- c) the gains from foreign exchange fluctuations should be added without any net off against the losses, these should be on accrual basis and must be accounted for as it forms part of the gross revenue.

³⁰ <https://indiankanoon.org/doc/18700540/>

- d) on revenue from gains from sales of shares, every amount which is more than the book value of the current asset comes to licensee company, has to be considered for calculation of gross revenue without netting off.
- e) the amount of negative balance of prepaid customer is a part of revenue.
- f) an entry concerning non-refundable deposits from subscribers has to be included in the statement of the gross revenue.
- g) the insurance claim over and above the book value is considered as revenue and not the value of the capital asset as there is an inflow of cash received and it has to form part of the gross revenue.

2.43 In the broadcasting sector, the matter of pass-through of content charges and other deductions being claimed by the DTH operators is sub-judice and the decision of the Supreme Court is awaited.

2.44 In view of the above discussions, stakeholders are requested to provide their comments on the following questions with appropriate justifications.

Issues for consultation:

- 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**

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?

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.

B. Bank Guarantee for DTH operators

2.45 Bank Guarantee (BG) is a type of financial backstop offered by a lending institution. BG means that the lender will ensure that the liabilities of a debtor will be met. In other words, if the debtor fails to settle a debt, the bank will cover it. According to the RBI³¹, the bank guarantee is a commitment made by the issuing bank to make payment to the beneficiary. BG ensures that the service providers pay their dues on time and fulfill their obligations as per the terms and conditions prescribed in the license agreement. Bank guarantee is a useful instrument to safeguard the interest of the Government.

2.46 'DTH Guidelines' prescribe a Bank Guarantee which is safeguard against the non-payment of license fee and violation of any of the license conditions by the licensee. The clause 4.1 of the 'DTH Guidelines' stated that:

"The Licensee shall, within one month of issual of SACFA clearance by W.P.C., submit to the Ministry of I & B, a Bank Guarantee from any

³¹ https://m.rbi.org.in/scripts/BS_ViewMasCirculardetails.aspx?id=9813#1

Scheduled Bank in Form-C for an amount of Rs.40 crores valid for the duration of the license.”

2.47 Further, the clause 4.2 of the ‘DTH Guidelines’ states that:

‘The Licensor shall be at liberty to encash the Bank Guarantee in full or part in the event of non-payment of license fee or violation of any of the license condition.’

2.48 Based on a reference from MIB in September 2013 on various DTH licensing issues, TRAI has also made recommendations on the Bank Guarantee to be submitted by the DTH service providers. Accordingly, TRAI in its recommendations on ‘Issues related to New DTH Licenses’ dated 23rd July 2014 had recommended that:

- i. The DTH licensees shall be required to furnish a Bank Guarantee for an amount equivalent to the estimated sum payable, equivalent to License fee for two quarters and other dues not otherwise securitized.*
- ii. The bank guarantee should be valid for a year which should be renewed year-on-year basis in such a manner that the BG remains valid during the entire license period.*
- iii. For new entrants, a BG for a fixed amount of Rs. 5 crore shall be taken for the first two quarters, and thereafter, for an amount equivalent to the estimated sum payable, equivalent to License fee for two quarters and other dues not otherwise securitize.*

2.49 The above recommendations in respect of BG had been accepted by MIB and the following has been notified vide the amendments dated 30th December 2020:

*‘The Licensee will have to submit a Bank Guarantee from any scheduled Bank to the Ministry of Information and Broadcasting for an amount of **Rs. 5 crores** for the first two quarters, and, thereafter, for an amount equivalent to estimated sum payable, **equivalent to License fee for two quarters** and other dues not otherwise securitized. For existing DTH Operators, Bank Guarantee from any*

*Scheduled Bank for an amount equivalent to the estimated sum payable, equivalent to License Fee for two quarters and other dues not otherwise securitized. Further, the Bank Guarantee shall be **valid for a year** which should be renewed on year-on-year basis in such a manner that the Bank Guarantee remains valid during the entire license period.'*

- 2.50 Pursuant to these amendments, provisional license was granted to existing four DTH operators on 31st March 2021, wherein MIB has mentioned that the Licensee shall, within one month, submit to the Ministry of Information and Broadcasting, a Bank Guarantee from any Scheduled Bank in Form-C for an amount equivalent to the estimated sum payable, equivalent to License Fee for two quarters and other dues not otherwise securitized. This provisional license was made applicable with effect from 1st April 2021. It is also pertinent to mention here that vide the amendment dated 30.12.2020, the validity period of DTH license has been made 20 years from the date of issue of Wireless Operating License (WOL) by WPC and license may be renewed by 10 years at a time.
- 2.51 MIB, in its reference has mentioned about the amendments carried out by DoT on 06th October 2021³² on the subject 'Amendment in Unified License Agreement for rationalization of Bank Guarantees'. These amendments are discussed in the subsequent paragraphs.
- 2.52 Unlike DTH sector, under the present telecom licensing regime, there are two types of Bank Guarantees i.e., Financial Bank Guarantee (FBG) and Performance Bank Guarantee (PBG). FBG covers the liabilities in respect of license fee and other dues not otherwise securitized, whereas PBG covers the violation of license conditions and ensures the performance under the license agreement.
- 2.53 As per the DoT amendments dated 6th October 2021, all telecom licensees are required to submit PBG to a maximum of Rs. 44 crore, initially instead

³² https://dot.gov.in/sites/default/files/BG-UL-06-10-2021_0001.pdf

of earlier Rs. 220 crore and FBG to a maximum of Rs. 8.8 crore instead of Rs. 44 crore initially. Thereafter, this FBG shall be equivalent to 20% of the estimated sum payable equivalent to License fee for two quarters and other dues not otherwise securitized, which was earlier equivalent to the entire estimated sum payable equivalent to License fee for two quarters and other dues not otherwise securitized. Further, the FBG is subject to periodic review on six monthly basis by the Licensor and is renewed from time to time. The detailed amendments made in UL agreement in respect of Bank Guarantees is mentioned in **Table 2.6**.

Table 2.6: Amendment made by DoT in UL Agreement w.r.t. BGs

Old Clause	Amended Clause (Amendments dated 06.10.2021)
<p>PART-I, CHAPTER-III, FINANCIAL CONDITIONS</p> <p>21. BANK GUARANTEES 21.1 Performance Bank Guarantee:</p> <p>Performance Bank Guarantee (PBG) in prescribed format of this license agreement shall be submitted separately for each service and service area for the amount, subject to a maximum of <u>Rs. 220 crore</u> initially, before signing the License Agreement or subsequent authorization of service(s), as the case may be, valid for one year, from any scheduled bank or for one year, from any scheduled bank or public financial institution duly authorized to issue such bank guarantee, to cover violation of license conditions and to ensure the performance under the license agreement including compliance of instructions issued by the Licensor from time to time. The PBGs shall be maintained and kept valid by the license Agreement.</p>	<p>PART-I, CHAPTER-III, FINANCIAL CONDITIONS</p> <p>21. BANK GUARANTEES 21.1 Performance Bank Guarantee:</p> <p>Performance Bank Guarantee (PBG) in prescribed format of this license agreement shall be submitted separately for each service and service area for the amount, subject to a maximum of <u>Rs. 44 crore</u> initially, before signing the License Agreement or subsequent authorization of service(s), as the case may be, valid for one year, from any scheduled bank or for one year, from any scheduled bank or public financial institution duly authorized to issue such bank guarantee, to cover violation of license conditions and to ensure the performance under the license agreement including compliance of instructions issued by the Licensor from time to time. The PBGs shall be maintained and kept valid by the license Agreement. However, the Licensor may increase the value of PBGs whenever an</p>

<p>However, the Licensor may increase the value of PBGs whenever an demand is raised for non-compliance of terms and conditions of License/ authorization to the extent it remains un-securitized by the existing PBGs, which shall be maintained till clearance of such demand by the licensee.</p>	<p>demand is raised for non-compliance of terms and conditions of License/ authorization to the extent it remains un-securitized by the existing PBGs, which shall be maintained till clearance of such demand by the licensee.</p>
<p>21.2 Financial Bank Guarantee: The Licensee shall submit Financial Bank Guarantee (FBG) separately for each service and service area for the amount, subject to a maximum of Rs. 44 crore initially before signing License Agreement or subsequent the License of authorization of service(s), as the case may be, valid for one year, from any may be, Scheduled Bank or Public Financial Institution duly authorized to issue such Bank Guarantee, in the prescribed Bank Proforma of this license agreement. Subsequently, the amount of FBG shall be equivalent to the estimated sum payable (of License fee for two quarters and other dues not otherwise securitized). The amount of FBG shall be subject to periodic review on six monthly basis by the Licensor and shall be basis by the Licensor and shall be renewed from time to time.</p>	<p>21.2 Financial Bank Guarantee: The Licensee shall submit Financial Bank Guarantee (FBG) separately for each service and service area for the amount, subject to a maximum of Rs. 8.8 crore initially before signing License Agreement or subsequent the License of authorization of service(s), as the case may be, valid for one year, from any may be, Scheduled Bank or Public Financial Institution duly authorized to issue such Bank Guarantee, in the prescribed Bank Proforma of this license agreement. Subsequently, the amount of FBG shall be equivalent to 20% of estimated sum payable (of License fee for two quarters and other dues not otherwise securitized). The amount of FBG shall be subject to periodic review on six monthly basis by the Licensor and shall be basis by the Licensor and shall be renewed from time to time.</p>

2.54 It is mentioned in the MIB reference that the DTH operators have requested the Ministry that the principle adopted and implemented to rationalize the requirement of BGs in telecom sector should also be extended for DTH operators to align the quantum of BGs as has been made applicable to telecom.

- 2.55 As per the 'DTH Guidelines', one Bank Guarantee (only) is prescribed, which covers both the aspects of PBG as well as FBG. This BG is prescribed at Rs. 5 crore for the first two quarters and thereafter, a sum equivalent to the License fee for two quarters.
- 2.56 Further, vide amendments dated 30th December 2020 in the DTH Guidelines, the BG for first two quarters for new DTH operators is made Rs. 5 crore instead of earlier Rs. 40 crore (i.e., reduced by 87.5%) as per TRAI recommendations mentioned in the previous paragraphs. However, for the existing DTH operators, it is an amount equivalent to License fee for two quarters and other dues not otherwise securitized.
- 2.57 In the given context, whether the rationalization of BGs as made in telecom sector should also be extended to DTH operators is a question for consideration. Accordingly, stakeholders are requested to provide comments on the following question.

Issues for consultation:

- 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?**
- 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?**
- 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.**

C. Uniform License Fee amongst DPOs

2.58 The uniform license fee among all the Distribution Platform Operators (DPOs) is one of the very crucial issues referred by MIB in the current reference. Through the reference, MIB has mentioned that:

“DTH Association has also raised the matter of level playing field between Distribution Platform Operators (DPOs). It has been stated by HITS, while being licensed by this Ministry and security cleared by MHA, do not have to pay any license fee whereas DTH has to pay a License Fee @ 8% of AGR. To create a level playing field, they have requested the Ministry to charge 4% License Fee from all the DPOs viz. Cable, HITS and DTH while not being too harsh a levy on Cable. It would also be revenue neutral for the exchequer.”

2.59 In the broadcasting and distribution sector, television channels are distributed through licensed/registered/permitted distribution agencies called the distribution platforms operators (DPOs) for delivery of content to the end consumers. Currently, the permitted distribution platform operators in India include cable TV (via MSOs and LCOs), DTH, HITS and IPTV.

2.60 These four modes commonly known as DPOs of the TV broadcasting sector are:

- i. Direct-to-Home (DTH) operators registered under the DTH Guidelines issued by Government of India;
- ii. Multi System Operators (MSOs)/Cable Operators registered under the Cable Television Networks (Regulation) Act, 1995;
- iii. Headend-in-the-Sky (HITS) operators duly permitted under the policy guidelines for HITS;
- iv. Internet Protocol Television (IPTV) service providers duly permitted under their existing telecom license or authorized by DoT or as MSO registration by MIB.

2.61 Hence, the service providers are governed under different Guidelines/Act. Moreover, different charges are being levied by MIB for different set of service providers. TRAI is in the process of seeking genesis of levying

different fee structure from MIB as to under what circumstances such Guidelines/Act have been formulated.

- 2.62 Due to the advancements in digital and information technologies, the line between broadcasting and telecom services is becoming thin. This has enabled the convergence of broadcasting and telecom operators. This convergence is happening on all fronts i.e., the carriage infrastructure, the services as well as the end user devices.
- 2.63 Given this background, it is important that the regulatory regimes in these two sectors are in consonance and aligned to the maximum extent possible. This would not only ensure a level-playing field amongst service providers of the sector but also propel overall orderly and harmonized growth, benefitting all stakeholders as well as consumers.
- 2.64 Further, DoT has made a reference to TRAI regarding, convergence of carriage of broadcasting services and telecommunication services which is already under active consideration. Therefore, the Authority, after due consideration will deal with the issue of level playing field separately.

CHAPTER III

SUMMARY OF ISSUES FOR CONSULTATION

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
- 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?
- 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.

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?**
- 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?**
- 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.**

Any Other Issue

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

Form-D'

**Statement of Revenue and License Fee for the quarter _____ of the
financial year _____**

(Amount in Rupees)

S. No.	Particulars	Actuals for the previous quarter	Actuals for the current quarter	Cumulative upto the current quarter
1.	Revenue from Services			
i.	Subscription Revenue			
ii.	Advertisement Revenue			
iii.	Revenue from subscription of Platform services channels			
iv.	Revenue from advertisement of Platform services channels			
v.	Carriage fees			
vi.	Distribution fees			
vii.	Promotional events			
viii.	Musical/Star events			
ix.	Sponsored Programmes			
x.	Marketing Rights			
xi.	Commission			
xii.	Activation charges			
xiii.	Installation charges			
xiv.	Royalties			
xv.	Customer Support Service			
xvi.	Related party transactions (please specify sub-heads) a. b. ...			
xvii.	Goods sold			
xviii.	Production			
xix.	Sale of Consumer Premise Equipment			
xx.	Sale of antenna, Set Top Boxes, LNBs, wiring etc.			
xxi.	Rent - Premises			
xxii.	Rent - Equipment			
xxiii.	Rent - Others			
xxiv.	Sale of toolkits and accessories			
xxv.	Income from value added services			

xxvi.	Non-refundable deposits from subscribers			
xxvii.	Goods and Service Tax (GST)			
xxviii.	Any other income (please specify)			
	a.			
	b.			
	...			
2. Revenue from sharing of infrastructure				
i.	Revenue from sharing earth station uplinking facility			
ii.	Revenue from sharing satellite resources (transponder capacity)			
iii.	Revenue from sharing of transport stream			
iv.	Revenue from sharing of CAS and SMS			
v.	Revenue from sharing of disaster recovery system in hot-standby mode			
vi.	Goods and Service Tax (GST)			
vii.	Any other Income (please specify):			
	a.			
	b.			
	...			
3. Other Income				
i.	Income from Interest			
ii.	Income from Dividend			
iii.	Capital Gains on account of profit of Sale of fixed assets and securities			
iv.	Gains from Foreign Exchange rate fluctuations			
v.	Income from property rent			
vi.	Insurance claims			
vii.	Bad debts recovered			
viii.	Excess provisions written back			
ix.	Profit on redemption of units of mutual funds			
x.	Profit on sale of investments			
xi.	Goods and Service Tax (GST)			
xii.	Any other income (please specify)			
	a.			
	b.			
	...			

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			
GROSS REVENUE OF THE COMPANY (A)				
DEDUCTIONS (B)				
1.	Good and Service Tax paid to the Government			
ADJUSTED GROSS REVENUE [C = (A - B)]				
REVENUE SHARE @----- OF ADJUSTED GROSS REVENUE				



LIST OF ACRONYMS

Acronyms	Description
AGR	Adjusted Gross Revenue
ApGR	Applicable Gross Revenue
AUSPI	Association of Unified Telecom Service Providers of India
CAG	Comptroller and Auditor General
CARS	Cable Television Relay Service
CAS	Conditional Access System
BG	Bank Guarantee
DAS	Digital Addressable System
DBS	Direct Broadcast Service
DoT	Department of Telecommunications
DOS	Department of Space
DTH	Direct-to-Home
DPO	Distribution Platform Operator
FBG	Financial Bank Guarantee
FCC	Federal Communications Commission
GOPA	Grant Of Permission Agreement
GR	Gross Revenue
HITS	Headend-In-The-Sky
HC	High Court
IA	Impleadment Application
IPTV	Internet Protocol Television
ITA	Indian Telegraph Act
MHA	Ministry of Home Affairs
MIB	Ministry of Information & Broadcasting
MRP	Maximum Retail Price
MSO	Multi System Operator
NOCC	Network Operation Control Center
NCF	Network Capacity Fee
OWP	Other Writ Petition
PBG	Performance Bank Guarantee
SACFA	Standing Advisory Committee on Frequency Allocations
SC	Supreme Court
SMS	Subscriber Management System
STB	Set Top Box
TDSAT	Telecom Disputes Settlement & Appellate Tribunal
TLCS	Television Licensable Content Service
TRAI	Telecom Regulatory Authority of India
TV	Television
UL	Unified License
WOL	Wireless Operating License
WP	Writ Petition
WPC	Wireless Planning and Coordination

Amendments in 'DTH Guidelines' dated 30th December 2020

**No. 8/7/2020-BP&L
Government of India
Ministry of Information & Broadcasting**

Shastri Bhawan, New Delhi
Dated, the 30th December, 2020

ORDER

Subject: Guidelines for obtaining License for Providing Direct-To-Home (DTH) Broadcasting Services in India – regarding.


The Government of India had notified the Guidelines for obtaining License for providing Direct-To-Home (DTH) Broadcasting Services in India vide order No.8/1/99-PBC.(Vol.II) dated 15.03.2001 and certain amendments therein have been notified vide Order No.8/3/2004-BP&L dated.01.06.2005, Order No.8/3/2004-BP&L dated 11.05.2006, Order No.8/12/2006-BP&L dated 31.07.2006, Order No.8/12/2006-BP&L dated 29.05.2007, Order No.8/12/2006-BP&L dated 10.09.2007 and Order No.8/12/2006-BP&L dated 06.11.2007.

2. The Government of India has decided to further amend the DTH Guidelines which shall come into effect immediately. Accordingly, the amendments to the guidelines are notified herewith. The consolidated operational guidelines along with the amendments will be issued in due course. These shall be applicable to all licenses issued hereinafter.

3. The existing licensees are required to apply afresh to get License for providing DTH Services in India.

4. The issue of fresh license to the existing Licensees will be subject to their clearing all dues and fulfilling all obligations under the terms and conditions of existing license as well as those arising out of legal cases pending before various Courts of Law.

Encl: As above.


(Neerja Sekhar)
Additional Secretary to the Government of India
Tele:011-23387558

.....2/-

MINISTRY OF INFORMATION & BROADCASTING
AMENDMENTS TO GUIDELINES FOR OBTAINING LICENSE FOR PROVIDING DIRECT
TO HOME SERVICES IN INDIA

(Enclosed with Order No.8/7/2020-BP&L dated 30.12.2020)

1. Eligibility Criteria:

- 1.1 Applicant Company shall be an Indian Company, registered under the Indian Companies Act, 1956 or 2013.
- 1.2 The FDI policy of Government of India shall be followed as notified from time to time.

2. Period of License:

License will be valid for a period of 20 years from the date of issue of wireless operational license by Wireless Planning and Coordination Wing of Ministry of Communications. License may be renewed by 10 years at a time. However, the license can be cancelled/suspended by the Licensor at any time in the interest of Union of India.

3. Vertically Integrated Entity: Reserving of Operational Channel Capacity:

A vertically integrated entity will not reserve more than 15% of the operational channel capacity for its vertically integrated operator. The rest of the capacity is to be offered to the other broadcasters on a non-discriminatory basis.

4. Entry Fee :

No entry fee will be charged from the DTH Operators holding license on the date of notification of these guidelines.

-1-

5. Bank Guarantee :

The Licensee will have to submit a Bank Guarantee from any Scheduled Bank to the Ministry of Information and Broadcasting for an amount of Rs.5 crores for the first two quarters, and, thereafter, for an amount equivalent to estimated sum payable, equivalent to License fee for two quarters and other dues not otherwise securitised. For existing DTH Operators, Bank Guarantee from any Scheduled Bank for an amount equivalent to the estimated sum payable, equivalent to License Fee for two quarters and other dues not otherwise securitized. Further, the Bank Guarantee shall be valid for a year which should be renewed on year-on-year basis in such a manner that the Bank Guarantee remains valid during the entire license period.

6. License Fee:

- 6.1 The Licensee shall pay an annual fee equivalent to 8% of its Adjusted Gross Revenue, calculated by excluding GST from Gross Revenue (GR) as reflected in the audited accounts of the Company for that particular financial year.
- 6.2 The minimum annual license fee shall be subject to 10% of the Entry Fee.
- 6.3 The license fee is to be paid on a quarterly basis, the quantum thereof to be equal to the actual License Fee payable for the preceding quarter. The annual settlement of the License Fee shall be done at the end of the financial year.
- 6.4 The licensor will have the right to modify the license fee as a fixed percentage of AGR during the validity of license period.

7. Platform Service:


- 7.1. The DTH operator would be permitted to operate Platform Services (PS) channels i.e. DTH operators' own channels exclusively available to its subscribers, to a maximum of 5% of its total channel carrying capacity.
- 7.2 A one-time non-refundable registration fee of ₹ 10,000 per PS channel shall be charged from the DTH operator.

8. Sharing of Infrastructure:

- 8.1 DTH operators willing to share DTH platform and transport stream of TV channels, on voluntary basis would be allowed to do so, wherever technically feasible.
- 8.2 The common hardware for their Subscriber Management System (SMS) and Conditional Access System (CAS) applications can also be voluntarily shared.

9. Set Top Box

Set Top Boxes offered by a DTH Service Provider shall have such specifications as laid down by the Bureau of Indian Standards (BIS) from time to time.


(Neerja Sekhar)
Additional Secretary to the Government of India
Tele:011-23387558

Operational Guidelines for DTH Services issued on 16th September 2022

**No. 8/7/2020-BP&L
Government of India
Ministry of Information & Broadcasting**

Shastri Bhawan, New Delhi
Dated, the 16th September, 2022

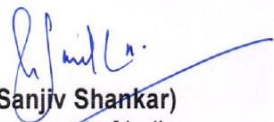
ORDER

Subject: Operational Guidelines for Direct-To-Home (DTH) Broadcasting Services in India – regarding.

The Government of India had notified the Guidelines for obtaining License for providing Direct-To-Home (DTH) Broadcasting Services in India vide order No.8/1/99-PBC.(Vol.II) dated 15.03.2001 and certain amendments therein have been notified vide Order No.8/3/2004-BP&L dated.01.06.2005,Order No.8/3/2004-BP&L dated 11.05.2006, Order No.8/12/2006-BP&L dated 31.07.2006, Order No.8/12/2006-BP&L dated 29.05.2007, Order No.8/12/2006-BP&L dated 10.09.2007, Order No.8/12/2006-BP&L dated 06.11.2007 and Order No. 8/7/2020-BP&L dated 30.12.2020.

2. It has been decided to issue operational guidelines in respect of License fee, Platform Service Channels and Sharing of Infrastructure by DTH operators. These provisions along with those contained in the said amendment vide Order No. 8/7/2020-BP&L dated 30.12.2020 will supersede the guidelines issued on 15.03.2001 and amended upto 06.11.2007 to the extent these change the relevant provisions of those guidelines and additions proposed hereinafter shall be read accordingly.

Encl: As above.


(Sanjiv Shankar)
Joint Secretary to the Government of India
Tele:011-23384453

.....2/-

MINISTRY OF INFORMATION & BROADCASTING
OPERATIONAL GUIDELINES IN RESPECT OF LICENSE FEE, PLATFORM
SERVICE CHANNELS AND SHARING OF INFRASTRUCTURE BY DIRECT TO
HOME SERVICE PROVIDERS IN INDIA

(Enclosed with Order No.8/7/2020-BP&L dated 16th September, 2022)

1. PAYMENT OF LICENSE FEE

- (i) The Licensee shall pay an annual fee equivalent to 8% of its Adjusted Gross Revenue, calculated by excluding GST from Gross Revenue (GR) as reflected in the audited accounts of the Company for that particular financial year.
- (ii) The minimum annual license fee shall be subject to 10% of the Entry Fee.
- (iii) The license fee is to be paid on a quarterly basis, the quantum thereof to be equal to the actual License Fee payable for the preceding quarter. The first payment of license fee for the previous quarter shall be made on the basis of provisional account for the quarter within one month of the end of a particular quarter. The annual settlement of the License Fee shall be done at the end of the financial year.
- (iv) The payment of license fee for the 4th quarter shall be made after adjustments and settlements of accounts for the whole year and on the basis of the finalised audited statement of the entity and latest by 30th September succeeding the financial year.
- (v) The licensor will have the right to modify the license fee as a fixed percentage of AGR during the validity of license period.

2. PLATFORM SERVICE CHANNELS

- (i) The Platform Services (PS) are programs transmitted by Distribution Platform Operators (DPOs) exclusively to their own subscribers and does not include Doordarshan channels and registered TV channels. PS shall not include foreign TV channels that are not registered in India.

Page 1 of 5

J. M. L.
16/09/22

- (ii) The 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 (DPO).
- (iii) In case the same programme is found available on the PS of any other DPO, MIB may issue direction to immediately stop the transmission of such programme. MIB also reserves the right for cancellation of registration of such PS of the DTH operator.
- (iv) Total number of permitted PS for a DTH operator shall be capped to 5% of the total channel carrying capacity of the DTH operator platform.
- (v) A one-time non-refundable registration fee of ₹10,000 per PS channel shall be charged from a DTH operator.
- (vi) The DTH operators shall provide an option of activation/deactivation of platform services as prescribed in the orders/directions/regulations issued by TRAI from time-to-time.
- (vii) The platform services channels shall be categorised under the genre 'Platform Services' in the Electronic Programmable Guide (EPG) subject to orders/directions/regulations issued by TRAI from time-to-time.
- (viii) The respective maximum retail price (MRP) of the platform service shall be displayed in the EPG against each platform service subject to orders/directions/regulations issued by TRAI from time-to-time.
- (ix) A provision for putting a caption as 'Platform Services' shall be required to distinguish the platform services from the linear channels.
- (x) A DTH operator, who wants to operate Platform Service Channel, is required to furnish an application for the same in the prescribed proforma as per 'FORM-E'.

3. SHARING OF INFRASTRUCTURE BY DTH OPERATOR

- (i) General Sharing of the infrastructure – Wherever technically feasible, the DTH operator may share the DTH Platform infrastructure on voluntary basis. The infrastructure sharing of DTH Platform will be allowed for DTH services

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16/09/22

only and not for other distribution platform operators like MSOs or HITS operators.

(ii) For infrastructure sharing the new applicant and existing licensee will jointly submit a detailed proposal for infrastructure sharing giving details of the infrastructure proposed to be shared and in the manner infrastructure is proposed to be shared as well as roles and responsibilities of each to Min of I&B with a copy to WPC and NOCC, DoT. The proposal should contain:

(a) Acceptance from all concerned stakeholders for sharing the infrastructure.

(b) Copies of the Agreements between the parties sharing the infrastructure with conditions stipulated in the guidelines.

(c) An undertaking by both the parties proposing to share the infrastructure that under the sharing arrangement proposed, there will not be any violation of the underlying terms and conditions of the licence granted.

(iii) No Objection / Permission for sharing of infrastructure will be subject to security clearance by Ministry of Home Affairs; Clearance of satellite use and transponder sharing from Department of Space; Wireless Operating License issued by Wireless Planning and Coordination Wing; and National Operational Control Centre (NOCC-DOT) certification.

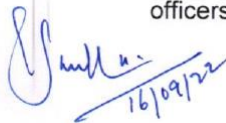
(iv) The sharing of the Satellite resources and Up-linking infrastructure (on voluntary basis) will be allowed with the written permission of MIB, DOS, WPC and NOCC, DoT.

(v) For a new DTH operator to use existing DTH platform and infrastructure, the condition in the existing guidelines relating to hiring of satellite capacity and setting up of the Earth station, will stand modified accordingly to the extent as per these amended guidelines.

(vi) However, the DTH operator providing DTH service using the shared infrastructure with another operator can establish, maintain and operate its own DTH platform at a later stage within the license validity period, following due procedures.

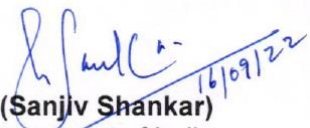
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16/09/22

- (vii) To ensure continuity of service to subscribers in the event of any disaster, the operator should have arrangement of sharing disaster recovery system in hot-standby mode.
- (viii) The applicant/ new DTH operator proposing to share the transport stream of TV channels should have valid written inter-connection agreements with the concerned broadcasters for distribution of pay TV Channels to the subscribers.
- (ix) For CAS & SMS, sharing parties may use common hardware. Details of such arrangement should be intimated to MIB and broadcasters, 30 days in advance. However, the respective operator will be accountable for integrity and security of CAS and SMS data pertaining to the respective operator. Maintenance of historical logs of data of CAS and SMS for two years will be the responsibility of respective operator individually.
- (x) Allowing access to CAS & SMS for audit purpose and also to the authorised officers of Govt. and their representatives will also be the responsibility of the respective operator individually.
- (xi) For transport stream sharing each distributor shall be individually responsible for setting up the system and processes which ensure that the broadcasters can exercise right for disconnection in case of default of payment or due to any other reason in terms of inter connection agreements between the broadcaster and the distributor and the relevant regulations in place.
- (xii) The permission will be granted subject to following conditions:
- (a) The adherence and compliance to all the provisions of the rules and guidelines issued by MIB and WPC & NOCC, DoT for grant of licence to the DTH operator will be the responsibility of the existing operator and the new applicant proposing to share the infrastructure to the extent as may be required/ applicable individually.
- (b) Each distributor in sharing environment should undertake to ensure the encryption of signals and addressability to all the subscribers in all circumstances and provide requisite access for Audit or for authorized officers of Government wherever demanded.


16/09/22

- (c) Accountability of operators is ensured with reference to the SMS, their respective subscribers and to the respective state Governments and local administration as well as to the Central Government on all relevant aspects of Tax collection.
- (d) Compliance to TRAI regulation pertaining to CAS/SMS, Finger printing, STB as per Schedule III of the regulation will be the responsibility of the respective operator individually to ensure proper reporting of subscriber's base, checking unauthorised distribution and piracy.

Note: Please note that all permissions & approvals and final up linking permissions in all cases will continue to be taken from NOCC as per existing guidelines, norms and practice.


(Sanjiv Shankar)

Joint Secretary to the Government of India
Tele:011-23384453

Form-E

Application for Platform Service channel

1. Name of Applicant Company:
2. Address of the Applicant Company
 - I. Head Office :
 - II. Regional Office :
3. Corporate Identification Number (CIN) allocated by Registrar of Companies (RoC) :
4. Identity of its beneficial owners:
5. Total channel carriage capacity:
6. Area of Operation:
7. Details of Platform Services channels:

I. Existing Platform Services channels offered:

S.No.	Name of Channel	Logical Channel No.	Nature / genre of content	Satellite used

II. New Platform Services channels to be offered:

S. No.	Name of Channel	Logical Channel No.	Nature / genre of content	Satellite used

Declaration:

It is hereby declared that the programme/content transmitted on the above-said platform channels is exclusive to the platform of M/s..... and shall not be shared directly or indirectly with any other distribution platforms.

Handwritten signature and date: 16/09/22

Signature

(Name of the Authorized signatory)

Tele No:

Email Id:

Reference received from MIB

No. 2/33/2021-BP&L
Government of India
Ministry of Information & Broadcasting

'A-Wing', Shastri Bhawan,
New Delhi, Dated: the 2nd February, 2022

To

The Secretary,
Telecom Regulatory Authority of India (TRAI),
Mahanagar Doorsanchar Bhawan,
Jawahar Lal Nehru Marg,
Old Minto Road,
New Delhi-110002.

Subject: Representations received from DTH Association and DTH Operators regarding DTH matters keeping in view the recent amendments carried out by Department of Communications, Ministry of Communications in the Unified License Agreement-regarding.

Sir,

Kindly refer to the subject mentioned above. As you are aware, Ministry of Communications, Department of Telecommunications (DOT) vide their letter no. 20-271/2010 AS-I (Vol.-IV) dated 06.10.2021 has carried out amendment in Unified License Agreement for rationalization of Bank Guarantees. As per the amendment, all Telecom Licensees are now required to submit Performance Bank Guarantee (PBG) to a maximum of Rs. 44 Crore instead of earlier Rs. 220 Crore and Financial Bank Guarantee (FBG) to a maximum of Rs. 8.8 Crore instead of earlier Rs. 44 Crore. This FBG shall be equivalent to 20% of the estimated sum payable (of license fee for two quarters and other dues not otherwise securitized).

2. Further, DOT vide their letter no. 20-271/2010 AS-I (Vol.-V) dated 25.10.2021 has also carried out amendment in the Unified License Agreement for Adjusted Gross Revenue (AGR). As per the amendment, the Gross Revenue (GR) shall be inclusive of installation charges, late fees, sale of proceeds of handsets (or any other terminal equipment, etc.), revenue on account of interest, dividend, value added services, supplementary services, revenue earned from parent NSO(s), revenue from permissible sharing of infrastructure and any other miscellaneous revenue, without any set-off for related item of expense, etc. As per the amendment, Applicable Gross Revenue (ApGR) shall be equal to GR of the licensee by reducing component like Revenue from operations other than telecom activities/operations, Income from Dividend, Income from Interest etc. Further, AGR shall be arrived by excluding some components from ApGR.

3. Based on the recommendation of Telecom Regulatory Authority of India (TRAI) on "Issues related to New DTH Licenses" dated 23.07.2014, it is informed that Ministry of Information and Broadcasting vide order dated 30.12.2020 carried out amendments in the DTH Guidelines (as amended up to 06.11.2007). As per the amendments, the existing DTH Operators are required to submit Bank Guarantee to this Ministry from any Scheduled Bank for an amount equivalent to the estimated sum payable, equivalent to License Fee for two quarters and other dues not otherwise securitized. However, for new DTH Operators, the Licensee will have to

submit a Bank Guarantee from any Scheduled Bank to this Ministry for an amount of Rs. 5 crores for the first two quarters, and thereafter, for an amount equivalent to estimated sum payable, equivalent to License fee for two quarters and other dues not otherwise securitized. Further, as per the amendments, the DTH Operators are required to pay an annual fee equivalent to 8% of its Adjusted Gross Revenue, calculated by excluding GST from Gross Revenue (GR) as reflected in the audited accounts of the Company for that particular financial year.

4. Keeping in view the aforesaid amendments carried out by DOT, DTH Association has raised their concerns and requested this Ministry to amend the definition of AGR in DTH sector by excluding the revenue generated from non-licensed activities as well as pass through items like content, for the calculation of License Fee and bring a uniform and Industry friendly licensing policy. DTH Operators have also requested the Ministry that the principle adopted and implemented by the Government to rationalize the requirement of Bank Guarantees (BGs) for the telecom sector should also be extended for the DTH sector to align the quantum of BGs as has been made applicable to telecom.

5. DTH Association has also raised the matter of level playing field between Distribution Platform Operators (DPOs). It has been stated by them that MSOs and HITS, while being licensed by this Ministry and security cleared by MHA, do not have to pay any license fee whereas DTH has to pay a License Fee @ 8% of AGR. To create a level playing field, they have requested the Ministry to charge 4% License Fee from all the DPOs viz. Cable, HITS and DTH while not being too harsh a levy on Cable. It would also be revenue neutral for the exchequer.

6. TRAI is therefore, requested to examine the following issues from policy angle and furnish its recommendations under Section (11) (1) (a) of the TRAI Act, 1997 to this Ministry:-

- i. Issue of exclusion of non-licensed activities from definition of Gross Revenue in respect of DTH License fee as in case of recent amendments carried out by Department of Telecommunications (DOT) and /or identify any other base for levy of the license fee. Accordingly, the format of Form-D in DTH sector as per GR/AGR criteria may also be provided.
 - ii. Percentage/amount of Bank Guarantees (BGs) in respect of private DTH services as in case of recent amendments carried out by Department of Telecommunications (DOT); and
 - iii. Issue of Uniform License Fee (Level playing field) in respect of all Distribution Platform Operators (DPOs).
7. This issues with the approval of Competent Authority.

Yours sincerely,


(Sanjiv Shankar)

Joint Secretary to the Govt. of India
Tele: 011-23384453

Form-D of extant 'DTH Guidelines'

FORM -D

STATEMENT OF GROSS REVENUE FORMING PART OF THE
FINAL ACCOUNTS OF M/S. -----.

SL. N.	Income Heads	Tariff rate/ rate card	Discounts trade Others	Agency commis- sion	Taxes	Net as per P & L a/c
	[Amount Rupees in lacs]					
1.	Advertisement					
2.	Promotional events					
2.1.	Musical/Star Events					
2.2.	Sponsored programmes					
3.	Marketing Rights					
4.	Commission					
5.	Royalties					
6.	Sale of antenna, set top boxes etc.					
7.	Rent -Premises					
8.	Rent-Equipment					
9.	Interest/Dividend					
10.	Related Party Transactions					
10.1	Goods sold					
10.2	Services tendered					
10.3	Production					
10.4	Marketing					
10.5	Others					

Note: 1. The income heads are only indicative and illustrative and the Auditor would include all the relevant Heads of the licensee.

2. The income from the Related Parties shall tally with the Related Parties as per accounting standards no. 18.