

Reliance Digital TV's Response to the Draft Tariff Order prescribing framework for commercial interoperability of Customer Premises Equipment (CPE) in DTH services

Executive Summary:

- A. Tariffs for CPEs should not be regulated as these are equipment/goods and not a telecom service. **The Section 11(2) of the TRAI Act, 1997 confers power to regulate tariffs for telecom services only and not for telecom equipment like CPEs.**
- B. Without prejudice to our views on TRAI's powers to regulate tariffs for CPEs, we have following suggestions on TRAI's proposed tariff schemes:
 - a. Depreciation of CPE, as goods, should be based on the period prescribed under accounting rules regarding the depreciation and amortisation of assets followed by different companies and hence cannot be kept as 5 years.
 - b. The incorporation of AMC for 5 years with the cost of CPE should not be mandated and the same should be allowed to be charged by the DTH operators whenever the repair and maintenance requirement arises. AMC, if at all to be mandated then the timeline should not be more than 3 years.
 - c. **The AMC post expiry of the manufacturer warranty should be as per the customer's choice similar to the extended warranty offers available while purchasing other goods like Car, AC etc.**
 - d. **The proposed buy-back/refund mechanism should not be mandated without considering the refurbishment cost of the CPE and demand of refurbished CPEs in the market by the new subscribers.**
 - e. TRAI should consider various cost components which a DTH operator incurs to provide the CPE to the customer before prescribing any buy-back/refund policy.
 - f. **The programming cost in a bundled offering should be kept out of the purview of the buy-back refund mechanism.**
 - g. The lock-in period should be prescribed at least 9-12 months of active connection.
 - h. TRAI should allow to charge activation/installation and surrender charges (if surrender of CPE is mandated) and should not mandate the proposed charges for the same.

- i. There is no need to mandate the DTH operators to make collection centers at each DHQ.
- j. The proposed reporting requirement should be changed from 15 days to quarterly basis.
- k. To maintain a level playing field amongst different platform operators, any such regulations should also be mandated for the Digital Cable Television Operators and should make effective from the same date.**

Preamble

- A. Indian consumers today have the benefit of an array of choices in the highly competitive Television Distribution market. Besides the free DTH service of Doordarshan, there are six private DTH licensees, offering their services to the DTH subscribers. With the ongoing digitization of Indian Cable TV Industry, competition is becoming fierce as consumers have choice to avail their services and packages from DTH, IPTV and Cable TV operators.
- B. DTH operators have invested thousands of crores over the past eight- nine years. Major costs for a DTH operator include satellite bandwidth, technology platform, national sales & distribution network, installation, servicing logistics, broadcasters/content fees, customer care, license fees, customs duty and high taxes. Currently, DTH is burdened by an arduous tax regime to the tune of over 30% which includes license fee, service tax, entertainment tax and custom duty. On the other hand the Cable TV operators have the competitive advantage of not being burdened with high taxes as compared to DTH operators.
- C. Thus, even in such a competitive market, for attracting and retaining customers, the DTH operators are offering a broad array of choices at affordable (subsidised) and customer-friendly tariffs that ensure their satisfaction.
- D. The proposed tariff order shall put additional financial liabilities upon DTH operators impacting their frugal margins as well as impede their growth. In addition to the estimated losses of Rs 15,000 crores, implementation of this draft tariff order will result in **further losses to this beleaguered industry.**
- E. It is also important to highlight that the DTH industry subsidizes CPEs to make them affordable for customers. This subsidy is a substantial cost on DTH industry adding to the accumulated losses mentioned above each year.
- F. In view of the above, it is felt that in a fiercely competitive Digital TV market where consumers have myriad choices of Set Top Boxes (STB) including Standard Definition STB, High Definition and High Definition DVR STB and variety of ways to buy these STBs including outright sale and Hire- purchase schemes we see no reasonable basis for TRAI's intervention to regulate the prices of CPE.**

G. Our specific comments on Draft Tariff Order for regulating prices for CPEs for DTH Broadcasting Services:

1. Tariffs for CPE cannot be regulated under the TRAI Act

1.1. It is noted from the Draft Tariff Order that TRAI is proposing to regulate the tariff for CPEs for DTH Broadcasting services by exercising its powers under Section 11(2) of the TRAI Act, 1997; reproduced below for ready reference:

“(2) Notwithstanding anything contained in the Indian Telegraph Act, 1885, the Authority may, from time to time, by order, notify in the Official Gazette the rates at which the telecommunication services within India and outside India shall be provided under this Act including the rates at which messages shall be transmitted to any country outside India;”

1.2. From the above provision of the TRAI Act, it may please be noted that the Authority has been empowered to regulate of rates at which the telecommunication services can be provided. However, it is pointed out that the **STB and Dish Antenna (CPE for DTH) are hardware goods / equipments which are deployed for provisioning of DTH services** and not itself a Service. These CPEs are akin to mobile handsets / Wi-Fi routers which are not regulated as services. Therefore, it is felt that the regulation of tariffs of CPEs for DTH services, is outside the domain of section 11 (2), of the TRAI Act, 1997.

1.3. Further, it is brought out that the STB is classified under ITC (HS) code 8528. For its manufacturing / import / selling duties / taxes / levies like Excise duty, customs duty, VAT, sales Tax etc are payable. No service tax is paid on the sale of set top box which clearly establishes that CPE is a tangible goods and not a telecom service.

1.4. It is humbly submitted that the hardware / CPE is not a revenue stream for DTH operators; in fact it is an entry cost which DTH operators have been subsidizing for their customers.

1.5. In telecom sector, TRAI only regulates the services and not the equipment cost e.g. cost of handsets, dongles etc.

1.6. **In view of the foregoing, it is submitted that the tariffs for CPE should not be regulated under section 11(2) of the TRAI Act.**

2. Incorporation of Annual maintenance Charge (AMC) to the cost of CPE

2.1. Clause 9 of the proposed Tariff Order mandates DTH operator to provide the details of repair and maintenance services to be provided by it to the subscriber and charges, if any, for the same, provided that the DTH operator shall repair and maintain the CPE for five years without any charges from the date of activation of service. This provision implies that the operator, at the time of activation of the service, is required to provide the details of repair and maintenance charges, if any, and then provide the maintenance support for the next five years.

2.2. It is brought out that the repair and maintenance charges should not be the part of CPE during the customer acquisition due to the following reasons:

- 2.2.1. Repairs and maintenance is an on-going activity.
 - 2.2.2. 5 years free repair and maintenance / AMC for the CPE would force out of pocket expenses for DTH operators since this translates to unlimited on-site visits for fault repair, maintenance etc. which are out of the control of an operator.
 - 2.2.3. Damages can be caused to the CPE due to voltage fluctuation/electrical failure, environment & climate reasons like rains, thunder storms and lightning. All such damages would require engineer visits.
 - 2.2.4. Remotes are purely handled by customers with a high degree of user related fault such as mishandling, wear and tear etc. DTH operators will be required to absorb the replacement cost along with an on-site visit costs. Therefore, such a cost cannot be included in the AMC.
 - 2.2.5. DTH operators incur about Rs 150/- to Rs. 200/- per customer for an on-site visit to repair and maintain the CPE. The repair and maintenance has been outsourced and any amount collected from the subscriber for the repair of CPE goes to these outsourced parties. Apart from this each repair, maintenance or installation the calls received by an operator at the call centre imposes a further cost. All these costs are prone to inflation.
 - 2.2.6. The operators should be allowed to charge for repair and maintenance charges to discourage misuse of the facility during the occurrence of such fault incidents and should not be forced to include the same as a CPE upfront cost at the time of subscriber acquisition.
 - 2.2.7. **CPE manufactures warranty is valid for only one year and it is the choice of the consumer to further avail AMC or not.**
 - 2.2.8. **Thus, AMC cannot be the part of CPE cost.**
- 2.3. **It is also submitted that incorporation of AMC along with the sale price of the CPE would increase the subscriber acquisition cost for the operators and the amount paid by the subscriber towards new connection.** Keeping in view the fierce competition in the market amongst the DTH operators and between DTH and digital cable industry, the inclusion of AMC while acquiring customers would not be feasible. This will only increase the subsidy burden upon the operators which are already financial stressed. Further, this will distort the level playing field between the DTH and digital cable operators as the inclusion of AMC by the DTH operator (if it included) will increase the new connection price whereas as no such regulations is applicable for the Digital cable providers and they will enjoy an upper hand in the market.

- 2.4. The regulation should transparently recognise that such costs cannot be calculated for the next five years as it is dependent on various factors as outlined above and beyond the control of the operators. Thus, the repair and maintenance cost should be allowed to be recovered whenever the fault happens.
- 2.5. Notwithstanding above, if TRAI still mandates the inclusion of the AMC in the sale price of CPE then the life span of 3 years should be mandated instead of 5 year. TRAI has considered the life span of 5 years for CPE which is not consistent with the depreciation rate followed by different Companies under their accounting policies. Companies are required to keep a book of account wherein they follow certain accounting rules regarding the depreciation and amortisation of assets. Any changes in the life span as proposed by TRAI would require changes in the Accounting Policy adopted by the Companies over a period which is not warranted. **Thus, it is requested that the same should be left to the operators and let the market force determine the period for which the operator wants to provide the AMC support to the subscribers post warranty period of 1 year.** This will also lead to another aspect in the competition amongst the operator wherein operators will on their own provide the AMC to the subscribers.
- 2.6. It is also brought out that the broadcast technology changes at a rapid pace and commensurately the customers' choice / behaviour also changes. DTH industry itself started with MPEG 2 and now MPEG 4 is being used. In fact SD boxes are being replaced with HD and HD DVR boxes. In future, it is likely that integrated boxes having both DTH and other services will attract the consumers. Thus, AMC, if at all to be mandated then the timeline should not be more than 3 years. This will also be consistent with the depreciation rate followed by DTH operators in their accounting policies.
3. **Provision of Buy-back / refund of amount:**
- 3.1. TRAI vide this draft tariff order has proposed that there needs to be a standard buy-back / refund mechanism built into each of the standard schemes (including out-right sales schemes) offered by the DTH operators.
- 3.2. Due to the intense competition in the Digital television distribution market wherein the highly regulated DTH platform is required to compete with less regulated and less monitored Digital Cable Industry, the DTH operators are providing the CPE by subsidizing the same by 60-70%, to acquire the customers, under all three schemes viz. Outright sale, Hire purchase and Rental, for acquiring a DTH connection.
- 3.3. TRAI's proposal of mandating the offer of buy back option with each scheme is not financially viable and justifiable. Also, there has been no justification provided by TRAI as to why for an outright sale or hire purchase schemes, the DTH operator is required to propose a buy-back / refund offer wherein the CPE has been sold to the subscribers.
- 3.4. It is felt that TRAI has also ignored the fact that there are many consumers who have not bought the STB directly from DTH operators under any tariff model but have got their CPEs bundled with TV set or any other scheme in the market wherein DTH operator have

already provided subsidized CPEs to the third party. **Thus buying back such CPEs would be more taxing to the DTH industry.**

- 3.5. Further, TRAI, while prescribing the buy-back / refund mechanism for all the schemes of CPE, has not considered the mindset of Indian consumers, wherein a new subscriber would be unwilling to buy refurbished (old) CPE equipment. Moreover, the amount prescribed by TRAI on account of collection of CPE from the customer's premises (Rs. 150) is not reasonable and will not cover the cost incurred by the operator for the same. Once installed CPE, if removed, requires the same amount of monetary effort as required during the installation of the connection. Further, the cable installed is of no further use and hence doesn't hold any value for the operator.
- 3.6. All returned STBs, would require the CPE including the STB and Remote Unit to be refurbished and re-packaged before being provided to a new customer. The minimum cost of this refurbishment is Rs. 1,000/-. Further, the proposal of TRAI that the DTH operator should re-sale the CPE to the new subscribers is practically not feasible keeping in view that (i) No subscribers would be interested to get an old CPE as a new connection (ii) Provisioning of CPE with two different prices (brand new and refurbished) will not stand in the market.
- 3.7. In view of the above, we request the Authority to not to prescribe a buy-back/refund mechanism as proposed in the draft tariff order. The DTH Quality of Service Regulation prescribes three mode of CPE offering viz. outright sale, Hire Purchase and Rental Scheme and the same should continue as a tool to achieve commercial interoperability.

4. Various cost components not taking into account while prescribing the Refund Mechanism:

- 4.1. While prescribing the factors for calculation of the refund amount payable to the subscriber by the DTH operators, TRAI has not considered various relevant factors e.g. Distribution Margin Cost, warehouse cost, cost incurred in the supply of CPE at various distribution points.
- 4.2 It is a well known fact that a DTH operator has to pay distribution margin which is around Rs. 600-800 per connection. This cost is incurred for sale / distribution of each CPE. The DTH operator is able to recover/recoup this expenditure/cost only when the customer stays with the platform for a long duration. The draft tariff order prescribes for a lock in period of only 3 months. It is stated that in such cases or even when the customer refunds the set top box within a period of 6-12 months, it would not be possible for the DTH operator to recover this amount from the monthly charges payable by the subscriber. Accordingly, while prescribing the refund amount, the DTH operators should be allowed to deduct the distribution margin i.e. distributor/dealer commission paid to the third parties.
- 4.3 Further, certain elements/components of the CPE like wire, connectors etc. which once installed, cannot be reused. In case of refund by the subscribers, these equipments are of

no use and cannot be installed at any other premise. The cost of such components should also be recovered from the subscriber from the refund amount.

5. Mechanism for refund towards charges for programmes offered in bundles schemes:

- 5.1 As stated earlier, instead of mandating the proposed buy-back/refund mechanism for CPE, the Authority should continue with the commercial interoperability mechanism as provided in the DTH QoS Regulations.
- 5.2 DTH operators offers programmes (packages) at a lesser rate in a bundled plan in comparison to the rates of such packages/channels if opt independently. For such subsidised offering, the subscribers are required to give certain commitment to avail the services of the DTH operator for a certain minimum period which the subscribers are aware well in advance.
- 5.3 TRAI has proposed that if the subscriber surrenders the CPE in case of a bundled offering, then the DTH operator can only deduct an amount equal to the average monthly charge towards the programmes in the bundled schemes for an additional month beyond the actual number of completed months for which the subscriber availed the services. Such provision is unreasonable and would force out of pocket expense towards the channel offerings for the DTH operators. The programmes offered in bundled plans are highly subsidised and any such provision will force the DTH operators to incur the loss not only towards the CPE but also towards offering of programmes.
- 5.4 As stated earlier, there should not be any mandatory buy-back mechanism for the CPE. However, if TRAI mandates such buy-back mechanism for the CPE, then it should only be applicable towards the CPE cost and the price paid for the programmes in a bundled offer should be kept out of purview of such mechanism. **The offering of channels/programmes have been kept under forbearance at the retail level which provides the freedom to the DTH operator to price the channels/bouquets differently under different offerings keeping the usage pattern and interest of the consumer in mind** (e.g. bundled offering, annual, semi-annual plans). The proposed buy-back mechanism would hit the freedom of the DTH operators as they will be forced to reduce the discounts offered to the subscribers under bundled offerings so that they can protect their own interest in view of the refund mechanism. This will only work against the interest of the consumers. TRAI may also note that DTH operators have a lock in period of 6 months from the broadcasters which does not commensurate with the proposal of TRAI, leading to taxing on DTH operators.
- 5.5 In telecom sector, operators offer bundled plans to the subscribers wherein the same has been kept under forbearance which allows the operators to offer services at a very low cost to the subscribers. Also, in any such schemes, the telecom operators give an exit clause to the subscriber which is required to comply by the subscribers in case he wants to port out before the specified period. DTH, can also work out on the same principle of prescribing an exit clause in case of a bundled offering. If the subscribers want to use the services of other operators, instead of mandating a buy-back/refund policy on bundled

offerings, the subscribers can move out of the services of that DTH operator subject to the fulfillment of exit clause as prescribed by that DTH operator.

5.6 As the DTH operators are required to compete with the Digital Cable Operators in the distribution market, any mandatory provision for the bundled offerings of the DTH operator and not mandating any such regulations for the cable operator will create discrimination amongst the platform operators. **Thus, we request the Authority that if Authority will mandate any such provision for the DTH operator, same should be made applicable for the DAS operators and made effective from the same date.**

6. Lock-in Period:

6.1 The proposed lock-in period of 3 months is completely inadequate. Such a short lock in period will have huge adverse impact on the DTH business. TRAI has provided no justification in the draft tariff order for keeping the lock in period as 3 months. It is reiterated that long period needed to recover the distribution margin and non-usability of certain components of CPE, the lock in period of only 3 months is not feasible. Evidently, the DTH operator would be at a huge loss if the lock in period is not increased. We are of the view that the lock-in period should be increased to at least 9-12 Months as against the proposed period of 3 months in the draft tariff order.

7. Cost of Collection:

7.1 The draft Tariff Order offers no justification for fixing the collection charges at Rs. 150/-. The cost of collection should also include the cost of de-installation as the representative visit is required to dismantle the CPE. The figure of Rs. 150 is an arbitrary figure without any rationale & basis and without considering the cost to be incurred towards de-installing the connection. Accordingly, it is suggested that the cost of collection should not be less than Rs. 350-400, which is to be paid to the third party.

8. Establishment of Collection Center at every DHQ:

8.1 Regarding the condition pertaining to having one collection center at every district head quarter, it is submitted that the same is not only onerous but would also result in additional cost to the DTH operators as it is required to engage agencies in each DHQ and pay them accordingly. This factor/cost component is also required to be considered by the Authority in the draft tariff order.

8.2 It is further submitted that any additional burden on the DTH operators will add on to the financial liabilities upon DTH operators impacting their frugal margins as well as impede their growth. It will result in further losses to this beleaguered Industry as due to fierce competition in the Digital TV Distribution Industry any additional cost cannot be pass on to the subscribers.

9. Reporting Requirement:

9.1 It is submitted that, instead of 15 days as proposed in the draft tariff order, the reporting requirement should be made quarterly. DTH operators are already furnishing quarterly Performance Monitoring Report to the TRAI and this reporting requirement under the proposed tariff order can be merged in the same.

10. Views expressed by TDSAT in its Judgment dated 1st October, 2014:

10.1 We respectfully submit that TRAI has not considered the views expressed by Hon'ble TDSAT in its judgment dated 01.10.2014 wherein the contentions of the DTH operators (petitioners) were upheld by the Hon'ble TDSAT. It is matter of record that the Hon'ble TDSAT vide the said judgment had set aside the earlier Tariff Order and held that while passing the said tariff order, TRAI did not address the concern raised by the DTH operators. The relevant portion of the judgment is reproduced as under:

"...Assuming that it is able to recover the CPE, will it be able to use a second hand CPE again and will a customer accept a second hand CPE? In our opinion, one way to address this issue can be to permit the DTH operators to supply recovered/refurbished CPE under the standard tariff order and the subscribers may not insist on new CPE if they want this tariff. However, we may clarify that this is just one example and the respondent is free to address the various issues as it may deem fit. Though all these issues have been raised by the appellants, in our view the same have not been satisfactorily addressed by the respondent.

38. In view of the above, we find that some elements of cost have not been taken into account and issues raised by the appellants have not been fully addressed by the respondent while passing the impugned tariff order and the same is, therefore, not tenable. The impugned tariff order is accordingly set aside...."

10.2 The concern raised by Hon'ble TDSAT regarding the use of second hand CPE and the acceptance of the same by the customer has not been given appropriate consideration while prescribing the buy-back/refund mechanism for all type of CPE schemes. Also, many elements of cost, as suggested above, have not been taken into account while prescribing the different parameters for the refund. We request TRAI to consider the contentions of the DTH operators as raised in the petition filed before Hon'ble TDSAT against the previous tariff order.
