DTH ASSOCIATION

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19th March, 2015

To,
Telecom Regulatory Authority of India,
Mahanagar Doorsanchar Bhawan,
Jawahar Lal Nehru Marg,
New Delhi - 110002

Kind Attn: Mr. Wasi Ahmad, Advisor (B&CS)

<u>Ref</u>:-Draft Tariff Order prescribing framework for commercial interoperability of Customer Premises Equipment, released by TRAI on 27th February, 2015.

<u>Sub:-</u>Comments of DTH Association on the Draft Tariff Order for Direct to Home (DTH) Broadcasting Services

Dear Sir,

We are a Direct to Home (DTH) Service Providers Association, comprising of six (6) DTH Operators.

At the outset, we would like to point out that primary objective for establishment of the TRAI was to protect the interest of the service providers and consumers and to promote and ensure the orderly growth of the telecom sector which includes the DTH sector. This objective is enshrined in the preamble of the TRAI Act, and the same is mentioned as under:

> "To provide for the establishment of (Telecom Regulatory Authority India and the Telecom Disputes Settlement and Appellate Tribunal to regulate the telecommunication services, adjudicate disputes, dispose of appeals and to protect the interest of service providers and consumers of the telecom sector, to promote and ensure orderly growth of the telecom sector) and for matters connected therewith or incidental thereto.

It is therefore clear from the above that the obligation of the TRAI is not only to protect the interest of the consumers but at the same time the TRAI is equally obliged to protect the interest of the service providers as well. It is however disheartening to note that while the draft tariff order issued by the TRAI does not at all consider the impact this tariff order may have on the business viability of the DTH operators. The TRAI, being the regulator of the industry, is fully aware of the financial condition of all the DTH operators where none of the

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DTH operators have been able to reach to reach a profitable position despite the industry having already crossed 11 years of operation.

The TRAI is aware that the DTH Association had filed its response to the earlier draft tariff order circulated by the Authority on 11th April, 2013 by filing our written submission on 26th April, 2013. Subsequently, the TRAI notified Telecommunication (Broadcasting and Cable) Services (Sixth) (The Direct to Home Broadcasting Services) Tariff Order, 2013 (No. 2 of 2013). The said Tariff Order was challenged before the Hon'ble TDSAT and the Hon'ble TDSAT, vide order dated October 01, 2014 set aside the said Tariff Order and directed the Authority to issue a fresh tariff order after taking into consideration the inputs provided by the DTH operators addressing the issues raised by them.

As you are aware, DTH Service providers are have been providing multiple schemes and offers to subscribers at large. Some of these schemes are in vogue since the inception of DTH Industry in the country. There were no specific schemes or offer recommended by the Authority at any time since 2003 when DTH Industry started functioning in the country. On the contrary, the TRAI allowed the DTH operators to provide all such schemes as the operators may deem fit. Now after such a long period of time, of about 12 years and after market forces and consumer at large having synched in with the schemes of various DTH Operators, the draft Tariff Order is being released which is aimed at mandating a scheme to be offered by DTH Operators to their subscribers, which scheme is unreasonable, arbitrary and unjust for the entire DTH industry.

The TRAI is fully aware that the DTH segment has always been transparent and addressable since inception unlike the analog cable segment where no such transparency / addressability exists. Even as on this day, the segment of digital cable is still having a free and unregulated zone for their trade. Despite this DTH Industry has continued to operate in compliance with all applicable regulations introduced by the Authority, from time to time. However, there are areas of some serious concerns when certain regulations / orders impinge upon the domain of the manner in which a DTH Service provider can operate and present draft tariff order is one such proposed order.

To highlight our view as above, the proposal to include even High Definition (HD) Set Top Box (STB) in the current draft tariff order despite the fact that the HD service till date is under forbearance is a pointer. Right from the earlier CPE related draft tariff order till the release of the present draft tariff order, the Authority has considered all applicable criterion for a vanilla STB along with its CPE without any reference to HD CPE. Even the order Hon'ble TDSAT had limited the scope of the Authority only to the limited extent of further considering certain cost components which were missed out the Authority. However, the Authority seems to have travelled too far across the limited scope by making the present draft tariff order applicable even to HD CPE. As the Authority is aware, HD channels tariff as well as tariff of HD services are under forbearance and as such it will be arbitrary, unjust and improper to apply present tariff order to HD CPE.

Whilst reiterating our stand points in our comments dated 26th April, 2013 which are applicable for the present draft tariff order also, we would like to submit our detailed comments on the captioned tariff orders as follows:-

At the outset, we would like to bring in your notice that, the proposed tariff order has been released by the Authority under the provisions of sub-section (2) of section 11, read with sub clause (v) of clause (b) of sub section (1) of the said section of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997). However, we believe that the above provision does not confer the jurisdiction to this Hon'ble Authority to regulate price, tariff of goods viz. Customer Premises Equipment **('CPE')** and this issue is yet to be settled by the Hon'ble Supreme Court of India. However, we hereby submit our response to the present draft Tariff Order which is without prejudice to our rights and contentions. .

1. **<u>PRELIMINARY OBJECTIONS</u>:**

a) The Authority previously came up with a Tariff Order namely the Telecommunication (Broadcasting and Cable) Services (Sixth) (The Direct to Home Broadcasting Services) Tariff Order, 2013 (No. 2 of 2013), *interalia* regulating price, terms and conditions of supply of CPE (Vanilla Set Top Boxes) and which was set aside by the Hon'ble TDSAT vide its judgement dated 1st October, 2014 and directed the Authority to issue a fresh tariff order after taking into consideration the inputs provided by the DTH operators addressing the issues raised by them. The Hon'ble TDSAT had also observed that some elements of the costs were not taken into account and issues raised by the stake holders were not fully addressed by the TRAI while passing the said Tariff Order. Accordingly, any such exercise has to be undertaken after considering all the relevant factors / inputs and also addressing all the issues raised by the DTH operators. However, we believe this Authority has proposed the present draft Tariff Order without considering the relevant factors and the inputs provided by the DTH Operators. According we believe the present draft tariff order is not in compliance with the order dated October 01, 2014 of the Hon'ble TDSAT judgement.

b) As we have already pointed out in our earlier reply dated 26th April, 2013, the provision of section 11 of the TRAI Act does not confer the power on the Authority to regulate the CPE. The CPE provided by the DTH operators is supplied basically for accessing the DTH services which is akin to the mobile handsets in the telecom sector. In telecom industry, neither the prices of handsets nor their supply to end customers has ever been regulated and hence similar treatment is required to be given to the CPE. Without prejudice we would like to state that a DTH player has been offering the CPE's under various schemes which inter alai include outright purchase, hire-purchase, rental etc since the inception of the DTH industry and these schemes have been in vogue since long. These schemes have been in vogue even when no scheme was prescribed by the Authority. Accordingly, it is surprising that now the Authority is endeavoring to introduce for the first time a scheme related to CPE after such a long time. There will be conflict of interests of consumers availing the long existing schemes of a DTH Service Provider and the schemes being tried to be introduced through the captioned draft order.

We reiterate that, the provisions of Sec. 11 of TRAI Act does not confer the power on this Hon'ble Authority to fix Retail Rates of Goods to be supplied for accessing the services like Broadcasting/DTH/Telecom. For instance the price of telecom equipment such as mobile handsets and its accessories was never fixed or regularized by Authority and the same is always left to the market forces to determine.

c) The proposed tariff order does not take into account the fact that there is enough competition amongst the existing DTH Operators, MSO's and Cable Operators. In a present scenario no operator can monopolize the CPE market for provision of television services. The TRAI is fully aware that due to the intense competition in the market, the DTH operators are providing the CPE are provided at subsidized rates by incurring huge losses.

If Customer is unhappy with particular service operator and if he churns from such DTH operator, each such churn causes loss to the DTH operator. It is a matter of fact that owing to the churn, each DTH operator is under huge financial losses. It cannot be forgotten that the DTH Operators incur huge customer acquisition cost. As such there is no need at present to come out with the proposed Tariff Order.

As stated above, the DTH operators have been offering the CPE at huge subsidy to the subscribers and the DTH operators incurs loss on each STB provided to a subscriber. This is being done with a view that the subscriber will continue to be on the DTH platform for a long duration of time, enabling the platform to recover the costs from the subscription. The TRAI has in its possession all the relevant data in respect of the rates at which the DTH operators are providing the CPE, the costs of the CPE, the Content Cost, taxation etc which are applicable to the DTH industry. The TRAI is also aware that its takes nearly 3 to 4 years of continuous subscription from the customers for DTH Operators to recover this cost.

The immediate impact of the proposed Tariff Order would be a continuous chain of installation of CPE and de-installation thereof, at the heavy cost of promotion of the churn and unjust enrichment of intermediate dealers and distributors. The proposed Tariff Order is potent enough ensure encouraging unethical and illegal practices across the intermediate dealers and distributors in lust of earning extra distribution margins and encouraging churn of Customers.

d) The Authority has not taken into consideration that in case of buy- back and re-provision of the CPE, there would be double taxation burden on the Operators without gaining any revenue out of it. There will be numerous taxation issues in relation to (i) DTH license fees, (ii) refund and credit issues of various taxes which are already remitted at first instance. The Authority has also failed to consider that the

DTH operators would not be able to re-deploy / sell the returned Set Top Boxes to any new subscriber since no subscriber would agree to take old / refurbished box.

e) The Authority under the proposed tariff order has obligated a DTH Service provider to provide free repair and maintenance of CPE for a period of five (5) years, which according to us is clearly lop sided and prejudicial to the interests of a DTH service provider. It has been brought before the notice of the TRAI time and again that the cost towards repair and maintenance should not be imposed on the DTH operators. However TRAI has proceeded with the same requirement in the draft tariff order with even providing for any justification for the same. Any kind of product may develop a fault and repair is necessitated due to multiple factors not necessarily attributable to its provider alone, but may involve some other elements for development of such faults. Service visits requires visit by a technician who necessarily has to be a skilled person. For provision of the repair and maintenance services, the DTH Operators have engaged the third party services providers who are paid for every visit done by such technicians. This is therefore imperative that the DTH operators would incur cost towards every visit. Keeping this area of providing free repair and maintenance by a DTH service provider is clearly bereft of any merit & basis and thus such an onerous and unreasonable condition should not be imposed on the DTH operators.

f) In respect of the amount to be refunded in case of return by the subscriber, the authority has ignored the actual cost incurred to DTH operators when the returned set top box is to be reinstalled at the subscriber premises (this is without prejudice to the contention that no subscriber would take an old box when he is paying the amount at which even a new set top box can be obtained): i) refurbishing cost; ii) loss on account of dealer and distribution commission; iii) actual de-installation cost; iv) freight and logistics cost; v) inventory holding cost; vi) collection centre cost; vii) call centre cost; viii) testing and verification cost; ix) technology up-gradation and changes cost; x) re- pairing of viewing card cost. As such, it is stated that in the proposed tariff order, the above costs have not been considered by the Authority, whilst working out the buy-back/ refund price of CPE.

g) Further, we would like to state that, the earlier draft tariff order for supply of CPE released by the Authority on 11th April, 2013 was exclusively in respect of vanilla Set Top Box **(STB)** and not for any other kind of STBs, including the HD version of it. It is therefore unfair and unjust to refer to HD STBs in connection with the provisions being discussed under the captioned draft tariff order. As the Authority is well aware, the entire segment/ channels/ services is under forbearance it would be a travesty to include the same in the captioned tariff order. We would urge the Authority to appreciate that all cost components of a standard definition CPE as compared to a high definition CPE are entirely different. The cost of high definition STBs along with its CPE is too high and cannot be compared with vanilla STB along with its CPE. Without prejudice to all our objections to the captioned draft tariff order, we would urge the Authority to exclude all other types of CPE other than vanilla CPEs.

h) This Authority has already promulgated the regulation to enforce commercial interoperability of STB and by various Regulations as mentioned hereinafter and mandated the DTH operator to give subscriber the option to acquire STB on either on 1) Sale or 2) Rental or 3) Hire Purchase basis. The Authority has also mandated to all DTH operators to submit and publish applicable rates of its CPE each on Sale, Rental and Hire Purchase mode. These schemes have been in vogue in the absence of a single scheme of the Authority and as such it is intriguing that the Authority is endeavoring to introduce for the first time a scheme **only related Outright Sale of CPE** after such a long time.

i) Without touching the aspect of Technical interoperability the Authority has considered the Commercial Interoperability of STB, which the proposed Tariff Order covers, is itself sub judice before Hon'ble Supreme Court of India in the matter of TRAI versus Tamilnadu Consumer Progressive association & others. Till this point of time, the Authority has never waived off or even recommended the mandate of Technical interoperability.

j) Without prejudice to our objections to the proposed tariff order, we would like to state that, whilst DTH segment is entirely regulated, the segment of Digital Cable remains entirely unregulated till date. This has resulted in absence of level playing field for similar service providers.

k) We further request this Authority to take into account that, the DTH industry has made huge investments in the business with an intention to start getting returns in futures. The industry is heavily taxed and has to pay huge content cost apart from other costs. Further, the CPE's being provided by the Operators are heavily subsidized due to competition from cable system. The assumption of price and other commercial are incorrect and if implemented, there would be serious impact on operations affecting business viability of DTH business. The commercial impact is separately explained herein under.

l) Lastly, we would like to bring in notice of this Authority that, as explained hereinafter the proposed tariff order would cause serious commercial impact on DTH Operator and calculations would reveal that a DTH Operator would sustain more loss if the refurbished CPE is resold Ie / re-provided.

2. DETAILED IMPACT OF PROPOSED TARIFF ORDER:

2.1 Taxation:

The Authority has not taken into consideration that in case of buy- back and re-provision of the CPE, the taxes once remitted cannot be claimed back by the company, in all the situations. There would be similar problems with regard to availment of credit.

It is important to note that, presently DTH License Fees does not give concession in a scenario of refund and would cause serious complications and financial repercussions on DTH Operators. On other hand, presently there is no express provision spelt in license regarding relaxing/ deducting the loss incurred by DTH Operator in case of refund scheme in proposed Tariff Order.

2.1 Heavy Tax / Duty / License Fee Incidence on the DTH operations

The Authority is aware that each DTH operator has invested huge amount towards the business in addition to providing Rs. 40 Crores of bank guarantee with the Ministry of Information and Broadcasting (MIB) for the term of the license, paying Rs. 10 Crores as non refundable entry fee to wireless planning and co-ordination (WPC) Wing of the Ministry of communication and the DTH Operators are also under mandate to pay a License Fees @ 10% annually, to the MIB.

The details of the imposition of taxes on DTH operators are as below:

Description	DTH
Entry Fee	10 Crores
Bank Guarantee	Rs 40 crores
License Fee	10% of yearly Revenue
Service Tax	12.36%
VAT on hardware/STB Excise Duty on hardware	12.50% to 15.00% 12.36%
Entertainment Tax	From 6% to 25%

Thus, every DTH operator on an average has been paying approximately 40% to 45% of every rupee to the Government by way of various taxes, including but not limited to entertainment tax and Value Added Tax to the State, Service Tax, license Fee to the Central Government. These expenses are over and above the huge Capital investment in equipment and CPE and operational expenses are big hurdles to make profit and maintain sufficient cash flow.

2.2 Refurbishing Cost

We would like to point out that, returned CPE, ipso facto cannot be supplied to the new customer as is in a same condition and requires refurbishment. Refurbishment cost of the returned CPE cannot be less then Rs. 500/- to Rs. 600/- per CPE (will vary from operator to operator) for which there is no provision in draft tariff order. As there are various elements of cost of components involved while undertaking refurbishment activity of a CPE, which shall include following:

Conversion Charges

In order to undertake refurbishment of a Set Top Box, sufficient number of manpower is required. This exercise involves the activity of removal of rust, repair in the STB. The cost towards such refurbishment is about Rs. 100/- per STB (will vary from operator to operator).

Raw Material Cost

Refurbishment of CPE would require use of various raw materials and consumable items. There is a considerable cost associated to it and the same is stated herein below:

Casing cost

The casing of each STB received from customer need to be changed and as such the same cannot be reused, since the casing is prone to scratches and rust, the branding of company as well as the shining on the product fades away over a period of time and damage caused during transportation. The cost towards new casing per STB would be in range of Rs. 40/- to Rs. 60/- (will vary from operator to operator).

Cost of providing new remote, antenna, cable, connectors and other Consumable items

Apart from the STB, a DTH operator would be required to provide new equipment forming part of the CPE whenever a new connection is to be installed at a customer premises. Remote control needs to be provided afresh. Customer will not accept a used remote. Further, the Antennas are installed out in the open at customer premises and usually there is no shed or protection available to these Antennas. The un-installed Antennas cannot be re-used and provided to a new customer. Other consumables like cable, connectors, adaptor, LNB etc also cannot be reused once they have been used at a customer's premises. Accordingly, a DTH operator will be required to provide new remote, antenna and other consumable even in respect of refurbished box the cost of which is in the range of Rs. 600 – Rs. 700 (will vary from operator to operator). The Authority has failed to consider this cost while prescribing the amount of refund to be given to the customer.

Packaging Cost of Refurbished CPE

In order to offer the refurbished CPE to Customer, there would be a repackaging cost involved. This aspect has gone unnoticed in the analysis of costs made by the

Authority in the proposed tariff order. The Repackaging cost is in the range of Rs. 25/- to Rs. 50/- per CPE (will vary from operator to operator).

2.3 Loss on account of Dealer and Distribution Commission

This Authority has ignored the fact that, in order to seed the returned CPE back in market, there would be cost towards the margins of dealers and distributors. The margin payable to these dealer and distribution cannot be less then Rs. 400/- to Rs. 500/- per CPE (will vary from operator to operator) which has not been considered in the draft tariff order. Further, the dealers and distributors will not promote refurbished CPE, if their margin is reduced then the new CPE.

Considering the past instances, the proposed scheme is potent enough to ensure encouraging unethical and illegal practices across the intermediate dealers and distributors in lust of earning extra distribution margins and encouraging churn of Customers.

2.4 Actual de-installation Cost

Although, this Authority has considered Rs. 150/- towards de-installation cost, we would like to point out that the process of de-installation is more complex and time consuming then installation. Despite the Authority having considered lesser installation cost i.e., Rs. 300/-, the de-installation cost cannot be lesser then Rs. 350/-, as such there would be additional loss of Rs. 200/- per de-installation for which has not been considered in the draft tariff order.

2.5 Freight and Logistics Cost

It is not necessary that all CPE collected at particular collection centre would be used in the same collection centre. Refurbishment would also incur freight and logistics cost which will be not less than Rs. 50/- per CPE.

2.6 Collection Centre cost

DTH companies operate across pan India and supply happens through dealers and distributor network therefore unlike supply of new CPE, the collection of returned CPE requires establishment of special collection centers across Pan India, which will entail capital investment as well as recurring cost. The Collection centre cost would be in range of Rs. 50/- to Rs. 60/- per CPE (will vary from operator to operator).

2.7 Call Centre cost

For return of CPE and refund request customer will call on customer care centers of DTH operators and on an average will consume 4 minutes on call. The cost of which will be Rs. 4/- towards telecommunication charges and Rs. 12/- to Rs. 15/- towards operator of Call centers through customer agent. As such per CPE the cost of Call centre would be atleast Rs. 16/- (will vary from operator to operator).

2.8 Testing and verification cost

After de-installation of CPE, it needs to be tested for re-supply as well as processing refund, which requires sufficient manpower and the cost would be around Rs. 5/- per CPE (will vary from operator to operator).

2.9 Technology up-gradation and changes cost

Since record of each customer, its account is maintained in computerized system software, which does not have provisions for recording details as envisaged in the proposed tariff order. To effectively implement and execute the proposed tariff order and for the purpose of synchronization of the system, each DTH Operator will have to upgrade its various software's for which cost would be huge and need to be envisaged.

2.10 Re- pairing of viewing card cost

In case of return of CPE, it is not necessary that the same viewing card would be given with the same STB to the new customer. In such case, refurbished STB needs to be freshly paired with fresh viewing card. This will also entail cost to DTH Operator and need to be taken into consideration.

2.11 Cap on Collection Charges

TRAI has provided no rationale for fixing the collection charges at Rs. 150/-. It should be noted here that if the job of installation of the connection can be done by a skilled labour, the same for un-installation of the connection can be performed only by a person of same caliber and therefore the collection charges should minimum be the same rate which has been prescribed for installation charges, i.e. Rs. 300/-.

2.12 Stipulation of Lock in period of 3 months

The draft tariff order has suggested for lock in period of 3 months only post which period, a subscriber will be entitled to return the CPE and claim the refund from the operators. The said stipulation is without any basis. Subject to our contention that no tariff order should be laid down in respect of the CPE, The DTH association is strongly of the view that stipulation of a lock in period of less than 12 months shall be totally against the entire industry. It is a known fact that a DTH operator would be able to recover initial cost incurred by it towards the subsidy, distribution margins etc. only and only if the customer remains associated with the DTH operator and keeps paying. The lock period of only 3 months would inevitably result into the DTH operators incurring huge losses. As stated above, an operator is able to recover the amount of subsidy and costs from the subscriber only when the subscribers continues on the platform for 3-4 years and in case of subscribers leaving the platform prior to this period causes huge losses to the operators.

2.13 Installation and Activation Charges

The TRAI has specified Rs350 for installation and activation on the following criteria:

- Installation @ Rs. 300 based on – it is assumed that only 2 installers are required for a single installation; the average minimum wage is Rs.358 per day, 3 connections are installed by a team on an average and transportation cost is Rs.200
- Activation @ Rs.50 based on the assumption that activation is basically creation/configuration of subscription details and should be same across various schemes

It is stated that the above assumptions of the TRAI is not correct. Installation and activation charges differ amongst operators and are based on variable factors including 3rd party installation service providers, skill set of installation engineer, transportation cost, accessibility to a location, number of subscribers in a single location, costs pertaining to training, tools, test equipment and also the amount which can be absorbed to keep the installation charges at a uniform and nominal rate etc.

For example sometimes a single installation provider may be providing service to 2 or 3 smaller towns and his transportation cost may be higher than if the installation is in the same city he is based in. Further, a higher number of installations may be possible in a high rise apartment in one day as the same is a single location with multiple subscribers, however more number of installers may be needed.

Thus, the installation charges should remain uncapped.

TRAI is aware that Activation charges include variety of costs and charges viz. costs such as cost of activation vouchers, call center charges, data center charges etc. these charges will go up with the up-gradation of the types and difference in technology used in the STB as the integration and maintenance of details in the system. All these charges add up to the activation charges which is borne by the DTH operators. Thus, the activation charges for all the types of the STB cannot be put at the same rate and the decision to this effect should be left to the DTH operators.

In view of the above, it is suggested that the DTH operators be allowed to fix the activation fee in accordance with the business model and the scheme offered to the subscribers

TRAI in its own explanatory memorandum of the draft tariff order has mentioned that approximately 45% of the DTH subscribers have already churned. Despite being in possession of the said data, the TRAI has not considered the impact of the said churn read along with the impact the conditions of the draft tariff order would have on the DTH operators.

Thus, the above makes it abundantly clear that the proposed tariff order is not legally and commercially feasible. We further request you, to call for an open forum for granting an opportunity to the DTH Association and the DTH operators to provide all the inputs which you require to address the issues raised above.

In the light of the above, we earnestly beseech the Hon. Authority to drop the captioned proposed Tariff Order.

Thanking you

For **DTH Association,**

R. C. Venkateish
President