

19th March, 2015

To,
Mr. Wasi Ahmad
Advisor (B & CS)
Telecom Regulatory Authority of India
New Delhi.

Sub:-Comments/suggestions on the Draft Tariff Order for Direct to Home Broadcasting Services

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

Respected Sir,

This has reference to the above captioned draft Tariff Order prescribing framework for commercial interoperability of Customer Premises Equipment for Direct to Home Broadcasting Services released by the Hon. Authority on 27th February, 2015. We strongly believe that Hon'ble Authority endeavors to promulgate various Policies, Recommendations, Regulations keeping balance between consumer and business interest of DTH Service Providers. After going through the proposed CPE Tariff Regulation, Explanatory memorandum and assumptions taken therein, we have following genuine and serious difficulties, issues and hurdles in introduction and execution of proposed CPE tariff, which we would like to bring to the notice of this Hon'ble Authority.

Whilst reiterating our standpoint in our comments dated 2nd May 2013 which were in response to the draft tariff order for supply of CPE released by the Authority on 11th April 2013, we would like to submit our detailed comments on the captioned tariff order 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, as such without prejudice to our said contentions and our rights, claim in this regard, we hereby submit our response to the present draft Tariff Order.

1. PRELIMINARY OBJECTIONS:

- a) The Authority had previously come 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), *inter alia* regulating price, terms and conditions of supply of CPE and which was set aside by the Hon'ble TDSAT vide its judgement dated 1st October, 2014 and directed the Authority to come up with the fresh recommendations, however, this Authority has proposed the present draft Tariff Order under frame work for commercial interoperability, as such according to us it is not clear whether the present draft Tariff Order is in compliance of Hon'ble TDSAT judgement or a fresh tariff order with all together under new subject of Commercial Inter-operability.
- b) As we have already pointed out in our earlier reply dated 2nd May 2013, the above provisions of section 11 do not intend to confer the power on the Authority to deal with Goods such as the CPE. Our CPE is supplied basically for accessing the DTH services like telecom. In telecom industry, neither the prices of handsets nor their supply to end customers were ever 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 its schemes of outright purchase, hire-purchase and rental since the inception of the DTH industry and these schemes have been in vogue since long. 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 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 do not intend to 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 CPE are provided at subsidized rates by incurring huge losses.

If Customer is unhappy with particular service operator and if he churns due to deficiency in service then it is already causing huge losses to the DTH Operators. It cannot be forgotten that the DTH Operators incur huge

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customer acquisition cost. As such there is no need at present to come out with the proposed Tariff Order.

Details on Loss of Customer Acquisition

Particulars	Amount Rs.
CPE Procurement cost	3000
Dealer/ Distributor Margin	650
Cost of CPE (A)	3650
Installation Cost (B)	350
C= (A+B)	4000
Smart Card Cost (D)	350
Total Subscriber Acquisition Cost E=(C+D)	4350
Less: Recovered from Customer	
- Installation & Activation Cost	350
- Towards CPE	1300
Total Recovery (F)	1650
Net Loss on Customer Acquisition (E-F)	2700

It takes nearly 4 to 5 years of continuous subscription of the customers for DTH Operators to recover this cost. This clearly indicates that a DTH Operator incurs an aggregate loss of Rs. 2700/- at the time of a customer coming on its Platform itself. The concept of lock in as envisaged in the draft tariff order is going to defeat the trade objective of retaining the customers by a DTH Operator. Without prejudice to our objections to the draft tariff order, we would therefore urge the Authority to dispense with this requirement also.

The logic behind the proposed Tariff Order seems to 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.

- 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. 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. Keeping this area of providing free repair and maintenance by a DTH service provider for such a long tenure of 5 years is clearly bereft of any merit and thus we strongly object to the same.
- f) Beside above, the assumed costs in a proposed refund scheme of CPE is far away from the actual cost incurred to DTH operators viz. 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 in the proposed tariff order above costs are not taken into this Authority, whilst working out the buy-back/ refund price of CPE.
- g) DTH operators are providing CPE which consist of STB, remote, LNBF, antenna, cable & other accessories to customer and collecting cost for CPE as a single unit. In such case, if the Customer churns and returns the CPE in a partially working condition or any part is found to be damaged then, there will be practical difficulty to ascertain the amount of buy back as the recovery this will result in numerous consumer disputes. The Proposed Tariff Order does not have any provision to address such nicer issues.
- h) 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 HD 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 (as set-out in detail under paragraph 'f' hereinabove) applicable to standard definition STBs along with its CPE viz a viz high definition STBs along with its CPE are entirely different and the cost of high definition STBs along with its CPE is too high and cannot be compared with vanilla STB along with its CPE. 4K STB price is equivalent to nearly 95 US dollars, and HD DVR STB costs about 145 USD. This clearly indicates huge gap in pricing of SD and HD STBs, and for both the proposed tariff order cannot be made applicable.

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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.

- i) 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. 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.
- j) Without touching the aspect of Technical interoperability the Authority has considered the Commercial Interoperability of STB, which the proposed Tariff Regulation 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.
- k) 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.
- l) We further request this Authority to take into account that, the DTH industry is already facing heavy investment, taxation burden and distributing CPE at subsidized rate by incurring considerable loss with an intention that consumer in long run will compensate the incurred loss. 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.
- m) 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 sustain more loss if he resale / re-provide refurbished CPE then not selling/ providing and subsuming the cost of the refund given to the Customer.

2. DETAILED COMMERCIAL IMPACT OF PROPOSED TARIFF REGULATION:

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.

Taxes Burden

The Authority is aware that each DTH operator has invested huge amount towards the business such as Rs. 40 Crores of bank guarantee with the Ministry of Information and Broadcasting (MIB) for the term of the license, 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 remit 10% of License Fees annually, to 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	12.50% to 15.00%
Duty on hardware	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 than Rs. 500/- to Rs. 600/- per CPE 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.

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/-.

Antenna refurbishing Cost

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 provided on *as is* basis to new customer. The Antennas would require refurbishing and re-branding of a DTH Operator. The cost towards such activity is at least Rs. 80/-.

Cost towards Cable, Connectors and Other Consumable items

Connectors and other such items are consumable materials in nature and as such they cannot be put to use again nor can they be refurbished, as these items are as per the specific requirement of a particular connection. Therefore, the cost towards Cables, Connectors, cords, nut bolts and other consumable items shall be applicable afresh which shall not be less than Rs. 150/- to Rs. 200/- per CPE for which there is no provision in draft tariff order.

Cost towards Remote Control

Remote control needs to be provided afresh. Customer will not accept a used remote. The cost of a new remote control is in range of Rs. 90/- to Rs. 110/-.

Adaptor Cost

The Adaptor cannot be refurbished and as such the same adaptor cannot be offered to different customer for safety reasons. Therefore, this would require a DTH Operator to provide new adaptor along with refurbished CPE. The cost of adaptor would be around Rs. 125/- per CPE.

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.

We would like the Authority to appreciate the refurbishment cost incurred by a DTH Operator which is reproduced in the table below:-

	Amount Rs.	
Refurbishment Cost		
- Conversion Charges	100	
- Raw Material Cost		
a) Casing Cost	40	
b) Antenna refurbishing Cost	80	
c) Cable , connector & other consumables etc.	125	
	245	
- Remote Control	90	
- Adaptor	125	
-Packaging Cost of Refurbished CPE	25	585.00

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 than Rs. 400/- to Rs. 500/- per CPE for which there is no provision in 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 than installation. Despite the Authority has considered lesser installation cost i.e., Rs. 300/- therefore de-installation cost cannot be lesser than Rs. 350/-, as such there would be additional loss of Rs. 200/- per de-installation for which there is no provision in 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 Inventory Holding Cost

Holding of returned CPE will also incur the cost and interest. As all the DTH Operators are operating on finance and facing crunch of liquidity due to huge subsidy and taxation burden and as such, there would be cost involved in holding inventory and processing refund which will be not less than Rs. 30.60/- per CPE (considering the CPE is on hold, on average for 6 months and interest rate @ 12% p.a.).

2.7 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.

2.8 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/-.

2.9 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.

2.10 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.

2.11 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.

2.12 Recovery from Customer

Currently, in a standard case of subsidized provision of CPE, a DTH Operator on an average receives Rs. 1300/- (net of taxes and dealer margins), per new CPE connection with an expectation that the loss would be subsumed in long term if customer stays on platform.

However, in compared to new CPE, DTH Operator will at the most can get Rs. 1,000/- per refurbished CPE. But in both the cases, the customer acquisition cost remains the same. Therefore, there is an additional loss of Rs. 300/- per CPE connection, beside loss towards customer acquisition and aforementioned factors.

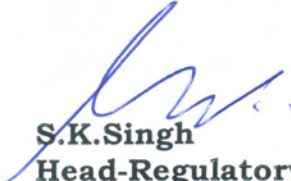
In the chart annexed herewith as **Annexure A**, we have taken into account some of the above loss making components/ costs to its minimum and evaluated the commercial feasibility or non- feasibility and its impact, per refurbished CPE, as per proposed tariff order and found out that on an average there is an additional loss of Rs. 941.60/- per refurbished CPE connection which is in addition to the existing loss subsumed by a DTH Operator for acquisition of new customer.

Considering the past scenario, for any DTH company the yearly churn/ upgrade is not less than 7,00,000 to 8,00,000 subscriber per year, which will add further loss atleast of Rs. 75.32 Crore per year.

Thus, the above elucidation 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 discussing and explaining the proposed tariff order which will further clear and clarify all pros and cons of the same.

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

Thanking you
Yours Sincerely,
For **Videocon d2h Limited**


S.K. Singh
Head-Regulatory & Compliance

Annexure A
Impact of Loss/cost under Buy back scheme to a DTH Operator

S. No.	Particulars	Amount Rs.
A	Possible Sale Price after Refurbishment of Returned CPE	1,000.00
B. Cost		
i)	Buy Back Price (As per Note 3)	510.00
ii)	Refurbish Cost	585.00
iii)	Freight & Other Logistic Cost of Refurbish	50.00
iv)	Dealer Distributor Margin	500.00
v)	Loss on collection charges in Buy Back	200.00
vi)	Inventory holding Cost	30.60
vii)	Cost of Collection Centres	50.00
viii)	Call Centre Cost	16.00
	Total Cost of refurbished CPE (Total B)	1,941.60
	Loss Per Refurbished CPE under Buy back (A-B)	-941.60
	Total Loss to a DTH Operator (Assuming 8 Lakhs customer churns/ upgrade per year)	75,32,80,000

Notes:-

- 1 New features, technology, development, higher version of CPE will also induce the existing active customer return back the old CPE and requests for new upgraded CPE. These cases will also increase the return of CPE.
- 2 On an average approx 5 Lakhs de-active subscribers will go for buy back scheme and approx 3 Lakhs active subscribers will go for up-gradation under buy back scheme from Vanilla STB to Higher versions of STB.

- 3 Buy back Price will be as under:
5 Lakhs De-active Subscriber
3 Lakhs Active Subscriber

Particulars	Amount in Rs.
CPE cost	4000
Less Installation & Activation charges	350
Gross Cost	3650
Cost Net of Taxes	3200
Cost of Per CPE (A)	3200
Recovery from customer (Net of Taxes) (B)	1300
Depreciation (1 Year Customer) (As per proposed TRAI regulation) (C)	640
Collection charges of CPE to recovered from customer (D)	150
Refund to the Customer Per CPE (B-C-D)	510

- 4 Smart card will be return by customer in working condition and can be used without doing pairing exercise for new customer
- 5 All the above cost estimation based on past experience and as per cost of industry practice