

COMMENTS ON THE DRAFT NOTIFICATION THE TELECOMMUNICATIONS (BROADCASTING AND CABLE) SERVICES (THE DIRECT TO HOME BROADCASTING SERVICES TARIFF ORDER, 2013)

1. Indian consumers today face an astonishing array of choices in the vibrantly competitive DTH and Digital Cable market. Besides the free DTH service of Doordarshan, there are 6 private DTH licensees, offering their services to the DTH subscribers. Subscribers have choice of Digital TV not only from DTH operators but also from cable operators in almost all major cities.
2. In a competitive market, service providers know that to win and keep customers, they have to offer a broad array of choices that provide the value to the consumer and offer customer-friendly tariffs that assure their satisfaction. By offering consumers to make the choices that are right for them, service providers maximize their own chances of success in winning the customers.
3. In fiercely competitive Digital TV market consumers have myriad choices of Set Top Boxes(STB) including Standard Definition STB, High Definition STB and High Definition DVR STB. Customers already have variety of ways to buy these STBs on outright sale and Hire- purchase schemes. Customers clearly understand that they have choices to purchase STBs on outright sale or Hire and Purchase and make the selection which is best for them.
4. As the DTH market is fiercely competitive and consumer has existing choice to get STB on outright sale or Hire and Purchase, we see no reasonable basis for TRAI's intervention at this stage to regulate STB prices.
5. **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

- 5.1. We note 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. The Section 11(2) of the TRAI Act, 1997 is 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;”*

- 5.2. It may be noted from the above provision of the TRAI Act that the Authority can regulate of rates at which the **telecommunication services** can be provided. However, Set Top Box and Dish Antenna which together form customer premises equipment is a good or equipment and not a Telecom Service. Regulating tariffs for CPEs for DTH service is similar to the regulating tariffs for Handsets or Wi-Fi Routers for Telecom services. Thus we understand regulating tariffs for CPE is outside the domain of section 11 (2), of the TRAI Act, 1997.
- 5.3. Set Top Box 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 good and not a telecom service and thus its tariff cannot be regulated under section 11(2) of the TRAI Act.**

2. Incorrect Assumptions regarding life span of CPE

- 5.4. The TRAI has considered the life span of 5 years for CPE which is not consistent with the depreciation rate allowed under the Companies Act, 1957 and Income Tax Act, 1961. As per these Companies and Income Tax Acts any asset whose actual cost does not exceed Rs 5,000 shall be provided depreciation @ 100%. Thus the assets like CPEs are written off within a 1 year. The relevant provision of the schedule XIV of the Companies Act, 1957 is reproduced below for reference:

“.8. Notwithstanding anything mentioned in this Schedule, depreciation on assets, whose actual cost does not exceed Rs. 5,000 shall be provided depreciation @ 100%.”

- 5.5. The Authority has assumed the life span for CPE of 5 years against 1 year allowed under the Companies Act, 1957 and Income Tax Act, 1961. In case TRAI's scheme is to be implemented, the DTH service providers would have to retain these assets in their Books of Accounts for atleast 5 years which is against the statutory provision to depreciate r STBs within a year. Thus, any Hire and Purchase scheme for CPEs for DTH broadcasting services should not exceed 1 year.
- 5.6. In addition to the life span of CPE, assumption with regard to cost of CPE is also incorrect. The Authority has assumed a cost of Rs 2,250 for CPE which

includes set top box, dish antenna, LNB, cable and connectors, viewing card and remote control. The actual cost of all these items exceeds the assumed cost.

5.7. Although DTH operators incur cost towards installation of CPEs and its activation but that cost has not been allowed to be charged as the Authority has put restriction on activation and insulation charges.

5.8. Without prejudice to our contention of powers of the TRAI to regulate CPEs, **we suggest that the TRAI should revisit the tariffs by taking actual cost and maximum one year life span of CPEs.**

3. Security Deposit is Insufficient to Hedge Risk to Provide CPE on Hire and Purchase

5.9. The TRAI has proposed a security deposit of only Rs 500 and Rs 1000 under various tariff options. The proposed amount towards security deposit is not sufficient in any of the option to protect DTH operator against the risk of loss, damage, theft of the CPE at the customer rent. Thus, **the security deposit should be sufficient to fully securitize DTH operator against the risk in providing CPEs on Hire and Purchase basis.**

4. Early termination charges of the contract

5.10. The Authority has not taken into account that "used" Set Top Boxes do not have any acceptance in the market. The used STBs would have to be refurbished so as to be able to resell in the market. Refurbishing of STBs involve huge cost. In addition there is cost for reverse logistics of CPEs from the customer to the distributor and to the DTH operator and finally to the refurbishing centre. All these activities involve huge cost and therefore there is legitimate expectation and right to charge consumer for early termination of contract. This practice of early termination fee is acceptable across the globe especially when consumers enter into a long term contract for any Hire and purchase scheme.

5.11. In view of the above we request the **TRAI to allow early termination charges.**

Conclusion

In view of the above we suggest that:

- Tariffs for CPEs should not be regulated as these are equipment 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.
- Without prejudice to our views on TRAI's powers to regulate tariffs for CPEs, we have following suggestions on TRAI's proposed tariff schemes:
 - CPE is depreciated within 1 year and any Hire Purchase Scheme should be for a maximum for a period of 1 year;
 - TRAI has under estimated the cost of CPEs. The Authority should consider correct costs to regulate tariffs.
 - Security Deposit is not sufficient to securitise against risk of loss/theft/damage of CPE, thus security deposit should be increased.
 - Activation and Installation charges for CPEs should be allowed to be charged;
 - Early Termination Fee should be allowed to be charged.