Response by Dish TV India Limited to the Draft Tariff Order Prescribing Standard Tariff Package (STP) for Set Top Box's for Digital Addressable Cable TV Systems (DAS) and Consumer Premises Equipment (CPEs) for Direct to Home (DTH) services.

Submitted by

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At the outset, we would like to state that the current draft Regulation for which the Consultation process has initiated by the TRAI is detrimental to the entire DTH industry.

Prior to the advent of DTH, the only source of distribution of TV Channels was through cable. To have an alternative to Cable and provide better services to the consumers, the Government of India came rolled out the DTH License in the Year 2003 subsequent to which, 6 DTH License has been issued till date. While laying down the DTH licensing conditions, the Government of India paid attention to details and ensured that only serious contenders applied for the DTH License by stipulating a Bank Guarantee of Rs. 40 Crore to be paid by the DTH operator in addition to the Entry Fee of Rs. 10 Crore and a License Fee of 10% on the Gross revenue. Due to such high entry cost, only reputed Corporate houses entered into the DTH venture.

It is also a well known fact that apart from the high entry cost of almost Rs. 50 Crores, a DTH operator has to shell out 10% of its total revenue to the Government of India as the License Fee and almost 35% - 40% to other arms of the Government of India in the form of various taxes. Additionally, each DTH operator had to put in place state of art uplinking center, hire a large number of man power, put in place call centers to provide services to its customer. Further, due to intense competition, each DTH operator has been forced to give huge amount of subsidy to the subscribers. Till date, the DTH operators have already invested an amount of around 4.5 Billion Dollars to acquire a consolidated subscriber based of around 32 Million subscribers. Under such situation and due to the steep taxation regime governing the DTH sector, no DTH operator has been able to make profits despite in last 10 years despite having a consolidated registered subscriber base of more then 45 Million subscribers. This situation is going to continue for more time.

DTH is a highly capital intensive business however funding from banks remains constrained except in cases where guarantees are provided by Shareholders or the Promoters companies. The total bank loan extended to the DTH sector is around USD 1.4bn. In the absence of bank funding, respective parent company Balance Sheets are stretched due to consistent loss funding of DTH business. Upfront investment in STBs recoverable from the subscriber over a period of 5 years proposed in the draft Tariff Order, if implemented, will create an acute shortage of working capital for the already stretched DTH sector and the entire DTH business will be totally unviable. No DTH operator would be able to operate with such stringent and commercially non feasible stipulations.

Further, in a cluttered and unorganized environment, DTH continues to provide superior service with 100% addressability. However, due to being heavily taxed by the Central and State governments the net margin for each player remains negative.

With respect to the draft Regulation, it is stated that the TRAI, in its draft tariff order, has made unverified and hypothetical assumptions on its own regarding various aspects of the costing and recovery model for STB's, implementation of which will have a severe impact on any DTH company's ability to survive and operate as a financially viable entity if the aforementioned tariff regulations were to come into being.

In this regard, specific attention is drawn on the following:

1) The provision of the CPE by the DTH operators is not a Licensed activity hence the TRAI cannot fix the price of the CPE provided by the DTH operators. Under the scheme of the applicable regulations, TRAI has the power to regulate the services being provided by the DTH operators which include provision of the channels and related service. The provision of CPE is an ancillary to the DTH service hence Regulation regulating the price of CPE cannot be imposed. Under the DTH License issued to the DTH operators, there is no stipulation to compulsorily provide the CPE to the subscribers by

DTH operators only. The CPE can be provided by any entity, whether a License holder or not. Under a circumstance where the CPE is provided by an entity which is not a Licensee, the current regulations proposed by the TRAI will not be applicable. Further, it is also important to state that the TRAI is also a Regulator for the mobile industry which is older and bigger than the DTH industry however till date the TRAI has not come out with any Regulation regulating the price of the mobile hand sets and / or any other telecom equipment being made available to the subscribers.

2) The proposal to lay down the current Regulations so proposed by the TRAI clearly amounts to breach of Article 19(1) g of the Constitution of India. The proposed Regulations intends to restrict the freedom to conduct the business by DTH operators. Taken together, the measures proposed by TRAI will impose a crippling burden on the DTH companies finances and as such will render them incapable of carrying on their lawful business. Such actions are tantamount to denying the DTH industry the right to carry on a lawful business and profession and fly in the face of the fundamental right to business and profession enshrined under article 19(1)g of the Constitution of India.

3) In this regard, it is also important to state the TRAI cannot obligate the DTH operators to give subsidy when the DTH operators are not getting any subsidy from the Government of India. As stated above, since provision of CPE not being a Licensed activities, the TRAI does not have the authority to lay down the prices of the CPE and any such a stipulation will be contrary to law.

Notwithstanding the contention of Dish TV that the proposed Regulation is bad in law and ultra vires, the response of Dish TV indicating the non feasibility of the Regulations is being given hereunder:

4) Ad hoc assumptions have been made by the TRAI as to the price of the STB's, which are far less than the actual costs of STB's. Further, the draft Regulation does not take into account the wide variation of costs of STB's deployed by the DTH operators. These prices vary, depending on the technology used and are also dependent on extraneous factors such as exchange rate of the rupee etc.

In the explanatory memorandum to the Draft Tariff order the Authority has assumed as under

> ***8. The Standard Tariff Package has been worked out on the basis of the following facts and figures as provided by Industry stakeholders/ Associations;***
>
> ***a) The total cost of CPE has been taken as Rs. 2250/-.***
>
> ***b) Life span of CPE has been taken as 5 years.***
>
> ***c) The residual value has been taken as nil.***
>
> ***d) Rental per month is based on cost of CPE on Equated Monthly Installment (EMI) Basis @15% per annum (@1.25% per month) for a period of 60 months***

The premises of the calculation has been taken as the mere cost of the Set Top Box and Antenna which also is an incorrect basis of calculation as the major constituent of the CPE are imported and are subject to heavy foreign exchange fluctuations.

The cost of the STB today as per the customs department is in the range of INR 2000-2500 for a plain vanilla box and they are asking the DTH service providers to pay the Additional Duty (CVD) based on this Retail Sales price, then the question comes how come the Authority has taken the total cost of the CPE as INR 2250.

The cost of the Antenna, Cable, LNBF, viewing card and the connectors has been totally ignored in the draft Regulations. In the definition of the CPE, the authority has only considered the costs of the STB and Antenna and no other element of the CPE. Further, even the assumption as to the cost of the STB and Antenna is without any basis and incorrect.

The tax elements like licensee fee (as it is still on gross revenue of the DTH service provider), Service Tax as the rental comes under the ambit of Service Tax and VAT in most of the states constitute another 35% of the element which has not been accounted for.

The incidence of the installation cost which is high as INR 300 per case has not been taken into account.

The Authority has not considered the fact that recovery of the boxes from the customer premises is impossible as there is no right of way available to the operator but he is at the mercy of the customer to continue the service and in case subscriber chooses not to renew the connection he can easily stop paying the rental and the whole asset will be treated as lost.

To enable the reach to the subscriber the DTH operator to appoint CFA, Distributors and dealers thus they have to be compensated which also has not been considered in the assumptions made in the draft Regulations. The TRAI has also not considered the cost of financing for these STB which itself is more then 12% today for the operator.

Thus the whole premises of the calculations and the options provided are not based on the complete calculations but taking bits and pieces as per the convenience to arrive at a predetermined figure.

The following table presents the impact on the DTH industry on imposition of the proposed Regulation:

Draft standard tariffs for CPEs - DTH				
	Option 1	**Option 2**	**Option 3**	**Option 4**
Rent pm per STB	47.28	41.03	41.63	29.74
Applicable	5 years	5 years	5 years	5 years
Security deposit	500	1000	500	1000
Refundable	Yes	Yes	Partial	Partial
Security deduction	None	None	Table-A	Table-B
Installation charge	None	None	None	None
Activation charge	None	None	None	None
Smart card charge	None	None	None	None
Repair charge	**None**	**None**	**None**	**None**
Total Rent (5 years)	2837	2462	2498	1784
Service tax @ 12.36%	351	304	309	221
License fees @ 10%	249	216	219	156
Rent (Net of tax)	**2238**	**1942**	**1970**	**1407**
Security Deposit	**0**	**0**	500	1000
VAT @ 12.5%	**0**	**0**	62.5	125
Security Deposit (Net of tax)	**0**	**0**	**438**	**875**
Total Recovery (A+B)	2238	1942	2408	2282
Less: Selling commission	350	350	350	350
Less: Cost of Capital	387	246	441	342
Total Recovery	**1501**	**1346**	**1617**	**1591**
CPE price	**2450**	**2450**	**2450**	**2450**

Note: The above is made assuming the subscriber continues for a period of 5 years. The above table clearly indicates that despite the consumer continuing for a period of 5 years, a DTH operator will incur a loss of around Rs. 1500 per subscriber.

5) It is evident from the above table that in case the DTH industry acquires around 40 Million subscribers (as per Media Partner Asia Hong Kong, FICCI KPMG Reports, DTH industry will acquire around 40 Million subscribers in next 5 years), due to the Regulation being proposed by the TRAI, the DTH

operators will incur a loss of atleast Rs. 6000 Crores. This does not consider the loss / expense to be borne by the DTH operators arising out of movement of the subscribers from DTH to cable and / or any other alternate distribution technology. We are also attaching herewith a Study done by ICICI Securities at 'Annexure A' which clearly shows that the Draft Regulation is totally against the entire DTH Industry.

6) The present draft Regulations under consultation imposes an obligation on the DTH Operators to bear the entire risk of default by the subscribers as well as carry the financial cost of recovery. In the proposed model, a security deposit of Rs 500 to Rs 1000 is proposed. Even for hypothetical arguments sake if the TRAI version of STB's costs were assumed, the authority is forcing the DTH companies to bear a subsidy burden of Rs 1250 to Rs 1750 upfront. Where will the financing of such subsidy come from? And who will bear the financial and interest cost of such subsidy. Adding such a heavy burden on the loss making DTH industry will further force the industry deeper into the red and make it financially unviable thereby denying the industry its legitimate right to operate as a viable business entity. It is a common knowledge that the DTH industry has been incurring a huge loss on account of the subsidy being given on the CPE to the consumers and if we take into account the taxes, levies and the distribution margin being paid to the field it is hardly any amount which comes to the DTH operators which is on account of the CPE. The subsidy being given by the DTH operators is arising out of the intense competition in the market which is in the interest of the consumers as the consumers has the option of choice and the best deals from the operators.

7) There is no protection to the Industry in the event the customer defaults before paying of all the instalments. Who will stand guarantee that the customer will pay the instalments? In the event the customer ceases to pay then the DTH operator loses money equivalent to the unpaid instalments, the

box and other items of CPE which is recovered, if at all, has only scrap value as no customer will accept a second hand box for the service .

8) By stating therefore that the objective of this tariff order is “commercial interoperability” given the abovementioned points, it would seem that TRAI seeks to actively encourage customers to switch services without paying the full cost of the box and thereby inflict heavy losses on the DTH companies.

9) In addition to the above, the requirement to provide the repair and service free of cost is totally unacceptable. Dish TV is no position to accept that repairs and service and installation can be undertaken free of cost. All these services cost the company money and it is an ill advised and an ill thought out suggestion that seeks to force DTH companies to make these available free of cost to the customers.

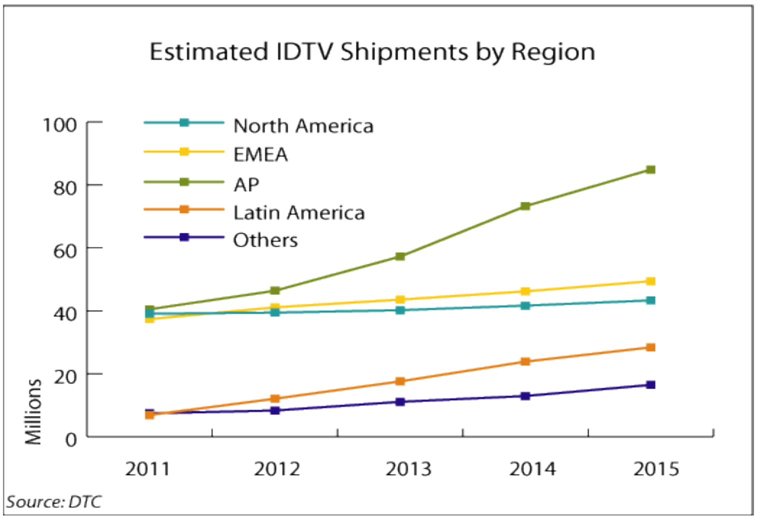
10) Dish TV will like to bring to the attention of the TRAI that in the consultation paper “**Issue related to the DTH” dated 02 March 2007** had mentioned (reproduced below) that there exists a provision for the DTH subscriber to exit from one service provider from which he is not satisfied.

> ***4.1 The DTH service is not location specific, meaning thereby that the DTH service provider is in a position to offer services to a migrant without any extra cost. The technical requirement of the use of a Set Top Box for availing DTH services throws up issues of exit option for subscribers and interoperability of Set Top Boxes. The exit option becomes important to protect the interests of the subscribers to give them the choice to select the service provider of their choice. Thus the subscribers should have an option to leave their service provider if they are not satisfied with the services or for any other reason. Moreover, the cost associated with the exit option should not be so high as to render the choice illusory. The choice can be provided to the subscribers by insisting on interoperability. Interoperability can be of two types, i.e. Technical Interoperability or Commercial Interoperability***

In furtherance to the same, the TRAI, in **THE DIRECT TO HOME BROADCASTING SERVICES (STANDARDS OF QUALITY OF SERVICE AND REDRESSAL OF GRIEVANCES) REGULATIONS, 2007** dated 31.08.2007 has imposed an obligation on the DTH operators to allow refund to the subscribers after reasonable adjustments**.** The existence of such a provision allows a subscriber to move from one DTH operator in case he is not satisfied with the services, giving a customer commercial interoperability. It is stated that once the TRAI has allowed commercial interoperability to the subscribers, there is no need to stipulate the price of the Set Top Box by the TRAI.

11) Dish TV will also like to bring out here very strongly that this all could have been avoided if the interoperability as mandated in the Licensing conditions and the BIS specs would have been enforced by the Licensor and the Regulators. The Licensor and Regulator by not adhering and monitoring the licensing conditions have allowed deliberately a scenario where in the interoperability was defied and today it is being accused on the industry that it is not possible to implement the same where as if we see the other markets the interoperability is growing as IDTV is becoming a norm of the day.

It is a matter of fact that in Europe the IDTV sales have been on rise for past few years as evident from the figure placed below, this would have given the consumer to change the service provider at his will, would have enabled a consumer choice at a very nominal price, the CPE subsidy for the operators would have been limited.



The role of the regulator comes in to effect on the pricing in case of a market failure and in the provisions of the DTH services for the last one decade where in Dish TV started its services in 2003, there has been no case of market failure, The competition among the six DTH players, Digital Cable, Analogue Cable and IPTV has ensured that consumers get the best of the schemes with the CPE kits.

To specify the schemes and pricing is tantamount to take away the freedom from the operator to operate in the market and be dictated to provide the services at a specific price which is sustainable only when there is subsidy from the Government in those cases.

The Authority in calculations seems to have missed the element of the heavy taxation and the levies on the DTH services and the options proposed have not taken into account any one of the taxes and levies. It is a matter of fact that DTH is the most taxed service today with Tax element constituting approx. 35% of its revenue from services

The rental as being proposed are also open to the taxes of around 35% with License fee, Service Tax and VAT applicable on these cases thus the whole scheme is bound to be unviable

The cost of servicing the customer is expensive, DTH unlike cable has subscriber in far flung areas and to provide free maintenance and no replacement cost is not commercially and practically feasible and the same has also not been even considered in the costings. The delinquent boxes today form a considerable investment by the operator and this sort of the scheme will encourage churn as consumer can go an take a box of alternate service provider once he decides to get out of the relationship which a particular service provider

Today from the ARPU of INR 150 per sub around 33% goes in the Taxes and License fee, 40% of the balance goes as the content cost and balance 27% is left out for the operator to meets its financial costs, operative costs, transponders, marketing , personnel , admin and other allied costs which are a substantial cost.

In view of the above, it is most respectfully submitted that the DTH Subscriber, with a choice of six DTH players, have full freedom to choose the service provider of its choice unlike cable where he is tied to a particular service provider in the locality. It is also a common knowledge that due to intense competition, all the DTH operators are providing subsidy to the subscribers and because of which a subscriber is in a position to get the best deal from the DTH players. Since the market forces are fully operational and the Consumers are able to get the best prices of the CPE from the DTH operators, Dish TV India Limited opines that there is no need for the said Regulation which is under Consultation.

Dish TV will request that this Draft Tariff Order Prescribing Standard Tariff Package (STP) for Set Top Box's for Digital Addressable Cable TV Systems (DAS) and Consumer Premises Equipment (CPEs) for Direct to Home (DTH) services may please withdrawn.

Equity Research
April 12, 2013
BSE Sensex: 18542

INDIA

Media

Commercial interoperability – A potential blow to the industry

Reason for report: Sector update

The Telecom Regulatory Authority of India (TRAI) has come out with draft tariff orders recommending rental based offer for Direct-To-Home (DTH) and Multi System Operators (MSOs) in order to offer a cheaper and flexible option to subscribers. We believe these tariff orders can potentially break the back of DTH companies which are already reeling under high churn, as it give immense flexibility to subscribers to switch over to other operator at no cost and commercial interoperability is a bigger risk than interoperability altogether. While we do not expect these draft orders to get implemented, we nevertheless believe such orders increase regulatory concerns over the sector. We recommend caution and advise investors to keep a close watch on further developments on this front.

Key recommendations of draft orders

- All MSOs and DTH operators shall compulsorily offer STBs on rent
- Service providers cannot charge any installation or activation charges
- Repair and maintenance charge for the first 5 years to be borne by service provider
- Consumers are free to exit any time within 5 years at no additional cost

Impact on DTH industry - Negative

- Used STB cannot be redeployed easily, as was evident in the case of Dish TV's "Swap Box" offer in which old or faulty STBs were being replaced with used STBs for Rs175 per STB.
- Our interaction with management of DTH operators indicates that these orders are highly negative for the sector and reckon that there is low likelihood of these orders getting implemented.

Impact on MSOs – Bad but better than DTH

- Impact on MSOs will be lower, as they are already offering similar schemes to end customers.
- As per draft orders, cost of STB for MSOs is assumed to be Rs1,750, however, as per our channel checks, cost of STB for digital cable is Rs1,300-Rs1,400, while that for DTH companies is around Rs2,150.

I-Sec view - Negative for the sector; increase in churn and stretch payback

- DTH operators could refrain from offering normal SD STBs and, instead offer STBs with additional features like recording, as such STBs do not fall under the purview of the draft tariff orders.
- We believe TRAI's move towards commercial interoperability of STBs in Indian market is premature given that boxes are not operator agnostic. Further, in case of mobile number portability there is a provision of minimum 90 days of lock-in period before porting out to another service provider.
- In our view, Indian DTH industry is highly competitive, offering superior services at affordable prices and TRAI's consumer-friendly move will further impact DTH industry which is already burdened with a high debt of Rs75bn and accumulated losses of around Rs90n.

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Key highlights of draft tariff orders

- All MSOs and DTH companies shall compulsorily offer STBs on rent to its subscribers
- MSOs or DTH operators will charge rent on a monthly basis and take security deposit
- Security deposit will be refunded at the end of the fifth year.
- Consumer is free to exit any time within five years and, will receive entire security deposit from service provider provided STB is not tampered with.
- No installation or activation charges from consumer.
- No monthly rental will be payable after five years and, the STB will become the property of the subscriber.
- Consumers will not bear any repair or maintenance cost till the fifth year.
- In addition to offering STB as per TRAI's order, the operators are free to offer their own schemes.
- Standard tariff package will be applicable only to basic or vanilla STBs (non-HD non-recording STBs)
- Service providers shall report to TRAI tariff packages, including all the terms and conditions associated with the supply of STBs to subscribers.

Table 1: Standard tariff package for MSOs

(Rs)

	Option 1	Option 2	Option 3	Option 4
Monthly rental	36.6	31.6	32.1	22.6
Security deposit	400	800	400	800
Monthly deduction from security deposit	Nil	Nil	Yes	Yes
Installation charges	Nil	Nil	Nil	Nil
Activation charges	Nil	Nil	Nil	Nil
Smart card / viewing card charges	Nil	Nil	Nil	Nil
Repair and maintenance cost	Nil	Nil	Nil	Nil

Source: TRAI

Assumptions for MSOs

- The total cost of STB has been taken as Rs1,750
- Life span of STB has been taken as five years
- The residual value has been taken as nil
- Rental per month is based on the cost of STB on EMI (Equated Monthly Installment) basis at a rate of 15% per annum (at 1.25% per month) for a period of 60 months

Table 2: Standard tariff package for DTH operators

(Rs)

	Option 1	Option 2	Option 3	Option 4
Monthly rental	47.3	41.0	41.6	29.7
Security deposit	500	1000	500	1000
Monthly deduction from security deposit	No	No	Yes	Yes
Installation charges	Nil	Nil	Nil	Nil
Activation charges	Nil	Nil	Nil	Nil
Smart card / viewing card charges	Nil	Nil	Nil	Nil
Repair and maintenance cost	Nil	Nil	Nil	Nil

Source: TRAI

Assumptions for DTH operators

- The total cost of STB has been taken as Rs2,250
- Life span of STB has been taken as five years
- The residual value has been taken as nil
- Rental per month is based on the cost of STB on EMI basis at the rate of 15% per annum (at the rate of 1.25% per month) for a period of 60 months.

Chart 1: Dish TV offering used STB at Rs175/-

Source: Media; I-Sec research