Telecom Regulatory Authority of India A-2/14,
Safdarjung Enclave,
New Delhi 110029

NOTIFICATION

File NO: 8-26/2004-B&CS Dated: 10th December, 2004

In exercise of the powers conferred upon it under section 36, and paras (ii), (iii) and (iv) of clause (b) of sub-section (1) of section 11 of the Telecommunication Authority of India Act, 1997 read with the Notification No.39 (S.O No. 44 (E) and 45 (E))dated 09.01.2004 issued from file No.13-1/2004-Restg by the Government of India under clause (d) of sub-section (1) of Section 11 and proviso to clause (k) of sub section (1) of the Section 2 of the Telecom Regulatory Authority of India Act, 1997, the Telecom Regulatory Authority of India makes the following Regulation, namely:

1. Short title, extent and commencement:

(i) This regulation shall be called "The Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004" (13 of 2004) (The Regulation).

(ii) This regulation shall cover arrangements among service providers for interconnection and revenue share, for all Telecommunication (Broadcasting and Cable) Services throughout the territory of India.

(iii) This regulation shall come into force with effect from the date

Definitions:

2.

In this regulation, unless the context otherwise requires:

(a) **'addressable system"** means an electronic device or more than one electronic device put in an integrated system through which signals of cable television network can be sent in encrypted or unencrypted form, which can be decoded by the device or devices at the premises of the subscriber within limits of the authorization made, on the choice and request of such

subscriber, by the distributor of TV channels to the subscriber;

(b) "**agent or intermediary**" means any person including an individual, group of

(c) persons, public or body corporate, firm or any organization or body authorised by a broadcaster/multi system operator to make available TV channel(s), to a distributor of TV channels;

"authority" means the Telecom Regulatory Authority of India established under sub-section (1) of section 3 of the Telecom

Regulatory Authority of India Act;

(d) **"authorized officer"** has the same meaning as given in the sub-section (a) of
(e) the Section 2 of the Cable Television Networks (Regulation) Act, 1995, as amended;
(f)
(g) **"broadcaster"** means any person including an individual, group of persons, public or body corporate, firm or any organization or body who/which is providing broadcasting service and includes his/her authorised distribution agencies;

"broadcasting services" means the dissemination of any form of communication like signs, signals, writing, pictures, images and sounds of all kinds by transmission of electro magnetic waves through space or through cables intended to be received by the general public either directly or indirectly and all its grammatical variations and cognate expressions shall be construed accordingly;

"**cable operator**" means any person who provides cable service through a cable television network or otherwise controls or is

responsible for the management and operation of a cable television network;

(h) "**cable service**" means the transmission by cables
(i) programmes including re-transmission by cables of any broadcast television signals;
(j) "**cable television network**" means any system consisting of a set of closed transmission path signal generation, control and distribution equipment designed to provide cable service for rece subscribers;

"**distributor of TV channels**" means any person including an individual, group of persons corporate, firm or any organization or body re-transmitting TV channels through electromagnet cable or through space intended to be received by general public directly or indirectly. The pers but is not limited to a cable operator, direct to home operator, multi system operator, head ends in

(k) "**direct to home operator**" means an operator licensed
(l) government to distribute multi channel TV programmes in KU satellite system directly to subscriber's premises without intermediary such as cable operator or any other distributor of

"**head ends in the sky operator**" means any person permitted

by the central government to distribute multi channels TV programmes in C band by using a satellite system to the intermediaries like cable operators and not directly to subscribers;

(m) "**multi system operator**" means any person who receives a broadcasting service from a broadcaster and/or their authorized agencies and re-transmits the same to consumers and/or

re- transmits the same to one or more cable operators and includes his/her authorised distribution agencies.

(n) **"service provider"** means the Government as a service provider and includes a licensee as well as any broadcaster, multi system operator, cable operator or distributor of TV channels.

3. General Provisions relating to Non-Discrimination in Interconnect Agreements

3.1 No broadcaster of TV channels shall engage in any practice or activity or enter into any understanding or arrangement, including exclusive contracts with any distributor of TV channels that prevents any other distributor of TV channels from obtaining such TV channels for distribution.

3.2 Every broadcaster shall provide on request signals of its TV channels on non-discriminatory terms to all distributors of TV channels, which may include, but be not limited to a cable operator, direct to home operator, multi system operator, head ends in the sky operator; Multi system operators shall also on request re-transmit signals received from a broadcaster, on a non-discriminatory basis to cable operators.

Provided that this provision shall not apply in the case of a distributor of TV channels having defaulted in payment.

Provided further that any imposition of terms which are unreasonable shall be deemed to constitute a denial of request

3.3 A broadcaster or his/her authorised distribution agency would be free to provide signals of TV channels either directly or through a

particular designated agent or any other intermediary. A broadcaster shall not be held to be in violation of clauses 3.1 and 3.2 if it is ensured that the signals are provided through a particular designated agent or any other intermediary and not directly. Similarly a multi system operator shall not be held to be in violation of clause 3.1.and 3.2 if it is ensured that signals are provided through a particular designated agent or any other intermediary and not directly.

Provided that where the signals are provided through an agent or intermediary the broadcaster/multi system operator should ensure that the agent/intermediary acts in a manner that is (a) consistent with the obligations placed under this regulation and (b) not prejudicial to competition.

3.4 Any agent or any other intermediary of a broadcaster/multi system operator must respond to the request for providing signals of TV channel(s)in a reasonable time period but not exceeding thirty days of the request. If the request is denied, the applicant shall be free to approach the broadcaster/multi system operator to obtain signals directly for such channel(s).

3.5 The volume related scheme to establish price differentials based on number of subscribers shall not amount to discrimination if there is a standard scheme equally applicable to all similarly based distributors of TV channel(s).

(*Explanation: "Similarly based distributor of TV channels" means distributors of TV channels operating under similar conditions. The analysis of whether distributors of TV channels are similarly based includes consideration of, but is not limited to, such factors as*

whether distributors of TV channels operate within a geographical region and neighbourhood, have roughly the same number of subscribers, purchase a similar service, use the same distribution technology. ")

3.6 Any person aggrieved of discrimination shall report to the concerned broadcaster or multi system operator, as the case may be. If the broadcaster or multi system operator does not respond in a satisfactory manner in a reasonable time period, but not exceeding thirty days, the aggrieved party can approach the appropriate forum.

3.7 The provisions of clauses 3.1 to 3.6 shall apply to the contracts already entered into, after 90 days from the date of this regulation coming into force.

4. Disconnection of TV channel signals

4.1 No broadcaster or multi system operator shall disconnect the TV channel signals to a distributor of TV channels without giving one month notice indicating the brief reasons for the proposed action:

Provided that in case a distributor of TV channel is re-transmitting signals for which he/she is not authorized and thereby affecting the commercial interest of the concerned broadcaster or multi system operator, the notice period shall be two working days giving reasons to the concerned distributor of TV channel for such action.

Explanation

A distributor of TV channels is said to be authorised if there exists any agreement between the broadcaster, including his/her agents permitting the distribution of the broadcasting service by the said distributor of TV channels, either through a written agreement or through an oral agreement. Consequently nonotice would be required if there is no agreement, written or oral, permitting the distribution of the broadcasting service.

4.2 Broadcaster/multi system operator shall inform the consumers about the dispute to enable them to protect their interests. Accordingly, the notice to discontinue signal shall also be given in two local newspapers in case the distributor of TV channels is operating in local area and in two national papers in case the distributor of TV channels is providing services in a wide area. Alternatively consumers can be informed through scroll on the concerned channel(s). Where a Broadcaster or a Multi System Operator decides to give this notice through a scroll the Multi System Operator or the Cable Operator, as the case may be, must carry the scroll in the concerned channel(s).

5.Explanatory Memorandum

5.1 Annex A to this order contains an Explanatory Memorandum for the issue of this regulation.

(Rakesh Kacker)
Advisor (B&CS)

Annex A

Explanatory Memorandum

1. The distribution of cable TV in India is characterized by a few dominant broadcasters and large multi system operators (MSOs). Some of these players have become even stronger as vertical integration has taken place. Last mile operations on the other hand are highly

fragmented and therefore there are large disparities in the bargaining power of various players of the distribution chain.

2. The vertical integration may improve efficiency as it reduces the transaction between upstream and downstream operations but at the same time vertically integrated companies may be able to use the vertical integration in certain circumstances to reduce competition.

The anti-competitive behaviour could take the following forms:

(i) Vertical Price Squeeze may happen when a vertically integrated broadcaster increases the price of a TV channel for competing operators but maintains the same price for operator affiliates. The effect would be to reduce or squeeze the margins.

(ii) Exclusivity of the Content could be another form whereby popular TV channels can be denied to a competitor so as to promote the broadcaster's own distribution network.

(iii) Denial of carriage by a vertically integrated cable system of TV channel of the rival company.

Non Discriminatory Access

3. In India, competition for delivery of TV channels is not only to be promoted within the Cable Industry but also from distributors of TV channels using other mediums like Direct To Home (DTH), Head Ends in the Sky etc. It is important that all these distribution platforms are promoted so that they provide consumers with choice. It would be very important that at this stage vertical integration does not impede competition. Vertically integrated broadcaster and distribution network operators would, in the absence of strong regulation, have the tendency to deny popular content to competing networks or to discriminate against them.

4 One method of checking these practices is to stop at the source any chance of anti-competitive behaviour by ruling that vertical integration will not be allowed. This route could, however, impede investments and in the long run adversely affect competition. The only DTH platform today has a degree of vertical integration. There is another pay DTH platform which is awaiting approval from the government that also has a degree of vertical integration. DTH is the

platform most likely to provide effective competition to cable operators. Restriction of vertical integration could therefore lead to a situation where the DTH rollout could be affected and hence competition. It is for this reason that the alternative route has been looked at; controlling anti-competitive behaviour wherever it manifests itself. These issues are dealt with in the following paragraphs.

5 Generally TV channels are provided to all carriers and platforms to increase viewership for the purpose of earning maximum subscription fee as well as advertisement revenue. However, according to some opinions, if all platforms carry the same content it will reduce competition and there will be no incentive to improve the content. Some degree of exclusivity is required to differentiate one platform from the other.

6 Exclusivity had not been a feature of India's fragmented cable television market. However the rollout of DTH platform has brought the question of exclusivity and whether it is anti competitive to the forefront. Star India Ltd and SET Discovery Ltd do not have commercial agreements to share their contents with ASC Enterprises on its DTH platform and

at present are exclusively available on the Cable TV platform. ASC Enterprises claims that the future growth will remain impacted by the denial of these popular contents. Space TV a joint venture of Tatas and Star, is also planning to launch its digital DTH platform. It has applied for license to the government for the same. The DTH services have to compete with Cable TV. If a popular content is available on Cable TV and not on the DTH platform, then it would not be able to effectively give competition to the cable networks.

7 The issue has to be seen primarily from the consumer's perspective. If all channels are not available on one DTH platform then the consumer may have to install more than one dish to view his favourite channels. If the content is not available on all platforms then they would not be treated as the same and would be presented as different products having different content. If content, especially popular content, is exclusively available on one DTH platform then there may not be effective competition. The consumers would also have limited choice as subscribing to one particular DTH platform may not ensure the availability of content of his/her choice.

8. The DTH platform would have to be seen as a carrier of TV channels and its vertical integration with the broadcaster cannot be the reason for content denial to the other distributors. The DTH platforms would have to compete on the strength of the quality of service, tariffs and packaging of the TV channels and not on the content.

9. DTH is quite clearly the most effective competitor for Cable TV today. It would be illogical for a consumer to establish two

arrangements to view the differing content of two platforms when he has access to the entire content through cable. Moreover if a popular content is available on the cable network and is not available on the DTH platform, it would never be able to give an effective alternative to the cable services. Competition between cable and DTH will be enhanced if all the content is available on both platforms. Similarly the cable industry should not be denied content that is available on DTH. Therefore in the interest of consumers it is essential that all channels are available on all platforms on a non-discriminatory basis. This would promote competition amongst different platforms and thus would be beneficial for the consumers.

10. The Authority has also looked at international experience in this regard. In India, the problem is that broadcasters may not provide content to rival platforms and this could adversely affect competition in terms of price and quality of service. It is therefore necessary that there should be regulations in place that can be invoked if content is denied in a manner that stifles competition. Thus a general ban on exclusivity at this stage has been envisaged.

<u>'Must Provide' through whom</u>

11. There is high cost involved in the distribution of TV channels if the market is fragmented. To reduce the distribution costs broadcasters/ multi system operators should be free to provide access in the manner they think is beneficial for them. The 'must provide' of signals should be seen in the context that each operator shall have the right to obtain the signals on a non-discriminatory basis but how these are provided - directly or through the designated agent/distributor- is a decision to be taken by the broadcasters/multi system operator. Thus the Broadcaster/multi system operator would have to ensure that the signals are provided either directly or through a particular designated agent/distributor or any other intermediary.

12. In order to expedite the interconnection process the Authority has further provided that in case an agent does not respond to the request for providing signals within one month of the request, then the applicant would be free to approach broadcaster to obtain signals directly.

Quality of TV Channel Signals

13. Some cable operators had apprehended that in case TV channel signals are provided through cable and not directly then the quality of transmission could deteriorate and accordingly it was suggested that agents must provide services through IRDs. The Authority through this regulation has framed the principle of non-discriminatory access, which also includes non-discriminatory access in terms of quality of

signals. Operators can seek relief if it is found that the quality of their signals is being tampered with.

Safeguards for Broadcasters

14. In this context it must be recognized that certain basic criteria must be fulfilled before a service provider can invoke this clause. Thus the service provider should be one who does not have any past dues. Similarly provisions for protection against piracy must be provided. However, the content provider must establish clearly that there are reasonable basis for the denial of TV channel signals on the grounds of piracy.

Volume Discounting Schemes

15. An important aim of non discriminatory conditions is to ensure that a vertically integrated supplier does not treat itself in a way that benefits itself, its subsidiaries or its partners and has material effect on competition. The broadcaster/multi system operator must offer the required channels on terms that are no less favourable than those on which it provides equivalent services to its own affiliated operators.

16. Broadcasters and multi system operators are also offering discounting schemes including volume or bulk discounts. Such discounts are not considered anti competitive if these are consistently available to similarly based distributors of TV channels. However such discounts will be treated as anti competitive if provided on preferential basis to one or select group of operators. The Authority has identified three factors which may not be exhaustive relating to the subscriber base, technology of the distribution of TV channels and geographical region and neighbourhood.

Discrimination in providing TV Channel signals

17. In case any distributor of TV channel feels he/she has been discriminated on terms of getting TV signals compared to a similarly based distributor of TV channel, then a complaint must be filed with the broadcaster or multi system operator, as the case may be. In case the complainant is not satisfied with the response, he/she may approach the appropriate forum for relief.

Disconnection of Signals

18. An important issue in the cable industry is the disconnection of signals to settle a dispute. Usually this means that without notice the signals by a broadcaster or multi system operator are cut off leaving consumers in the lurch. This implies that the consumer who has not defaulted nevertheless has to bear the brunt of the dispute between the operators. It is, therefore, necessary to find some solution that will

protect the consumers without compromising the ability of the broadcaster/multi system operator to settle their dispute. It has therefore been decided to impose a restriction on the broadcaster/multi system operator that they cannot cut off the signals without giving at least one month's notice. This would give some time for the affected parties to obtain relief. This notice should also be given through the newspapers so that consumers also have an opportunity to approach the necessary forum to ensure that their interests do not suffer on account of a dispute to which they have not contributed in any way.Broadcasters have suggested that this requirement of notice period should be exempted when disconnection occurs for piracy and copy right violation and violation of the non-financial terms and conditions of the interconnect agreement. In the case of unauthorized re-transmission of TV channels, it may be necessary for Broadcaster or Multi System Operator to disconnect signals of TV channels without giving one-month notice. In such cases the Authority has decided that after giving a notice for two working days, the signals may be disconnected.

Annex A

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Consultation on draft Regulation

19. The draft Regulation had been put on the website of TRAI and time was given to all stake-holders till 5th November, 2004 for comments on the draft. A number of comments have been received and these have been carefully analysed. Since the number of comments is very large, and in some cases are in the form of modifications to the draft, the gist of the comments have been briefly summarised, section by section in the Annexe to this Explanatory Memorandum and the response of TRAI for each of the comments has been set out. Wherever necessary, the draft has been modified in the light of the comments received. Some other changes have been made to make the regulation clear. Some issues have also been raised which are not relevant to the issue of these regulations – these are being separately examined

Annexe to Explanatory Memorandum on "The Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004" (13 of 2004) (The Regulation).

1. Short title, extent and commencement:

Stake-holders comments

After the words "service providers" the words "and distributors of TV channels" should be added.

TRAI's response

Service providers include distributors – a definition of service providers has been added to clarify this point. (new definition added at clause 2(n) of the Regulation)

2. Definitions

Stake-holders comments

i) Agent or intermediary should not be directly or indirectly a distributor of TV channels.

ii) Broadcaster should also include his/her agent or

iii) intermediary.

iv) Broadcasting services – it should be clarified that these refer to those services intended to be received by the general public *in India.*

v) Cable operator – the definition should include one who provides such a service either directly or indirectly.

vi) Cable service – it should be clarified that this means the transmission only with the authorization of the broadcaster.

vii) The definition of MSO should exclude with reference to consumers, since an MSO is not supposed to reach subscribers directly.

The regulation should apply only to those distributors who meet certain minimum qualifications.

viii) The definition of addressable system should be expanded to include other technologies such as DTH, Broadband and MMDS.

ix) Definition of DTH operator should clarify that there are other intermediaries like Broadband provider, MMDS provider, etc.

TRAI's response

(i) At present this is not the practice – MSOs supply signals and also provide
(ii) direct connections to subscribers. If this definition is to be amended as
(iii) proposed it would mean considerable realignment of the business – this should
(iv) therefore not be done unless this is shown to be absolutely necessary; accordingly this need not be done now. For the present therefore this is not being done and if there is enough evidence that this practice is causing problems then this would be considered later**. However to address the likely problem it is being provided in clause 3.3 that broadcasters and MSOs will have to ensure that the agent or intermediary acts in a manner**that is (a) consistent with the obligations placed under this regulation and (b) not prejudicial to competition. **(proviso added to clause 3.3).**

There is no need to change the definition since the recourse to the broadcaster is only after the agent or intermediary is not able to satisfy the person aggrieved. Broadcasters would in any case be liable for the actions of their agents and intermediaries, because a representation would lie to the broadcasters after the agent/intermediary is not able to provide satisfaction. At this stage the Broadcaster would either have to satisfy the person aggrieved or the aggrieved person will have to go the appropriate forum. The proviso to clause 3.3 also makes this clear.

This is not necessary since the TRAI Act in any case applies to the whole of India.

This change is not required; the definition of cable operator is as

defined in the Cable Act and does include one who provides such services indirectly.

(v) This is not necessary – if signals are carried without authorization of the
(vi) broadcaster then no protection can be given; this is also being clarified in clause 4.1

As discussed in (i) above such a change is not desirable at this stage.

(vii) This is not necessary for TRAI to specify – each company should decide its own policy which should be applied uniformly and without discrimination.

(viii) **The definition of addressable system has been modified by replacing the word "cable operator" with the words "Distributors of TV channels" so that all distributors are included (clause 2(a) amended accordingly).**

(ix) **The definition of DTH operator has been modified to make reference to all**
(x) **distributors of TV channels rather than only the cable operator (clause 2(k) amended accordingly).**

In addition the definitions of "agent or intermediary" have

been changed replacing the word "entity" by the words"any person ,including an individual, group of persons, public or body corporate, firm or any organization or body" to bring it in line with the definition of broadcaster.

3. General Provisions relating to Non-discrimination in Interconnection Agreements.

Stake-holders comments

(i) Non- discriminatory access should not be mandated by regulation. Ban on
(ii) exclusive contracts will hit premium programming and adversely affect competition.
(iii) Even under the MRTP Act exclusivity is permitted if this is not prejudicial to the interests of consumers. Exclusivity should be dealt with under the provisions of the MRTP Act.

Transition clause is required for change over to the new system

or a provision should be made providing that the regulation is not applicable to old contracts. If time is being given for transition then for this purpose time may be given upto January 1, 2006.

(iv) The regulation should be applicable only to non addressable systems.
(v) The proposed regulation is violative of the freedom of speech guaranteed in the
(vi) Indian Constitution and the rights of broadcasters in the TRIPS agreement and
(vii) the Berne convention.

The Regulation should only require vertically integrated companies to offer their content on terms no worse than what it has agreed for its own platform.

It would be advisable to spell some outlines of the controlling mechanism on the operational aspects of "Must Provide".

(viii) It may be useful to have a description of DTH in the main regulation itself.

(ix) The Explanatory Memorandum should be clarified to bring out that grounds of
(x) piracy cannot be invoked if the distributor of TV signals has deployed anti piracy measures and installed transparent subscriber management systems duly accredited by BECIL.

The provisions will hurt rural consumers who cannot afford

terms offered by urban consumers. It may also not be administratively/economically viable to provide services to small operators.

TRAI's response

(i) This issue has already been discussed in the Recommendations sent on
(ii) 1.10.2004. It is the Authority's view that given the present stage of the market it is necessary to provide non discriminatory access across different distributors and

correspondingly not provide for exclusivity.

As has already been explained in the recommendations exclusivity at this stage will only harm the consumers. The provisions of MRTP apply to all consumers and industries. In the case of the TV programme market the Authority has already come to the conclusion that exclusivity at this stage would be harmful after examining the issues in great detail. The Authority has a mandate to provide effective interconnection, promote competition and protect the interests of the consumers. This it has to do under the powers given to it. Non-

discrimination is a well known regulatory principle and similarly not allowing exclusivity is also a practice followed in some countries to foster competition.

(iii) **A new clause is being added -3.7- to provide that 90 days will be given for**
(iv) **old contracts to be renegotiated and bring them in compliance with the new regulations. This time is sufficient as it may not be necessary to renegotiate all contracts – provision has already been made in clauses 3.4 and 3.6 for redressal of alleged non- compliance before recourse may be had to the appropriate regulatory/legal forums. (Clause 3.7 added) .**

The Authority has already indicated that prices of new channels will not be regulated in CAS areas except for the limited regulation on the discount on prices of bouquets vis-à-vis prices of individual channels. However, these prices should be uniformly applicable to all similarly placed distributors. Allowing discrimination in these prices could lead to unfair competition in the addressable segment of the market.

(v) It is not correct that the Regulation is in violation of the Constitution. TRAI is under obligation under the TRAI Act to ensure effective interconnection and protect the interests of consumers. This regulation will help in promoting competition and providing more areas to cable services. Further there is no infringement of the right to get equitable compensation in these regulations. The restriction on prices is through the tariff order

which has not been challenged on these grounds. There is also no question of the TRIPS Agreement or the Berne Convention being violated by these regulations as it is a well established principle of our law that international law has to be translated into domestic law before it becomes enforceable. No violation of the domestic law protecting the broadcaster has been made out. Thus if the rights of the broadcasters have been impacted under the relevant international law the remedy will be to get the offending domestic law changed. Till then TRAI would have to fulfill the mandate given to it under the TRAI Act read with the relevant domestic laws.

(vi) It is necessary to ensure that access is provided to all content and not merely
(vii) that of the vertically integrated companies. This is required for content to be available on all platforms which would ensure fair competition amongst rival platforms.

These have been spelt out in the regulation. Essentially it would be for an individual service provider to seek remedy, in the first instance, from the broadcaster/MSO or their intermediaries. If this does not succeed, then the service

provider has to approach the appropriate forum for relief.

(viii) DTH has been defined in the regulations and a DTH operator is included in the definition of distributor of TV channels and thus DTH is automatically included in the body of the regulations. **Nevertheless clause 3.2 has been amended to make this amply clear (clause 3.2 amended).**

(ix) Normally there should well accepted standardized measures taken for preventing piracy, at least on well established technologies where there would be standard requirements and procedures. However if there is no such standard then the two parties could refer the matter to a well known technical expert. TRAI would not be in a position to specify the expert.

(x) In the industry today there exist wide variations in the prices – by providing for geographical variations in prices in terms of the explanation to clause 3.5, this variation will not be affected. Also by allowing for content to be delivered either directly or through agents/intermediaries it has been recognized that broadcasters

need not deal directly with all operators. This is already the industry practice. Further, it is for each service provider to have a well defined policy that can weed out non-serious players but at the same time ensure that there is no discrimination. It is also pertinent that this issue has been raised by broadcasters and not by MSOs- it is the MSOs who have been in an increasing way dealing directly with the last mile operators.

3.1

Stake-holders comments

i) This Clause should not apply for content made exclusively for addressable
ii) systems.

The clause should be applicable to broadcasters as well as their agents/subsidiaries.

TRAI's response

(i) This has already been dealt with in 3(iv) above.
(ii) In view of the provisions of clause 3.3 this is not necessary.

3.2

Stake-holders comments

i) Apart from non-discriminatory access, provision of access "on similar/equitable commercial terms" should be added as a principle.

ii) The exclusion of operators having defaulted in payment should be qualified to
iii) provide for a minimum of 15/30 days notice for the defaulting distributor to
iv) make good the default in payment. The Authority has made similar provisions for telecom service providers for disconnection on the ground of non payment
v) of dues.

In view of the bandwidth constraint in analogue systems, it may not be possible to re-transmit all the channels requested by the distributor.

After the words Multi-System Operators "and Cable Operators" should be added.

It should be stipulated that the broadcasters should provide their signals within 15 days of the request having been made.

vi) Apart from those who have defaulted in payment, this clause should not apply
vii) to those who have indulged in piracy or material breach of commercial terms like under-declaration of subscriber base.

Pricing should be uniform irrespective of technology

viii) All distribution platforms should get the signals on the same effective commercial terms.

ix) The word "defaulted" needs to be suitably defined.

TRAI's response

(i) The essential purpose of the regulation is to promote competition by ensuring
(ii) that content is made available to all distributors so that competition is
(iii) developed. The addition of the words "similar/equitable" would not help in meeting this objective.

Clause 4.1 already provides for a 30 days notice. This would include disconnection for non payment. For operators seeking a new contract and who have defaulted in the past there is no need to prescribe a time period as such operators can get the new contract as and when the default is removed**.**

The clause does not require all channels to be re- transmitted. All that is required is that the MSO should not discriminate between cable operators. The clause applies only to requests

from distributors of TV channels and not from broadcasters. The issue of "must carry" is being separately looked at by the Authority.

(iv) This is not necessary as by definition a cable operator cannot retransmit.
(v) The time taken to respond will vary from platform to platform depending on
(vi) the technology and other factors. **Rather than**

prescribe different periods for different types of requests/problems clauses 3.4 and 3.6 are being amended to say that the request/complaint must be responded to in a reasonable time period but not exceeding thirty days (clauses 3.4 and 3.6 have been amended accordingly)

Piracy is too wide a term and can also include underdeclaration. Unless underdeclaration is defined correctly this would be difficult to enforce. Piracy, if invoked as a ground for refusing content to a new entrant will have to be justified as already

explained in the explanatory memorandum. For existing operators the provision of 4.1 will apply.

(vii and viii) This has been addressed in 3.5(ii & iii)

(ix) The word defaulter is well understood and whether a person has defaulted or not needs to be determined with reference to the facts of the case and the contractual arrangements between
the service providers.

3.3

Stake-holders comments

i) Broadcasters must be held responsible for the actions of their
ii) agents/intermediaries.

iii) Multi-system operators should not be allowed to act as a designated distributor agent.

This clause should not be used by broadcasters to defeat the

Tariff Order of October 1, 2004.

iv) The agent or distributor should not be an MSO or a distributor of TV channels
v) within that territory and distributor should be able to receive signals of a
vi) channel directly from the satellite.

The second and third sentences of this section can be deleted.

The words “on an equitable and non-discriminatory basis” should be added at the end of the second sentence.

TRAI’s response

(i) This is already provided for in the regulation; to make this explicit a proviso
(ii) has been added. (proviso added to 3.3)

(iii) This has been addressed in 2(i) above.

(iv) The tariff order is an independent order and its provisions will have to be complied with.

This has been partially addressed in 3(ii) above. Whether a

distributor should be entitled to receive the signals through cable or directly from the satellite is a matter to be negotiated between the service providers. If a distributor of TV channels finds that he would be discriminated against and the

broadcaster is not able to rectify the problem then he can always approach the appropriate regulatory forum.

(v) Both these sentences are necessary since the Broadcaster/MSO have to ensure
(vi) that the signals are received by the distributor.
The primary responsibility has to be that of the broadcaster/MSO.

As in 3.2 (i).

3.4

Stake-holders comments

i) If the agent denies content, the broadcaster must respond to his complaint
ii) within two days of the receipt of the complaint and
the agent/broadcaster should be made liable to pay compensation for the loss caused by any wrongful delay in providing services.
An agent who has defaulted in payment to MSO should not be

allowed to take signals directly from a broadcaster.

iii) Distributor should be entitled for compensation for any losses incurred by them
iv) because of them acts of omission/refusal on the part of a broadcaster, MSO or their agent/intermediary.
v)
It should be stipulated that the broadcaster must provide the signals within 15
vi) days of the request having been made provided that there are no pending dues
vii) to the broadcaster/ respond within 30 days.
viii) After the word "broadcaster" the word "MSO" should be added.
The broadcaster/MSO should ensure that signals are provided to the applicant within 7/30 days.
This clause should apply even if the broadcaster is not located in India as long as the broadcasting services are marketed in India
Imposition of terms that are unreasonable will be deemed to be

a denial of the request.

ix) The response of the broadcaster and MSO should not be specified by a time limit; instead it should merely be specified to take place within a reasonable amount of time.

TRAI's response

(i)(iii)(iv)(vi) and (ix)This has been partially addressed in 3.2(v) above. Damages cannot be awarded by TRAI .

(ii) The proviso to clause 3.2 already provides that there is no obligation to provide signals to a distributor of TV channels who has defaulted in payment . If an MSO wants to ensure that a distributor of TV channels who has defaulted does not get
signals from a broadcaster then this should be done by a contractual arrangement.

(v) **This has been done (clause 3.4 amended accordingly).** (vii) This is already provided in the law – there is no need to make a separate provision for this.

(viii) **A second proviso has been added to provide for this in Clause 3.2 (clause 3.2 amended accordingly)**

3.5

Stake-holders comments

i) The broadcaster should announce a standard scheme regarding rates to be
ii) charged as well as declared subscriber base.

iii) The words "based on number of subscribers" should be deleted from the clause
iv) as well as the explanation and the words "use the same distribution technology" should also be deleted from the explanation.

v) The words "use the same distribution technology" should be replaced by
vi) "irrespective of the technology used for distribution of signals".

The clause should provide that a standard scheme equally applicable to all similarly based distributors of TV channels should be drawn up in this regard.

Volume discounting should be left to the market and there should be no insistence on a standard scheme.

The quantum of discount needs to be specified to prevent

exploitation of this provision.

TRAI's response

(i)(iv) and (v) It is for each broadcaster to decide on whether or not there should be such a policy. If there is a policy then

discrimination would be allowed based on volumes. If there is no such policy then such discrimination would not be permitted. If different distributors are going to get different prices the there must be some justification for it – in the absence of such justification such discrimination could be used eliminate/reduce competition.

(ii) and (iii) It is necessary to retain these words as the intention is to allow volume based discrimination and also permit different terms and conditions of supply based on the different technologies being used. However since in non- addressable systems payment is normally made only for the number of subscribers negotiated and agreed upon while in an addressable system payment is made for all the consumers it should

normally be expected that price in an addressable system would be lower than in a similar non addressable system.

(vi) **3.6** It is not necessary to quantify the discount, as the only purpose of the regulation is to prevent discrimination. The extent of discount would depend on the benefits perceived by individual broadcasters/MSOs from higher volumes – a uniform ceiling for this purpose would be difficult to fix.

Stake-holders comments

i) There should be safeguards in place to prevent this clause being used to harass
ii) the distributor.
iii) The "appropriate forum" should be spelt out.
It should be clarified that the aggrieved party can approach the

appropriate forum for various reliefs such as injunction, restoration of signals, damages, etc.

iv) Disputes should be resolved within 30 days and in case the broadcaster/distributor does not cooperate then the signals should be made available to the subscribers, subject to the final decision of such a forum.

TRAI's response

(i) Safeguards have already been provided in the draft; the additional safeguards proposed have not been spelt out.

(ii) and (iii) The appropriate forum could be TRAI, TDSAT or a High Court/ Supreme Court depending upon the nature of the case and relief sought. This cannot be specified ex ante. Relief to be

obtained will be as per the TRAI Act or the Constitution and other relevant laws. These cannot be defined by Regulation

(iv) Whether signals should be provided as an interim measure as is being suggested has to be decided on a case to case basis. This cannot be specified by Regulation.

Disconnection of TV channel signals

4.1

Stake-holders comments

(i) Disconnection period for unauthorized distribution should be 7 days since two
(ii) days is too short to obtain relief in cases of unjustified disconnection. The words "authorisation" and "commercial interest" should be defined.
A one month notice is too long and would provide a distributor an opportunity to earn money from the consumers without

paying the broadcaster.

(iii) The distributor and not the broadcaster should be responsible for advising the consumer on whether the distributor has met his/her obligations to the broadcaster , notice should be placed in the monthly bill and the consumer should get compensation from the distributor such as a discount in the monthly bill.

(iv)

(v)

(vi)

(vii) In case of piracy the distributor should be given an opportunity to rectify the problem and protect the commercial interest of the broadcaster/MSO.

For checking piracy certain safeguards should be specified in the Regulation.

The words "for which he/she is not authorized and" should be replaced by the words "by stealing the same in an illegal manner".

Distributors should be entitled for losses suffered by them due to wrongful acts of broadcasters in disconnecting such signals.

(viii) The word "thereby" should be added before the words "affecting commercial interest"

(ix) For unauthorized retransmission no notice period should be given; a brief notice can only be required when there is a business relationship.

(x) No disconnection should be allowed for disputes on subscriber base.

TRAI's response

(i) In such cases since a period of two working days has been provided this should be enough – given the nature of the problem allowing a larger period would not be desirable. **The word "authorization" has been clarified to mean any agreement permitting the distribution of the broadcasting service, either through a written agreement or through an oral agreement.** Commercial interest is well understood and need not be clarified further.(Explanation added to clause 4.1)

(ii)

(iii)

This is necessary to provide time for dispute resolution and for consumers to ensure that they can continue to have access to the content for which they have not defaulted. Broadcasters/ MSOs can protect their interests by making appropriate provisions in their contracts.

The onus of making the decision known must lie with the

person making the decision. The regulation does not bar the recovery of costs/damages from the person who is found to be at fault later. Such recovery has to made under the contractual terms between the parties and TRAI cannot provide for such recovery. **However it is being provided that if the broadcaster/MSO does give a notice to be carried as a scroll on the concerned channel then the**

distributor must carry the notice as a scroll in the concerned channel(s).(necessary amendment carried out in Clause 4.2)

(iv) This has to be mutually settled between the contracting parties. Given the
(v) nature of piracy more then two days notice would not be desirable.

(vi) These safeguards have to be determined contractually as they can vary depending upon the technology used and perceptions of the copyright holder. The only restriction that can be placed in the regulations is the need to ensure that this does not become an obstacle for fair competition and hence the principle of non discrimination has been incorporated in the regulation.

This suggestion has been examined. It would be better to use

the words in the draft with the clarification for the word authorised as in (i) above.

(vii) This is beyond the scope of the TRAI Act and hence these regulations. The Act only provides for fines as provided in

section 29. Damages have to be claimed through other legal forums.

(viii) **This correction has been done.**

(ix) **This has been clarified by adding the following in the explanation after Clause 4.1 "no notice would be required if there is no written or oral agreement permitting the**

distribution of the broadcasting service"

(x) If such a clause were to be added, this would imply that broadcasters would have to provide their services irrespective of the subscriber base declared. This would not be desirable as the subscriber base is a negotiated number and changes in this lead to disputes. Such disputes would have to be settled mutually or by using the legal process available under the law.

4.2

Stake-holders comments

(i) The payments for ads should be borne initially by the stakeholder who is planning to discontinue the signal and the payment can be mutually shared in any ratio during settlement.

.

(ii) Public notice should be both by scroll and newspaper ad since a scroll is sometimes not noticed by the consumers

(iii) Broadcaster/MSO should not be responsible for informing the consumers and it should be distributor who should place a placard or scroll advising the consumers of the dispute.

(iv) The scroll should not hamper/restrict the view of the channel for the consumers.

TRAI's response

(i)As has been discussed in 4.1 (iii), the cost of informing the consumers would have to be borne initially by the service provider who is disconnecting and later this can be recovered from the service provider who is found to be at fault.

(ii) At present both the options are available. Depending on the experience with the scroll option, the regulation can be reviewed later.

(iii) This has already been discussed in 4.1 (iii).

(iv) It is presumed that if a scroll is inserted, it would be done in a manner that does not affect the consumers ability to view the channel. The regulations need not specify such details.

TELECOM REGULATORY AUTHORITY OF INDIA

No. 3-57/2005/B&CS New Delhi

March 3, 2005.

In exercise of the powers conferred by section 36, and paras (ii), (iii) and (iv) of clause (b) of sub-section (1) of section 11 of the Telecommunication Regulatory Authority of India Act, 1997, read with the Notification No.39 (S.O No. 44 (E) and 45 (E))dated 09.01.2004 issued from file No.13-1/2004-Restg by the Government of India under clause (d) of sub-section (1) of Section 11 and proviso to clause (k) of sub section (1) of the Section 2 of the Telecom Regulatory Authority of India Act, 1997, the Telecom Regulatory Authority of India hereby amends the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004 (13 of 2004) (hereinafter called the "Principal Regulation"), as follows, namely -

1.Short title, extent and commencement:

(i)This regulation shall be called "The Telecommunication (Broadcasting and Cable Services) Interconnection (First Amendment) Regulation 2005" (2 of 2005)".

2. The words and figures "120 days" shall substitute the words and figures "90 days" in clause (7) of regulation 3 of the Principal Regulation.

3. This regulation contains at Annex A, an Explanatory Memorandum that explains the reasons for this amendment to the Principal Regulation.

By Order

(DR. HARSHA VARDHANA SINGH)
Secretary-cum-Principal Advisor

Annex. - A

EXPLANATORY MEMORANDUM

1. The Telecom Regulatory Authority of India had notified "The Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004" (13 of 2004) and it came into effect w.e.f. 10th December 2004. As per the provisions of this regulation, all the broadcasters /multi system operators and their agents/ intermediaries through whom they provide the signals are required not to engage in any practice or activity or enter into any understanding or arrangement, including exclusive contracts with any distributor of TV channels that discriminates against any other distributor of TV channels. A period of 90 days was granted in respect of the contracts already entered into before the provisions regarding non-discrimination in Interconnect Agreements would apply to these contracts. This period of 90 days was given for old contracts to be renegotiated and brought in compliance with the new regulations.

2. A proposal was received from a broadcaster to extend the transition period for another 60 days to enable all the agreements to be compliant with the regulations. The reasons given for seeking such an extension are: -

(a) The broadcaster has more than 6000 contracts with various distributors of TV channels that got signed at different points in time. In addition to the above, before the enforcement of the Interconnection Regulation, they had launched several new channels and signed up addendums/ contracts with various operators.

(b) They are now working towards transitioning their various contracts and addendums to make them compliant with the Interconnection Regulation. In addition several internal organizational activities are being implemented to ensure that the transition is entirely smooth, such as

- Formulation of a Policy for distribution of its channels in India to clearly articulate to the distribution personnel the Company's position on various issues related to distribution with step by step instructions on ensuring all activities are compliant with the Interconnection Regulation.
- Review of existing contracts and addendums. On finalization of Distribution Policy, the existing contracts and addendums will be modified to comply with the Policy. The 6000+ contracts will then be re-signed in the modified formats to the extent required and subject to negotiations with their associates.
- Several workshops have already been conducted for distribution personnel and distributors across the country to help them understand the provisions of Interconnection Regulation. The inputs received from these workshops will be used to resolve outstanding issues and queries. Company executives are being briefed in detail regarding the process to be followed for executing the commercial arrangements.
- Organizational processes and systems are being defined to streamline all new activities required to be undertaken by the Company to comply with all the provisions of Interconnection Regulation.

3. The Authority had considered the request to extend the transition period for another 60 days and in line with its consultative approach, it decided to seek comments on the proposed extension of the transition period from 90 days to 150 days. A Press Release was accordingly issued on 11th February 2005 seeking comments in the matter till 18th February 2005. The following are the major comments have been received on the issue:-

(a) Jaipur Cable & Broadband Society has stated that increase in transition period will have adverse effect on those cable channel distributors who raised their voice against broadcaster/ MSO monopolies. By giving more time broadcasters/ MSO will have enough time to manipulate things on the ground. It will delay the upcoming competition in the market. It has further said that there is only one MSO in Jaipur and it is capturing cable networks by increasing connectivity amount. Extension of transition period by 60 days would mean that broadcasters would not give decoders to cable operators for 150 days and it will be difficult to sustain 150 days without Pay channels.

(b) Cable Operators Federation of India has objected to the proposal for the following reasons :-

- All the major broadcasters have made alliance with each other for distribution
- whereby they are distributing channels in bouquets through a joint distribution staff.

It is not true that they are unable to renew their contracts as per the new terms in 90 days as the broadcasters have a very large

distribution department comprising of distribution heads, regional managers, area managers and distribution executives in each major town. Apart from this, there are distribution companies in every major city who deal with LCOs. Thus at a lower level, a distributor may not have to deal with more than 40-50 contracts in 90 days.

- The broadcasters are not taking any interest in revising their contracts with existing operators and they are busy in forcing the cable networks to increase their connectivity by 40-60% by appointing minimum guarantee agents in each area. Additional 60 day period will give opportunity to these minimum guarantee agents and their affiliated MSOs to extract the maximum from the existing cable operators.

4. The additional time period of 30 days being granted by this amendment is considered adequate by the Authority for the reason that in case any complaint of a discriminatory interconnection agreement is received by the Authority, the broadcasters /multi system operators/ their agents/ intermediaries would be given an opportunity of explaining their position and rectifying the same. This would give them an opportunity to make such a contract compliant with the Interconnection Regulation.

5. Although the Authority had earlier approved only 90 days for the transition period it is considered that in view of difficulties experienced by the broadcasters and the steps taken so far a further extension of 30 days can be given. Moreover, this is only a one time provision and will have no long term impact. On the other hand if all preparations are not completed there could be unnecessary litigation.

6. Therefore, after considering the proposal and the objections, the Authority decided to extend the transition period from 90 days to 120 days.

TELECOM REGULATORY AUTHORITY OF INDIA

NOTIFICATION

New Delhi the 24th August 2006

F. No. 11-13/2006- B&CS - In exercise of the powers conferred by section 36, and sub-clauses (ii), (iii) and (iv) of clause (b) of sub-section (1) of section 11 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), read with the Notification No.39 {S.O No.44(E) and 45(E)} dated 9.1.2004 issued from file No.13-1/2004-Restg by the Government of India under clause (d) of sub-section (1) of section 11 and proviso to clause (k) of sub section (1) of section 2 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), the Telecom Regulatory Authority of India hereby amends the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004 (13 of 2004) (hereinafter called the "Principal Regulation"), as follows:-

1. Short title, extent and commencement.-

i) This regulation shall be called 'The Telecommunication (Broadcasting and Cable Services) Interconnection (Second Amendment) Regulation, 2006 (9 of 2006)"

2. In clause 2 of the Principal Regulation, sub-clause (a) and entries relating thereto shall be substituted by the following sub-clause and the entries relating thereto, namely: -

"(a) "**addressable system**"means an electronic device or more than one electronic device put in an integrated system through which signals of television channels can be sent in encrypted or unencrypted form, which can be

decoded by the device or devices at the premises of the subscriber within limits of the authorization made, on the choice and request of such subscriber, by the service provider to the subscriber.**"**

3. The existing clause 5 of the Principal Regulation shall be renumbered as clause 7.

4. In the Principal Regulation, after the existing clause 4 and the entries relating thereto, the following clauses and the entries relating thereto shall be added as clauses 5 and 6, respectively, namely :-

"5. Standard Interconnection Agreements

5.1 All broadcasters, multi system operators and cable operators shall mutually negotiate and finalise their interconnection agreements in respect of areas notified by the Central Government under section 4A (1) of the Cable Television Networks (Regulation) Act, 1995 (7 of 1995) vide notification no. S.O. 1231(E) dated 31.7.2006.

5.2 In case any of the service providers in the areas as notified by the Central Government vide notification no. S.O. 1231(E) dated 31.7.2006, are not able to arrive at a mutually acceptable interconnection agreement within a time-period to be specified by the Authority through a direction, then they shall enter into interconnection agreements in terms of the standard interconnection agreements as specified in Schedule I (between broadcaster and multi system operator) or in Schedule II (between multi system operator and cable operator) to this Regulation, as the case may be, within a time period to be specified by the Authority for entering into standard interconnection agreements.

Explanation

For removal of doubts, in respect of areas notified by the Central Government referred to in clauses 5.1 and 5.2 above, it is clarified that if the service providers have already entered into mutually acceptable interconnection agreements by such date as specified in the direction issued by the Authority, then they need not take recourse to standard interconnection agreements specified in Schedules I and II. Further,

those service providers, who have a pre-existing interconnection agreement as on the date of issue of this regulation, will also have the option, after the expiry of their existing agreement, to either enter into a mutually acceptable interconnection agreement, or failing which to enter into interconnection agreements as per the standard agreements specified in Schedules I & II, within a period to be specified by the Authority in the direction.

5.3 If the provisions of the standard interconnection agreements in Schedule I and II are in conflict with any Act, rule, regulation, direction or order of the Government, TDSAT or TRAI, as the case may be, then the provisions of such Act, rule, regulation, direction or order shall prevail.

6. Prohibition of minimum guarantee clause

Where a distributor of TV channels is using a technology by which pay channels can only be seen through an addressable system, then no service provider shall stipulate, insist or provide for any clause in an interconnection agreement with such a distributor which would require such distributor to

pay a minimum guaranteed amount as subscription fee for the services provided."

5. This regulation contains at Appendix, an Explanatory Memorandum.

By Order

(**RAKESH KACKER)**
Advisor (B&CS - I)

Schedule 1

[Broadcaster and Multi System Operator (MSO)]

STANDARD TECHNICAL AND COMMERCIAL INTERCONNECTION AGREEMENT [CAS]

This Technical and Commercial Interconnection Agreement along with its Schedules and Annexures is executed on this _____ day of _____ 2006 by and between:

M/s A & Co Ltd, a company incorporated under the Companies Act, 1956, having its registered office at 001, XYZ Colony ABC City (hereinafter referred to as "**Broadcaster**" which expression shall unless repugnant to the context or meaning thereof be deemed to include its successors and permitted assigns) of the **ONE PART;**

AND

M/s. B & Co Ltd, a company incorporated under the Companies Act, 1956, having its registered office at 00111, PQR Colony ABC City (hereinafter referred to as the "**Affiliate**" which expression shall unless repugnant to the context or meaning thereof be deemed to include the successors and permitted assigns) of the **OTHER PART**.

The Broadcaster and the Affiliate are hereinafter individually and collectively referred to as "**Party**" and "**Parties**", respectively.

WHEREAS:

a) The Broadcaster is engaged in the business of distribution of Television channel(s) and has the exclusive right to market and distribute Television Channels, in particular the Television channels specified in Annexure A throughout the territory of India or in the territory comprised in ----- in India

b) The Affiliate is engaged in the business of distribution of television channels including through a digital /analogue Conditional Access System ("CAS") in the areas notified by the Central Government under Section 4A(1) of The Cable Television Networks (Regulation) Act, 1995 (7 of 1995);

c) The parties have mutually agreed to execute this Agreement between them to govern the rights and obligations in regard to the subscription and distribution of Television channels, appropriately described in clause 1.1 of Article 1 of this Agreement read in conjunction with Annexure A, for the Term and in the Area specified herein

NOW THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, constituting good and valuable consideration, the Parties agree as follows: -

ARTICLE 1: SCOPE OF SERVICE, AREA SERVED, TERM AND ENTIRE UNDERSTANDING

1.1 SCOPE OF SERVICES

The Parties mutually agree that this Agreement seeking to govern the terms and conditions of rights and obligations between them shall be in respect of the services indicated herein below and as specifically described in Annexure A to this Agreement for the area and for the term indicated in clause 1.2 and 1.3, respectively.

Subscription to and distribution of the Television channels whether as an individual channel or as a part of a Bouquet and described in Annexure A to this Agreement through the Permitted Distribution System with Conditional Access System directly or indirectly to the subscriber,

For the purpose of ascertaining the scope of services at any point of time, the scope of services as indicated above shall be read with additions /deletions, if any, done through separate addendum agreements/ updation forms executed from time to time and till the date of reckoning.

1.2 AREA (S) SERVED

The parties mutually agree that the services referred in clause 1.1 of this Agreement shall have reference to the area specified in the city/cities of …… specified in the Government of India, Ministry of Information and Broadcasting notification number S.O. 1231(E) dated 31.7.2006.

1.3 TERM

1.3.1 The Agreement shall come into effect from DD/MM/YYYY ("Effective Date") and shall be valid for a period of 12 months (“Term”) unless otherwise terminated prior to the expiry of validity period of 12 months in accordance with the terms and conditions of the Agreement.

1.3.2 Within 2 months prior to expiry of this Agreement, both parties agree to take steps towards renewal of the Agreement for extended period if it is mutually intended to continue the term of the Agreement beyond the date of expiry. The parties shall inform the subscribers through appropriate means of the intention to carry out the negotiations and consequences to the subscribers if negotiations fail to succeed.

1.3.3 If the parties mutually decide to extend the term to continue the Services referred to in clause 1.1 above with or without modification, the Parties may enter into a fresh agreement, in writing on mutually agreed terms and conditions.

1.3.4 In case if the parties decide not to extend the term and such decision could not be made before the expiry of the term of this Agreement and the services have continued in the meanwhile even after the said expiry of the term specified in clause 1.3.1 of this Agreement, the term would be deemed to have been extended till the date of such decision.

1.4 ENTIRE UNDERSTANDING

1.4.1 The Agreement contains the entire understanding between the parties with respect to the subject matter covered, in the manner, it is expected to be understood by the parties and that there is total agreement between the parties as to the manner in which the other party has understood various clauses of this Agreement.

1.4.2 The Parties agree that in addition to the principal terms stated herein, the Schedules and Annexures if any attached hereto form an integral part of the Agreement and shall be deemed to be incorporated herein and failure to comply with any of the terms, conditions, and/or provisions mentioned in any of the Schedules and Annexures hereto, shall constitute breach of the Agreement.

1.5 DEFINITIONS

The words and expressions used in this Agreement shall have meanings as assigned to them in the Schedule to this Agreement.

ARTILCE 2 : SUBSCRIPTION RIGHTS

2.1 Subject to due observance by the Parties of the terms and conditions of this Agreement and in consideration of the promise by the Affiliate to make payment of the Subscription Amounts which are due and payable in terms of this Agreement to the Broadcaster, the Broadcaster hereby grants to the Affiliate, for the duration of the Term of this Agreement, a non-exclusive right to avail the services indicated in clause 1.1 of Article 1 comprising in the right to subscribe to and to distribute the Subscribed Channels as described in Annexure A through CAS to the subscribers in the Area only via the Permitted Distribution System. The Affiliate shall have the right to distribute the viewing of the subscribed Television Channels only to subscribers in the Area and not to any other third party.

2.2 The subscription rights given to the Affiliate under this Agreement are confined to subscribers having an addressable set top box, in relation to whom the Affiliate compulsorily maintains the complete detailed data and transaction records in its CAS/ Subscriber Management System (SMS). This Agreement does not give the Affiliate or his agents rights to transmit by any mode of transmission from the head end of the Affiliate to the commercial operators and/or its subscribers other than through coaxial or optic fiber cable. A separately negotiated agreement would have to be entered into for the purpose of transmission through any other means such as DTH or HITS or any other mode.

2.3 Without prejudice to the remaining provisions of this Agreement, the Broadcaster reserves the right:

2.3.1 to commence or continue to provide the Service direct to other Affiliates and to appoint other Affiliates in the Area for the purpose of distributing the Service, subject, however, to the observance of the provisions of applicable law in force.

2.3.2 to discontinue any Channels which form part of the services as Broadcaster shall deem fit subject to and in compliance with the rules, regulation and orders , if any in this regard.

2.4 In the event of an increase/decrease in the number of the Subscribed Channels taken by the subscribers, it is obligatory on the part of the Affiliate to include, delete, increase or decrease the same, as the case may be, in his SMS/CAS and intimate the same to the Broadcaster at the time of paying the Subscription Amount for the respective month according to the terms of this Agreement.

2.5 It is expressly agreed between the Parties that the Affiliate's right to receive and distribute the Service shall be conditional upon the performance by the Affiliate of all its obligations arising under this Agreement and mere possession of the Integrated Receiver Decoders (IRDs)/ Viewing Cards shall not entitle the Affiliate to receive and/ or to distribute the Service.

2.6 The Affiliate shall receive and de-code the Subscribed Channels only through IRDs recommended/approved by the Broadcaster.

2.7 The Affiliate shall further ensure that the Services of Subscribed Channels for which a fee is payable as specified in Annex A shall only be activated through the set top boxes which meets the specifications prescribed by BIS; otherwise the Broadcaster shall be entitled to de-activate the Service of the Affiliate. For the purpose of compliance of this clause, the Affiliate shall give a certificate to the Broadcaster that a mutually agreed procedure for verification is in place and that the same has been followed in respect of each subscriber.

2.8 The following conditions are a prerequisite for the execution of the present Agreement and shall subsist for continuing the same:

- The Affiliate shall install the CAS, which is linked and integrated, with SMS and activation/deactivation are processed through such SMS. Both CAS and SMS systems should be as per the standard prescribed by BIS. The reports generated by SMS should be in conformity with CAS and in a pre-defined read only format such as a suitable PDF format, which cannot be edited.
- The Affiliates operating system should be able to handle individual channels, packages, tiers, discounts, free offers, promotional offers;
- The CAS and SMS of Affiliate must have the capability or recording activation/deactivation history with respect to each addressable device (IRD/VC) and each service for every activation and deactivation in the system for a

minimum period of 1 year.

- The Services of the Broadcaster shall be provided to the subscribers only through CAS/SMS and no services shall be provided without recording, authorization, billing and accounting through the said system.
- The Affiliate shall be liable to provide to the Broadcaster, as and when demanded by the Broadcaster, from time to time a list of subscribers pertaining to any location along with the names and addresses of the subscribers within the Area to which it or its sub Operators is providing the Channel services including each dwelling for purposes of verification.

ARTICLE 3: COMMERCIAL TERMS AND CONDITIONS OF AGREEMENT

3.1 SUBSCRIPTION AMOUNTS AND REVENUE SHARE ARRANGEMENTS.

A. **SUBSCRIPTION AMOUNTS**

3.1.1 Subject to the provisions set forth herein in this Agreement, and in consideration of the rights granted by the Broadcaster under this Agreement in terms of clause 2.1 of Article 2, the Affiliate agrees to pay to the Broadcaster the Subscription Amounts, determined as per the Revenue Share Arrangement indicated herein below, per subscriber per month and as specified in Annexure A for the services indicated in clause 1.1 of Article 1 of this Agreement and within the time limits as indicated in this Agreement.

3.1.2 The Broadcaster shall have the right to vary the Subscription Fees after giving notice of not less than one month to the Affiliate and in compliance with the applicable law in force. The Total Subscription Amounts payable by the Affiliate to the Broadcaster shall also vary accordingly.

B. **REVENUE SHARE ARRANGEMENTS**

3.1.3 The subscription amounts payable to the Broadcaster by the Affiliate shall be calculated with reference to the subscription fee indicated in Annexure A in respect of each channel or bouquet of Channels multiplied by the number of subscribers as recorded in the Subscriber Management System installed at the Head End of the Affiliate to be availing such service for each month. The revenue share arrangement for the purpose of calculating the subscription fee for each channel or bouquet of channels shall be as per the formula indicated below:

I	Maximum Retail Price of a subscribed pay channel or bouquet of channels as Annexure A per subscriber per month	Rs. X
II	Percentage of Amount payable to the Broadcaster by the Affiliate, per subscriber per month	45% of X
III	Percentage of Maximum Retail Price to be retained by Affiliate (to be shared between the Affiliate and the cable operator)	55% of X

3.1.4 The total Subscription Amount along with any other payments statutorily required to be made by the Affiliate to the Broadcaster for each month shall be payable within 21 days from the close of the relevant month (after adjusting/deducting and retaining the portion of revenue retainable by the Affiliate as per 3.1.3(III) supra).

3.1.5 In the event of default in payment of the Subscription Amount, simple interest at the rate of 15 % per annum shall be paid by the Affiliate on the arrears of such Subscription Amounts which may remain unpaid at the end of the 21 days.

3.1.6 The parties may enter into a separate Agreement as regards payments to be made/ received on account of Carriage /Placement fee.

3.1.7 The entire advertising revenue for the Subscribed Channels shall pertain to the broadcaster.

3.2 CHARGES FOR EQUIPMENT INCLUDING INTEGRATED RECEIVER DECODER (IRD)

IRD: The Broadcaster shall, supply or cause to supply the IRDs, on payment of the following charges:

(a) **IRD Deposit & Processing Fees:** Immediately upon execution of the Agreement the Affiliate shall pay such sums towards the processing fees per IRD ("**Processing Fees**") and interest free refundable deposit per IRD ("**IRD Deposit**"), as required by the Broadcaster and specified in Annexure A. The Processing Fees and IRD Deposit are hereinafter collectively referred to as IRD Charges.

(b) **Other Charges/ Taxes:** The Affiliate shall pay courier charges, transportation charges, and all applicable taxes / levies, if any, for the IRD on actuals.

ARTICLE 4: RIGHTS AND OBLIGATIONS OF THE PARTIES

4.1 AFFILIATE'S RIGHTS

The Affiliate shall have the right to subscribe and distribute the Subscribed Channels conferred through this Agreement and shall be conditional to the Affiliate's performance of all its obligations and on the basis of the representations, warranties and declarations made by the Affiliate to the Broadcaster.

4.2 The Broadcaster shall give to the Affiliate access to the Subscribed Channels, subject to the Affiliate meeting the following mandatory eligibility conditions: -

4.2.1 The Affiliate provides an undertaking that it has all necessary licenses and permits required under the Applicable Law(s) for distributing the Subscribed Channels;

4.2.2 The Affiliate provides an undertaking that it has internal guidelines in place to comply with non-discriminatory access provisions specified by The Telecom Regulatory Authority of India (TRAI) in its Telecommunication (Broadcasting & Cable Services) Interconnection Regulation, 2004 and other relevant regulations and guidelines introduced by TRAI/ Government, from time to time;

4.2.3 The Equipment, CAS and SMS used by the Affiliate shall comply with the following requirements at all times during the subsistence of this Agreement: -

(i) The systems are capable of monitoring and printing historical data relating to subscriber activation, deactivation and reactivation, as the case may be;

(ii) CAS and SMS are integrated and any activation or de-activation is processed simultaneously through both systems;

(iii) The SMS enables the location of each set top box and Smart Card to be recorded;

(iv) The CAS and SMS is from a reputed, well-known organization, which is currently being used by other Pay Television Services and has a demonstrated track record of fulfilling the technical requirements under this Agreement.

(v) Covert and visible fingerprinting to be supported by all set top boxes which should be compatible for running fingerprinting whether operated by the Affiliate or by the Broadcaster.

4.3 BROADCASTER'S RIGHTS

4.3.1 In consideration of the grant of rights in terms of clause 1.1 of Article 1 of this Agreement the Affiliate shall pay to the Broadcaster, the following on the due dates with or without any deduction or set-off:

a) All Subscription Amounts and or all revisions or modifications thereof, due and payable to the Broadcaster shall be paid within the time period and in the manner and mode as may be agreed to between the parties and specified in Annexure A on the

basis of specific invoices raised , whether or not the subscriber/ sub operator has been Invoiced or whether or not the payment is received by the Affiliate from his subscriber / sub operator and irrespective of any discounts or other concessions given by Affiliate to its subscribers or commercial operators.

b) Any other sum payable by the Affiliate to the Broadcaster under the terms of this Agreement.

c) Any other payments statutorily required to be made by the Affiliates to the Broadcaster.

4.3.2 In case the payment is not received by the due dates, a simple interest at the rate of 15% per annum from the date of default will be charged from the Affiliate without prejudice to any other rights of the Broadcaster. For this purpose the due date shall be the twenty first day of the calendar month following the month in which the Services were subscribed.

4.3.3 The Affiliate shall be responsible for payment of all taxes, levies, charges imposed by or under a statute, law, regulations, relating to the Services and payable by the Affiliate as also for collection of such amounts attributable to such taxes, levies, charges imposed by or under a statute, law, regulations, relating to the Services and payable by the Broadcaster and for remitting the same promptly to the Broadcaster with in the respective due dates.

4.3.4 If the Subscription Amount, or any other amounts payable to the Broadcaster as specified in this Agreement is not paid by the Affiliate on due date, the Broadcaster may take all or any of the following actions without prejudice to any other rights but subject to the applicable rules/regulations, if any, issued by the Competent Authority including issuance of prescribed notice stipulated by the Interconnection Regulations.

4.3.4.1 De-authorize the reception of Broadcaster's services by Affiliate, his agents and/or his subscribers subject to the compliance of the applicable rules /regulations of the Competent Authority.

4.3.4.2 Terminate this Agreement, by giving Notice required under this Agreement and subject to compliance of the Applicable Laws in force.

4.3.4.3 Immediately take back possession of the IRD(s) belonging to the Broadcaster;

4.3.4.4 Charge a simple interest at the rate of 15% from the date such amounts became due until they are fully paid;

4.3.4.5 Intimate all the subscribers of such non-receipt of subscription amounts or other charges and consequences thereof on the subscribers.

4.3.5 Any discounts, special schemes, free periods etc as offered by the Affiliate to its agents or subscribers or sub operators shall be at the cost and responsibility of the Affiliate. No burden of such discounts or other promotional schemes shall be passed on to the Broadcaster.

4.3.6 The Affiliate shall not make his subscribers take other channels or services or fulfill any other commercial consideration as a precondition to receiving the Broadcaster's channels or services.

4.3.7 In the event the Affiliate is required under the Income Tax Act, 1961 to withhold or deduct tax or other duties or levies that are required by law to be made from a payment due under the Agreement (including without limitation, the Subscription Amounts), all of the following conditions shall apply:

a) The Affiliate shall, promptly upon becoming aware that it is required to make any withholding or deduction (or that there is any change in the rate or the basis of a withholding or deduction), notify Broadcaster accordingly;

b) The Affiliate shall deliver to Broadcaster, receipts, certificates or other proof

evidencing the amounts (if any) paid or payable in respect of any such withholding or deduction and the Affiliate shall co-operate in completing any requirements necessary to obtain authorization to make that payment without any withholding or deduction.

4.3.8 The Subscription Amounts payable by the Affiliate to the Broadcaster shall be exclusive of all government taxes, levies, cess, including service tax, education cess, etc., save and except the withholding as provided under the Income Tax Act, 1961. The Subscription Amounts shall accordingly be increased to the extent of such government taxes, levies, cess, etc.

4.4 AFFILIATE OBLIGATION ON RECEPTION AND DISTRIBUTION OF SERVICE

4.4.1 The Affiliate shall at its own cost and expense cause the Subscribed Channels as specified in Annexure A to be received only from the designated satellite(s) as notified by Broadcaster from time to time, and shall distribute the Subscribed Channels to subscribers via the Permitted Distribution System using the same original audio and visual signals and sound tracks (including any stereo tracks) as provided by the Broadcaster to the Affiliate, in accordance with the restrictions, terms and conditions set forth herein and in an encrypted/ scrambled form using encryption and CAS that are capable of Fingerprinting.

4.4.2 The Affiliate shall be responsible, at its sole cost and expense, for obtaining all licenses and permits necessary to carry on its business as contemplated herein;

4.4.3 The Affiliate shall use its best endeavor within all its means and control to maintain a high quality of signal transmission for the Subscribed Channels. The Affiliate further agrees and undertakes that it shall cause continuous distribution of the Subscribed Channels to all its subscribers during its telecast without blacking it out or interfering with it in any manner whatsoever, subject however to such continuous and high quality of service being provided by Broadcaster;

4.4.4 The Affiliate shall ensure that the Permitted Distribution System is maintained on a standard capable of delivering as per Bureau of Indian Standards Act, 1986 ("BIS") specifications broadcast quality signals to subscribers, and that the Subscribed Channels are distributed to subscribers at such broadcast quality level, which in any event should be no less favorable than the quality of signal delivered by the Affiliate to its subscribers for any other channel.

4.4.5 The Affiliate shall comply with all laws and regulations affecting its marketing, sale and distribution of the Subscribed Channels in the Area in connection with its performance under the Agreement including, without limitation, (i) obtaining and maintaining all relevant approvals, consents and registrations and (ii) paying all charges, levies and duties imposed on or charged to it under any law or regulation or by any Government Authority;

4.4.6 Without prejudice to the above general obligations as above the Affiliate subject to the terms of this Agreement shall take the following steps as set out herein under:

a) The Affiliate shall on receiving the encrypted signals as prescribed by the Broadcaster shall decode the same using an IRD which is compatible with the CAS of the Broadcaster,

b) After receiving the Signals and decoding the same, the Affiliate shall reencrypt the signals with his own CAS and further distribute the encoded signals through cable networks only to those subscribers who have installed set top boxes and whose names and complete details are properly entered in the CAS & SMS, as per their choice/ request for individual channels on an a-la-carte basis or number of channels of the different bouquets on offer as opted by the subscriber. The abovesaid receiving of signals and de-

encoding shall be done only at the head end address as mentioned in the Affiliation Registration details to this Agreement or as approved by the Broadcaster by an appropriate addendum to the same. The re-encrypting and further transmission shall be done only through the coaxial or optic fiber cable network of the Affiliate or of his authorized sub operator only and shall not be transmitted even partially or intermediately through any other means such as satellite, head-end in the sky, very small aperture terminal (v-sat), internet, etc.

c) The Affiliate shall maintain complete records of its subscribers, commercial operators, their viewership details, like addresses, services taken, periods for which they were taken,

d) The Affiliate will not distribute the services to subscribers out of the area without the prior written permission of the Broadcaster,

e) The Affiliate may provide the services to the subscribers either by himself or through his sub operators,

f) The Affiliate shall be responsible for making all payments under this Agreement notwithstanding any default by his sub operators and subscribers,

g) The Affiliate is obliged and shall endeavor in the task of protection of Broadcaster's intellectual property rights, preventing piracy of the Broadcaster's services, disclosing correctly all the information as required by the Broadcaster, distribution by commercial operator only to persons in the Affiliate's SMS database and operating within the limits of the subscription rights as conferred in terms of this Agreement. The Affiliate shall endeavor in the task of ensuring that the subscribers shall not further distribute the Broadcaster's services to others whether or not for commercial consideration. It is understood that these obligations would comprise of taking all necessary steps promptly within the control of the Affiliate.

4.4.7 The Affiliate shall take all necessary actions to prevent any unauthorized access to the Subscribed Channels in the Area and shall obtain and provide to Broadcaster regularly updated piracy reports at least once every quarter. The Affiliate shall take appropriate remedial actions to curb piracy in the Area.

4.4.8 The Affiliate undertakes that it shall not either itself, or through others acting on its instructions, copy, store or otherwise reproduce any part of the Subscribed Channels. The Affiliate further undertakes that it shall not copy or store programmes for resale or deal in any copied programmes and shall immediately notify the Broadcaster of any unauthorised copying, storage or use of any part of the Subscribed Channels and shall fully cooperate with all requests by Broadcaster to take such steps as are reasonable and appropriate to cause such activities to cease. It is understood that this does not apply to subscribers having STBs in their houses which have the capacity to record and playback programmes.

4.5 AFFILIATE OBLIGATIONS ON SUBSCRIBER REPORTS

4.5.1 The Affiliate shall prepare and provide to the Broadcaster complete and accurate monthly reports ("Subscriber Report") for the Subscribed Channels within 15 days after the end of each month detailing:

i) Total number of subscribers, including their names and addresses and the Subscribed Channels on the first day and the last day of the month subscribed to; ii) Maximum Retail prices charged for the tiers that include Subscribed Channels; iii) Details of tiers that include Subscribed Channels offered to the subscribers (details such as channels in each tier and number of the subscribers subscribing to each tier);
iv) Such other information as Broadcaster may require for determining the Subscription Amounts.

Upon Broadcaster's written request, the Affiliate shall provide number of subscribers by category, tier, location, sub-operator/last mile operator that Broadcaster may require with prior intimation and sufficient Notice to the Affiliate

4.5.2 Each Subscriber Report shall be signed and attested by an officer of the Affiliate of a rank not less than Head of Department/Chief Financial Officer responsible for the Affiliate's SMS, who shall certify that all information in such Subscriber Report is true and correct. The Affiliate acknowledges that any requests for further information from time to time by the Broadcaster would not be unreasonably withheld. This obligation shall survive termination of the Agreement until Broadcaster receives the Subscriber Reports for each relevant month and all outstanding monies have been paid.

4.6 OBLIGATIONS REGARDING EPG (ELECTRONIC PROGRAMME GUIDE)

The Affiliate shall create an electronic programming guide (EPG) which shall contain the details of programming schedules of each of the channels and for that purpose the Broadcaster shall provide to the Affiliate the required information in a format that is requested by the Affiliate.

4.7 PACKAGING, PLACEMENT AND PROMOTION RELATED OBLIGATIONS

a. Apart from the packages provided by the Affiliate the channels should also be offered on an a-la-carte basis.

b. In addition to the other packages/ tiers, including the Subscribed Channels of the Broadcaster, offered by the Affiliate to the subscriber, the Affiliate shall also offer the Subscribed Channels to subscribers in the same bouquets as offered by Broadcaster to the Affiliate.

4.8 MARKETING OBLIGATIONS

4.8.1 In all its marketing efforts including but not limited to on-air and off-air promotion, the Affiliate would provide the Subscribed Channels:

i) An equivalent amount of marketing support as it provides to channels of the same genre;

ii) Equal treatment in all its material whereby Channel logos or names appear with the same size and prominence and page as other channels;

iii) Equal opportunity to participate in events/promotions the Affiliate undertakes.

4.8.2 The Affiliate shall not use the Channel Marks or the Broadcaster's trade names or trademarks in any manner that is not expressly provided in the Agreement, unless it has obtained the prior written agreement of Broadcaster. For the removal of doubts, the Affiliate shall not use the Broadcaster's trade names or trademarks in a manner that will adversely affect the goodwill and reputation of Broadcaster and its products and services.

4.8.3 The Affiliate acknowledges that Broadcaster shall have the sole discretion to approve the use of Channel Marks by the Affiliate, including with respect to the programmes included in the Subscribed Channels. The Affiliate further agrees that that by reason of the Agreement, it shall not acquire any proprietary or other rights or interest in the Channel Marks.

4.9 OBLIGATIONS OF INTELLECTUAL PROPERTY RIGHTS AND RIGHTS PROTECTION

4.9.1 The Affiliate shall use its best efforts to promote an awareness of the Subscribed Channels among its subscribers and potential subscribers.

4.9.2 It is expressly agreed and understood that the Affiliate shall not acquire any intellectual property rights, ownership or other rights, including but not limited to rights

relating to any trade marks, service marks or copyrights (whether registered or unregistered), with respect to the Subscribed Channels or Additional Channels except as expressly set forth in the Agreement, nor shall the Affiliate grant to others, the right to use the Subscribed Channels or any other rights in and to the Subscribed Channels except as specifically set forth in the Agreement.

4.9.3 The Affiliate shall not acquire and agrees not to take advantage of any legal possibility to acquire any proprietary or other rights in the trade names and marks to which the Broadcaster or its principals (the owners or the channel providers of the Subscribed Channels) assert proprietary or other rights (**"Channel Marks"**) and further agrees not to use the Channel Marks in any corporate or trade name.

4.9.4 The Affiliate agrees that upon discovering or coming to Notice of any actual or impending infringement or unauthorised use by or through the subscribers of the Channel Marks or any other intellectual property rights or ownership rights relating to the Subscribed Channels, the Affiliate shall immediately report to Broadcaster with full details.

4.10 SUBSCRIBER RECORDS, ACCESS & AUDIT RIGHTS

4.10.1 The Affiliate shall keep accurate, complete and up to date records of every subscriber's details, details of the location of every set top box, Smart Card, records and accounts of billings including historical billing data, type of subscribers, sublicenses and all relevant matters ("Subscriber Records"). The Affiliate shall ensure that its SMS and billing software allows for monitoring and printing historical data relating to subscriber activation and/or deactivation, going back to at least 12 months at any point of time.

4.10.2 The SMS and all Subscriber Records that are relevant to the Subscribed Channels for the operation of the Agreement shall be available for inspection and audit by Broadcaster/Broadcaster's representative(s) (where such representatives are members of an internationally recognized accounting firm and agree in writing to be bound by confidentiality obligations) during the Term at any time during normal business hours and for three months after the expiry or premature termination of the Agreement, as the case may be, to ensure compliance with the Anti-Piracy Obligations, and (ii) on three days prior written notice during normal business hours to ensure compliance with all other terms of the Agreement up to four times within any 12-month period and for three months after the expiry or premature termination of the Agreement, as the case may be. The Affiliate shall give Broadcaster/Broadcaster's representatives any assistance they may reasonably require in connection with their audit investigations. In the event a breach of the Agreement has been discovered during the course of such audit or inspection, Broadcaster/Broadcaster's representatives shall have the right to take printouts, photocopies and computer copies of the Subscriber Records, or any portion thereof, reasonably required to provide evidence of such breach, and the Affiliate agrees to extend reasonable co-operation in this regard.

4.10.3 In the event an audit or inspection by Broadcaster/ Broadcaster's representative(s) under Clause 4.10.2 reveals that the Affiliate has under-reported or has misrepresented any item having a bearing on the computation of the amounts payable to Broadcaster, the Affiliate agrees to immediately pay all amounts due based on the actual and true items together with simple interest at the rate of 15% per annum for the periods from the dates when the respective payments should have been made until the actual date or dates of payment. In addition to the above payment, the Affiliate shall also pay all costs and expenses incurred by Broadcaster for such audit/ inspection. This obligation shall survive the termination of the Agreement. If within a period of two weeks from the date of demand by the Broadcaster, the Affiliate fails to pay any amounts found due on the basis of such audit/

inspection, including the cost and expenses of such audit/ inspection, the Broadcaster shall have the right to deactivate/disconnect the Subscribed Channels and/or terminate the Agreement as per the law applicable without prejudice to its right to claim such amount referred to above in addition to any other action that may be deemed appropriate.

4.11 ANTI-PIRACY OBLIGATIONS

4.11 The Affiliate shall, at its own expense, take all necessary steps to prevent and stop unauthorised or illegal use of the Subscribed Channels or signals thereof as described below

4.11.1 The Affiliate represents, warrants and undertakes that the systems, processes and controls in place regarding the distribution of set top boxes and Smart Cards so as to ensure that they are only sold within the Area by the Affiliate or by its authorized dealers and such sales are only made to *bona fide* subscribers residing in the Area and installations are made at a residential address is adequate and steps taken to ensure adequate systems, processes and controls shall include, without limitation, the Affiliate:

(a) Investigating any multiple Smart Cards issued under one individual name or address, including visiting the premises of such individuals or addresses from time to time;

(b) Ensuring compliance by its authorized dealers including through unannounced visits to dealers' premises from time to time;

(c) Requiring that for every change of address on the system and therefore relocation of a set top box, there is an independent physical verification of the new residential address; and

(d) Deauthorising any set top box or Smart Card that is found outside of the Area or in the possession of a person who is not a *bona fide* subscriber.

4.11.2 The Affiliate represents, warrants and undertakes that all of its set top boxes and Smart Cards: (i) are sold and installed together as a pack only in the Area and only at the premises of subscribers whose address has been verified in accordance with Clause 4.11.1; and (ii) employ card-pairing technology that ensures once a Smart Card is activated, it is paired to a particular set top box and that the Subscribed Channels cannot be viewed if such Smart Card is removed and used with any other set top box.

4.11.3 The Affiliate represents, warrants and undertakes that all installations of set top boxes and Smart Cards are done directly by the Affiliate or through its authorised dealers and only within the Area, and that the installer for every installation physically checks and ensures before installation and activation of a set top box and Smart Card that the address where the installation is being done matches with the address as supplied by the subscriber at the time of purchase of the set top box and which is the same as detailed in the SMS. In accordance with Clause 4.11.1, the Affiliate's SMS shall contain all of the following information items for each subscriber prior to activation of a set top box and, where separately issued, Smart Card for such subscriber:

(a) Name;
(b) Installation address;
(c) Billing address (if different);
(d) Telephone number of the installation address, where applicable;
(e) Subscriber's unique subscriber reference or subscription agreement number; (f) Service/Channels/Packages that have been selected;
(g) Details of the dealer who sold the set top box;

(h) Details of the authorized dealer who sold the subscription;
(i) Details of the installer;
(j) Smart Card number; and
(k) Set top box number.

4.11.4 The Affiliate agrees and undertakes that it shall not activate, or otherwise reactivate, as the case may be, those Smart Cards, wherein the Subscribed Channels can be accessed from addresses which are:

(a) not *bona fide* or do not match the addresses as supplied by the relevant subscribers as detailed in the SMS; or
(b) outside of the Area.

4.11.5 In order to ensure that the Smart Card is only activated for *bona fide* subscribers, the Affiliate further represents, warrants and undertakes that there are adequate controls to ensure (a) a Smart Card is not activated before installation with its paired set top box; and (b) that such Smart Card is activated at the address of the subscriber which matches with the address as supplied by the subscriber at the time of purchase of the set top box and which is the same as detailed in the SMS.

4.11.6The Affiliate represents, warrants and undertakes that its SMS: (a) allows viewing and printing historical data, in terms of total activation, de-activation and re-activation of all subscribers and all other records required under Clause 4.11.3;

4.11.7In the event the Affiliate is found to be in breach /violation of the terms and its obligation under Article 4.11 of the Agreement the Broadcaster shall be entitled to deactivate/de-authorise the Subscribed Channels after following the procedure laid down in the Regulations/Directions/Orders of the TRAI or any other statutory authority.

4.12 FINGERPRINTING

4.12.1 The Affiliate shall ensure that it has systems, processes and controls in place to run Fingerprinting at regular intervals as per the specifications/ guidelines provided by the Broadcaster. A certificate at periodical intervals by the Affiliate giving the details of systems, processes and controls in place to run fingerprinting which detail is verifiable by the broadcaster would be sufficient compliance of this clause.

The Affiliate shall ensure that all set top boxes should support both visible and covert types of Fingerprinting and should be compatible for running Fingerprinting whether operated by the Affiliate or by the Broadcaster.

4.12.2 The Affiliate shall ensure that it shall be able to operate the Fingerprinting across all subscribers or any sub-set of subscribers based on pre-set parameters and such Fingerprinting should, apart from the foregoing, be possible and available on global, group and regional bases at all times.

4.12.3 The Affiliate shall ensure that the following processes shall be deployed to keep a check on piracy and misuse of the signals of the Subscribed Channels:

4.12.3.1 The Subscribed Channels' Fingerprinting should pass through without masking or tampering with respect to time, location, duration and frequency;

4.12.3.2 Fingerprinting to be provided by the Affiliate on the Subscribed Channels, as per the scheme provided by the Broadcaster; the Broadcaster shall have a right to give the time, location, duration of Fingerprinting at a reasonably short notice (i.e. at least 30 minutes prior notice or more).

4.13 BROADCASTERS OBLIGATIONS

4.13.1 The Broadcaster and the Affiliate would work closely together to decide on the promotional schemes/ offers for the subscribers with an objective to persuade them to subscribe to the channel(s) of the Broadcaster.

4.13.2 Broadcaster will take all necessary approvals and permissions as may be laid down by law.

4.14 It is clearly understood that all the relevant laws of the country, including the rules, notifications and orders issued by the Government under such laws as well as any order, direction or regulation of TRAI or any Regulatory Authority would be binding on both parties and none of the clauses contained herein shall be interpreted in a manner as may be in derogation of the said provisions, notifications, rules, orders, directions and Regulations.

ARTICLE 5: RESTRICTIONS

5.1 The Affiliate shall subject to constraint of factors beyond his control, distribute each Subscribed Channel in its entirety, without interruption, alteration, addition, deletion or editing except as may be required by any Applicable Laws in the Area.

5.2 The Affiliate shall not, without the Broadcaster's prior written consent:

i) Distribute or exhibit or authorize, license or permit the distribution or exhibition of the Subscribed Channels by any such medium or devices, now known, or hereafter devised throughout the Area other than in accordance with the terms of the Agreement. The Affiliate shall not, without Broadcaster's prior written permission, distribute the Subscribed Channels via any distribution system or medium other than the Permitted Distribution System. Further, the Affiliate subject to the applicable law shall not distribute the Subscribed Channels to any Commercial Establishments in the Area unless specifically provided herein.

ii) Copy any of the programmes, data or content included on the Subscribed Channels for the purpose of distributing them later, or for any other reason, except as may be required by any Applicable Laws within the Area provided that the Affiliate promptly notifies the Broadcaster before making any copy;

iii) Cut, edit, dub, voice-over, sub-title, reformat or otherwise change or make additions to any programmes, data or content included on the Subscribed Channels except as may be required by any Applicable Laws within the Area;

iv) Except for the services specifically permitted vide clause 1.1 of Article 1 in this Agreement, the Affiliate shall not incorporate any Subscribed Channel or the programmes, data or content therein as part of any Free TV, Interactive TV, Internet Protocol TV (IPTV), Pay Per View (PPV), Video On Demand (VOD) or Near Video On Demand (NVOD) services or On-line Services, or otherwise exhibit or cause the exhibition of any stills, extracts or data from any Subscribed Channel or the programmes therein via the Internet or any other local or area wide computer network or mobile telephone or handheld device;

v) Reformat any Subscribed Channel so that it appears on less than the full screen of a television or add or super-impose any data, crawlers, buttons or other items to any Subscribed Channel;

vi) Superimpose or otherwise add any third party or non-Broadcaster advertising, promotions, programmes, data, content, copyright, trademarks, trade names, logos, names and / or licenses on any Subscribed Channel, Channel Mark or Broadcaster Promotional Materials;

vii) Use any copyright, trademarks, trade names, logos, names and / or likenesses, or any part of them, included in programmes on any Subscribed Channel, or which Broadcaster uses for marketing purposes, except in connection with its receipt or promotion of the Subscribed Channels;

viii) Allow or authorize any other person to do any of the acts mentioned in subclause (vii),

except with the permission of Broadcaster and in accordance with the Agreement;

ix) Remove or shift or allow to be removed or shifted, the Equipment from the agreed Address detailed in clause 3 of the Agreement or allow anybody else to do the same, and shall indemnify Broadcaster against any damage, destruction or theft or loss of the Equipment;

ARTICLE 6: REPRESENTATION AND WARRANTIES OF AFFILIATE

The Affiliate undertakes, represents and warrants to the Broadcaster as under:

6.1 It has the requisite power and authority to enter into the Agreement and to fully perform its obligations hereunder and it has not entered and shall not enter into any agreement that may conflict with its obligations under this Agreement.

6.2 It shall comply with all laws and regulations with respect to the services in terms of the Agreement and it shall pay all charges, levies, taxes and duties imposed on or charged to it under any Applicable Laws, rules and regulations or government orders (including service tax, entertainment tax etc.);

6.3 It shall submit to the Broadcaster a copy of its registration as a cable operator, with the postal authority or with such other competent authority as may be appointed from time to time, The Affiliate further confirms that it shall renew such registration as and when required and shall keep it in full force and shall duly inform the Broadcaster in the event of any changes or termination in its registration, within two weeks of such change;

6.4 It shall not misuse the Subscribed Channels and shall not conceal/misrepresent the details of subscribers in the Area. The Affiliate further confirms that it shall promptly inform the Broadcaster by SMS Report furnished every month within 15 days following the expiry of each month in case of any change in the names and addresses and other details of its subscribers and addition/ change in sub-operators, last mile operators and/or franchisees through whom the Subscribed Channels are being delivered to the subscribers;

6.5 It shall pay all duties, taxes, fees and other outgoings payable in respect of the Equipment as and when the same becomes due and payable and shall indemnify the Broadcaster against any default or non-payments in this regard;

6.6 It shall keep the Equipment in good and serviceable order and condition to the satisfaction of the Broadcaster and bear all expenses for general repairs and maintenance of the same and it shall immediately notify the technical cell of the regional office of the Broadcaster in the event of any mechanical/ technical fault in the Equipment;

6.7 It shall not pledge, charge or encumber or in any way part with the possession of the Equipment without the prior written permission of Broadcaster. Further, it shall not remove or replace any or all parts of the Equipment. The Affiliate shall allow authorized employees or agents of Broadcaster free access to the address mentioned at clause 1.1 of Article 1 to check whether the Equipment is being properly used;

6.8 It shall not modify, misuse or tamper with the Equipment including the seal (paper seal to prevent opening of the Equipment) or any signals emanating therefrom, in a manner that prevents the identification of the Equipment number or interferes with the signals emanating there-from. Any such act by the Affiliate shall be construed as a breach of its obligations hereunder;

6.9 The Affiliate undertakes that it shall not do anything, which might tend to indicate that any TV programme is from any source other than the channel

forming part of the Subscribed Channels under the Agreement;

6.10 In case Broadcaster desired to enter into any new contract superceding the earlier Agreement or add or delete certain terms and conditions because of change in Applicable Laws then the Affiliate shall sign such new contract. Provided further that the Affiliate may choose not to sign if the terms as per the new contract is less favorable to the Affiliate vis-à-vis the terms contained in the superceded agreement. If the Affiliate further agrees to adhere to and abide by the new contract or by any such additional terms and conditions, the Affiliate, shall sign a new contract superseding the Agreement, incorporating any such additional terms and conditions, within one month of the issue of such new contract by Broadcaster. If the Affiliate does not agree the parties may mutually agree to proceed to terminate the Agreement after following the procedure provided in this Agreement and complying with any regulations, orders or directions that may be issued by the Government or any regulatory body;

6.11 The Affiliate acknowledges that it shall be deemed to have notice of any regulations and guidelines issued by competent Authority, as and when the same are issued;

6.12 The Affiliate represents and warrants that it has the appropriate net worth and necessary infrastructure (including office, support staff and the equipment) for running the cable operations smoothly and efficiently and discharging its entire obligations under the Agreement. The Affiliate shall pay the Subscription Amounts to Broadcaster on the basis of invoices raised and on or before the due dates without any delay or default. The Affiliate further undertakes to pay the increased Subscription Amounts in the event of any increase in the actual number of subscribers as may be derived from the Subscriber Management System(SMS).The Affiliate recognizes that it has been appointed hereunder, based among other things, on the above-mentioned representations and its confirmation that the Agreement and the payments to be made hereunder and the obligations to be discharged are for the definite Term provided in clause 1.5 of the Agreement unless expressly provided otherwise in the Agreement;

6.13 It is expressly recognized between the Parties that the breach of any of the above, shall constitute an event of default under the Agreement and shall entitle Broadcaster to disconnect the access to the Subscribed Channels hereunder provided and to terminate the Agreement and disconnect/deactivate the Subscribed Channels as per the law in force. All representations and warranties shall survive the termination of the Agreement.

ARTICLE 7: REPRESENTATIONS AND WARRANTIES OF BROADCASTER

7.1 The Broadcaster represents and warrants to the Affiliate that it has the requisite power and authority to enter into the Agreement and to fully perform its obligations hereunder and it has not entered and shall not enter into any agreement that may conflict with its obligations under the Agreement;

7.2 The Broadcaster shall comply with all laws and regulations with respect to services referred to in clause 1.1 of this Agreement and it shall pay all charges, levies, taxes and duties imposed on or charged to it under any Applicable Laws, rules and regulations or government orders (including service tax, entertainment tax etc.);

7.3 The Broadcaster understands that TRAI has issued certain regulations and guidelines and agrees that it shall adhere to and strictly abide by such regulations and guidelines and any amendments thereto or any new regulations and guidelines that may be in force from time to time. The Broadcaster acknowledges that it shall be deemed to

have notice of any regulations and guidelines issued by TRAI, as and when the same are issued; The Broadcaster represents and warrants to the Affiliate that downlink license has been applied for/obtained with respect to all channels;

7.4 The Broadcaster further represents and warrants to the Affiliate that the satellite signal of the Subscribed Channels shall be in standard PAL or NTSC format as designated by Broadcaster and have one or more audio tracks;

7.5 The Broadcaster shall ensure good quality and uninterrupted service to the Affiliate except for reasons beyond control and undertakes that it has all the requisite rights, authority and approval to broadcast the programme and that such broadcast shall not infringe the copy rights of any other person;

7.6 The Broadcaster represents that the equipment including IRD if any supplied by it will be compliant with the existing BIS standards;

7.7 It is expressly recognized between the Parties that the breach of any of the above, shall constitute an event of default under the Agreement and shall entitle the Affiliate to disconnect the carriage of the Subscribed Channels hereunder provided and to terminate the Agreement as per the law in force. All representations and warranties shall survive the termination of the Agreement.

ARTICLE 8: OBLIGATIONS RELATING TO EQUIPMENT

The Broadcaster shall, at the request of the Affiliate supply or cause to be supplied the Equipment to the Affiliate (or if it has already supplied such Equipment directly or through suppliers nominated by it) upon the following terms and conditions:-

8.1 IRDs

(i) The IRD shall be used by the Affiliate exclusively for distribution of the Subscribed Channel for which it is issued and shall at all times remain the sole and exclusive property of the Broadcaster and the Affiliate shall forthwith return the same to the Broadcaster upon expiry or termination of the Agreement as per the provisions and procedure laid down in this Agreement.

(ii) In the event, that the Affiliate merges or amalgamates with another entity or ceases to carry on business of a multi system operator (MSO) or a cable operator, the Affiliate shall intimate the same to the Broadcaster immediately and shall take steps to forthwith return the IRD to the Broadcaster within 10 days. In the event, the Affiliate fails to return the IRD to the Broadcaster without reasonable cause, the Affiliate shall be liable to pay a sum of Rs.1,000/- per day per IRD to the Broadcaster for the period during which the default continues.

(iii) The Affiliate shall not, under any circumstances, reverse engineer, decompile or disassemble the IRD Box or Viewing Cards or reproduce or allow the reproduction of any of them or the technology included in them. The Affiliate will ensure that the IRD is not tampered with in any way.

8.2 VIEWING CARDS

(i) The Viewing Card(s) supplied by the Broadcaster shall at all times remain the sole and exclusive property of the Broadcaster and the Broadcaster shall forthwith deactivate the same upon expiry or termination of the Agreement as per the provisions and procedure laid down in this Agreement

(ii) The Affiliate shall use the Viewing Card(s) only in terms of the Agreement and at the installation address mentioned in clause 1.1 of Schedule to this Agreement. The Affiliate shall not make any unauthorized use or tamper with the Viewing Card(s) in any manner whatsoever. However, in the event the Affiliate desires to move the Viewing Card(s) to some other address, the Affiliate shall obtain prior written

permission from the Broadcaster and such permission shall not be unduly delayed or refused by the Broadcaster. The Affiliate shall not sell, exchange or transfer the Viewing Card(s) in any manner whatsoever. If, upon any investigation or inspection, it is found that any Viewing Card(s) is being misutilised, mishandled or used in any manner, other than what has been specifically provided for under this Agreement, then, the Affiliate shall be liable to compensate the Broadcaster for any loss or damages caused to the Broadcaster by such misutilisation or mishandling or unprescribed use. In any such event the Broadcaster shall also be entitled to immediately take back possession of the Viewing Card(s) and also to initiate appropriate civil/ criminal proceedings in respect of such unauthorized use in addition to any other action that it deems appropriate under the law.

(iii) The Broadcaster shall not be liable for any defect in the Viewing Card(s) that is attributable to any unauthorized use, tampering or damage due to negligent use of the same by the Affiliate or any other person. In the event, the Viewing Card(s) is lost, stolen or damaged, the Affiliate shall immediately inform the Broadcaster. In the event, the Affiliate desires new Viewing Card(s) for any channel

forming part of the Subscribed Channels, the same may be issued at the discretion of BROADCASTER on payment of such charges as may be specified by the Broadcaster from time to time. In the event of deactivation of the Viewing Card(s) for any reason whatsoever, including non-payment of Subscription Amounts, the Affiliate shall be liable to pay to the Broadcaster such charges as may be determined by the Broadcaster from time to time for re-activation of the Viewing Card(s). In the event, any of the Viewing Card(s) is not in use by the Affiliate, the same shall be returned to the Broadcaster immediately.

8. 3 RECEIPT OF EQUIPMENT

It is expressly agreed between the Parties that where the Broadcaster has dispatched the Equipment as per request of the Affiliate and informs him about the same but the Affiliate does not intimate the Broadcaster of the receipt or non-receipt of the Equipment within a period of thirty days of the receipt of such intimation of dispatch by the Broadcaster, then it will be deemed that the Affiliate has received the Equipment.

8.4 RESTRICTIONS ON EQUIPMENT

8.4.1 In the event the Affiliate fails to pay the Subscription Amounts and/ or, upon expiry of, or termination of the Agreement, the Broadcaster shall be entitled to take back the possession of the Equipment from the Affiliate and deactivate the Viewing Card(s). Upon return of the Equipment in proper working condition by the Affiliate, the IRD Deposit shall be refunded to the Affiliate. In the event, the Affiliate fails to return the Equipment to the Broadcaster without reasonable cause, the Affiliate shall be liable to pay a sum of Rs.1,000/- per day per IRD to the Broadcaster for the period during which the default continues. In case the Affiliate returns the IRD, but the Viewing Card and remote (where applicable) are damaged or missing, then the Affiliate shall be liable to pay to the Broadcaster such charges as may be determined by the Broadcaster. The Broadcaster shall be authorized to deduct the cost of damages from the IRD Deposit.

8.4.2 The Affiliate shall get the IRD insured immediately on execution / renewal of the Agreement. In case of damage to the IRD, the Broadcaster shall recover the actual repair cost from the Affiliate. However, in case the IRD cannot be repaired or is beyond repair the Affiliate shall be liable to pay to Broadcaster the book value of the IRD. The Broadcaster shall be entitled to deduct the book value of such IRD from the IRD Deposit and/or Security Deposit. The premiums if any paid by the Affiliate would be adjusted from the amounts due to the Broadcaster on account of subscription amounts.

8.4.3 In order to recover possession of the Equipment from the Affiliate, the Affiliate shall ensure that the authorized personnel of the Broadcaster are allowed free and unobstructed access to the premises of the Affiliate where the Equipment are installed and take possession of the same. The Affiliate shall not interfere with such procedure provided that such authorized personnel of the Broadcaster visit the premises for the purposes of taking the possession of the Equipment during normal office hours.

8.4.4 The Affiliate acknowledges and recognizes that mere possession of the Equipment does not automatically entitle the Affiliate to receive the Subscribed Channels.

8.4.5 Any violation/breach of this Clause 8 shall entitle Broadcaster to disconnect and deny access to the Subscribed Channels subject however to the compliance of applicable laws as well as to terminate the Agreement as laid down in this Agreement.

8.4.6 The parties to the Agreement have verified that all the representations and warranties made herein above are true, accurate and correct and that no material information,

particulars or details have been omitted, concealed or otherwise not disclosed or remained to be furnished.

8.4.7 It is expressly recognized between the parties that the breach by either party of any of the representations, warranties or covenants set out in this Agreement shall constitute an event of material default by the other party under this Agreement and shall entitle the other party to terminate the Agreement and claim damages without prejudice to any other rights.

ARTICLE 9: INDEMNITY AND THIRD PARTY CLAIMS

9.1 If for any reason or resulting from any cause whatsoever, any statement, representation or warranty of the Affiliate/Broadcaster set forth herein is found to have been materially incorrect, untrue when made, fails to prove to be true, the breaching party which provided such materially incorrect, untrue statement or representation or warranty, shall be fully liable to the other party for any and all liability, damage, costs, and expense including attorney fees, arising from such representation, breach or incorrect statement.

9.2 Both parties agree that each party shall forever keep and hold the other party and its affiliated companies, officers, directors, employees and agents fully indemnified and harmless against all liabilities, claims, costs, damages and expenses (including, without limitation, reasonable fees of a counsel of the other party's choice) arising out of any breach of any representation and warranties set out herein or any of its obligations pursuant to this Agreement**.**

ARTICLE 10: CONFIDENTIALITY

10.1 The Parties agree to keep all information including without limitation, data pertaining to the business of the other Party, details of the other Party's Affiliates, subscriber details, Subscription Amounts, pricing, etc. regarding the strategy and volume of business of the other Party strictly confidential at all times unless required by applicable law to disclose such information.

10.2 Any information provided by one Party to the other Party under the Agreement is to be held strictly in confidence by the other Party and shall not be used by the other Party for a purpose other than the purpose for which it is intended under this Agreement without written consent of the other. Disclosure of any such information is to be made only to such employees of the Parties who need to use the Confidential Information and it is the responsibility of the Parties to bind and ensure that any such employee shall hold in confidence all such confidential information including but not limited to the terms and conditions of the Agreement and that such an employee does not disclose, publish or make copies of the Agreement or the Confidential Information (unless it is required by law to do so) without the prior written consent of the other Party.

This clause shall survive the termination of this Agreement.

ARTICLE 11: NO PUBLIC ANNOUNCEMENTS

The Parties shall not make, and shall not permit any of their respective directors, employees, officers, or Associates to make, any public announcement about the subject matter of the Agreement or any of its business and operating plans from time to time, whether in the form of a press release or otherwise, without first consulting with the other Party and obtaining the other Party's written consents, save as required to satisfy any requirement (whether or not having the force of law) of a stock exchange on which the shares of the Parties or an Associate of the Parties or holding company of the Parties are traded or the securities laws, rules or regulations applicable to the Parties or an Associate of the Parties or holding company of the Parties in any jurisdiction in which its shares are traded or any relevant governmental or regulatory body or as otherwise required by law or

regulation. In the event that disclosure is required, the other Party shall be given a reasonable opportunity to review and comment on any such required disclosure.

ARTICLE 12 : TERMINATION AND EFFECT OF TERMINATION

12.1 TERMINATION

12.1.1 The Agreement shall automatically terminate by efflux of time i.e. on the completion of the Term unless on or before the expiry of completion of the term, the parties have executed another agreement on the same subject or have agreed to or have started a process of negotiation to extend the term of the Agreement with or without modification in terms of clause 1.3.2 of this Agreement.

12.1.2 Either of the Parties may, subject to clause 12.1.3 and clause 24 below, terminate the Agreement at any time by giving a reasoned written notice of one month to the other Party.

12.1.3 The parties shall have the right to terminate the Agreement, subject to Applicable Laws, upon the occurrence of any of the following events:

12.1.3.1 Where one of the parties is in material breach of any provision of the Agreement as defined in clause 1.3 of the Schedule;

12.1.3.2 Where the Broadcaster fails to provide conditions necessary for proper exercise of the rights of subscription as envisaged in Article 2 of this Agreement;

12.1.3.3 Where the Affiliate fails to provide to the Broadcaster, true and accurate information pertaining to the names, addresses and details of (i) the subscribers; and (ii) any cable operators, sub-operators, last mile operators and/or franchisees through whom the Subscribed Channels are being delivered to the subscribers pertaining to any location within the Area as and when demanded by the Broadcaster, from time to time for purposes of verification. The details of subscribers should be verifiable through the Subscriber Management System (SMS);

12.1.3.4 Where the Affiliate fails to provide the Subscriber Report as required by the broadcaster duly attested within fifteen days from the expiry of each month;

12.1.3.5 Where the Broadcaster has provided the Affiliate with evidence to the effect that any of the Affiliate's sub operators are engaging in piracy of the Subscribed Channels, and the Affiliate has failed to take reasonable remedial action (including deactivating or confiscating Viewing Cards, Smart Cards, set top boxes or Receiver Boxes, as applicable) within two days of its receipt of such evidence and a notice by the Broadcaster requiring it to take such remedial action;

12.1.3.6 Where the Affiliate is in breach of the Anti-piracy Obligations set forth in the Agreement;

12.1.3.7 Where the Broadcaster has provided the Affiliate with reasonable evidence that any of Affiliate's active Smart Cards or set top boxes are lost or stolen or found being sold outside of the Area, or the Subscribed Channels or proprietary information or technology in the Smart Cards or set top boxes are in immediate and apparent danger of unauthorised use and the Affiliate has failed to take remedial action in accordance with the Anti-Piracy Obligations (including deactivating or confiscating such Smart Cards or set top boxes, as the case may be) within two days of its receipt of a written notice by Broadcaster requiring it to take such remedial action;

12.1.3.8 Where the Broadcaster has increased the Subscription Fees as provided under clause 3.1.2 of this Agreement and the Affiliate does not want to continue the business relationship on account of such increase in Subscription Fee;

12.1.3.9 In the event of Bankruptcy or insolvency of any of the parties;

12.1.3.10 Where winding up proceedings/liquidation proceedings have been initiated against any of the parties;

12.1.3.11 Where the Affiliate in any manner has jeopardised or interfered with the Broadcaster's intellectual property rights in any of the Subscribed Channels or part thereof;

12.1.3.12 Where the Affiliate's distribution of all or any of the Subscribed Channels, exposes the Broadcaster or its Associates to any liability, civil or criminal;

12.1.3.13 Where any of the parties attempts to make or makes any transfer, assignment or sublicense of any of their rights under the Agreement without prior written consent of the other party;

12.1.3.14 Where there is any change in the Control of the Affiliate/Broadcaster by way of any Competitor gaining Control of the business of the Affiliate/Broadcaster (**"Control"** meaning, for this purpose, the power to manage, directly or indirectly, the operation of the business of the Affiliate/Broadcaster, whether through the ownership of voting securities, by contract or memorandum or articles of association or any constitutional documents of the Affiliate/Broadcaster or otherwise) (**"Competitor"** meaning, for this purpose, any person whose business is that of a service provider and/or multi system operator (MSO) and/or distribution and/or broadcasting and/or owner (whether direct or indirect) of one or more television channels in one or more markets in the world).

12.1.4 Where the Broadcaster's authority to distribute all of the Subscribed Channels is revoked and/or terminated, then the Agreement shall stand automatically terminated;

Provided, however, that in the case of revocation or termination of the Broadcaster's authority to distribute some of the Subscribed Channels and not all of the Subscribed Channels, the Broadcaster shall at the first opportunity of knowing about the imminent possibility of such revocation or termination of authority, inform the Affiliate about such possibility and its consequences, so as to enable the latter to decide whether to continue with the Agreement or not.

12.1.5 Where the Broadcaster is subjected to legal, governmental or other adverse action under applicable treaties, tariffs or Applicable Laws that restrict the right of the Broadcaster to provide the Subscribed Channels or any part thereof to the Affiliate or limit the Affiliate's right or authorisation to offer the Subscribed Channels or in the event of any court order which cannot be reviewed or appealed against, which prevents/restricts the Broadcaster to provide the Subscribed Channels to the Affiliate under the terms of the Agreement then the Agreement shall stand automatically terminated.

12.1.6 Upon the termination of the Agreement, distribution of the Subscribed Channels shall be unauthorized and illegal and the Broadcaster shall be entitled to disconnect /deactivate the distribution of the Subscribed Channels but subject to observance of applicable rules /regulations/orders if any.

12.2 CONSEQUENCES OF TERMINATION

12.2.1 Upon termination of the Agreement:

(i) the parties to the Agreement shall cease to exercise their rights and to perform

obligations arising out of this Agreement unless expressly provided otherwise in this Agreement

(ii) the Affiliate shall cease to provide services as defined in clause 1.1 of Article 1 and specifically referred to in Annexure A including distribution of Subscribed Channels to its subscribers directly or indirectly.

(iii) the Affiliate shall return the IRD / Viewing Cards in the same condition as they were made available by the Broadcaster subject to normal wear and tear.

(iv) the Affiliate shall prepare and deliver to the Broadcaster a final Subscriber Report relating to Subscription Amount due to the Broadcaster on termination; (v) all Promotional Materials of the Broadcaster, which are in the Affiliate's possession or under its control shall be delivered to the Broadcaster or otherwise disposed of in accordance with the Broadcaster's directions;

(vi) the parties shall immediately cease to make any representations that they are associated with each other in the Area;

(vii) the Parties in addition to their other rights and remedies under law or equity, shall be entitled to receive all outstanding monies due to each other including the Subscription Amounts /IRD Deposit /Security Deposit due or to become due under the Agreement and these shall immediately become due and payable on the date of termination;

(viii) the indemnity obligations and the confidentiality obligations of the parties will continue to stand and survive termination; and

(ix) the Affiliate shall cease to use the intellectual property and sign a confirmation of cessation of the use of Intellectual property as may be required by the Broadcaster.

ARTICLE 13: LIMITATION OF LIABILITY

13.1 It is expressly understood and agreed between the Parties that neither Party shall have any liability or obligation whatsoever under this Agreement, towards any other party arising from and in respect to:-

(a) Any defect or damage in the equipment including IRD(s)/Viewing Card(s) not attributable to the Affiliate. (Any defect in the IRD(s)/ Viewing Card(s) attributable to or resulting from any unauthorized or improper use, tampering, negligence or failure to follow the Broadcaster's instructions or any use of the IRD(s) with any apparatus or equipment not authorized by the Broadcaster shall be deemed to be actions attributable to the Affiliate);

(b) Any problem in the CAS or any other equipment due to system failure, any reason beyond the reasonable control of the Affiliate;

(c) Any action, failure to act or default on the part of any equipment distributor or installer;

(d) Any delay or failure in performance of this Agreement caused by any reason or event beyond the reasonable control of the Broadcaster/ Affiliate;

(e) Any indirect or consequential loss resulting or any other default on the part of the Broadcaster or any of its officers, employees, suppliers, distributors or agents or any vendor of an IRD; and

(f) Withdrawal or suspension of any Channel or programs by the Channel Owners without providing adequate opportunity to the Broadcaster to suitably notify the Affiliate of such an eventuality;

13.2 It is expressly agreed and understood between the parties that the Broadcaster shall have no liability or obligation towards the Affiliate, its sub operator and/or subscriber due to deactivation of services if such services have been deactivated by the Broadcaster as per the terms of this Agreement and in compliance of the orders/regulations in this regard, if any.

ARTICLE 14: AGREEMENTS WITH SUBSCRIBERS

Any agreement entered into by the Affiliate with a subscriber or any Agreement entered into by the Broadcaster with the channel provider shall not relieve the Affiliate or the Broadcaster of any of its obligations under this Agreement towards the other and the Affiliate and Broadcaster shall ensure that such agreements are not in any way prejudicial to the rights and obligations between the Parties arising out of this Agreement.

ARTICLE 15: NO WAIVER

The exercise of or failure to exercise any, or all of the foregoing remedies by the Parties shall not operate as a waiver on the part of the Parties of its rights to exercise any other remedy available to the Parties under the Agreement, at law or equity, and all of the foregoing remedies shall be deemed cumulative. The failure of the parties to enforce anytime or for any period any one or more of the terms and conditions of the Agreement shall not be a waiver of them or of the right at any time subsequently to enforce such right unless such subsequent exercise of the right is barred by limitation as provided by law or otherwise limited by this Agreement.

ARTICLE 16: NO AGENCY

Neither the Affiliate nor the Broadcaster shall be or hold itself out as the agent of the other under the Agreement. No subscribers shall be deemed to have any privity of contract or direct contractual or other relationship with the Broadcaster by virtue of the Agreement or by the Broadcaster's delivery of the Subscribed Channels to the Affiliate. The relationship between the Broadcaster and the Affiliate is "Principal to Principal".

ARTICLE 17: BINDING NATURE

All the obligations and benefits arising under the Agreement shall pass to and be binding on the respective assigns transferees and successors of the Parties hereto.

ARTICLE 18: MODIFICATIONS

This Agreement cannot be modified, varied or terminated except in writing. Any variation of the Agreement including Addendum Agreements, Annexures, Schedules or any other document, called by whatever name, but executed relating to this Agreement, shall be mutually agreed to in writing and executed by or on behalf of the Parties through their respective authorized representatives.

ARTICLE 19: NO PARTNERSHIP

Nothing contained in this Agreement shall constitute or be construed to be or create a partnership or joint venture between the Broadcaster and the Affiliate and neither party shall enter into any contract or obligation that purports to bind the other.

ARTICLE 20: NOTICES

All Notices given hereunder shall be given in writing in English, by personal delivery or by Registered Post Acknowledgement Due (RPAD), at the correspondence addresses of the Affiliate and of the Broadcaster set forth in this Agreement unless either party at any time or times designates another address for itself by notifying the other Party thereof by Registered AD Post only, in which case all notices to such Party shall thereafter be given at the address so notified.

Notice shall be deemed to have been received, (a) if delivered personally, upon delivery and (b) if sent by RPAD, upon delivery of the mail or upon expiry of 7 days from the date of despatch.

ARTICLE 21: RIGHTS AND VALIDITY

The rights and remedies set out in the Agreement are cumulative and not exclusive of any rights or remedies provided by law.

ARTICLE 22: SUPERSESSION

Except as provided herein, this Agreement constitute the whole agreement between the Parties relating to the subject matter hereof and supersedes any other prior agreements or understanding relating to such subject matter. Provided, however, that it shall not prejudice the rights and obligations which have arisen out of the prior agreements and continuing to subsist unless otherwise agreed to be relinquished or abrogated through this Agreement.

ARTICLE 23: ASSIGNMENT

Notwithstanding anything contained in this Agreement, the parties shall not have the right, without the prior written consent of the other, to assign or transfer the Agreement or any of their respective rights or obligations, under this Agreement. Any breach, actual, potential or threatened, of this clause**,** shall entitle the parties to terminate the Agreement and take any other measures as may be appropriate.

ARTICLE 24: FORCE MAJEURE

Failure on the part of the Broadcaster/Affiliate to perform any of its obligations, shall not entitle either party to raise any claim against the other or constitute a breach of this Agreement to the extent that such failure arises from an event of Force Majeure. If through Force Majeure the fulfillment by either party of any obligation set forth in this Agreement is delayed, the period of such delay will not be taken into account in computing periods prescribed by this Agreement. Force Majeure will include any war, civil commotion, strike, Satellite Jamming, Satellite Failure, lockout, accident, epidemic or any other event of any nature or kind whatsoever beyond the control of the parties herein that directly or indirectly hinders or prevents either of the parties from commencing or proceeding with the consummation of the transactions contemplated hereby. The Party affected by such Force Majeure event shall promptly notify the other party of the occurrence of such event. It is agreed between the Parties that lack of funds shall not in any event constitute or be considered an event of Force Majeure. Were the condition of Force Majeure to continue for a period exceeding one month, the Parties shall meet to decide upon the future performance of the Agreement. If the Parties are unable to agree upon a plan for future performance, then the Agreement shall be terminated upon notice of either party to the other, on expiry of one month from the date such notice is given.

ARTICLE 25: SEVERABILITY

In the event that any provision of this Agreement is declared by any judicial , quasi judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable, the Parties shall amend that provision in such reasonable manner as achieves the intention of the Parties without illegality or at the discretion of the Parties, it may be severed from this Agreement and the remaining provisions of this Agreement shall remain in full force and effect unless the Parties decide that the effect of such declaration is to defeat the original intention of the Parties in which event, Parties shall be entitled to terminate this Agreement by a months' notice.

ARTICLE 26: JOINT AND SEVERAL

Joint and several: All agreements on the part of either of the Parties which comprises more than one person or entity shall be joint and several and the neuter singular gender throughout this Agreement shall include all genders and the plural and the successors in title to the Parties.

ARTICLE 27: DISCRETION

No decision, exercise of discretion, judgment or opinion or approval or provison of information on any matter mentioned in this Agreement or arising from it shall be deemed

to have been made by either of the Parties to the other except if in writing and shall be at its sole discretion unless otherwise expressly provided in this Agreement.

ARTICLE 28: GOVERNING LAW AND DISPUTE RESOLUTION

28.1 The rights and obligations of the Parties under the Agreement shall be governed by laws of India.

28.2 The Parties agree that they shall not seek injunctions or any interim/ad-interim orders from any court or judicial tribunal/authority in India with respect to any claims, dispute or differences between the Parties arising out of this Agreement save and except before the Telecom Disputes Settlement and Appellate Tribunal, New Delhi **("TDSAT").** The Parties agree that all disputes between the Parties shall be resolved solely through proceedings instituted before the TDSAT.

IN WITNESS WHEREOF the Parties hereto have executed the Agreement on the day, month and year mentioned hereinabove.

For and on behalf of M/s. A & Co Ltd)

_____)

Authorised Signatory

In the presence of 1.

…… 2. ……

For and on behalf of M/s. B &CO. Ltd.)

_____)

Authorised Signatory

In the presence of

1. ……

2. ……

Annexure A

Details of Subscribed Channels, subscription fees, MRP, Security Deposit, IRD fees, etc

Item (1): SUBSCRIPTION FEE

A) A - la – Carte Channels

SUBSCRIBED CHANNELS	IRD Number	Viewing Card Number if any	Maximum Retail Price per subscriber per month	Subscription Fee per subscriber per month

B) Bouquets

SUBSCRIBED CHANNEL BOUQUETS		IRD Number	Viewing Card Number if any	Maximum Retail Price per subscriber per month	Subscription Fee per subscriber per month
Name of Bouquet	Channels included in the Bouquet				

Item (2): IRD DEPOSIT & PROCESSING FEES

[Read with Clause 8 of the Agreement]

CHANNEL	IRD DEPOSIT(One Time) (Rs.)	PROCESSING FEES (One Time) (Rs.)

Annexure B

Copy of Identification Certificate furnished by Affiliate

Schedule: Registration Details of the Affiliate & Broadcaster

1.1 AFFILIATE REGISTRATION AND OTHER DETAILS:

Cable Television Registration No.

Date of issue: Date of expiry:

PAN No.:

Service Tax registration No.

Date of issue:

Entertainment Tax Registration No.:

Date of issue:

The Affiliate shall provide a self-attested copy of the above registration certificates.

Installation Address *(if different from address details provided above)*

Contact Person (Mr./Ms)

Installation Address

1.2 **Broadcaster Registration and Other Details**.

Details of Registration Certificate :

PAN No.:

Service Tax registration No.

Date of issue:

Entertainment Tax Registration No.:

Date of issue:

Note : Strike Out whichever is not applicable/ Add any other details that are relevant

DEFINITIONS AND INTERPRETATIONS

A. DEFINITIONS

In the Agreement unless the context requires otherwise, the following words and expressions shall have the meanings set out herein below:

"Affiliate"	means a multi system operator (MSO) including its agents or intermediaries who provides services as agreed to and as described in Clause 1.1 of Article 1 of this Agreement through the Permitted Distribution System. For the purposes of this Agreement the definition shall be interpreted with reference to the party of the Other Part ie M/s. B & CO Ltd on whose behalf this Agreement has been signed.
"Agreement"	means this Commercial and Technical Agreement and all its Schedules, Annexures and/or addenda agreements, updation forms particularly referred as forming part of this Agreement as amended from time to time.

"Applicable Laws"	means and includes any law, regulation, direction, notification, policy, guideline or order, including amendments thereto, enacted or issued by any constitutional, legislative, judicial, quasi-judicial or administrative authority concerning Broadcasting and Distribution of TV channels and matters consequential upon and incidental thereto.
"Area"	means the area referred to in clause 1.2 of Article 1 of the Agreement, within which the Subscribed Channels through a permitted distribution system with CAS are to be distributed by the Affiliate, directly or indirectly, through its agents and would include flats, apartments, buildings, dwelling units, whether in a single family or in a multi unit building. Each television set connected to a set top box in a single dwelling would hereby constitute a subscriber for the purposes of computing the number of subscribers in the Agreement.
"Associates"	means: (i) in the case of a person other than a natural person, any other person that, either directly or indirectly through one or more intermediate person(s), controls, is controlled by, or is under common control with such person, and (ii) in the case of a person that is a natural person, any other person that, either directly or indirectly through one or more intermediate person(s), controls, is controlled by or is a relative of such natural person. For the purposes of this definition, "control" means the power to direct the management or policies of a person, whether through the ownership of over 50% of the voting power of such person, through the power to appoint over half of the members of the board of directors or similar governing body of such person or by virtue of the articles or other constitutional document of such person or otherwise, or through contractual arrangements or otherwise.
"Bouquet"	means a combination of more than one Television Channels and/ or selling of a combination of Channels together as a package.
"Broadcaster"	means a Broadcaster as defined in The Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004
"Channel(s)"	means the television channel(s) with a set of frequencies used for transmission of a programme and particularly specified in Annexure A, whether
"Commercial Establishment"	means a commercial cable subscriber as defined in "The Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Fourth Amendment) Order, 2006.
"Conditional Access System" or "CAS"	means any Addressable System containing features as indicated in the Explanation (a) below Section 4A of The Cable Television Networks (Regulation) Act, 1995 (7 of 1995).
"Confidential Information"	means :(a) any information concerning the organization, business, technology, trade secrets, know-how, finance, transactions or affairs of a Party or any of its Associates, directors, officers or employees (whether conveyed in written, oral or in any other form and whether such information is furnished before, on or after the date hereof) of the parties, (b) any material/ information, which results in the violation of any conditions imposed by the Broadcaster or its programme suppliers and disclosed to the Affiliate by the Broadcaster for the purposes of this Agreement, including any information of any kind whatsoever which is made known to the Affiliate as being confidential in nature and vice versa (c) any information or materials prepared by a Party or its representatives that contains or otherwise reflects, or is generated from Confidential Information.

"Competent Authority"	means the Authority specified in this Agreement to be the Competent Authority for the purpose indicated therein and would include any Authority as has been notified /declared or as may be notified/ declared from time to time as a constitutional or legislative or judicial or quasi judicial or Administrative or Regulatory Authority concerning matters of Broadcasting and Distribution of TV channels and matters incidental or relating thereto.
"Electronic Programme Guide" or "EPG"	means an electronic program guide maintained by the Affiliate that lists television channels and programmes, and scheduling and programming information therein and includes any enhanced guide that allows subscribers to navigate and select such available channels and programs.
"Equipment"	means and includes the IRDs and the Viewing Card(s), collectively referred to as Equipment.
"Fingerprinting"	means a process whereby code words/numbers are made overtly to appear on the screen of a television and / or covertly in the signal of a Subscribed Channel that enables identification of the Viewing Cards being used to access the signal.
"Integrated Receiver Decoder" or "IRD"	means a device, decoder, receiver cum decoder used in conjunction with a Viewing Card by the Affiliate in order to receive a Television Channel and may include a remote control, where applicable and which has the recommendation/ approval of Broadcaster on the basis of mutually agreed parameters between the parties.
"Promotional Material"	means such materials, information, merchandise, etc. made by the Broadcaster, or by the Affiliate for the purpose of promoting the Subscribed Channels/ programmes of the Subscribed Channels, and shall without limitation include flyers, banners, hoardings, stickers,
	handouts, etc.
"Material Breach"	includes but is not limited to any of the following breaches of the terms and conditions of this Agreement i) non payment or part payment of the subscription amounts which have been established to be due and outstanding in terms of the mutually agreed procedure for determining the due and outstanding payment of subscription amounts. ii) in the event of a statement / warranty of the party is found to be untrue. iii) tampering with SMS or CAS systems and records and failure to provide records despite the procedure of making such requests have been followed. iv) Change of location of IRDs/ Viewing Cards by the Affiliate without consent of the Broadcaster.
"Notice"	means a written communication by one party to the other, issued pursuant hereunder and is addressed and delivered personally or by post at the place indicated in this Agreement or in the Addendum Agreements as the case may be as address for the purpose of the notice.

"Permitted Distribution System"	means a system of distribution of the Television Channels to the subscribers in encrypted analogue or digital format through the Cable Television Network as defined under the Cable Television Networks (Regulation) Act, 1995 (7 of 1995). For avoidance of doubts, it is clarified that for the purposes of this Agreement, Permitted Distribution System would not include distribution of Television Channels to subscribers through any other method such as Head-ends In The Sky, Direct-To-Home, Multipoint Microwave Distribution System/ Multi Channel Multipoint Distribution System (MMDS), Terrestrial Transmission, or through cellular mobile network or any other medium or technology or device
"Set Top Box" or "STB"	means a device, which is connected to, or is part of a television and which allows a subscriber to receive in unencrypted/descrambled form subscribed pay channels through an addressable system.
"Smart Card"	means, in relation to a subscriber, a card or other device either issued by the Affiliate to the subscriber or embedded in the set top box which when enabled by CAS, has the functionality of enabling the subscriber's set top box to receive the Subscribed Channels offered by the Affiliate.
"Pay Channel"	means a pay channel as defined under the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order, 2004 and specified in Annexure A to have been subscribed as a pay channel for distribution through the permitted distribution system to the subscribers directly or indirectly.
"Subscription Fee''	means the fee payable by the Affiliate to the Broadcaster per subscriber per month in respect of any particular subscribed channel or in respect of any particular subscribed bouquet of channels as per the revenue share arrangement indicated in clause 3.1.3 of this Agreement.
"Total Subscription Amount"	means the total amount payable by the Affiliate to the Broadcaster for each month. It shall be calculated by taking the subscription fee for each channel or bouquet of channels and multiplying the same by the number of subscribers for that channel or bouquet of channels, as the case may be, as reflected in the SMS of the Affiliate and by adding up the sums in respect of all channels and bouquets of channels covered under this Agreement.
"Subscriber"	means a person who receives the services described in clause 1.1 of Article 1 of the Agreement read with Annexure A, either in full or in part, through the permitted Distribution System either directly or indirectly from the Affiliate without transmitting it to any other person and has been declared to be a subscriber for such service as per the Subscriber Management System (SMS) installed at the Head End of the Affiliate. For the purpose of the definition every television set connected to a set top box located within duly occupied residential flats, apartments, or other residential dwelling units located in single unit or multi-unit buildings or a place indicated for receiving the Subscribed Channels from the Affiliate shall be counted as one subscriber.
"Subscribed Channels"	means the channels as described in Item (1)(A) and (1)(B) of Annexure A to this Agreement.

"Subscriber Management System" or "SMS"	means a system or device which stores the subscriber records and details with respect to name, address etc as well as information regarding the hardware being utilized by the subscriber, channels /bouquets of channels subscribed to by the subscriber, price of such channels or bouquets of channels as defined in the system, the activation / deactivation dates and time for any channel or bouquet of channels, a log of all actions performed on a subscriber's record, invoices raised on each subscriber and the amounts paid by the subscriber for each billing period.
"Services"	means Services referred in Clause 1.1 of Article 1 and described appropriately in Annexure A of this Agreement.
"Term"	means the term of this Agreement as specified in clause 1.3 of Article 1.
"Viewing Card"	means the Broadcaster-approved viewing card to be used in conjunction with the IRD for the Affiliate to access and decode each Subscribed Channel.

B. INTERPRETATION

In this Agreement, unless the context otherwise requires:

(a) Any reference to the singular in the Agreement shall include a reference to the plural and vice versa and words importing one gender only shall include all other genders unless the context otherwise requires.

(b) The word "person" shall include individuals, corporations, partnerships, association of persons and any other entities;

(c) Any references to Article, clauses, sub-clauses, appendices, annexure and schedules are references to Articles, clauses, sub-clauses, appendices, annexure and schedules to the Agreement unless the context otherwise expressly provides;

(e) References to a "month" are to a calendar month;

(f) Headings and titles are for ease of reference only and shall not affect the interpretation of this Agreement and in no way be read to give a construction not harmonious with the interpretation of various clauses of this Agreement done otherwise independent of the title.

(g) Any reference to law, regulation, statutory provision, order, guideline, policy, etc, includes references to such law or regulation or provision, order, guideline, policy, etc., as modified, codified, amended or re-enacted from time to time.

Schedule 2

[Between multi system operator (MSO) and cable operator (CO)]

STANDARD TECHNICAL AND COMMERCIAL INTERCONNECTION AGREEMENT [CAS]

This Technical and Commercial Interconnection Agreement along with its Schedules and Annexures is executed on this _____ day of _____ 2006 by and between:

M/s. B & Co Ltd, a company incorporated under the Companies Act, 1956, having its registered office at 00111, PQR Colony ABC City (hereinafter referred to as the "**multi system operator (MSO)**" which expression shall unless repugnant to the context or meaning thereof be deemed to include the successors and permitted assigns) of the **ONE PART**.

AND

***[M/s C & Co., a partnership firm** having its office at 123, MNO Road, XYZ City and having as partners Mr. _____ s/o _____, r/o _____ and Mr._____ s/o. _____ r/o. _____]

OR

***[M/s. D & Co. Ltd., a company incorporated** under the Companies Act, 1956, having its registered office at 456, LMN Road, EFG City]

OR

***[M/s. E Associates, a proprietary concern**, having its office at 789, IJK Colony, UVW City owned by Mr. _____ s/o _____, r/o _____, carrying on business in the name and style of Alpha Beta Gamma Cable Vision]

(* strike out whichever is not applicable or modify suitably in case of Association of Persons or Body of Individuals)

(hereinafter referred to as the "**Affiliate**" which expression shall unless repugnant to the context or meaning thereof, be deemed to include the successors in business and permitted assigns, legal heirs, executors) of the **OTHER PART**

The **multi system operator (MSO)** and the **Affiliate** are hereinafter individually and collectively referred to as "**Party**" and "**Parties**", respectively.

WHEREAS

A. The multi system operator (MSO) is engaged in the business of distribution of television channels including through a digital /analogue Conditional Access System ("CAS") in the Areas notified by the Central Government under Section 4A(1) of The Cable Television Networks (Regulation) Act, 1995 (7 of 1995);

B. The Affiliate is registered as a cable operator with the local post office having its postal registration No. _____dated_____ and is authorized to provide Cable T.V. Service to subscribers by means of Cable T.V. Network having subscribers in the Territory.

C. The parties have mutually agreed to execute this agreement between them to govern the rights and obligations in regard to the subscription and distribution of Television channels in the Territory.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, constituting good and valuable consideration, the Parties agree as follows: -

1. DEFINITIONS

The words and expressions used in this Agreement shall have meanings as assigned to them in the Schedule to this Agreement.

2. PROVISION OF SERVICE

2.1 The multi system operator (MSO) hereby grants to the Affiliate and the Affiliate hereby accepts from the multi system operator (MSO), the right to receive Cable T.V. Signals through the Trunk Line for further instant re-transmission by the Affiliate to the subscribers in the Territory on the terms and conditions herein set out.

2.2 The multi system operator (MSO) shall make available Channels to the Affiliate based on sufficient demand and as per prevailing norms, policies, the applicable Laws and rules, regulations, directions and orders of the concerned Authorities, so as to make a complete wholesome service, and subject to commercial feasibility. This shall include such number of Free To Air channels as may be specified under the law for inclusion in the package of channels

forming the basic service tier. In case any Channel is not received and/or transmitted by the multi system operator (MSO) for reasons not solely attributable to multi system operator (MSO), Affiliate shall not hold the multi system operator (MSO) responsible for the same.

3. BILLING AND PAYMENT

FOR PAY CHANNELS

3.1 The Affiliate shall pay the Subscription Amounts for each month to the multi system operator (MSO) for the Pay Channels in accordance with the statement furnished to him by the multi system operator (MSO). The Subscription Amounts will be based on the maximum retail price for each channel/ bouquet of channels of the respective Pay Broadcasters and the number of subscribers subscribing to each channel or bouquet of channels.

3.2 The above statement will contain the details of the Pay Channel subscribers and the amounts payable by the Affiliate. This may be used by the Affiliate to

invoice and collect the amounts from his subscribers. The Affiliate shall bill the subscribers for the channels or bouquet of channels subscribed by them at an amount not exceeding the maximum retail price of individual channels or a bouquet of channels as subscribed by the subscribers.

3.3 (i) The Affiliate will pay to the multi system operator (MSO) each month, 75 % of the total amount calculated by taking the maximum retail price for each pay channel or bouquet of pay channels and multiplying the same by the number of subscribers for that channel or bouquet of channels, as the case may be and by adding up the sums in respect of all pay channels and bouquets of pay channels provided by the multi system operator (MSO). The Affiliate will retain the remaining 25% as his margin out of the total amount on account of pay channels.

(ii) The multi system operator (MSO) shall give due notice of any change in the maximum retail price of any of the pay channels or bouquet of channels, of a minimum of 21 days or as may be prescribed by law, as the case may be.

FOR BASIC SERVICE TIER/ FREE TO AIR CHANNELS AND CARRIAGE CHARGES

3.4 No charges for the Basic Service Tier/ Free To Air channels shall be payable by the Affiliate to the multi system operator (MSO). Any amount collected by the Affiliate from his subscribers for the Basic Service Tier/ Free To Air channels shall be retained by the Affiliate. However, the Affiliate shall have no claim to get any share from the Carriage Fee, if any, received by the multi system operator (MSO) from any broadcaster and the entire amount so received by the multi system operator (MSO) shall be retained by the multi system operator (MSO).

3.5 All amounts billed as per statements/ invoices shall be payable on or before the due dates as mentioned therein.

3.6 The Affiliate will also collect rent, instalment and security deposit for the Hardware or any other amount as may be specified by the multi system operator (MSO) from the subscribers concerned from time to time and hand over the same to the multi system operator (MSO) without any deduction.

SECURITY DEPOSIT

3.7 The Affiliate shall deposit with the multi system operator (MSO) a sum of Rs._____/- (Rupees _____Only) interest free and refundable security deposit. This security deposit will only cover the cost of the set top boxes provided to him .At the time of expiration or

termination of this Agreement, Affiliate shall be entitled to refund amount of the security deposit, subject to the adjustment of arrears of bills, and any other payments due from the Affiliate to the multi system operator (MSO). This shall be settled within 30 days of the expiry/ termination of the agreement.

TAXES

3.8 The multi system operator (MSO) and the Affiliate shall be responsible for payment of all taxes, levies, charges and penalties levied or imposed by or under a statute, law, regulations, relating to the Services and which are due to be paid by them, respectively. The Affiliate shall also be responsible for collection of such amounts attributable to such taxes, levies, charges imposed by or under a statute, law, regulations, relating to the Services and payable by the multi system operator (MSO) and by Broadcaster and for remitting the same promptly to the multi system operator (MSO) within the respective due dates.

DEFAULTS

3.9 Without prejudice to such rights and remedies that the multi system operator (MSO) may have in law or under the provisions of this agreement, in the event of any delay or failure by the Affiliate to make payments of subscription amounts on or before the respective due dates, the multi system operator (MSO) shall have the right:

(i) to disconnect the services to the Affiliate subject to the compliance of the applicable rules, regulations, directions or orders of the competent authority.

(ii) to terminate this agreement, subject to compliance of the applicable laws in force.

(iii) to charge a simple interest at the rate of 15 percent per annum from the date such amounts became due until they are fully and actually paid.

(iv) to appoint another Affiliate, other than the defaulting Affiliate, for the Territory.

Provided however, that the multi system operator (MSO) may, at its discretion, waive its right to disconnect the service and to terminate this Agreement, upon such terms and conditions as the multi system operator (MSO) may deem fit and proper, which shall, inter-alia, include the receipt by the multi system operator (MSO):

(a) of the entire arrears of subscription amounts, together with simple interest accrued thereon at the rate of 15 percent per annum from the date immediately succeeding the due date, till they are fully paid; and

(b) reasonable reconnection charges as may be mutually decided.

3.10 Upon disconnection of the service as mentioned in clause 3.9 above, whether accompanied by termination of this Agreement or not, the Affiliate shall be liable to deposit forthwith all sums payable by it to the multi system operator (MSO). In the case of termination, accounts shall be settled within 30 days and for delayed payments by either party, simple interest at the rate of 15 percent per annum shall be charged.

4. AFFILIATE'S COVENANTS

4.1 The Affiliate hereby undertakes that it shall be responsible for -

(i) booking of orders from subscribers for provision of the Hardware, getting the necessary registration forms filled up by the subscribers, getting signatures of the subscribers under his certification, collection of the rents or instalments and the security deposits and forwarding promptly to the multi system operator (MSO) such forms, along with the requisite payments, as also

requests from the subscribers for changes, if any, from time to time, duly countersigned by the Affiliate to enable the processing of the same;

(ii) Storage of the Hardware supplied by the multi system operator (MSO), payment of the security deposit therefor and distribution and installation thereof to the subscribers and for repossession of the same at the request of the multi system operator (MSO) and for handing over the same to the multi system operator (MSO);

(iii) Billing, collection of the amounts from the subscribers and handling all calls, queries, complaints of the subscribers; and

(iv) Physical verification of the address of each subscriber of pay channels after getting proof of residential address such as a ration card, Voters Identity Card, Bank Pass Book or any other such documentary proof of residence;

4.2 The Affiliate shall -

(i) protect, safeguard and maintain services provided to the existing and also to the future subscribers;

(ii) ensure the deployment and usage of only such set top boxes and Smart cards at the subscriber's end, as are approved by the multi system operator (MSO) and are compatible with the network of the multi system operator (MSO);

(iii) not transmit or retransmit, interpolate or mix any signals to subscribers which are not transmitted or generated by the multi system operator (MSO) without the prior written consent of the multi system operator (MSO);

(iv) not insert any commercial or advertisement or information on any signal transmitted by the multi system operator (MSO). Any such tampering of signals or interpolating of signals shall be deemed to be a violation of this agreement and shall constitute sufficient cause for termination of this agreement by the multi system operator (MSO) by giving such notice as prescribed under the law;

(v) not interfere in any way with the signals provided by the multi system operator (MSO) and also not to use any decoding, receiving, recording equipment(s), counterfeit set top box or Smart card and any other like equipments;

(vi) not provide any feeder line from its end to any other cable operator, commercial establishment, institution or any other person, association of persons (whether registered or unregistered) or company, without the prior written permission of the multi system operator (MSO);

(vii) supply/provide the multi system operator (MSO) a copy each of the return filed with the Entertainment Tax Department, Service Tax Department, Central Government under the Cable Television Networks (Regulation) Act, 1995, and any other authority under any law for the time being in force on request;

(viii)make payment of bills by the fifteenth of succeeding month, in respect of the services it availed during a month, by such mode as may be notified by the multi system operator (MSO), or, if directed and authorized by the multi system operator (MSO), to deposit the same in a designated bank account notified by the multi system operator (MSO) for that purpose; (ix) inspect the set top boxes and Smart cards with the subscribers on a sample basis every month so as to ensure that the set

top boxes and Smart cards are not altered, tampered, misused, replaced, removed or shifted without the written consent of the multi system operator (MSO) from their original address, and also whether or not, the subscribers are using, either before or after the set top box, any decoding, receiving, recording equipment(s), counterfeit Smart cards other than the set top box, Smart cards and other equipments supplied/ approved by the multi system operator (MSO).

(x) not perform or, not induce another person to perform or offer to perform -

(a) any alteration, tampering with the Hardware including the seal (seal to prevent opening of set top box), misuse, replacement, removal and shifting of Smart card(s) and/or set top box(es) without the written consent of multi system operator (MSO) from their respective original addresses,

(b) any use, either before or after the set top box, of any decoding, receiving, recording equipment(s), counterfeit set top box(es),Smart card(s) other than the set top box(es), Smart cards and any other equipments supplied/ approved by the multi system operator (MSO), and to take actions as directed by the multi system operator (MSO) against such subscribers, and

(c) any piracy or other activities, which has the effect of, or which shall result into, infringement and violation of trade mark and copyrights of the multi system operator (MSO), the broadcaster, or any other person associated with such transmission.

(xi) intimate the multi system operator (MSO) promptly about any alteration, tampering with the Hardware including the seal, misuse, replacement, removal and shifting of Smart cards and set top boxes, without the written consent of multi system operator (MSO), from their respective original addresses and also about the use, either before or after the set top boxes, of any decoding, receiving, recording equipment(s), counterfeit set top box(es) and Smart card(s) other than the set top box(es), Smart card(s) and any other items of Hardware supplied by the multi system operator (MSO), and to take actions as directed by the multi system operator (MSO) against such subscribers;

(xii) comply with all the applicable statutes or laws for the time being in force, or any rules, codes, regulations, notifications, circulars, guidelines, orders, directions etc. issued, published or circulated under any law for the time being in force;

4.3 The Affiliate shall not provide any connection to any person for further re-transmission of the Cable T.V. signals for any purpose. Also, the Affiliate shall not receive, transmit or retransmit any signal directly or indirectly, which is transmitted or re-transmitted from any third party.

Explanation: This clause shall have no application where the Affiliate receives, transmits or retransmits any signal from a third party through a separate independent network, having no connection whatsoever with the network of the Affiliate, utilized for transmission/ retransmission of signals received from the multi system operator (MSO).

4.4 The Affiliate shall not record and then retransmit Cable T.V. Signal or otherwise to block or add or substitute or otherwise tamper with the signal being transmitted by the multi system operator (MSO) or with the Trunk Line nor shall allow any other person to do so.

4.5 The Affiliate shall extend all reasonable co-operation, to the multi system operator (MSO), to enable the multi system operator (MSO) to conduct such inspections etc. so as to satisfy itself with regard to the fulfillment of the conditions mentioned in this Agreement, on the part of the Affiliate.

4.6 The Affiliate shall not do any act or thing as a result of which, any right or interest of the multi system operator (MSO) in respect of the Cable T.V. signals under this Agreement or any property of the multi system operator (MSO) may be infringed or prejudiced.

4.7 The Affiliate shall provide true and accurate information pertaining to the names, addresses and details of (i) the subscribers; and (ii) any sub operators, through whom the services are being delivered to the subscribers, within two weeks from the date of this Agreement, and thereafter at the end of each month to the multi system operator (MSO).

4.8 The Affiliate shall have no right, without the prior written consent of the multi system operator (MSO), to assign or transfer any of its rights or obligations under this Agreement. Any breach, actual, potential or threatened of this clause, shall entitle the multi system operator (MSO) to terminate this Agreement and to take any other measures as may be appropriate under the law after giving the prescribed notice.

4.9 **RIGHTS & OBLIGATIONS OF MULTI SYSTEM OPERATOR (MSO)**

(i) To carry out modifications, if found necessary, in its network. These modifications may include replacement of the old cables and equipment with new ones, which are capable of handling the services of the multi system operator (MSO) and to carry out improvements/ upgradation therein. Entire network as well as all improvements carried out in the

territory shall be the exclusive property of the multi system operator (MSO) and the Affiliate shall not have any right whatsoever on the same; (ii) To provide facility to the Affiliate to register and resolve the subscribers' complaints, and to forward and execute pay channel viewing choices and requests of subscribers;

(iii) To arrange for the provision of Subscriber Management System (SMS); (iv) To notify and inform the specifications of set top boxes and Smart cards which are compatible with its network and the authorized sources from where these can be procured/purchased by the subscribers;

(v) To receive complaints on technical aspects from the Affiliate and arrange to provide necessary advice/ assistance to carry out the required rectification work by the Affiliate. The multi system operator (MSO) will provide all technical consultancy and help to the Affiliate as and when required by him for up-gradation of its system and enhancement of quality of signals;

(vi) To deploy finger printing mechanism or any other mechanism/ method/ system in its network to detect any piracy, violation of copyrights and unauthorized viewing of channels, transmitted through its network, by the Affiliate, subscribers or any other person;

(vii) To make inspections at the premises of the Affiliate so as to satisfy itself with regard to fulfillment of the conditions, on the part of the Affiliate, mentioned in this Agreement;

(viii)To deal with satellite channel broadcasters; and

(ix) To make physical verification of the network, from time to time.

5. UNDERTAKINGS

5.1 Each party shall recognize the exclusive ownership of the property owned and installed by the other party and shall not have or claim any right, title or interest or lien of whatsoever nature.

5.2 Nothing contained herein shall constitute either Party as the agent or partner or the representative of the other for any purpose and neither Party shall have the right or authority to assume, create or incur any liability or obligation of any kind, express or implied, in the name of or on behalf of the other Party and the relationship between the multi system operator (MSO) and the Affiliate is on "Principal to Principal" basis.

5.3 (i) It is expressly understood by the parties that "_____" logo(s) is a Registered Trade Mark of the multi system operator (MSO), and the Affiliate shall use the said logo only during the currency of this agreement for the benefit of the cable television networking business of the multi system operator (MSO). Consent of the multi system operator (MSO) be and is hereby given to the Affiliate to use the said logo, to the extent of or in connection with the business of the multi system operator (MSO).

(ii) It is clearly understood and accepted by each party that it shall have no right to use any intellectual property of the other on its Cable T.V. Service or otherwise on or after the withdrawal by the other party of its consent for such uses.

5.4 In case of the Affiliate decides to transfer its interest in respect of its business of providing Cable T.V. Service to any other party / person (third party), in whole or in part, the Affiliate shall give prior notice to the multi system operator (MSO). The multi system operator (MSO) shall not have any objection to such transfer if the Affiliate has complied with its obligations under this contract and has paid all its dues.

Provided, however, that such other third party shall sign & execute a deed of adherence to the terms & conditions of this Agreement and other undertaking/ bonds to the satisfaction of the multi system operator (MSO) in order to give effect to the provisions of this Agreement.

5.5 The Affiliate undertakes to the multi system operator (MSO) to maintain and continue to maintain its Postal Registration Certificate renewed from time to time in accordance with the Cable TV Networks (Regulation) Act, 1995 and to comply with the terms and conditions of the license certificate issued by the Postal Authority.

5.6 Both the parties shall comply with the Laws, as applicable to them.

6. PREVENTION OF PIRACY

6.1 The Affiliate shall not indulge or allow any person to indulge in Piracy or in reverse engineering any technology used in the Hardware or any component thereof nor shall he use the Hardware to be connected to any equipment for setting up a mini head-end for retransmission of the signals generated from the same. Any subscriber shall be disconnected by the Affiliate after giving due notice, if found to be indulging in or abetting any Piracy.

6.2 The Affiliate represents, warrants and undertakes that all set top boxes and Smart Cards as provided by the multi system operator (MSO):

(i) are sold and installed together as a pack only in the Territory and only at the premises of a subscriber whose address has been verified in accordance with Clause 4.1.(iv); and

(ii) employ card pairing technology that ensures once a Smart Card is activated, it

is paired to a particular set top box and that the Channels so subscribed by the subscribers cannot be viewed, if such Smart Card is removed and used with any other set top box.

6.3 For relocation of a set top box of any subscriber, the Affiliate shall conduct an independent physical verification of the new residential address and forward due intimation of the same to the multi system operator (MSO).

6.4 The Affiliate shall furnish the following items of information for each subscriber prior to activation/ allowing activation of a set top box and where separately issued, Smart Card for each subscriber: -

(a) Name;
(b) Installation address;
(c) Billing address (if different);
(d) Telephone number of the installation address, where applicable;
(e) Subscriber's unique subscriber reference or subscription agreement number;

7. DISCLAIMER AND INDEMNITY

7.1 In no event, either multi system operator (MSO) or the employees thereof shall be liable to the Affiliate or to any subscribers of Affiliate or any other person for any indirect, special, incidental or consequential damage arising out of or in connection with the disruption, interruption or discontinuance of the Service or for any inconvenience, disappointment or due to deprival of any programme or information or for any indirect or consequential loss or damage, whether or not attributable to any act or omission of the multi system operator (MSO) or of any of its employees or otherwise.

7.2 Affiliate shall indemnify the multi system operator (MSO) from all cost, expense and damages by reason of any claim, action or proceedings from any third party or from subscribers for any inconvenience, loss or annoyance caused to them due to any default of the Affiliate or due to termination of the Agreement or suspension of the Service due to Affiliate's breach.

8. TERM AND TERMINATION

8.1 The Agreement until terminated, will remain in effect.

8.2 This agreement can be terminated by either party if the other Party;

a. fails to comply with any of the terms and conditions of this agreement and such failure, if capable of remedy, is not rectified within 30 days of receipt of written notice of such failure from the other party; or
b. goes into liquidation or becomes insolvent either compulsorily or voluntarily (save for the purpose of reconstruction or amalgamation) or if a receiver is appointed in respect of the whole or any part of their assets.

8.3 This agreement can be terminated by the multi system operator (MSO), if the Affiliate fails to pay the subscription amounts on or before the due date after following the procedure prescribed under the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004 and amendments made thereto from time to time.

8.4 If the Affiliate indulges in, or allows or induces any person to indulge in Piracy, this Agreement can be terminated by the multi system operator (MSO) after following the procedure prescribed under the Telecommunication (Broadcasting

and Cable Services) Interconnection Regulation, 2004 and amendments made thereto from time to time.

9. EFFECT OF TERMINATION

9.1 In case of default by the Affiliate, the multi system operator (MSO) may instead of terminating the Agreement, suspend the transmission of the Cable T.V. Signal after complying with the requirements under regulations made by the TRAI in this regard, without any liability, responsibility or obligation to any subscriber, for such period until the Affiliate remedies the default. If any subscriber makes any claim or takes any action against the multi system operator (MSO), due to the disconnection or termination by the multi system operator (MSO), the Affiliate shall make good for all costs and consequences for such claim and action which are incurred or suffered by the multi system operator (MSO). Services may be restored at the discretion of the multi system operator (MSO) upon such advance payment and the payment of all outstanding.

9.2 In the event of the Termination, the Affiliate shall pay all amounts due and payable by the Affiliate upto the date of the Termination.

9.3 The Affiliate shall, within Five (5) days of the expiration or termination, as the case may be, of this Agreement in terms of the provisions mentioned herein, hand over to the multi system operator (MSO) all properties and assets belonging to the multi system operator (MSO), which are in the possession of the Affiliate. The Affiliate shall also be liable to make good all losses or damages caused to such properties and assets belonging to the multi system operator (MSO) in the custody of the Affiliate within seven (7) days of expiration or termination of this Agreement.

Explanation:-
The requirement of this clause shall not have any application in respect of the Hardware or any other equipment belonging to the multi system operator (MSO), which are installed at the premises of the subscribers.

9.4 If the Affiliate fails to hand over the Assets or make good losses or damages caused to such properties and assets within the above said period, the Affiliate shall be liable to make payment for the same along with simple interest at the rate of 15 percent per annum.

9.5 All rights and obligations of the Parties shall terminate upon termination of this agreement except that any obligation, express or implied, following such termination which survives by its very nature shall survive. Any continuation of Cable T.V. Signal after the termination shall be merely an extension of the Agreement for which the Affiliate shall continue to be liable to pay as provided under this Agreement or any terms as modified in writing or otherwise from time to time.

9.6 The expiration and termination of this Agreement shall be without prejudice to the rights which have already accrued to either party.

9.7 Upon termination of this Agreement, the parties may, by mutual consent, revive this Agreement. The multi system operator (MSO) shall reconnect the service upon such revival subject to such terms and conditions as are mutually agreed.

10. GOVERNING LAW AND DISPUTE RESOLUTION

10.1 The rights and obligations of the Parties under the Agreement shall be governed by laws of India.

10.2 The Parties agree that they shall not seek injunctions or any interim/ ad-interim orders from any court or judicial tribunal/ authority in India with respect to any claims, dispute or differences between the Parties arising out of this Agreement save and except before the Telecom Disputes Settlement and Appellate Tribunal, New Delhi **("TDSAT").** The Parties agree that all disputes between the Parties shall be resolved solely through proceedings instituted before the TDSAT.

11. FORCE MAJEURE

11.1 Failure on the part of the multi system operator (MSO)/Affiliate to perform any of its obligations, shall not entitle either party to raise any claim against the other or constitute a breach of this Agreement to the extent that such failure arises from an event of Force Majeure. If through Force Majeure the fulfillment by either party of any obligation set forth in this Agreement is delayed, the period of such delay will not be taken into account in computing periods prescribed by this Agreement. Force Majeure will include act of god, earthquake, tides, storm, flood, lightening, explosion, fire, sabotage, quarantine, epidemic, arson, civil disturbance, terrorist attack, war like situation, or enactment of any law or rules and regulation made by the Authorities or any circumstances beyond the reasonable control of the parties herein that directly or indirectly hinders or prevents either of the parties from commencing or proceeding with the consummation of the transactions contemplated hereby. The Party affected by such Force Majeure event shall promptly notify the other party of the occurrence of such event. It is agreed between the Parties that lack of funds shall not in any event constitute or be considered an event of Force Majeure. Were the condition of Force Majeure to continue for a period exceeding one month, the Parties shall meet to decide upon the future performance of the Agreement. If the Parties are unable to agree upon a plan for future performance, then the Agreement shall be terminated upon notice of either party to the other, on expiry of one month from the date such notice is given.

11.2 Any accrued payment obligation of a Party prior to the commencement of Force Majeure shall survive the termination of this agreement pursuant to such Force Majeure.

12. NOTICES

Any notice to be served on any party by the other shall be deemed to have been validly sent if sent by Registered Post Acknowledgement Due (RPAD) or by hand delivery duly acknowledged at the address mentioned in the beginning or at such other changed address as the party may inform and the date of receipt of such notice will be the date of receipt by the other party or shall be 7 days from the date of dispatch of the notice by RPAD, whichever is earlier.

13. RESTRICTION ON TRANSFER

The Affiliate shall not remove, sell, assign, mortgage, transfer/sublet, encumber all or any part of the network which belongs to the multi system operator (MSO). If the Affiliate indulges in any of the above-mentioned acts, the said acts shall be illegal and void ab-initio and the Affiliate shall also be liable for any action under the applicable law.

14. CONFIDENTIALITY

14.1 The parties shall keep in strict confidence, any confidential information received by one from the other while participating in the affairs/business of each other and shall not disclose the same to any person or party not being a party to this Agreement.

14.2 The parties shall also bind their employees, officers, advisors, associates, contractors, agents, authorized persons and other similar persons to whom the above mentioned

information may be disclosed, to the obligations of confidentiality as prescribed in clause 14.1 above.

15. MODIFICATIONS

The Agreement cannot be modified, varied or terminated except in writing. Any variation of the Agreement, including Addendum Agreements, Annexures, schedules or any other document, called by whatever name, but executed relating to this agreement, shall be mutually agreed to in writing and executed by or on behalf of the Parties.

16 BINDING EFFECT

16.1 This agreement modifies all prior understanding of the parties as to the subject matter hereof and shall not be amended except in writing by both the parties. Any other understanding between the parties (if any) with regard to any other matter such as Internet, etc or any accrued rights and obligation of the Parties, if any, shall continue to be in full force and effect.

IN WITNESS WHEREOF the parties have set and subscribed their respective hands to this agreement on the date and year appearing hereinabove.

Signed on behalf of the multi system operator (MSO))
_____)
In the presence of
1. ……..
2. ……..

Signed on behalf of the AFFILIATE)
_____)
In the presence of 1.
……..

2. ……..

Schedule: Definitions and Interpretation.

DEFINITIONS AND INTERPRETATIONS

A. DEFINITIONS

In the Agreement unless the context requires otherwise, the following words and expressions shall have the meanings set out herein below:

"Act"	means the Cable Television Networks (Regulation) Act, 1995 (7 of 1995).
"Addressable System"	shall have the same meaning as assigned to it in the Act.
"Authority"	means any authority constituted under any statute, any department or sub-division thereof, any court or tribunal, including the department of post and tax authorities.
"**Basic Service Tier**"	shall have the same meaning as assigned to it in the Act.
"Cable T.V. Network"	means the network of cable and other equipment such as amplifiers, splitters owned and installed either by the multi system operator (MSO) or by the Affiliate for the purpose of providing Cable T.V. Service.
"Cable T.V. Service"	means the provision of Cable T.V. Signal to the subscribers.
"Cable T.V. Signal"	means the audio visual program signals of cable channels, Basic Service Tier and Pay Channels transmitted by the multi system operator (MSO).
"Channel"	means a set of frequencies of Cable T.V. Signal used for transmission of a television program.
"Finger Printing"	shall mean the mechanism deployed by multi system operator (MSO) in its network so as to detect any piracy, copyrights violation and/or unauthorized viewing of channels transmitted through its network.
"Free To Air channel"	shall have the same meaning as assigned to it in the Act.
"Hardware"	means a multi system operator (MSO) approved set top box to enable the decryption of signals of Pay Channels transmitted in encrypted form, the remote and other associated components and accessories.
"Headend"	means a facility that contains satellite receivers, modulator, compression equipment, multiplexes, and conditional access facilities, other transmission equipments and has antennas which receive signals from local TV studios, and sometimes has TV studios inside the facility which produce shows and send the signals to other locations by satellite or antenna. When a headend facility receives signals from a satellite, it retransmits the signals (analog and/or digital) at frequencies the network can use.
"Network"	means all assets and materials, established withinthe
	specified area, such as head end, control room equipments, dishes, receivers, amplifiers, modulators, integrated receivertranscoders, feeder lines, set top boxes, cassettes, computers, studioequipments, cameras, editing machine, stands, equipments, tools,wires, cables and services which consists of uplinking, downlinking,receiving and sending digital and analog channels, which has theultimate purpose of facilitating the subscribers to access thechannels of his choice or request.

"Package"	means the type of the Channels either individual or in the form of bouquets subscribed by the subscriber which may include the Pay Channels as availed by the subscriber from time to time.
"Pay Channel"	means the Channels transmitted by the multi system operator (MSO) in encrypted form which can be accessed by the subscribers only by means of the Hardware.
"Piracy"	means unauthorized reception of Cable T. V. Signal by any person by any means and modes including but not limited to any alteration, tampering of the seal or any component or accessory thereof or misuse, replacement, removal and/or shifting of Hardware without the written consent of multi system operator (MSO) from their original address or any use, either before or after the set top box, any decoding, receiving, recording equipment(s), counterfeit or unauthorized devices or any activity, which has the effect of, or which may result into, infringement and violation of trade mark and copyright of the multi system operator (MSO) or the broadcasters as the case may be .
"Service"	means the provision of encrypted and/or unencrypted Cable T.V. Signals to the Affiliate for the purposes of and subject to the terms of this Agreement for retransmission to the subscribers.
"Smart Card"	means the card duly approved by the multi system operator (MSO) as part of the Hardware, which enables the subscriber to gain access to the Cable T.V. signals of Pay Channels.
"Subscriber"	means the end viewers/individual households who receive Cable T.V. Signal through the Affiliate. For removal of doubts it is clarified that each television set connected to a set top box in a single dwelling would constitute a subscriber.
"Territory"	means the area of operations of the Affiliate and the multi system operator (MSO).
"Trunk Line"	means the coaxial/optic fiber cable network and other allied equipment such as receiver nodes, amplifiers, splitters etc. owned and installed by the multi system operator (MSO) or its associate companies for the purpose of transmitting Cable T.V. Signal to various affiliates till the receiving end of various affiliates, including the
	Affiliate, to enable them to re-transmit the Cable T.V. Signal to their respective subscribers.

B. INTERPRETATION

In this Agreement, unless the context otherwise requires:

(a) Any reference to the singular in the Agreement shall include a reference to the plural and vice versa and words importing one gender only shall include all other genders unless the context otherwise requires.

(b) The word "person" shall include individuals, corporations, partnerships, association of persons and any other entities;

(c) Any references to Article, clauses, sub-clauses, appendices, annexure and schedules are references to Articles, clauses, sub-clauses, appendices, annexure and schedules to the Agreement unless the context otherwise expressly

provides;

(e) References to a "month" are to a calendar month;

(f) Headings and titles are for ease of reference only and shall not affect the interpretation of this agreement and in no way be read to give a construction not harmonious with the interpretation of various clauses of this agreement done otherwise independent of the title.

(g) Any reference to law, regulation, statutory provision, order, guideline, policy, etc, includes references to such law or regulation or provision, order, guideline, policy, etc., as modified, codified, amended or re-enacted from time to time.

APPENDIX

EXPLANATORY MEMORANDUM

Hon'ble High Court of Delhi on 10.3.2006 had directed that Conditional Access System (CAS) be implemented in the notified areas of three Metros of Mumbai, Kolkata and Delhi on a petition filed by a group of multi system operators (MSOs). During the consequent meetings that the Government of India had organized to discuss the manner of implementation of CAS, the Stakeholders had given a suggestion that there should be standard forms of interconnection agreement between broadcasters & multi system operators (MSOs) and between multi system operators (MSOs) & Cable Operators, and that the Authority should formulate the same in consultation with stakeholders. Accordingly, the Authority had placed on the website a draft Standard Agreement for Interconnection for CAS areas between broadcasters and multi system operators (MSOs) and between multi system operators (MSOs) and cable operators on 12.6.2006.

2. The Authority received responses from some of the stakeholders. Based on the comments received, the Authority held further discussions with stakeholders. Discussions were held with the broadcasters on 20th July, 2006 and on 10th August, 2006; with the multi system operators (MSOs) on 29th June, 2006 and on 18th August 2006; with the cable operators on 3rd July, 2006; with all the stakeholders who had responded on 17th July, 2006 and with the consumer groups on 19th August, 2006. The MSO Alliance, through their letter dated 31.7.2006 had also put forth their views regarding revenue sharing. In the meanwhile, the Hon'ble High Court of Delhi had passed an order on July 20, 2006 according to which CAS has to be implemented in the notified areas of the three cities of Delhi, Mumbai and Kolkata by December 31, 2006. In accordance with these orders, the Government of India has issued a notification on 31.7.2006 according to which CAS has been mandated in the notified areas of these 3 cities by December 31, 2006. Accordingly, the Authority has, after carefully considering the feedback received from the stakeholders, finalised the standard interconnection agreements between broadcasters and multi system operators (MSOs) and between multi system operators (MSOs) and cable operators. These standard interconnection agreements are being mandated through the present amendment to the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004 (13 of 2004) dated 10th December, 2004. The objective of having standard interconnection agreements is to ensure that implementation of CAS does not get delayed on account of inability of service providers to enter into mutually acceptable interconnection agreements through negotiation. Therefore, the standard interconnection agreements are being provided for the areas notified by the Central Government vide notification no. S.O. 1231(E) dated 31.7.2006 only.

Standard Interconnection Agreements

3. As already stated in para 2 above, the standard terms and conditions for interconnection agreements between broadcasters and multi system operators (MSOs) on the one hand and between multi system operators (MSOs) and cable operators on the other, are being prescribed through this Regulation. The important issues raised by the stakeholders on various provisions of the draft standard interconnection agreements during the consultation process, along with the Authority's comments thereon, are set out below.

Some stakeholders have made suggestions regarding changes in the draft standard forms by highlighting the changes proposed by them in track change mode on the draft posted by the Authority on its website. Such suggestions are not listed in this memorandum, but the suggestions have been duly considered and, where accepted, appropriate changes have been made in the standard interconnection agreements. The details of the changes proposed in the MSO-CO draft standard interconnection agreements have not been discussed in detail here since they were all in track change mode. However, these were considered in detail and changes made wherever necessary.

A. Clauses where changes have been made in the standard interconnection agreement between broadcaster and multi system operators (MSOs) in CAS areas

(Comments of stakeholders in Bold – the Authority's comments in Italics)

1.Once there is CAS, the question of area of operation of a multi system operator (MSO) or a cable operator becomes redundant since the number of subscribers will be known transparently through the Subscriber Management System. Accordingly the area of operation should be allowed to cover the entire area of a city notified by the Government.

This position is correct. In the interests of consumer choice and competition multi system operators (MSOs) should be free to market their services in any part of the notified area. Accordingly the draft has been changed to reflect this.(Clause 1.2)

2.The provisions in Clauses 3.2.4 to 3.2.7 which provide for furnishing/ replenishing/ forfeiture of Security deposit have been objected to. The objection is that this is not the current industry practice.

It is a fact that the current practice is to provide credit and not to ask for a security deposit. Since these clauses involve a departure from the current industry practice, they are being deleted.

3.Clause 4.3.2 needs to be changed to provide for payment after 21 days of the relevant billing cycle if no credit is being provided.

This is a reasonable request and has, therefore, been accepted and necessary changes made in this clause and corresponding changes in clause 3.1.4 & 3.1.5.

4.The provisions of clauses 4.4.5 and 6.3 need to be recast since the payment of music rights, if any, is the responsibility of the broadcaster.

This is a valid point. At present the broadcasters are paying music right royalties. As and when this eventuality arises this would have to be commercially negotiated between the parties. There is no need to provide for it now and accordingly the relevant portions of these two clauses have been deleted.

5.The provisions of Clause 4 define the rights and obligations of the parties. It has been pointed out that while there are obligations of the multi system operators

(MSOs) there are no obligations of the broadcasters in this clause. Certain additions have been suggested to set right this position.

Some of the obligations of the broadcasters have already been laid out elsewhere in the draft especially in Clause 7. There is no need for duplicating these under clause 4. Certain additions have, however, been made broadly on the suggestions in clause 4.13. In addition, the provision for termination has been made on a reciprocal basis in clause 7.7

6.The provisions of clause 4.4.6 (f) and (g) should be deleted/modified since the cable operator is not an agent of the broadcaster but another principal.

This suggestion is broadly acceptable. However the multi system operator (MSO) is obliged to ensure the protection of the IPR through all means at his disposal including switching off any offending cable operator. To make the position clear, the wordings of both the sub clauses have been modified.

7.Clauses 4.7 (a),(b) and (d) should be deleted since the marketing and packaging is the responsibility of the multi system operators (MSOs). It has

also been pointed out that each channel would claim preferential treatment and this is not possible.

This is a commercial matter and depending on the terms agreed some channels could be placed in the basic tier which is the most common one. Clauses 4.7 (a), (b) and (d) are being deleted.

8.Clause 4.11 should be amended to provide for joint action by the broadcaster and the multi system operator (MSO) to prevent piracy. Further, the need for proof of residence for identifying subscribers is not necessary.

Provision of joint action would dilute the responsibility of the multi system operator (MSO) and could lead to disputes as to who has to take action in a particular case. The need for proof of residence is unnecessary and those sub clauses have therefore been done away with.

9.In clause 12.1.4.3 the requirement for an affidavit giving the list of subscribers should be deleted.

This has been done and certain other minor changes made in this clause

10.Reference to Carriage Fee should be deleted in Part III of Article 3.

Since there is no sharing of Carriage Fee this has been deleted.

11.The need to harmonise the provisions of clause 4.7 (c) with Rule 9 of the Cable Rules has also been brought out.

Rule 9 has since been changed. The Regulation has also been amended to specifically provide that any law, rule, regulation, direction or order of the Government, TDSAT, TRAI or any other Regulatory Authority shall prevail over the provisions of the standard interconnection agreements.

12.The provision of 7days in clause 2.4 to report changes in the number of subscribers has been considered too short by the multi system operators (MSOs).

It would be sufficient if these details are provided at the time of making payment for which 21 days have been given. The clause has been changed accordingly.

13.Clause 12.1.1 needs to changed to bring it in conformity with the Interconnection Regulations.

Explanation for point no. 11 above applies here also.

14. Clause 4.4.6 (c). Whereas addresses of subscribers with set top box may be possible, obtaining the "complete network map" of the operator may not be possible. Only areas need be specified as hithertofore.

Accepted and necessary changes made.

15.Clause 4.4.8. Subscribers may opt for set top boxes with PVR facilities which may have storage facilities. Multi system operator (MSO) cannot monitor what the subscriber does with the content.

Changes made in 4.4.8. to reflect this concern.

16.Clause 4.12.2. "OSD should support minimum of 78 characters". Generally, the smart card number and/or the set top box number is displayed, which is sufficient to track a set top box. This may be less than 78 characters.

Deleted for the present and could be reviewed later.

17.Clause 4.3.6 should be deleted as the multi system operator (MSO) cannot be made liable for consequential damages arising out of loss of revenue from advertising etc due to the default of the multi system operator (MSO).

This was to be read along with clause 4.3.7 which placed a reciprocal liability on the broadcaster. Both these clauses, namely, 4.3.6 & 4.3.7 have been deleted.

18.Details of listing of the channels on the EPG is the prerogative of the multi system operator (MSO) and no permission should be required from the broadcaster for this.

Necessary changes have been made.

Apart from these changes, there have also been certain other changes aimed at bringing about greater clarity in the provisions of the standard interconnection agreements as well as changes which are of a purely drafting nature. The rate of interest has been made uniform for all cases of default at 15% to ensure uniformity and also to bring in discipline in prompt payments by all concerned.

B. Comments on changes suggested in standard interconnection agreement between broadcasters and multi system operators (MSOs) in CAS areas, but where these changes have not been accepted.

1.**Digital set top boxes should be mandatory since analogue set top boxes are not credible.**

Since the BIS standards allow analogue set top boxes these cannot be disallowed.

2.**The term of the contract should be for 36 months and only the commercial terms should be reopened after 12 months. There should be no room for mutually agreed terms.**

The purpose behind prescribing the standard interconnection agreements is to ensure that CAS implementation is not held up for lack of an agreement. If parties can mutually arrive at contracts that are more suitable for them, then there should not be any opposition to the same. Accordingly, the validity of the contract as per the standard interconnection agreement has been kept only at 12 months.

3.**The agreement should also cover other modes of distribution also specially HITS.**

The broad features of this agreement can be applied to HITS also. However HITS can also reach the entire country and therefore there may be need for other clauses to protect the IPR of the broadcasters. Those operators who want to use HITS should use this standard interconnection agreement and finalise the same with the broadcasters with whatever changes may be necessary for HITS. In case of any difficulty they can come back to the Authority for issue of appropriate directions or regulations.

4.**The agreement should be aimed at providing effective interconnection. Disconnection should not be allowed except for serious breach of agreement causing irreparable harm,**

The entire agreement is subject to the provisions of the Interconnection Regulations which also provide for a procedure for disconnection. The regulations will help in ensuring that disconnection is done only in exceptional cases and even then the affected party is given enough time to respond and react.

5.**Clause 4.2.2. should be deleted as it casts a Must Carry obligation which has not been mandated by the Interconnection Regulations.**

The Clause does not require any must carry obligation. There is only an obligation to abide by Interconnection Regulation issued by the Authority. Deletion of this clause is not warranted.

6.**There should be a clause prohibiting any minimum subscription period for subscribers. This is particularly an issue with the Sports Channels.**

This cannot be done since certain broadcasters specially Sports channels may have high demand only during certain months or even days. Their costs for the other periods also has to be picked up. Broadcasters could of course have different and higher rates for subscription for shorter periods along with the normal rate for annual or any other periodicity of contract.

7.**Clause 5.2. needs to be amended to recognize the right of the multi system operator (MSO) to supply signals to the commercial subscribers.**

No change is required since the present position is in conformity with the order of the TDSAT dated January 17th 2006 and the Authority's Tariff orders dated March 7th and 24th, 2006. The Authority has also impleaded itself in this matter which is pending in the Supreme Court. Changes, if any, in this clause can be considered only after a decision is taken in the matter by the Supreme Court or permission is given to the Authority to finalise its tariff order for commercial subscribers.

8.**Clause 12.12 which provides for termination by either party after giving notice of one month is fraught with danger as this could lead to broadcasters terminating the contract even when an multi system operator (MSO) has fulfilled its contract.**

The circumstances under which the agreement can be terminated have been spelt out. Moreover, the Interconnection Regulations also provide for notice to be given before disconnection. Therefore, there cannot be any arbitrary termination of agreement.

9.**Clause 2.8 & 4.2.3. The multi system operator's (MSO's) business model may include bulk issue of set top boxes to an operator for the purpose of speedy**

implementation. In this case only the area can be given and not each dwelling unit.

The operator should be asked to provide these details.

Clause 4.2.3. Covert fingerprinting NOT understood and also not available.

Covert fingerprinting is a well established technology and is already in use in India. There is no need to delete this requirement.

10. **Clause 4.4.6 (g). Piracy – "subscriber shall not distribute". A subscriber may choose to have only one set top box with three TVs in the same house. The audio-video signal may be distributed to all three TVs where the same channel is seen by all TVs in the house.**

The agreement states that the subscriber should not distribute to others – there is no need for any change.

11. **Clause 4.4.7. Affiliate to "provide updated piracy report". The multi system operator (MSO) does not have the wherewithal to provide this.**

The multi system operator (MSO) must provide the report within whatever is the means available to it.

12. **Clause 4.11. Anti piracy is the broadcaster's requirement. It is he who should report instances of piracy, based on which the multi system operator (MSO) will take appropriate action. The procedure for this could be laid out.**

The multi system operator (MSO) also has responsibility and the agreement sets this out.

13. **Clause 4.12.3.1. "Channel's fingerprinting should pass through". This has no utility. For example, the entire network in a metro is fed from a single head-end (thus single IRD). The channel's fingerprint will point to the head-end alone. On the other hand, the multi system operator's (MSO's) fingerprint will indicate the set top box from which the signal is being "stolen", which can then be switched off and investigations carried out.**

There is no objection to this by the broadcasters so they perceive some utility in this clause. Therefore this should remain for the present.

14. **Clause 2.6: Would like to include: Or mutually agreed IRDs, as permissible. This is to reduce cost overheads.**

This can be done mutually if agreed to by a broadcaster. In the standard interconnection agreement there is no need for change.

15. **Clause 2.7: BIS specification for set top box is a separate matter. Need not be linked here to make this regulation simple.**

This is to ensure that BIS specifications are followed. This will have to be done and there is no harm if this is also put in the agreement.

16. **Clause 3.1.2: There should be no increase or adjustments for subsequent increase in charges or taxes/ levies in respect of advance payments made under quarterly/ half yearly/ annual advance subscription agreements.**

Notice for revision of tariff will either be governed by the tariff order or through mutual negotiation. This clause does not need change in either case.

17. **Clause 3.1.3: Some percentage of revenue should be kept aside for Telecom type of Universal Service Fund, else the same would later get extracted from core multi system operator (MSO) margins**

There is no USO fund for Cable TV and therefore this suggestion cannot be accepted.

18. **Clause 3.1.7 & 3.2.2: Similar bank guarantee/ escrow/ deposit by broadcaster with regulator in case broadcasters cut-off without due notice & TDSAT ruling proves broadcasters wrong, as a rein / restraint**

provisioning to protect advance paid subscribers & pay for damages suits from advance paid Quarterly/ Yearly subscribers.

Separately the provisions relating to security deposit to be provided by the multi system operator (MSO) to the broadcaster have been deleted. Accordingly, the issue has been addressed.

19. **Clause 3.2.1: We need BIS specifications for broadcasters IRDs too**

This cannot be done within the ambit of this agreement.

20. **Clause 3.2.1.b & 3.2.3: Charges should be mutually agreed & beyond purview of these recommendations. This recommendation should only be a guideline that such charges should be explicitly defined in the agreement, as a checklist.**

This will have to fixed by each broadcaster as per current industry practice

21. **Clause 4.3.6: Similar adjustments to be applied even for revenue share percentages for loss days/dates**

Clause 4.3.7: Similar Interest penalty for reimbursing subscribers/ affiliate/ multi system operator (MSO) too @ SBI prime lending rate.

The suggestion is no longer relevant as both 4.3.6 and 4.3.7 have been deleted.

22. **Clause 4.4.3/4: Similar norms & standards to be defined for received signal/ sound 'leveled across ADs' quality for input/ received signal quality of broadcaster to multi system operator (MSO)/ affiliate's central Headend. There should also be provision for related penalties & damages to re-imburse subscribers with interest, penalty charges.**

The obligations are on both parties and the agreement does not seem to require any change

23. **Clause 4.4.5: Copyright, etc monitoring onus cannot be solely on multi system operator (MSO). This is not multi system operators (MSOs) focus/ line of core business. The role of multi system operator (MSO) is just a pass through/ distribution operation. Already laid rules/orders to be interlinked here**

The obligations in this clause are very general and cannot be regarded as unreasonable.

24. **Article 24: Similar Force Majeures covering/ protecting Affiliate/ multi system operator (MSO) for cable cut by third part agency, infrastructure road expansion/digging work, flooding, riot, fire, etc. may be included.**

The obligations are on both parties and the provisions of the Article are couched in general terms. It is not necessary to list out all possible Force Majeure events in an exhaustive manner.

25. **Concerns on distribution only through Cable & Fiber: How is the regulator to address level playing field & prevent wresting of advantages to new convergent license entrants. Inter city growth through MAN/broadband is restrained –some/many multi system operators (MSOs) already using these means to circumvent HITS & required by multi system operator (MSO) to use cheaper spread/ expansion means using third party (heterogeneous) paths/ networks/ shared-access with emerging Tech breakthroughs permitting cheaper access vide the listed prohibited means of wire-less/ broadband/ HIT/ IP/ Internet means of expansion & distribution**

This is beyond the scope of this document

26. **Subscribers should pay for the number of days that they got the service – thus if someone disconnects on the 15th day of a month he should pay only half the amount fixed for a month.**

This is not an interconnection issue between the two parties and therefore should not form part of interconnection agreements.

4. *Revenue Share Arrangement:*

4.1 Along with the draft interconnection agreements for CAS areas, the Chairman's letter to the stakeholders had also raised certain issues on the arrangements for revenue sharing. In response to these questions, the multi system operators (MSOs) had made certain proposals for sharing of revenue. According to these the revenue from the pay channels is to be shared between the broadcasters, multi system operators (MSOs) and the cable operators. According to these proposals, the proposed share of the broadcasters ranges from 35% to 50%, the proposed share of the multi system operators (MSOs) ranges from 25% to 35%, and the proposed share of the cable operators ranges from 20% to 30%. On behalf of the cable operators, the Cable Operators Federation of India (COFI) had proposed a revenue share split of 50% for the broadcasters and 25% each for the cable operators and multi system operators (MSOs). While some multi system operators (MSOs) wanted sharing of the charges for the basic service tier in the initial response, others did not favour such sharing. The draft agreement put out by the Authority also did not envisage any sharing either of the basic service tier charges or the carriage charges. Subsequently, during the interaction with the stakeholders, most of the
multi system operators (MSOs) preferred that there should be no sharing of either the basic service tier or the carriage charges. The cable operators also agreed with this approach. It was, however, made clear on behalf of the cable operators that if there is to be any sharing of revenue of the basic service tier, then there should be also sharing of the carriage fee. COFI also revised their revenue sharing formula which now provided for the share of the pay channels revenue at 30% for the broadcasters, 30% for the multi system operators (MSOs) and 40% for the cable operators. The multi system operators (MSOs) also later revised their stand, vide their letter dated 31.7.2006, and wanted a share of the basic service tier charges as well as 100% of the carriage charges.

4.2 The Authority has considered these different proposals and also the practice in Chennai. The share of the broadcasters in Chennai varies from 42.5% to 65% for pay channels. There is no standard formulation of the share between the multi system operators (MSOs) and the cable

operators. In contrast with Chennai, the markets in Delhi, Mumbai and Kolkata are expected to have a much higher penetration of set top boxes. Accordingly, the share of the broadcasters for pay channels has been kept at 45% which is in the lower range of the Chennai experience.

4.3 Sharing of the basic service tier between the cable operators and the multi system operators (MSOs) could lead to frequent disputes since there is no transparent way of knowing the total subscriber base for subscribers who do not buy the set top boxes. Similarly, there could be disputes on the total carriage charges, the method of apportioning this amount to the areas notified for CAS, apart from the principles for sharing. Accordingly, it would be simpler to allow for no revenue sharing for both these components, i.e., basic service tier charges and the carriage charges. On this principle, the share for multi system operators (MSOs) in the pay channels should also be higher than the share of the cable operators and, therefore, this is being kept at 30% for the multi system operators (MSOs) and 25% for the cable operators.

4.4 The broadcasters have not given any proposal but have indicated that the Regulator should not standardize a commercial transaction. The Authority has undertaken the present exercise only with a view to ensuring that implementation of CAS does not get held up for want of commercial agreements between the service providers, which may take its own time. Accordingly, freedom has been given to the service

providers to enter into interconnection agreements that are different from the terms indicated in the standard agreement. It is also being provided that the standard agreement would be valid for only one year so that there is enough time for service providers to work out their mutually acceptable long term arrangements.

4.5 The broadcasters have taken a plea that these are commercial arrangements and, therefore, should not be subject to regulation. This plea cannot be accepted since it is well known that agreements can take months to be negotiated. Adoption of such a process will unduly delay the implementation of CAS. Accordingly what has been decided by the Authority is to keep this agreement for a short period of only 12 months. Even in this period, the service providers can enter into mutually acceptable agreements which are different from the standard agreements. It has been specifically provided in the standard interconnection agreement between broadcasters and multi system operators (MSOs) through clause 12.1.1 that the standard interconnection agreement shall automatically terminate before the expiry of completion of its term if the parties execute another interconnection agreement on the same subject. Thus, the parties are free to enter into mutually acceptable interconnection agreements which may differ from the standard interconnection agreement even after signing the standard interconnection agreement. After a period of 12 months the agreements can be suitably revised and if there is any need for issue of a regulation at that stage the same can be considered then. It should also be noted that in some cases the broadcasters have reported that they have been doing business in the CAS areas for more than two years without any written agreement. This is clearly not a desirable way of doing business and could lead to disputes and disruption of services. One of the objectives of CAS is to introduce systems and transparency that would help reduce disputes and avoid disruption in service so that the subscribers are not affected. Accordingly the Authority is of the of view that Standard agreements including the revenue sharing arrangements must be regulated at least in the initial stages of the implementation of CAS. Accordingly, these revenue shares have been specified in the standard interconnection agreements being prescribed.

5. Minimum Subscriber Guarantee

In accordance with the decisions taken by the Authority and contained in the recommendations on issues relating to broadcasting and distribution of TV channel of

October 1st, 2004 (paragraph 6.30) a clause has been added in the Interconnection Regulation prohibiting minimum subscriber guarantee where the distribution of signals is through an addressable system. In the draft this had not been specifically made applicable to all addressable platforms. It is now being made clear so as to be applicable to all addressable platforms including DTH, IPTV and such like and is also in accordance with the rationale of the earlier decision of the Authority as contained in the aforesaid recommendations. Some stakeholders have objected to such a clause on the ground that this would adversely affect their commercial freedom and that such issues should not be regulated or standardized. The reasons for imposing this restriction have been spelt out in the aforesaid recommendations in para 6.26 and the same are reiterated. Incentives for higher performance can always be given through volume discounting but the imposition of a minimum subscriber guarantee can defeat the introduction of new addressable platforms. This would adversely affect the subscribers who can get choice in an addressable platform. It would also adversely affect the industry which is plagued by disputes on subscriber base in the current non addressable regime: with addressability the scope for such disputes would become negligible if not vanish totally. Thus, it is in no one's interest to put any hurdle in the way of the introduction of such addressability. Accordingly, such a regulation is necessary to speed up the very slow introduction of addressability in the market. The TDSAT in its judgment in Petition No. 136© dated July 14 2006 (ASC Enterprises vs. Star India) has also taken a similar view. Accordingly, the Authority sees no reason to change its earlier view and has decided that there should be such a prohibition of minimum guarantee clauses in all interconnection agreements where addressable systems are in place. The definition of addressable systems has been changed to cover all addressable platforms.

TELECOM REGULATORY AUTHORITY OF INDIA

NOTIFICATION

New Delhi, the 4th September, 2006

No.6-4/2006-B&CS - In exercise of the powers conferred by section 36, and sub-clauses (ii), (iii) and (iv) of clause (b) of sub-section (1) of section 11 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), read with the Notification No.39 [S.O No. 44 (E) and 45 (E)] dated 09.01.2004 issued from file No.13-1/2004-Restg by the Government of India under clause (d) of sub-section (1) of section 11 and proviso to clause (k) of sub-section (1) of section 2 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), the Telecom Regulatory Authority of India hereby amends the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004 (13 of 2004) (hereinafter called the "Principal Regulation") as follows, namely :-

1. Short title and commencement:

(i) This regulation shall be called "The Telecommunication (Broadcasting and Cable Services) Interconnection (Third Amendment) Regulation, 2006" (10 of 2006).

2. In clause 2 of the Principal Regulation, after sub-clause (n), the following new sub-clauses and the entries relating thereto shall be inserted as sub-clauses (o) to (r), namely :-

"(o) **"RIO"** means the Reference Interconnect Offer published by a Party, prescribing conditions by fulfilling which other Parties would be entitled to obtain interconnection from that party;

(p) **"subscriber base"** means the number of subscribers -

(i) as agreed to by two service providers in a non-addressable system on the basis of which payments are made by one service provider to the other, or

(ii) as reflected by the Subscriber Management System, where addressable systems are employed.

(q) **"subscriber line report"** or **"SLR"** means a monthly statement wherein, in a non-addressable system, a multi system operator and a cable operator agree upon the subscriber base for that month.

(r) **"subscriber management system"** or **"SMS"** means a system or device which, in an addressable system, stores the subscriber records and details with respect to name, address, etc. as well as information regarding the hardware being utilized by the subscriber, channels /bouquets of channels subscribed to by the subscriber, price of such channels or bouquets of channels as defined in the system, the activation / deactivation dates and time for any channel or bouquet of channels, a log of all actions performed on a subscriber's record, invoices raised on each subscriber and the amounts paid by the subscriber for each billing period.**"**

3.In clause 3 of the Principal Regulation –

(a) after the second proviso to sub-clause 3.2, the following explanation and the entries relating thereto shall be inserted:-

"Explanation

The applicant distributors of TV channels intending to get signal feed from any multi-system operator other than the presently-affiliated multi system operator, or from any agent/ any other intermediary of the broadcaster/multi system operator, or directly from broadcasters shall produce along with their request for services, a copy of the latest monthly invoice showing the dues, if any, from the presently-affiliated multi system operator, or from any agent/ any other intermediary of the broadcaster/multi system operator who collects the payment for providing TV channel signals."

(b) after sub-clause 3.2 and the entries relating thereto, the following new sub-clause and the entries relating thereto shall be inserted as sub-clause 3.3, namely:-

"3.3 Any broadcaster/multi system operator or any agent/ any other intermediary of the broadcaster/multi system operator, who collects the payment for providing TV channel signals to any distributor of TV channels, shall issue monthly invoices to the distributor of TV channels. The monthly invoice shall clearly specify the arrears and current dues along with the due date for payment of the same.

Explanation
Any claim for arrears should be accompanied by proof of service of invoices for the period to which the arrears pertain."

(c) the existing clause 3.3 and the entries relating thereto shall be renumbered as clause 3.4 and the existing clause 3.4 and the entries relating thereto shall be deleted.

(d) after sub-clause 3.4, the following new sub-clause and the entries relating thereto shall be inserted as sub-clause 3.5, namely:-

"3.5 Any broadcaster/multi system operator or any agent/ any other intermediary of the broadcaster/multi system operator to whom a request for providing TV channel signals is made, should either provide the signals on mutually agreed terms to the distributor of TV channels who is seeking signals, or specify the terms and conditions on which they are willing to provide TV channel signals, in a reasonable time period but not exceeding sixty days from the date of the request. In case, the broadcaster/multi system operator or any agent/ any other intermediary of the broadcaster/multi system operator to whom a request for providing TV channel signals is made, turns down the request for TV channel signals, the reasons for such refusal must also be conveyed within sixty days from the date of the request for providing TV channel signals so as to enable the distributor of TV channels to agitate the matter at the appropriate forum.

Explanation

The time limit of sixty days shall also include time taken by the broadcaster to refer the distributor of TV channels, who has made a request for signals, to its agent or intermediary and vice versa."

(e) the existing sub-clause 3.5 and the entries relating thereto shall be renumbered as sub-clause 3.6 and the existing sub-clause 3.6 and the entries relating thereto shall be deleted.

(f) In the re-numbered sub-clause 3.6, the existing explanation and the entries relating thereto shall be substituted by the following explanation and the entries relating thereto, namely: -

"Explanation

"Similarly based distributor of TV channels" means distributors of TV channels operating under similar conditions. The analysis of whether distributors of TV channels are similarly based includes consideration of, but is not limited to, such factors as whether distributors of TV channels operate within a geographical region and neighbourhood, have roughly the same number of subscribers, purchase a similar service, use the same distribution technology.

For the removal of doubts, it is further clarified that the distributors of TV channels using addressable systems including DTH, IPTV and such like cannot be said to be similarly based vis-à-vis distributors of TV channels using non addressable systems. "

4. In the Principal Regulation, in place of the existing clause 4 and the entries relating thereto, the following clause and the entries relating thereto shall be substituted, namely:-

"**4. Disconnection of TV channel signals**

4.1 No broadcaster or multi system operator shall disconnect the TV channel signals to a distributor of TV channels without giving three weeks notice to the distributor clearly giving the reasons for the proposed action.

Provided that a notice would also be required before disconnection of signals to a distributor of TV channels if there was an agreement, written or oral, permitting the distribution of the broadcasting service, which has expired due to efflux of time.

Provided further that no notice would be required if there is no agreement, written or oral, permitting the distribution of the signals.

4.2 No distributor of TV channels shall disconnect the re-transmission of any TV channel without giving three weeks notice to the broadcaster or multi system operator clearly giving the reasons for the proposed action.

4.3 A broadcaster/ multi system operator/ distributor of TV channels shall inform the consumers about such dispute to enable them to protect their interests. Accordingly, the notice to disconnect signals shall also be given in two local newspapers out of which at least one notice shall be given in local language in a newspaper which is published in the local language, in case the distributor of TV channels is operating in one district and in two national newspapers in case the distributor of TV channels is providing services in more than one district. The period of three weeks mentioned in sub-clauses 4.1 and 4.2 of this regulation shall start from the date of publication of the notice in the newspapers or the date of service of the notice on the service provider, whichever is later.

Explanation

1. In case the notice is published in two newspapers on different dates then the period of three weeks shall start from the latter of the two dates.

2. Broadcaster/multi system operator/ distributor of TV channels may also inform the consumers through scrolls on the concerned channel(s). However, issue of notice in newspapers shall be compulsory.

4.4 The notice in the newspapers must give the reasons in brief for the disconnection."

5. In the Principal Regulation, as amended from time to time, the existing clause 7 and the entries relating thereto shall be renumbered as clause 14.

6. After clause 6 of the Principal Regulation as amended from time to time and the entries relating thereto, the following new clauses and the entries relating thereto shall be inserted as clauses 7 to 13, respectively, namely:-

"7. Conversion of a Free To Air channel/ Pay Channel

7.1 The nature of any channel, i.e., Free To Air or Pay will normally remain the same for a period of one year. Any broadcaster of a Free To Air channel intending to convert the channel into a Pay Channel or any broadcaster of a Pay channel intending to convert the channel into a Free To Air channel shall inform the Authority and give public notice in the manner specified in clause 4.3, one month before the scheduled date of conversion.

8. Time Period for Renewal of existing agreements

8.1 Parties to an interconnection agreement for supply of TV channel signals shall begin the process of negotiations for renewal of existing agreement at least two months before the due date of expiry of the existing agreement.

Provided that if the negotiations for renewal of the interconnection agreement continue beyond the due date of expiry of the existing agreement then the terms and conditions of

the existing agreement shall continue to apply till a new agreement is reached or for the next three months from the date of expiry of the original agreement, whichever is earlier. However, once the parties reach an agreement, the new commercial terms shall become applicable from the date of expiry of the original agreement.

Provided further that if the parties are not able to arrive at a mutually acceptable new agreement, then any party may disconnect the retransmission of TV channel signals at any time after the expiry of the original agreement after giving a three weeks notice in the manner specified in clause 4.3. The commercial terms of the original agreement shall apply till the date of disconnection of signals.

9. Finalising Subscriber Base at the time of first agreement

First agreement between Multi System Operator and Cable Operator

9.1 In non-addressable systems, while executing an interconnection agreement for the first time between a multi system operator and a cable operator, the parties to the agreement shall take into account the subscriber base of the cable operator on the basis of the Subscriber Line Report (SLR) where such SLR exists. Where such SLR does not exist, this shall be negotiated on the basis of the evidence provided by the two parties on the subscriber base, including the subscriber base of similarly placed cable operators and local survey.

Explanation

The Subscriber Line Report (SLR) is only an indicative basis for arriving at the subscriber base and the subscriber base as mutually agreed by the two parties could be more than or less than the number indicated by the SLR.

First agreement between Multi System Operator and Broadcaster

9.2 In non-addressable systems, while executing an interconnection agreement for the first time between a multi system operator and a broadcaster, the multi system operator shall furnish a list of the cable operators who will be getting signals from its network along with their subscriber base. The parties to the agreement shall take into account the subscriber base of cable operators connected to the multi system operator while negotiating the subscriber base of the multi system operator. For the consumers proposed to be directly served by the multi system operator, the procedure as laid down in sub-clause 9.1 of this regulation shall be followed.

10. Variation of Subscriber Base during validity of agreement

Between Multi System Operator and Cable Operator

10.1 In non-addressable systems, the subscriber base agreed upon by the parties at the time of execution of the interconnection agreement between a multi system operator and a cable operator shall remain fixed during the course of the agreement except in exceptional circumstances that warrant an increase or decrease in the subscriber base. In such an eventuality, it is for the service provider seeking a change in the subscriber base to provide reasons and accompanying evidence including local survey for the proposed change.

Between Multi System Operator and Broadcaster

10.2 In non-addressable systems, the subscriber base agreed upon by the parties at the time of execution of the interconnection agreement between a multi system operator and a broadcaster shall remain fixed during the course of the agreement

except in exceptional circumstances that warrant an increase or decrease in the subscriber base. In such an eventuality, it is for the service provider seeking a change in the subscriber base to provide reasons and accompanying evidence including local survey for the proposed change.

Provided that this sub-clause shall not apply to changes in the subscriber base of a multi system operator on account of any cable operator joining or leaving the multi system operator.

Provided further that any change in the subscriber base of a multi system operator, which is the basis of payment to a broadcaster, on account of any cable operator joining or leaving the network of the multi system operator shall be equal to the subscriber base of the cable operator, joining or leaving the network.

11. Finalising Subscriber Base at the time of Renewal of agreement

Between Multi System Operator and Cable Operator

11.1 In non-addressable systems, negotiations on revision of subscriber base at the time of renewal of interconnection agreement between a multi system operator and a cable operator shall take into account the changes in subscriber base of the cable operator over the past three years, as well as the changes in subscriber base of other cable operators operating in the area in which the cable operator is operating and its adjoining areas for the current period.

Between Multi System Operator and Broadcaster

11.2 In non-addressable systems, negotiations on revision of subscriber base at the time of renewal of interconnection agreement between a multi system operator and a broadcaster shall take into account the changes in subscriber base of the multi system operator over the past three years, as well as the changes in subscriber base of other multi system operators operating in the area in which the multi system operator is operating and its adjoining areas for the current period.

12. Monthly Subscriber Base Statement

12.1 In non-addressable systems, the multi system operators shall furnish the updated list of cable operators along with their subscriber base to the broadcasters on a monthly basis.

13. Reference Interconnect Offer

13.1 All broadcasters shall submit within 90 days of issue of this Regulation, copies of their Reference Interconnect Offers (RIO) describing, inter-alia, the

technical and commercial conditions for interconnection for non-addressable systems to the Authority. The same shall be published by the broadcasters and a copy shall also be put up on their websites after the terms and conditions of the draft reference interconnect offer are submitted to the Authority. The reference interconnect offer so published by the broadcaster shall form the basis for all interconnection agreements to be executed thereafter.

13.2 A published reference interconnect offer may undergo any change only after prior intimation to the Authority. Interconnection agreements shall be entered into by all broadcasters based on the reference interconnect offers so published, provided, however, that by mutual agreement, the parties concerned may modify and/or add to the terms and conditions stipulated in the published reference interconnect offer for entering into an individualised agreement.

13.3 The Authority may intervene at any stage to direct amendment or deletion of any clauses of the Reference Interconnect Offers, if the clauses are found to be in violation of the law, regulations, directions or orders."

7. This regulation contains at Annex A, an Explanatory Memorandum containing the reasons for amendments to the Principal Regulation.

By Order

(**RAKESH KACKER)**
Advisor (B&CS - I)

Annex A

Explanatory Memorandum

1. The distribution of cable TV in India was unregulated since its inception in early 1990s. This was sought to be regulated by TRAI by issue of the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004 (13 of 2004). This Regulation was issued on 10.12.2004, i.e. more than one and a half years ago. Some new issues have cropped up during this period. The experience of this period has shown that some issues relating to the Interconnect Regulations require clarification. Some disputes and litigation have also arisen on account of implementation of Interconnect Regulations. Thus a

need was felt to clarify as well as expand the scope of Interconnect Regulations so as to minimize the doubts and disputes/ litigation.

Disconnection of TV channel signals

2. The two notice periods prescribed in the regulation led to a number of disputes regarding the notice period applicable in specific cases. By having a single notice period, these disputes can be avoided. Moreover, there would be no advantage by way of a shorter notice period, in suppressing the true reasons for issue of notice to disconnect signals and the consumers would get to know the real issues in the dispute. The notice period should be sufficient for the affected parties to be able to approach the appropriate forum to plead for intervention and to give the consumers an opportunity to approach the necessary forum to ensure that their interests do not suffer on account of the dispute. At the same time, no notice need be provided in the cases of theft of signals as is already the case.

3. Moreover, the interests of consumers as well as the broadcaster/ multi system operator also get adversely affected if the distributor of TV channels decides to switch off signals of a particular channel due to some dispute with the broadcaster/ multi system operator. Accordingly, to protect their interests it is necessary that they get similar advance notice regarding discontinuation of TV channel signals. Therefore, the requirement of giving advance notice to disconnect signals has been extended to the distributors of TV channels also.

4. The purpose of having a public notice is to give the consumers an opportunity to approach the necessary forum to ensure that their interests do not suffer on account of a dispute to which they have not contributed in any way. However, the very purpose gets defeated if the public notice is not issued at the time of giving notice to the service provider and is issued much later leaving very little time for consumers to agitate the matter at appropriate forum. Accordingly, it is necessary that the consumers get the notice before the notice period begins. Considering the fact that cable TV has reached even remote parts of the country, the notice period should be sufficient to enable the affected parties to approach the appropriate forum.

5. The reach of vernacular language newspapers in the country is more than the reach of English language newspapers. To have the maximum coverage, it is necessary that the public notice should be published in the local language in a local language newspaper also.

6. The notice to the service provider concerned should clearly inform the service provider about the reasons for proposed disconnection. The notice should specify the terms & conditions of the agreement which have been allegedly violated and the details of such violation rather than cryptically mentioning violation of the agreement as the reason for issue of the notice. This is necessary so as to pin point the issues of dispute, so that the affected service provider can take steps either for rectifying the violation or to approach appropriate forum for redressal. Similarly, the public notice should also have the reasons for proposed disconnection in brief.

Access to content

7. The purpose of laying down a time limit for responding to a request for signals gets defeated if the distributor of TV channels making a request for signals is referred by the broadcaster/ multi system operator to its agent/ intermediary or vice versa just before the expiry of the time limit and the time limit starts afresh. Moreover, it is easy for a service provider to respond to the request before the expiry of the time limit by asking for some details and then prolong the process by asking for supplementary details. Hence, it is necessary to lay

down a time limit wherein either the signals are provided to the distributor of TV channels or the specific terms & conditions are informed on fulfillment of which the signals are to be provided.

Multi System Operator as an agent of the broadcaster

8. The TDSAT judgment in the case of Sea TV Network Ltd. has been challenged before the Hon'ble Supreme Court of India. Therefore, it would not be appropriate for the Authority to make any regulation in this regard. Thus, whether the Regulations should specifically prohibit appointment of an MSO, directly or indirectly, as an agent of a broadcaster and related issues will be covered by the eventual decision of the Hon'ble Supreme Court in the matter. Therefore, the Authority has decided not to proceed further in this regard and to wait for the judgment of the Hon'ble Supreme Court in the matter, which shall be binding on all concerned.

Default in payments

9. Sometimes LCOs switch from their affiliated MSO when they are either unable or unwilling to pay their outstanding dues to their affiliated MSO. This results in bad debts for their affiliated MSOs leading to the latter's inability to pay broadcasters for the LCOs portion of dues. Broadcasters are also unable to recover these dues from the MSO to whom such defaulting LCO gets affiliated. On the other hand, in the absence of regular issue of invoices, the LCOs are suddenly confronted with huge arrears, which they have

no means of paying. The problem can be tackled by ensuring that the LCOs are issued invoices on a monthly basis clearly showing the arrears as well as the current dues. In such a situation, if an LCO wants to switch to a new MSO, then the latest invoice would clearly show the level of arrears outstanding against the LCO. At the same time this will protect the LCO from unexpected and unforeseen arrears being suddenly thrust upon him.

Area of operation and Subscriber base

10. The term subscriber base is rather vague in the absence of addressability, as it is impossible to know the real number of subscribers being served by a service provider in non-CAS areas. Thus, it is not possible to have agreements based on the actual subscriber base. Hence, the negotiations for fixation of subscriber base for an interconnect agreement depend crucially on area proposed to be served by the distributor of TV channels. However, the actual number of subscribers is reflected by the Subscriber Management System (SMS) wherever addressable systems are deployed. Thus, the subscriber base in such a situation is accurately reflected by the SMS.

As mentioned in para 8 above, the TDSAT judgment in the case of Sea TV Network Ltd. has been challenged before the Supreme Court of India and the matter regarding determination of subscriber base of cable operators and MSOs has been raised in the appeal before the Supreme Court. However, the Supreme Court vide its interim order dated 2.3.2006 had specifically permitted the Authority to proceed with its exercise on devising a system for ascertaining the subscriber base of distributors of TV channels. The Supreme Court had observed that:-

> *"... Further, pendency of these matters shall not stand on the way of the Central Government if it so chooses, to implement the CAS or of the TRAI in devising any system to identify and arrive at the correct number of subscribers of each distributor of TV channels…. "*

In view of this observation of the Hon'ble Supreme Court the Authority has proceeded to lay down a system to identify and arrive at the correct number of subscribers of each distributor of TV channels.

The Authority had recognized in its recommendations on issues relating to Broadcasting and Distribution of TV channels dated 1.10.2004 that a gradual transition to addressability is a must and that it cannot be done immediately throughout the country. In these recommendations, the Authority had recommended mandating a register of subscribers to be maintained by the cable operators and multi system operators. The Authority had recommended that:-

> *"...All cable operators and multi system operators shall maintain a register of subscribers containing the names of the subscriber, address, monthly fee charged and number of channels received. The register shall be furnished for inspection to*
>
> *the Authorised Officer whenever he considers it expedient to inspect such register to find out if there has been a violation of any regulation..."*

In the absence of addressability and register of subscribers, it is very difficult to ascertain the number of subscribers of a distributor of TV channels. In spite of this limitation, the Authority has provided a methodology to arrive at the subscriber base of each distributor of TV channels.

11. The primary reason for disputes arising on account of expansion of area is that without addressability, it is impossible to know the actual subscriber base and area is the basis on which a subscriber base is arrived at. Any change in area of operation has direct bearing on the negotiations with respect to subscriber base. However, the expansion of area by a multi system operator on account of giving feed to a cable operator operating outside the existing area of operation of the multi system operator can be taken care of by negotiations based on the Subscriber Line Report (SLR). Similarly, the expansion of area of operation by a cable operator will also get reflected through the Subscriber Line Report (SLR).

Multi System Operator

12. The disputes regarding insistence of distributors of TV channels with very small subscriber base on getting signals directly from the broadcasters can be reduced by laying down a minimum subscriber base on the basis of area of operation of the distributor of TV channels, below which an operator will not be able to get signals directly from the broadcasters. However, this figure can be notified only after detailed analysis of city-wise data for different broadcasters regarding number of subscribers being served by the multi system operators with the smallest subscriber base in different parts of the country. For the present, laying down such a figure has not been found feasible by the Authority. The same may be laid down at a later date, if found feasible, by the Authority after analysis of relevant data.

Renewal of agreements

13. Renewal of agreements is smooth in most of the cases, but the problems arise when the negotiations for renewal extend beyond the date of expiry of the original agreement. To govern the terms and conditions for continuation of signals beyond the expiry date of the original agreement, the original agreement can be extended till an agreement is reached regarding the terms and conditions for renewal. However, it must be recognized that the new commercial terms will apply retrospectively from the date of expiry of the original agreement. If however, no agreement is reached, then either party can disconnect the signals after giving

the statutory notice as provided in Regulation 4 of these regulations. The terms and conditions of original agreement would govern the relationship between the two parties till the date of disconnection of signals. It is believed that the parties should be able to reach a new agreement within three months of expiry of the old agreement (after five months of negotiations). However, in case negotiations carry

on beyond this period, then some new interim arrangement regarding terms and conditions should be worked out between the parties and terms and conditions of the old agreement would not get automatically extended beyond this period.

Conversion to Pay/ Free To Air

14. The nature of any channel, i.e., Free To Air or Pay should not change very frequently and should normally remain the same for a period of one year. The broadcasters intending to convert their Free To Air Channels into Pay channels and vice versa should give advance notice to the Authority as well as to the general public. This would be important in the context of CAS areas as the multi system operators will have to make necessary changes in their Subscriber Management Systems. In the context of non-CAS areas it would inform the consumers about likely changes in their payout for cable services and possible non-availability of the channel.

Reference Interconnect Offer

15. There have been demands from different quarters regarding introduction of a regulation on Reference Interconnect Offer on the lines of "The Telecommunication Interconnection (Reference Interconnect Offer) Regulation dated 12th July 2002." This gives the flexibility to the broadcasters to draft the Reference Interconnect Offer in such a way so as to take care of their concerns. The provision for possible intervention by the Authority will ensure that the Reference Interconnect Offer does not contravene any statute. This will lead to a reduction in litigation about the way the standard agreements are drafted by the broadcasters. Service providers can by mutual agreement deviate from the provisions of such an RIO. This is intended to give flexibility to the service providers to take into account the special commercial circumstances that may exist in a particular area or agreement. It is also desirable to have similar RIOs for MSOs. However given the large number of such MSOs, it is not practically feasible for the Authority to undertake this exercise.

Monopoly in the last mile

16. The issue of monopoly in the last mile is likely to be addressed to a certain extent by increased competition due to new platforms such as DTH and IPTV. Two DTH service providers are already providing their services, and the roll out of IPTV services in the country is also expected in the near future. Therefore, for the present, the Authority has decided to watch the progress of competition from the new platforms and intervene at a later stage, if found necessary.

Carriage fee regulation

17. Regulation of carriage fees has been opposed by all the multi system operators as well as the Cable Operators Federation of India. It has been suggested that such regulation would lead to multiplicity of disputes. Regulation of carriage fee in the present circumstances is very difficult as it also implies regulation of positioning. In different parts of the country, there are different viewership patterns. The capacities of cable

networks also vary a great deal. Thus, the levels of carriage fee are different in different parts of the country depending upon demand and supply gap.

Presently, there are more than 6000 multi system operators, which follow different systems of accounting. Payment of carriage fee is very often done in cash or in kind. Thus, it is not possible to find out the actual payments being made towards carriage fees. The carriage fee is a temporary phenomenon and is likely to disappear with the advent of digital cable systems.

The issue of carriage fee was also examined by the Authority in its recommendations on issues relating to Broadcasting and Distribution of TV channels on 1.10.2004. The Authority had observed that:-

> *"6.5 On the issue of 'Must Carry of TV Channels' the existing scenario of capacity constraint in carrying signals in analogue mode and its consequences of competition for space on the Cable Spectrum has been kept in view. Since digitalisation is a long-term goal, no fresh regulation on 'Must Carry Obligations' is proposed apart from the ones already there in the Cable Act and Rules. As and when capacity is augmented the 'must carry' regulation will be introduced. For the present therefore there will be no regulation on carriage charges."*

In its recommendations on Digitalisation of Cable Television dated September 14, 2005, the Authority had recommended that licencing should be introduced for offering of digital services after a cut-off date. It was also recommended that the licences for digital service should have only a provision for non-discriminatory carriage of channels on the basis of the existing DTH licence conditions which require that the licensee shall provide access to various content providers/channels on a non discriminatory basis.

Consultation on draft Regulation

18. The Authority began its process of examination of the relevant issues by issuing a Consultation Note on 21.3.2006 so as to have the necessary document for discussing them. Thereafter a Consultation Paper was formulated after taking into account the comments and other inputs provided by the stakeholders on the consultation note dated 21.3.2006. Issues relating to the Register of Interconnect Agreements (Broadcasting and Cable Services) Regulation 2004, dated 31.12.2004 were also included. This consultation paper was released on May 11, 2006. A number of comments have been received and these have been carefully analysed. Since the number of comments is very large, the gist of the comments have been briefly summarized, section by section in the Annexe to this Explanatory Memorandum. Open House Discussions were also held in Mumbai on June 16, 2006 and in Delhi on June 19, 2006. All these comments as well as the comments made during the course of the Open House Discussions have been carefully considered before coming to the conclusions as reflected in the amendments to the Regulations.

Annexe to Explanatory Memorandum on "The Telecommunication (Broadcasting and Cable Services) Interconnection (Third Amendment) Regulation, 2006".

Gist of comments received on the consultation paper on interconnection issues relating to broadcasting and cable services.

INDEX OF STAKEHOLDERS FURNISHING COMMENTS

Sl.No.	Name	From where
1	Col V C Khare (Retd) - Cable TV Industry Observer	Mumbai
2	Star India Pvt. Ltd. (Star)	New Delhi
3	US India Business Council (USIBC)	Washington, USA
4	Motion Picture Association (MPA)	Singapore

5	**ESPN Software India Pvt. Ltd. (ESPN)**	**Gurgaon, Haryana**
6	**Ortel Communications Ltd. (Ortel)**	**Orissa**
7	**Shri Alok Sahal, B.N.B. Cables (B.N.B. Cables)**	**Kolkata**
8	**ASC Enterprises Ltd (ASC)**	**Noida**
9	**Siti Cable Network Limited (Siti Cable)**	**New Delhi**
10	**Indusind Media & Communications Ltd. (IMCL)**	**Mumbai**
11	**Hathway Cable & Datacom Pvt. Ltd. (Hathway)**	**Mumbai**
12	**Cable Operators Federation of India (COFI)**	**New Delhi**

Issue for Consultation

Amendment of Existing Regulations

Two Notice Periods

- **Whether there should be only one notice period for the notice to be given to a distributor of TV channels prior to disconnection of signals?**
- **If yes, what should be the notice period and whether this should apply to unauthorized retransmission/ piracy cases also?**
- **If not, what changes should be made in the regulation to avoid disputes as to which notice period is applicable? In particular, how should unauthorized distribution be defined?**

Comments Received

1. Notice period should be only one and such notices should be scrolled on news channels of the broadcasters, besides the Distributors scrolling on their networks. Unauthorized retransmission/piracy, if detected should be litigated under IPC because it can never be with consent of authorized distributor. If there be only one notice period, disputes will not arise. If signal is detected in networks not belonging to network of distributor, the distribution shall be deemed to be un-authorized. (Col V C Khare (Retd) - Cable TV Industry Observer)

2. There should be one notice period only for authorized distributor of TV channels. The notice period for disconnection of signals of authorized distributor of TV channels (including on account of payment defaults) should be one week. The unauthorized distributor of TV channels should not be given any prior notice for disconnection and their signals should be disconnected forthwith without any notice. It is suggested that 'unauthorized distributor of TV channels' be defined and Clause 4.1 of the Regulation be amended as "unauthorized distributor of TV channels" means any distributor of TV channels, which has failed to renew agreement, as per TRAI regulations, and/or undertakes/abets any of the following such as extend beyond area of operation provided in the agreement; connect new operators (other than the operators specified in the agreement) without prior written authorization; block, modify or tamper with the signals or add an overlay on the feed; tape and/or reproduce content without prior written consent; and remove IRDs from the installation address without prior written consent. Clause 4.1 of the Regulations be amended as "No broadcaster or multi system operator shall disconnect the TV channel signals to a distributor of TV channels without giving **one week's** notice indicating brief reasons for the proposed action. Provided that unauthorized distributor of TV channels may be disconnected forthwith without notice". Assuming the TRAI is not keen to change the notice periods, it is suggested that the definition of 'unauthorized distributor of TV channels' (as above) be incorporated and Clause 4.1 of the Regulations be amended as "No broadcaster or multi system operator shall disconnect the TV channel signals to a distributor of TV channels without giving

one month notice indicating brief reasons for the proposed action. Provided that in case of unauthorized distributor of TV channels, the notice period shall be two working days giving reasons to the unauthorized distributor of TV channels for such action". (Star)

3. Any discussion of notice periods for disconnection of signals should be applicable only with regard to authorized distributors of TV channels. TRAI should further clarify its definition of 'unauthorized distributor of TV Channels' to capture the various ways in which signals are obtained and put to use without authorization. For authorized distributors of TV Channels for which termination of the distribution agreement is sought, the notice period should be a contractual matter between the broadcaster and the operator. Consistent with the norms in other markets around the word, TRAI should consider a less intrusive regulatory path. (USIBC)

4**.** The present scheme envisages a 30-day notice period. However broadcasters create content at a cost, broadcast their signals at further costs and provide the signal to the cable operator. The Cable operator's payment obligation starts 30 days after they begin to receive the signals on the 1st of the month. Thus they already have a 30 - day notice as part of the existing contractual arrangement. Given this, the notice period needs to be reviewed. There should be a different notice period in proposed CAS Areas and for non-CAS areas as the environments are addressable and non-addressable respectively.

(MPA)

5. The changes required to be made in the regulation to avoid disputes can be; (a) any oral agreements between the parties should be discouraged; (b) No notice should be required to be served to the cable operators/ MSOs promoting unauthorized retransmission and (c) For any other dispute, there should be only one notice period which should be defined clearly. (ESPN)

6. Only one notice period should be given prior to the disconnection of signals to the distributor of TV channels. The notice period should be minimum of 30 days and should apply to Unauthorized Retransmission/piracy cases also since the customers would suffer without any fault of theirs if the notice period is of few days as is the case now. (B.N.B.

Cables)

7. There needs to be different notice periods for different reasons. Reasons can be attributed to 1) Commercial consideration: Non Payment, out standings etc, distributing the signals in the area or the place they are not intended to like for Public Viewing with an intention to earn entry fee. (in case of a major sporting event) in which case 30 days notice should apply; 2) Piracy of the signals; Redistribution on cable networks, using an unauthorized decoders and 3) Misuse of the equipment provided for decryption of the signals: Use of the card splitters to access more services then the authorized services. The present regulations prescribe a period of one month for disconnection of signals due to commercial reasons while it is 2 days for piracy. The same is appropriate as criminal acts involving piracy cannot be permitted to be going for a month which will lead to high revenue losses as well as undermining of competitive networks such as DTH. An example can be given of using a DTH/IPTV decoder on a cable network. The ease of

mobility in the case of the DTH will make it more susceptible to such cases and DTH service providers can act fast by switching off the decoder over the air within minutes of the piracy being reported. The common technique is the finger printing mechanism. The definition of

unauthorized distribution should inter-alia include the use of any cross service devices (such as IPTV or DTH Boxes on a cable Plant); use of any card splitters whereby one decoder is tampered with to deliver multiple channels; connection of signals to any networks outside of the contracted ones without prior confirmation and transport of decoders to any address, area or location other than where they are authorized to operate from. (ASC)

8. The present provisions of giving two Notice periods – one for alleged default in payment and another for piracy should continue. However, 2 days notice as prescribed at present in case of piracy is too short. The notice period in case of alleged piracy should be increased from present two days to minimum 7 days to enable the distributors of channels to seek relief from TDSAT in case of motivated and frivolous notices. The piracy can be defined as: where a distributor of channels is distributing signals from a decoder which is unauthorized i.e. distributor of channels does not have any arrangement with the broadcasters and is not taking the feed from an authorized distributors of channels (MSO/operator) and where a distributor of channels has been switched off by a broadcaster because of some dispute and that distributor of channels continues to distribute signals in his service areas without entering into any arrangement with the broadcaster/ any other MSO. Only in these cases the notice of 7 days should be applicable and in all other cases the notice of 30 days must be given by the broadcasters. Alternatively it should be provided that the notice of piracy should provide clear-cut 2 working days to enable the aggrieved party to seek redressal from TDSAT. The working days in this context should be defined to mean the days on which TDSAT and TRAI function and Saturday, Sunday & public holiday should be specifically excluded. (Siti Cable)

9. There should be only one notice period of 30 days and this should apply to all cases (it should not be confused with 'unauthorized distribution' as no notice is required for such cases). The person/party who has signed an agreement or has made payment to the broadcasters cannot be accused of unauthorized distribution since he is a licensee /authorized distributor of a broadcaster and distribution outside area is a commercial dispute arising out of the agreement for which Dispute Settlement Tribunal (TDSAT) is the final authority. Broadcasters are using commercial disputes on subscriber numbers to get more revenue from MSOs. For such disputes the judgment of Telecom Tribunal should be sought for instead of one sided arbitrary decision taken by broadcasters. Unauthorized distribution should be defined in two parts: (i) if an MSO has been switched off by a broadcaster for his authorized IRDs but he is still transmitting signals of that particular broadcaster through some other MSO/ICO without signing any agreement with either of them and (ii) a person who is distributing signals of broadcasters without having any arrangement either directly from the broadcaster or through any MSO/cable operator.(IMCL)

10. Current regime of two notice periods is fair as there are numerous judgments emanating out of the Interconnection Regulation dated 10th December, 2004. Consistency in any regulation and regime should be maintained to avoid any confusion. Clarification needs to be brought by the Authority on two day's notice period for un–authorised distribution of TV channels. Notice should be two working days excluding the date of publication in the print / scroll on the TV channels and excluding date which happens to be public holiday / Saturday / Sunday as if any person / entity affected by the act of disconnection / alleged piracy should have a time to defend his position before the Authority / Tribunal. (Hathway)

11. There should be only one notice period of 30 days and this should apply to all cases. For 'unauthorized distribution', no notice should be required if there is no previous business

relationship with the party. The person/party who has signed an agreement or has made payment to the broadcasters cannot be accused of unauthorized distribution since he is a licensee/authorized distributor of a broadcaster and distribution outside area is a commercial dispute arising out of the agreement for which Dispute Settlement Tribunal (TDSAT) is the final authority. Commercial disputes on subscriber numbers, asking for arbitrarily enhanced payments and disputes regarding area of operation to get more revenue from the existing affiliate MSOs/Cable Operators by the broadcasters should not be treated as unauthorised distribution. For such disputes the judgment of Telecom Tribunal should be sought for instead of one sided arbitrary decision taken by broadcasters. Unauthorized distribution should be defined in two parts: i) if an MSO has been switched off by a broadcaster for his authorized IRDs but he is still transmitting signals of that particular broadcaster through some other MSO/Cable Operators without signing any agreement with either of them and (ii) a person who is distributing signals of broadcasters without having any arrangement either directly from the broadcaster or through any MSO/cable operator. (COFI)

Issue for Consultation

Notice to disconnect

•Whether the notice period should be counted from the day of issue of public notice?

•Whether the option available to broadcasters/ MSOs to give public notice by running a scroll on the channels should be done away with?

•In cases where the Broadcasters have not switched off their channels whether the MSOs and the Cable Operators should be required to give notice to the consumers before switch off of any channel?

Comments Received

1. Notice should first be served, in writing, upon the distributor, acknowledged and then publicized. In such a case, notice period shall reckon from the date of public notice. The public notice could state the date already acknowledged by the distributor. The option available to broadcasters/MSOs to give public notice by running a scroll on the channels should not be done away with. Warning to viewers on the network, hooked to Headend, must be issued by the Headend operators i.e. MSO/Distributor. [Col V C Khare (Retd) - Cable TV Industry Observer].

2. The notice period should be counted from the day of issue of public notice. The scroll on the channels is an effective way of communicating to the viewing consumer of the intent of the broadcaster. Therefore, it should definitely not be done away with. In fact, it is suggested that the TRAI permit the broadcasters to use the same scroll to provide notice to distributor of TV channels as well as viewing consumers. The notice period should be applicable not only for broadcasters and/or MSOs, but all entities involved in the distribution of channels to the end consumers, including last mile operators. MSOs and Cable Operators should not be allowed to arbitrarily disconnect signals. In view thereof, it is recommended that the TRAI incorporate a Clause 4.1A of the Regulations as "No distributor of TV channels shall disconnect the TV channel signals from a broadcaster or multi system operator without giving one week notice to the broadcaster and consumers indicating brief reasons for the proposed action." The notice period for switch-off of signals of any channel by the distributor of TV channels should be the same as applicable to the broadcasters/MSOs. Clause 4.2 of the Regulations be amended as "Broadcaster/distributor of TV channels shall inform the

consumers about the dispute to enable them to protect their interests. Accordingly, the notice to discontinue signal shall also be given in two local newspapers in case the distributor of TV channels is operating in local area and in two national papers in case the distributor of TV channels is providing services in a wide area. Alternatively, consumers can be informed through scroll on the concerned channel(s). The distributor of TV channels must carry the scroll in the concerned channel(s)". Further, such MSOs and cable operators should then not be entitled to the benefits of the 'Must Provide' regulations, since they are in breach of the regulations issued by the TRAI. (Star)

3. The notice period should simply be counted from the day of issuance of the public notice. Furthermore, there is already a de facto 30 day period built in due to the time lag between the receipt of the signal and the regularly timed payment. Broadcasters should be allowed to continue the practice of offering a scroll. If the cessation of service is not due to criminal responsibility, but rather a business decision to stop delivering a particular channel, such decisions are typically made well in advance of the cancellation of such service, providing for time to notify consumers of a pending change in service. MSOs and cable operators currently disconnect the signals of broadcasters with no notice to either consumers or the broadcasters. Notice periods between broadcasters and operators are best left to contractual agreement, but parity requires that TRAI's regulations be made reciprocal. With regard to a regulated notice period between cable operators and subscribers, there is some justification for regulatory intervention given that the consumer lacks leverage with his last mile service provider to negotiate in this regard. Therefore the requirement that consumers receive notification from MSOs and cable operators prior to the switching off of signals should be there. (USIBC)

4. For all declaration related disputes for the first one month after CAS is introduced in an area the notice period can be 30 days After the first month, all piracy related

disconnection can take effect immediately to prevent further piracy. In case of disconnection for causes not related to piracy, the notice period could be 7 days during which the scroll may be inserted into the signal to warn the consumers of the impending disconnection. The scope of "Unauthorized exhibition" should be well-defined in the contract that a broadcaster enters in to with the MSO/LCO. (MPA)

5. The notice period should be counted from the day of issue of public notice. Notifying the consumers by means of Newspapers (National /Daily) turns out to be an expensive affair and hence, the option available to the broadcasters/MSOs to give public notice by running a scroll on the channels should not be done away with. Rather there should be a period prescribed during which the scrolls can be run on the channel(s). The cable operator/ MSO should not have the right to switch off the channels if the broadcaster is providing the same. This action of the operator/ MSO will hold the consumer at ransom and should be discouraged at all costs. Also, if the there is a "must provide" regulation the there should be a "must carry" regulation for the cable operators/ MSOs also. (ESPN)

6. Yes the notice period should be counted from the day of public notice. The option of running a scroll should be done away with. The consumers should be informed of any kind of switch off be it from the Broadcasters or the MSOs or the cable operators since this act is formulated with a view to protect the interests of the consumers. (B.N.B.

Cables)

7. Ideally speaking the notice period should start from the day service provider in writing informs the user, and the public notice should be mandated to be brought in within seven days of the issuance of the notice to the user. Running of scrolls on channels is an avoidable nuisance. The decoders used should have a forced messaging capability with addressability so that only a particular operator is warned of the impending disconnection. Even inexpensive decoders now support such addressable messaging and it is strongly recommended to the Authority to do away with stock tickers and making forced messaging which is displayed on the screens in a particular area a mandatory feature. In case the MSO or the Cable operator or any service provider wishes to switch off any service on his own, he should give the notice to the subscribers before switching off. It is fair to the Broadcaster or the Service provider that he is aware that his services will not be available to a particular section of the consumers in an area and it can make alternative arrangement for the delivery of the services in the area either through a different platform or by different technology. (ASC)

8. Notice period should be counted from the date of the issuance of the public notice in the newspapers. The broadcaster should not have the option to give public notice by running scroll on the channel and it should be mandated that the notice for proposed disconnection should be given through newspaper only. It is not possible for the MSO and the Cable Operators to give advance notice to consumers before switching off any channel because with more than 100 channels being delivered by most of the operators now and with increasing pressure on the capacity of the networks with launch of new channels there is bound to be some shuffling of channels or else no new channels will

ever get distributed. Also an MSO might be forced to shut off a channel for technical reasons as well such as bad audio or video quality etc. (Siti Cable)

9. Notice period from the date it appears in papers or received by MSO/service provider. It is alright to give public notices by running scroll on channels as otherwise broadcasters use some obscure newspaper to advertise which not many subscribers read in the network (though on the other side once such advertisements are placed, it is defamatory for the MSO/cable operator and subscriber creates a problem while paying their dues). MSOs and cable operators are required to inform the consumers before they switch off any of channels and this can be a part of an agreement between the stakeholders i.e. the notice period and information. In other words, if a consumer needs to be informed then MSOs can put a scroll on the network informing in advance of change before 3 days and if any MSO wants to switch off any broadcaster forever then 30 days. If broadcaster gives notice to any MSO of 30 days, invariably in most of the cases, whether the intervention of TDSAT is sought or the matter is settled between the parties, in that case giving such notices on scroll or in papers becomes meaningless. The viewer should be informed of any broadcaster going off on any network if the above remedies have been exhausted for i.e. there is no relief from TDSAT and the talks have failed between the parties.(IMCL)

10. The notice period should exclude the date of issue of public notice and should also exclude likely date of disconnection / deactivation of signals. The option available to broadcasters/ MSOs to give public notice by running a scroll on the channels should not be done away with. MSOs and the Cable Operators should not be required to give notice to the consumers before switching off of any channel. Some times the Broadcasters give notice as a threat only and there is no intention on the part of them to disconnect / deactivate signals, so as to make the MSO's/ LCO's submit to them. (Hathway)

11. Notice period should be counted from the date it appears in papers or received by MSO/Cable Operator. Giving public notice by running scroll on channel should not be done away with as otherwise broadcasters use some obscure newspaper to advertise which not many subscribers read in the network. However, it is felt that such advertisements can be defamatory for the MSO/cable operator as they may give a wrong impression in the minds of the subscribers of that network that their cable operator is not giving his dues to the broadcaster. Whereas in reality it may be a superficial dispute between broadcaster and the cable operator to get more revenues as it happens every day. MSOs and cable operators are required to inform the consumers before they switch off any of channels and this can be a part of an agreement between the stakeholders i.e. the notice period and information. In other words, if a consumer needs to be informed then MSOs can put a scroll on the network informing in advance of change before 7 days and if any MSO wants to switch off any broadcaster forever then 30 days. Generally in such disputes, parties approach TDSAT for redressal before the 30 days period is over so that there is no disruption in the signals. Viewer should be informed of any broadcaster going off on any network if the above remedies have been exhausted for i.e. there is no relief from TDSAT and the talks have failed between the parties. (COFI)

Issue for Consultation

Access to content

- **Whether a time limit should be laid down for the agent or any other intermediary of a broadcaster/multi system operator to either provide signals to any distributor of TV channels once a request is made or to decline the request giving reasons for the same so as to enable the distributor of TV channels to agitate the matter at the appropriate forum without loss of time?**
- **Whether the time limit should also include time taken by the broadcaster to refer the distributor of TV channels who has made a request for signals to its agent or intermediary?**
- **Whether the provisions for mandatory access and the non exclusivity requirement in the Interconnect Regulation be removed so that there is no mandatory requirement for channels that are provided to only a digital platform/ service to be made available to any other digital platform / service or on the cable platform?**
- **Alternatively should these requirements be applied only to channels that have entered the market before a particular date?**

Comments Received

1. This situation is fallout of non-existence of Broadcasting Law and the precedence of hitheretofore uplinks of offshore satellite content. A procedure to curb anti-competitive practices has to be evolved, wherein reasons for not complying with the request must be communicated in writing, within a stipulated time, so that the applicant may agitate the matter to the appropriate forum. In the present state of speedy telecommunications (telephony, E-mail, FAX and so on) time limit fixed should include the time for the agent of the broadcaster to communicate with their principal. One possible solution could be use of a standard form for such request, scrutiny at customer service desk for completeness of the form, issue of an acknowledgement that the application is complete in all respects and then apply the time limit

from the date of acceptance of such complete applications. In written intimation of reasons for denial, the fact that the principal has been appraised can also be mentioned. The provisions for mandatory access and non-exclusivity requirement in the Interconnect Regulation should not be removed. The requirements should be applicable to all channels irrespective of the date of their entry into the Indian cable TV market. [Col V C Khare (Retd) - Cable TV Industry Observer]

2. The process to address the applicant's request is generally quite lengthy and the time taken varies from case to case as many formalities such as complete documentation, site visit etc. are needed to be undertaken. In view thereof, the imposition of an outer time limit for the agent/intermediary to react would be unfair and impractical. Entering into a long standing business relationship with a new entity requires due diligence and establishment of complex commercial relationships. These processes are generally lengthy. In view thereof, Star India is of the strong opinion that there should not be any time limit to address the applicant's request. In the present environment, there is a need to review the overly broad "Must Provide" and "Non-Exclusivity" provisions of the Regulation for the reasons, among others, that there are presently over 240 channels available to consumers on the C&S platform. C&S is the preferred platform for broadcasters given its reach of approximately 61 million consumer homes. Non-discriminatory access of all channels to all distributors of TV channels should not be mandated by the Regulation. Star India believe that the regulatory mechanism should adopt a balanced approach to consumer interest and competition. Star India believe that date should not be the basis for application of these requirements. (Star)

3. The process, upon request for the provision of signals, varies depending on a variety of factors such as the provision of the requisite technical information, consideration of financial viability, a site inspection, and negotiation of the terms of supply and distribution. In practice, the process is often extended by delays on the part of the distributor. It is impractical to set a limited period for a commercial negotiation. The mandatory access provisions should be removed. Mandatory access, along with the price freeze, comprises some of the most market-distorting television regulatory regimes currently in place anywhere in the world. Mandatory access should be ended for all channels, irrespective of the channel's date of commencement in India. (USIBC)

4. There should be a transparent mechanism in place, which allows broadcasters or their agents to evaluate the creditworthiness and business reputation of a cable operator before they are required to licence their signal to the cable operator for further re-distribution. This mechanism could establish a minimum threshold of accountability for cable operators. If any cable operator is found to have links with undesirable persons, the broadcaster should be able to refuse signals to that operator. As an analogy, a new VAT registration today requires a trader to provide a surety to the Government up to Rs. 100,000. However, the surety can also be reduced by Rs. 50,000, should the trader have the following: a fixed line telephone, a passport, a Permanent Account Number. A similar mechanism should be put in place whereby at least an Income tax PAN number or VAT registration is required before the broadcaster is obliged to provide signals. The Telecommunications Regulations 2004 in spirit should offer signals on a non-discriminatory basis but also on minimum financial viability threshold terms, which are transparent and reasonable. The "must provide" obligation in the Interconnect Regulations has been conveniently misinterpreted by some MSOs and their affiliate LCOs to mean that they have unfettered rights to expand their business without accountability to broadcasters. It is

suggested that a request for signals to television channels by a distributor should be either under (a) for re-transmission of signals to the ultimate customer who has the ability to pay and is located in a specific geographic area as per existing terms between the broadcaster and the distributor, or (b) for re-transmission of signals to designated LCOs based on their current area of operation. Further, all MSOs should declare their list of sub-operators, link operators and LCOs and be able to provide details of their paid subscriber base. The provisions for mandatory access and non-exclusivity should be done away with. The prevailing market conditions include availability of several access modes for consumers to receive signals. Thus market forces should be allowed to dictate availability of channels and there should be no discrimination between availability of digital and analog channels. (MPA)

5. There is no requirement of Mandatory access to content and market forces should be allowed to determine these aspects. This will benefit the subscribers also. Also, as far as the pay channels are concerned and especially in the case of sports channels there must be a provision of must carry as Sports Channels also play an important role in developing sports and talent for the country. Restricting a Sports Channels growth would be restricting the growth of the sports itself. (ESPN)

6. The very purpose of this act to do away with discrimination is still to be achieved since the Broadcasters are not providing their signals to those who were already being discriminated but the new entrants are also denied the signals. The onus of providing the signals should be put on the Broadcasters by making this clause more stringent. The time frame set should be strictly adhered to and it should be seen that signal is provided within a period not exceeding thirty days. A criterion should be fixed for those requesting for the signal rather than Broadcasters coming up with their new criteria ever day. If the time frame is not followed strictly the very purpose of this act is defeated and the ground reality remains as it is. The time limit should also include the time taken for referral to its agent or intermediary. There are instances where the Broadcasters and Agent/ intermediaries do not bother responding to the request for providing their signals for more than 30 days. In these cases penalty should be imposed and the signal should be provided forthwith and formalities completed then. The mandatory access and non-exclusivity requirement should not be done away with as this may result in extra benefit for one platform over another which may affect lots of Networks. (B.N.B. Cables)

7. Yes there should be a time frame of 30 days for closing the request of the service provider who is asking for the content. The process needs to be defined as - once a request is made to the agent of the broadcaster it should be taken as the final request there would be no onus on the party making the request to contact any other agency in India or overseas; the Agent must provide an acknowledgement of the request; the agent must provide access to content at non-discriminatory rates as mandated under the interconnect regulation within one month of such request; all interconnect rates must be filed with the Regulator; the broadcaster through its agent must fulfill all conditions such as provision of decoder, or decryption equipment to the applicant party at the rates filed with the regulator; in case access is not provided by the Agent by the due date the Regulator should intervene and pass an order which is final and binding for provisioning of the content; any other remaining commercial formalities should, if necessary be completed through any agency designated by the regulator and in case of a default the action under the downlinking norms also need to be initiated. The request for the content can be in standard format with standard terms in the agreement. If these

issues can be addressed, it will save lot of litigation and suffering to the consumers. The mandatory provision of the channels can be acceptable if we say that any platform where the subscriber can be digitally addressed directly by an enabling device will have the benefit of the must

provide regulation. In order to tackle the problem of capacity constraints in the cable networks, any new pay channel launched after a notified date should mandatory be delivered in digital mode. The Time limit should be only one - which is made to the notified agent of the broadcaster. No other time or allowances should be given. (ASC)

8. As per clause 3.4 of the Interconnect Regulation any agent or any other intermediary of a broadcaster / MSO must respond to the request for providing signals of a TV channel in a reasonable time period but not exceeding 30 days of the request. This must be strictly adhered to even if the agent seeks certain details from the distributor. The agent should say either yes or no within the aforesaid time limit of 30 days to enable the distributor of channels to approach either broadcaster or appropriate forum for redressal of its grievance. The overall time limit of 30 days should also include time taken by the broadcaster to refer the request for signals to its agent or intermediary. Non-exclusivity requirement in the Interconnect Regulation should be continued to ensure effective competition between cable distribution platform and digital platforms such as DTH, IPTV etc. The requirement should apply to all channels irrespective of their date of launch. There should not be any exclusivity either amongst the digital platforms and /or in digital platforms vis-à-vis cable platforms. (Siti Cable)

9. A time limit of 30 days from the date of request received by an Agent/MSO/broadcaster should be laid down. This time limit should include the time taken by the broadcaster to refer the distributor of TV channels, who has made a request for signals, to its agent or intermediary. It is emphatically stated that under no circumstances should exclusive content be allowed whether on analogue or digital format and on any one particular technology vis-a-vis another. This is required in the consumer interest and in an era of vertical monopoly (80% market share in metros is in the hands of vertical integrated networks).These requirements be applied to all such channels who wish to downlink in India if the new channels are excluded, there is a likelihood that broadcasters will switch their popular content/programme to new channels to avoid must sharing of content if new channels are exempted from 'must provide.' Further non exclusivity should be retained with no limit to the number of registered cable operators in a given area. (IMCL)

10. The existing system of "not exceeding 30 days time frame" to respond under clause 3.4 and 3.6 is currently working fine. The time limit should not include time taken by the broadcaster to refer the distributor of TV channels who has made a request for signals to its agent or intermediary. The provisions for mandatory access and the non–exclusivity requirement in the Interconnect Regulation should not be removed. Cable TV industry will vehemently oppose to any such attempt to create niche content only for one platform like DTH, IPTV, leaving Analog Cable / Digital Cable TV Platform in the lurch as it is ex-facie discriminatory and arbitrary. These requirements should not be applied only to channels that have entered the market before a particular date. (Hathway)

11. Since process of providing signals by broadcasters through their decoder is completely automated, it can be activated in just 2 hours, a maximum period of 7 days from the date of request received by an Agent/MSO/broadcaster should be provided for

acceptance or refusal. The 7 days time limit should also include time taken by the broadcaster to refer the distributor of TV channels who has made a request for signals to its agent or intermediary. Under no circumstances should exclusive content be allowed whether on analogue or digital format and on any one particular technology vis a vis another. This is required in consumer interest and in an era of vertical monopoly. These requirements may be applied to all such channels who wish to downlink in India. Further non exclusivity should be retained with no limit to the number of registered cable operators in a given area. (COFI)

Issue for Consultation

Area of operation

- **Whether the obligation of the broadcaster to provide access to content to all distributors should be valid only as long as the MSO/ LCO operations are restricted to the area as defined in the commercial agreement?**

Comments Received

1. Access is provided at the Headend through issue of IRDs. The IRD should, under the interconnect agreement, be specifically allocated to the address of the Headend location in the agreement. Only then the feed from a particular IRD can be deemed to be restricted to the area covered by a particular Headend and its radius of operation. [Col V C Khare (Retd) - Cable TV Industry Observer]

2. The provision of service by the MSO or LCO, subsequent to execution of the subscription agreement, to paying subscribers outside the demarcated area (i) is not authorized by the broadcaster; (ii) is not paid for by the MSO/LCO; and (iii) potentially infringes on the retransmission licence of another MSO/LCO. The "Must Provide" obligations in the Regulations have been misinterpreted by some MSOs and their affiliated LCOs to require unfettered rights to expand their networks. Therefore, Star India believe that the Regulations should be appropriately amended to recognize that the "Must Provide" obligations on broadcasters and their authorized distributors/agents applies with regard to demarcated areas of operation and that there is an obligation for the licensee and his affiliates/sub-licensees to restrict themselves within the area of operation. The TRAI should also incorporate a regulation that obligates the MSOs and LCOs to provide the details (including names and address) of declared subscribers. In the absence of such provision, the MSOs and their affiliated LCOs are misusing the 'Must Provide' obligation of the broadcasters. (Star)

3. TRAI's 'must provide' obligations continue to be misinterpreted by some MSOs and cable operators as affording them the right to expand their networks without regard to the geographical boundaries stipulated in the channel supply agreements. It is imperative that the TRAI clarify that its existing 'must provide' obligations on broadcasters is not

meant to empower the MSOs and cable operators to expand service with impunity beyond the demarcated area commercially agreed. (USIBC)

4. Each MSO/LCO should have a specific geographic area of distribution within which they can expand their number of subscribers. TRAI could examine the feasibility of a scheme, which allows the MSO's to put in the cable infrastructure and gives the right to collect fees and maintain the infrastructure only to the existing 1-2 cable operators who are currently operating in the area and have control of the ground. This franchise/ license could be granted against payment for some fees or upon giving a guarantee. No new entrants would be granted licenses except for new licensees deemed necessary to service rapid market expansion. In such

cases they need to inform the broadcasters and existing contracts would have to be reviewed and amended suitably. (MPA)

5. The area of operation of the cable operators should be clearly defined in the commercial agreement and the obligation of the broadcaster to provide access to content to all cable operators should be valid till the time the cable operators are restricted to these areas. Otherwise, unauthorized expansion of area of operation by the cable operators may result in a situation of chaos. (ESPN)

6. The agreements can be drafted to either have an area of operation as predefined or the agreement can have a time linked increase in the area of provision as well as growth of customers within the given area. Most MSO and operators such as DTH operators operate in an environment where services are provided in large geographically dispersed areas and such provisions can be covered by agreements. (ASC)

7. If the distributor of a channel has a valid registration to operate in a particular area the same cannot be curtailed by placing artificial restrictions by the broadcasters as it would act as a impediment to the growth as well as competition. The only issue in this regard is the payment of additional subscription fee for the extended area (s) of operation, which can be settled between broadcasters and distributors of channels on a "negotiated subscriber base" for the additional area. The extension of area by a distributor of channels in which he is authorized to operate by virtue of having valid registration for that area, cannot be termed as piracy or unauthorized distribution entitling a broadcasting to switch off its channels by giving a notice of 2 days. In such an event a period of 30 days is to be given to arrive at the negotiated settlement of subscription fee for the additional/ extended area of operation failing which the distributor of channels is entitled to approach Hon'ble TDSAT for settlement of the disputes in accordance with law. (Siti Cable)

8. In IMCL's view, if IMCL wishes to serve consumers in a city, it be allowed to do so without hassles and the broadcasters then cannot impose conditions which restrict the MSO within the area of that city. Broadcasters need to share information regarding the number of MSOs/LCOs operating in an area and paying them for the number of connections for receiving their services and should put this information in public domain so that they can not discriminate when new MSOs seek service and there is transfer of

connectivity between the competing MSOs in today's environment in a transparent manner. (IMCL)

9. No. This will tantamount to the restrictive trade practice and will lead to unfair business practices. It is ultimately subject to revision in subscription fees either on the higher side if there is growth or lower side if there is loss of operational / billable area / size. (Hathway)

10. Any MSO/Cable Operator who wishes to serve consumers in a city, be allowed to do so without hassles and the broadcasters then can not impose conditions which restrict the MSO/Cable Operator within the area of that city. Broadcasters need to share information regarding the number of MSOs/LCOs operating in an area and paying them for the number of connections for receiving their services and should put this information in public domain so that they cannot discriminate when new MSOs seek service and there is transfer of connectivity between the competing MSOs in today's environment in a transparent manner. This will also help subscribers to know from the website of the broadcasters as to availability

of their signals from MSO/Cable Operator of a particular area. Any area demarcation has to be done as a part of license by the regulator/licensing authority. Since there is no licensing as of now, no area restriction can be made by a broadcaster. If different broadcasters resort to different areas, there will be a chaos on the ground. (COFI)

Issue for Consultation

MSO as an agent of Broadcaster

•Whether the Regulations should specifically prohibit appointment of an MSO, directly or indirectly, as an agent of a broadcaster?

Comments Received

1. Yes. [Col V C Khare (Retd) - Cable TV Industry Observer]

2. Principally there are two factors which determine the choice exercised by broadcasters; (i) the financial analysis of capital cost of providing IRDs vs. the subscription revenue expectation; and (ii) the potential impact of unfettered territorial expansion. In either case, the service providers would have to provide non-discriminatory terms and the commercial offer to the applicant-distributor would be the same. It follows that the agent/intermediary providing signal feed could be an MSO operating within the area of operations applied for. Where the existing MSO refuses to provide signal feed, the broadcasters would give signals directly on non-discriminatory terms. (Star)

3. The market should be allowed to operate in its own course. Should a broadcaster choose to appoint an MSO as its agent, it would only do so with the interest of expanding their share of the market. Given the huge costs involved in setting up a distribution network, it is likely that the agents appointed by a broadcaster would be from the cable trade. If the MSO cannot be appointed as an agent, it would mean that all cable operators would be entitled to take direct signals from the broadcaster, which is not financially viable, nor commercially manageable on the ground. With over 240 channels now available in India, no channel can be determined "irreplaceable" should any agent limit a channel's distribution. (USIBC)

4. The Regulations should clearly specify that an MSO cannot be appointed as an agent of a broadcaster. (ESPN)

5. MSO should not act directly or indirectly as an agent as it gives them unhealthy edge over their rival MSOs. (B.N.B. Cables)

6. The appointment of MSO as an agent of Broadcaster is inherently anti-competitive.(ASC)

7. The TDSAT has already adjudicated this matter in Sea TV's case and an appeal against this judgment is pending in the Supreme Court. The main issue in this regard is that there is an apparent conflict between the obligations of MSO as an agent of the broadcaster and his business as MSO, which is to provide signals to as many cable operators as possible. The broadcasters are appointing MSOs as exclusive agents at ground level on Minimum Guarantee basis, which is creating lot of distortions and disturbances in the market. Accordingly various cable operators are not able to get the signals of the broadcasters, as in order to perpetuate their monopoly these MSO agents are refusing the signals to rival cable operators on one pretext or the other. The appointment of MSO as an agent is totally prejudicial to the competition and is creating monopoly at ground. Matter may be put beyond doubt by adding one more proviso to Regulation 3.3 which should read as "Provided that a multi system

operator cannot directly or indirectly be the designated agent of broadcaster or his/her authorized distribution agency." (Siti Cable)

8. As this matter is sub judice in the Supreme Court in the Sea TV Civil Appeal in which IMCL are interveners, IMCL do not wish to make any direct comment except to state that the Interconnect Regulations need to be interpreted along with the explanatory memorandum and replies to stake holder queries issued by TRAI. (IMCL)

9. MSOs have even otherwise been reduced to act as a collection arm of the broadcasters. Since the matter is sub judice before the Hon'ble Supreme Court in Sea Network matter, Hathway are of the view that outcome of the judgment be awaited and they would abide by the same. (Hathway)

10. The Interconnect Regulations need to be interpreted along with the explanatory memorandum and replies to stake holder queries issued by TRAI. The agent should not be a service provider if a genuine competitive market has to be developed. (COFI)

Issue for Consultation

Payment defaulters

- **Whether the Regulations should make it obligatory that the applicant-distributors shall produce along with their request for services, a "No Pending Dues" certificate from the presently-affiliated MSO in respect of LCOs intending to get signal feed through such distributor or directly from broadcasters?**

Comments Received

1. Yes. [Col V C Khare (Retd) - Cable TV Industry Observer]

2. The provision of excluding payment defaulters from the "Must Provide" obligation should be expanded to include the cases such as where an MSO seeks to expand its area of operations to provide signals to an LCO who has defaulted in payment to his currently affiliated MSO, or to the Broadcaster; where an LCO or group of LCOs any of whom have defaulted in payment seek to establish their own head-end and obtain signals directly from broadcasters; and where any of the promoters of a distributor of TV channels are promoters of any other distributor of TV channels which has defaulted in payment. Further, it is operationally impossible for broadcasters to verify whether an applicant-distributor is a payment defaulter prior to provision of service in accordance with the Regulations. Therefore, Star India recommend that the Regulations should include an obligation that the applicant-distributors include, along with their request for services, a "No Pending Dues" certificate from the presently-affiliated MSO in respect of LCOs intending to get signal feed through such distributor or directly from broadcasters. The Regulations should also provide that if any MSO provides signals to a new LCO, who was previously affiliated to a Broadcaster, without obtaining a copy of the "No Pending Dues" certificate from such Broadcaster, the Broadcaster shall have the right to disconnect such MSO. (Star)

3. This regulation makes sense. It is a relatively simple way to ensure that chronically defaulting operators will not be tolerated. (USIBC)

4. All the payment defaulters are required to be dealt with strictly, in furtherance of which, the Regulations should make it mandatory for all the applicant-distributors to produce, along with their request for services, a "No Pending Dues" certificate from the presently-

affiliated MSO in respect of LCOs intending to get signal feed through such distributor or directly from broadcasters.(ESPN)

5. Yes it should be made obligatory that the applicant distributors produce No Pending Dues certificate from the presently affiliated MSO in respect of LCOs intending to get signal feed through such distributor or directly from Broadcasters. (B.N.B. Cables)

6. The issuance of the NOC is not a practical solution, it will bring in more litigations as the outgoing Service provider will delay NOC on various pretexts which can be litigated and thus may deprive the end consumer the service completely or partially. In case the input cost of the MSO are equal then the ultimate price to the LCO also will be the same and it will be the service which will be the determining factor and let the field decide for it. (ASC)

7. The provision for applicant – distributors to produce "No Pending Dues" from the presently affiliated MSO, is not a practical suggestion and would lead to all kinds of complications and litigations because the existing MSO would not want to lose any affiliated LCO and therefore is likely to put up false & frivolous demands of outstanding to prevent the LCO from shifting. In such a scenario in the absence of "No pending dues" certificate from the LCO, the other MSOs will not be able to provide feed to the LCO, thus forcing the LCO to stay with the existing MSO. Such a regulation would be detrimental to the progress of the industry and would amount to promoting de-facto monopolies. (Siti Cable)

8. The requirement of No Pending Dues certificate may create a problem because there may be a genuine dispute between the parties and the shifting applicant may not be able to procure and produce the certificate thus affecting his right to do business with others.(IMCL)

9. It is welcome step on the part of the Authority for the proposed amendment in the Interconnect Regulation. This dynamic and pragmatic view will resolve the evil in the system. (Hathway)

10. The requirement of No Pending Dues certificate may create a problem because there may be a genuine dispute between the parties and the shifting applicant may not be able to procure and produce the certificate thus affecting his right to do business with others.(COFI)

Issue for Consultation

Expansion of Existing Regulations

Subscriber Base

- **Whether the subscriber base should remain fixed during the term of validity of subscription agreement?**
  - **If not, what should be the methodology for periodic revision of subscriber base?**
- **Whether it should be made mandatory to provide a list of the LCOs (with Subscriber base/ lump sum payments)/households to the broadcasters/MSOs at the time of signing of the agreement?**
- **How should the subscriber base be determined for new entrants?**

Comments Received

1. The subscriber base should remain fixed during the term of validity of subscription agreement unless provision exists in the agreement to revise the same along with reasons and justification. The methodology for periodic revision of subscriber base should be by physical door count verification in LCOs area by Broadcaster's agents along with the LCO. Ideally it should be made mandatory to provide a list of the LCOs (with subscriber base/lump sum

payments)/households to broadcasters/MSOs at the time of signing of the agreement. The subscriber base for the new entrants be determined by encouraging CAS implementation, providing for acquisition of STB on softer terms, as a technological compulsion, like TV over IP and DTH, and assigning zero value to FTA content in the SMS (Subscriber Management System). [Col V C Khare (Retd) - Cable TV Industry Observer]

2.The subscriber base may typically change during the course of a subsisting contract and the subscription fee should be modified accordingly. Any increase or decrease in paid subscriber base on account of LCO churn can be given effect to only when all MSOs are required to give a break-up of their paid subscriber numbers by affiliate LCO as part of the subscription agreement. As MSOs do not provide a list of their affiliated LCOs and their paid subscriber base, broadcasters take the more conservative view of opposing any reduction in the paid subscriber base. The Regulations should mandate that the LCOs provide to the MSOs details of their declared subscribers (along with names and addresses) and the MSOs to provide such list to the broadcasters. This would facilitate the broadcasters to increase/decrease the subscription fee of the MSOs on account of LCOs churn. Given that there are instances of disputes on subscriber numbers between the Broadcaster and the MSO/cable operators, the TRAI may come up, on an immediate basis, with a mechanism to deal with this issue. Star India suggest that the TRAI appoint an independent reputable third party agency (such as AC Nielsen) to deal with subscriber related disputes (by conducting surveys in the event of dispute). In the event of any dispute, the MSO/cable operator would be required to provide to the third party agency a true and accurate list of its affiliated cable operators, and their respective connected subscribers (along with their complete contact details). The independent reputable third party agency could then conduct a survey in the specified area within a specified time. The reports of the survey should be final and binding on both the parties. The costs for the survey should be paid by the losing party. In the case of new entrants, the area of operation may be defined in terms of demarcated geographical territory or in terms of the list of LCOs which the MSO proposes to connect over the term of the agreement. Accordingly, the broadcaster may make a non-discriminatory offer based on the area demarcation or based on current subscription revenue of the affiliated LCOs within the area of operation. Star India feel that since the number of new entrants is not as much, no regulation is required specifically for new entrants. (Star)

3. Subscriber base should not remain fixed. India's cable television subscriber base is growing at a fast rate, and there are still entire regions that are not currently serviced by cable television. To freeze the subscriber base during the course of an existing subscription agreement is neither necessary nor fair. The Ministry of Information and Broadcasting or TRAI must be empowered to press service providers to provide their subscriber base. The Ministry or TRAI should be urged to set up a special cell to begin "snap audits" of a few dozen service providers every year to review conformity of reporting rules, and to get a clearer picture on the amount of under-reporting existent in the market. Underreporting of subscriber number is a violation of copyright laws and distorts the value of the market. The regulation to provide a list of the LCOs (with Subscriber base/ lump sum payments)/households to the broadcasters/MSOs at the time of signing of the agreement makes sense. It is a relatively simple way to add an important layer of regulation in an industry, cable distribution, which is lightly regulated. Furthermore, both the distributors and the MSOs should be obligated to provide an accurate count as to the number of subscribers they are serving. It would seem to

make sense to base it on estimates drawn from the population in the operator's operation of area, with provision of a complete list of the operator's cable affiliates and subscribers. There should be a survey of cable penetration of the area, with due allowance for the offering and appeal of the new entrant's product. (USIBC)

4. MSO/LCOs should be able to prospect new consumers on an ongoing basis and likewise consumers should be able to choose from an array of MSOs/LCOs. MSOs should provide broadcasters a list of their subscribers on a quarterly basis. This list should be geographically sorted with household addresses, names of subscribers and contact details. This will allow broadcasters – if they so desire – to spot check service quality. Also, this level of data mining will allow all the parties – Broadcasters, MSOs and LCOs to design special promotional offers. On a quarterly basis, new additions to the lists and deletions from the list may be flagged. It should be made mandatory to provide a list of the LCOs with their Subscriber base to the broadcasters/MSOs on a monthly basis and at the time of signing of the agreement. Approximately 50-60% of this should constitute the minimum guarantee in terms of payment obligation. For new entrants, the subscriber base may be determined based on the existing level of penetration of cable services in the area. (MPA)

5. The subscriber base should be specified in the agreement. Any increase/ decrease in the same should be dealt with in the manner such as; (a) it should be made mandatory for all MSOs/ Cable Operators to file with the broadcaster, a list of their subscriber base, on a monthly basis.; (b) a similar list for LCOs should also be filed; (c) this data should also be made available on TRAI's website so as to encourage transparency. In case of new channels / entrants, the subscriber base should be subject to negotiation between the two parties to the agreement. (ESPN)

6. The subscriber base should remain fixed during the term of validity of subscription agreement as the broadcasters specially event driven ones resort to strong arms tactics before important events and try and increase the subscriber base. The

obligation for provision of list of subscribers should not be made mandatory at the time of signing of agreement. A minimum amount of subscriber base should be fixed in a way so that it does not hurt any of the parties involved. (B.N.B. Cables)

7. The subscriber base during the tenure of the agreement in case of non addressable environment should remain fixed, in case of the addressable environment it should be based on the actual no of subs. It is important that during the tenure of the price freeze the total outgo from a network is also kept fixed. The periodic revision in case of the non addressable environment can be done on the basis of any new constructions coming in which may increase the number of households in the area. At the time of signing of the agreement the LCO list with sub base is difficult, however, it can be mandated that within three months of signing the agreement the list can be provided containing the names of the LCO connected to the system. The subscriber base of the new entrant can be fixed as a minimum entry level by the service provider. (ASC)

8. It is duly recognized by TRAI in earlier Consultation Note and papers that in non-CAS areas the Interconnect agreements are on the basis of 'negotiated subscriber base'. Since the negotiated subscriber number is supposed to take care of distribution margin and also the inbuilt subsidy to the subscribers, it should remain fixed through out the term of validity of the subscription agreement. Since the settlement between the broadcaster and distributor of TV channels has been arrived at on the basis of negotiated subscriber base, there is no relevance

and need to provide the list of LCOs etc as the broadcasters tend to misuse the said list to harass the distributor of TV channels by alleging that the LCOs figuring in the said list have much higher subscriber base than what is declared in the list at the time of signing the agreement and thus demand more subscription. In the alternative, when Interconnect agreement is entered into with the broadcasters for non-CAS areas, a particular declaration of the number of subscriber by the distributor of channels (LCO to MSO) should form a basis for the finally negotiated number. Therefore, if there is any increase in declared subscriber base on account of new LCOs joining the MSOs either in the same area or in new area when the MSO expands his operation, the same should be added to the subscriber base. Similarly when an LCO leaves the MSOs, the declared subscriber base should accordingly be reduced. Thus a proper reconciliation should be carried out whenever migration takes place both on account of increase in the declared subscriber base as also in respect of decrease in the declared subscriber base and the declared subscriber base should be revised both upwards & downwards as the case may be through a reconciliation exercise at periodic intervals and adjustments be carried out accordingly. For a new entrant the only methodology is negotiated settlement with the pay broadcasters for a particular period of time, which can be reviewed after the expiry of said period based on actual performance of the distributor of channels at the ground level. (Siti Cable)

9. There is no need to provide the lists of LCOs together with their list of declarations to broadcasters. The real reason why MSOs like IMCL cannot provide details of LCOs actual subscriber base is because LCOs also negotiate with MSOs on their notional subscriber base and pay a pre determined sum of monthly subscription fee. In fact no MSO is aware of the true and genuine subscriber base of a LCO. Alternatively

if such a subscriber base was considered vital and necessary to provide in the Regulation then in absence of addressability the only viable method is to use Service Tax/ Entertainment Tax declaration or self declaration by LCO (as relied upon by IMCL unless proved contrary otherwise on a case to case basis). The subscriber base for new entrants should be a minimum of 300 connections for MSO and a minimum of 50 connections for LCO. (IMCL)

10. Dynamics of any business never remain static. However, in order to maintain stability and reasonability during the terms of the agreement, it is the agreed and negotiated subscriber base that should be allowed to remain static and fixed. If it is allowed to remain fluctuating on monthly basis or in short span of time / tenure, this would lead to more conflicts and disputes. Further, the negotiated subscriber base is a function of demand of a particular channel or bouquet of channels or a channel within the bouquet / non–moving channels with one or two channels in demand. CAS is the only solution. If the Authority in any case takes any view based on the present consultation paper under consideration then the *a–la–carte* as well as issues arising out of the Distribution Margin to the Dealers like the MSOs / LCOs needs to be addressed simultaneously without any further delay. The objective of the Authority to minimize the disputes through the present consultation paper would get vitiated if there are periodic revisions. If there is a negotiated subscriber base (as recognized in the 01st October 2004 Recommendation of TRAI) then there is no sanctity left in providing with the list of subscribers of LCOs and households. Further, MSOs receive only the lump–sum negotiated fees from its value chain, like the pay broadcasters receive from the MSOs. Further the situation has reached to such an extent that MSOs are paying more subscription fees for the negotiated subscribers to popular pay broadcasters, than the amount they are collecting from

the paying subscribers / LCOs declaration. The subscriber base for new entrants be determined on the basis of negotiated and / or agreed subscribers. (Hathway)

11. Subscriber base should remain fixed during the term of validity of subscription agreement limited to one year. Subscriber base should be revised every year at the time of renewal of agreement or after completion of one year of the agreement. There is no need to provide the lists of LCOs together with their list of declarations to broadcasters. The real reason why MSOs cannot provide details of LCOs actual subscriber base is because LCOs also negotiate with MSOs on their notional subscriber base and pay a pre determined sum of monthly subscription fee. In fact no MSO is aware of the true and genuine subscriber base of an LCO. Alternatively if such a subscriber base was considered vital and necessary to provide in the Regulation then in absence of addressability the only viable method is to use a self declaration by LCO. The subscriber base for new entrants be determined on the basis of a minimum of 300 connections for MSO's business and a minimum of 50 connections for LCO. It has been a practice of broadcaster to give boxes under rural scheme for minimum number of subscriber on 300 and in urban markets on 500, the same can be allowed.(COFI)

Issue for Consultation

Multi System Operator

- **Whether any minimum threshold of the number of subscribers and other parameters should be specified for a Cable Operator to be defined as a "Multi System Operator" and for being entitled to receive signals directly from broadcasters?**

Comments Received

1. No. [Col V C Khare (Retd) - Cable TV Industry Observer]

2. The number of subscribers under an MSO varies depending on various factors (including size, geographical location, etc.). Therefore, it is very difficult to define a MSO based on number of subscribers. Therefore, the broadcasters should continue to define MSOs on a non-discriminatory basis. (Star)

3. There should be a uniform licensing procedure for all distributors and MSOs (subscriber thresholds, technical standards, financial requirements), but beyond that it should be a purely commercial decision as to whether to provide their signals directly.

(USIBC)

4. The definition of "MSO" as contained in the Act should define a minimum threshold of the number of subscribers and other parameters for a Cable operator to be defined as a "Multi System operator" and for being entitled to receive signals directly from broadcasters. (ESPN)

5. No minimum number of subscribers should be fixed as this will block the advent of new entrants in this sector and also restrict the aspirations of existing cable operators from becoming a MSO thus directly making the existing even more powerful and assertive thus creating a monopolistic market environment which can hurt the consumers.

(B.N.B. Cables)

6. Due to the diverse demographics of India it is difficult to specify the threshold number for the cable operator to be defined as MSO, the need of this definition is purely theoretical as

MSO in present day also do the agreements to a great extent based on the head ends reach and then consolidate the same in one agreement. This may be left to the broadcaster.(ASC)

7. The correct technical definition of an MSO is any company /entity which operates multiple headends in different areas or across state or country. In addition there are large independent cable operators also who operate single headend (Control room), provide direct services to the subscribes as well as give their feeds to other LCOs who in turn provide signals to the consumers. In order to be eligible or entitled to receive signals

directly from the broadcasters the MSO /independent LCO should have at least 25 cable operators connected to its network with a minimum aggregate subscriber base of 3000 connections. (Siti Cable)

8. Broadcasters have been charging a minimum of 500 connections in urban areas and 300 for rural areas for MSOs; since they have adopted this business model the same be allowed to continue. (IMCL)

9. It is welcome step on the part of the Authority for the proposed amendment in the Interconnect Regulation as even one person / LCO claims to be the MSO and attempts to destabilize the existing system. The role of the MSO is critical and serious business as it otherwise affect to the quality of service. It is therefore proposed that there should be a minimum 50 LCOs and at least 5,000 subscribers base as a threshold limit to be qualified as MSO.(Hathway)

10. Broadcasters have been charging a minimum of 500 connections in urban areas and 300 for rural area for MSOs, since they have adopted this business model the same be allowed to continue.(COFI)

Issue for Consultation

Renewal of Agreements

- **Whether any time limit should be laid down for renewal of agreements prior to expiry of existing contract, so that in case the agreement can not be renewed, the subscribers get sufficient advance notice regarding discontinuation of those channels after expiry of existing contract?**
- **What arrangements should be made for extension of the contract during negotiations after the validity of a contract has expired?**

Comments Received

1. Yes**.** This should be approximately four weeks more than the period of notice for discontinuation. The situation, of extending the contract during negotiations after the validity of a contract has expired, can arise only when the service has not been interrupted even after expiry of the validity period of the agreement. A logical approach should be to continue the service and levy new negotiated rates retrospectively from date of expiry of previous agreement. Wherever the service has been interrupted, new rates should take effect from the date of restoration of a service. [Col V C Khare (Retd) - Cable TV Industry Observer]

2. The MSOs/cable operators who intend to renew their agreement should send a written request at least two months prior to the expiry of their existing agreement. Along with the written request the MSOs/cable operators must, inter alia, send the various information/documents, including (i) post office license, (ii) photograph of authorized signatory, (iii) address proof, (iv) photo identity, (v) charter documents, (vi) letter of

authority, (vii) no-dues certificate, and (viii) such other documents as may be desired by the broadcasters. The regulation should mandate these requirements, failing which the broadcaster must have the right to disconnect the MSO/Cable operators after the expiry of the agreement. Extension of contract without execution of a separate agreement should be strictly discouraged. If such extensions are permitted, that would in effect validate provision of signals by the broadcasters to unauthorized MSOs/cable operators. (Star)

3. No, TRAI should not set a time frame for renewing existing agreements. This is a business-to-business process that need not be regulated. In addition, setting a time frame for renewing agreements would necessarily entail introducing enforcement measures; such measures could be abused by one party or the other through stalling the renewal process. An arrangement for extension of contract during negotiations after contract expires can be determined either in the original contract or on an ad-hoc basis when a contract expires. A regulation, forcing particular conditions, would not be useful as such a regulation would have to be written in such a manner as to make provisions for a mandatory extension of the terms. Such a regulation would inevitably favor one side or the other after the expiration of a contract. (USIBC)

4. The Act / Rules should lay down a time limit for renewal of agreements prior to expiry of existing contract(s), so that in case the agreement cannot be renewed, the subscribers should get sufficient advance notice regarding discontinuation of those channels after expiry of the existing contract. After the expiry of the contract three months time for negotiations should be given and in this time the operator (MSO / LCO) should be made to pay on the then prevailing rate of the channel for the period during which they receive the services from the broadcaster at the last agreed subscriber base, until the contract is either renewed or services discontinued. (ESPN)

5. Yes a time frame for renewal of agreements prior to expiry of old contract should be laid down so that the subscribers do not suffer and get enough advance intimation in case of continuation of any channels. (B.N.B. Cables)

6. The renewal of the agreement should be done at least a month prior to the expiry of the previous agreement. In case the agreement is not closed with in the validity of the previous agreement and their has been no new habitation of the household in the area defined then the previous agreement should be kept valid and in the next thirty days if the same can not be concluded then the regulator should pass the order based on the facts presented with in the next thirty days, in this interim period the broadcaster or its distributor should not take any step to discontinue the services. (ASC)

7. Ideally, the agreement should be for a period of 3 years and the commercial terms can be renegotiated after expiry of 12 months period. The negotiations for settlement of commercial terms should start at least 30 days before the expiry of the 12 months period and an attempt should be made to settle the same before the expiry of said 12 months. If the broadcasters stipulate certain unreasonable terms, the distributor of channels can approach TDSAT immediately after the expiry of 12 months period and seek redressal. If TRAI prescribes a standard agreement then most of such disputes can be eliminated

and renewals can take place in a speedier manner. If the negotiations in a good faith continue even after the expiry of 12 months period / agreement as mentioned above, the same can be continued till the fresh commercial terms are settled for the new period and no disconnection

be resorted to. Once the new commercial terms are settled they would automatically apply with effect from the date of start of new period.(Siti Cable)

8. Time limit of an agreement and their renewals should not be less than 1 year and extendable mutually thereafter. There is no legal provision that agreements end after one year and cannot even be renewed as this is a violation of must provide interconnect regulation. Ideally once the licensee has signed an interconnect agreement it should be for the period of license and any disconnection should be exception and not the rule and be allowed only if all other methods to resolve the dispute fail. If these contracts are not long term contracts then this business will be uncertain and investment in this business will never be safe and not only service providers but the consumers will have to suffer if they have to change their service provider every year. It is evident from many Court cases that whenever there is a renewal of an agreement, broadcasters send notices for enhancing the revenue on the threat of denial of services or deny to renew the contract. It is also a restrictive trade practice on account of broadcasters since they insists on signing of agreement on a fixed number of subscriber base for a year and for any change in the number of subscribers. They insist on signing new agreements. If there is an agreement then it should be for licensing or authorized distribution and the payment should be on the basis of declared subscriber base from time to time and not on annual contracts. For extension of contract, ideally, negotiations should start before 60 days so that 30 days are given for negotiations and 30 days to approach TDSAT if the parties fail to reach the agreement. (IMCL)

9. Till the time old agreement or oral arrangements are in place the continuity should be maintained. If there is a complete break down of negotiation then and in that case alone a notice of one month needs to be given by the broadcasters / MSOs to the MSOs / LCOs as the case may be and if the affected party rights are prejudiced then the affected party may approach the appropriate forum for adjudication. Till such time the parties to the Interconnect regime should be encouraged to enter into an agreement through dialogue. The Authority should give a clarification that the Oral arrangement / Oral Agreement should form part of the understanding in determining the inter-se relationship between the value chains in the system. The Agreement shall have a continuity at least for a period of 3 years and it is only the commercials like the function of the rate and number of subscribers or the negotiated lump–sum periodical subscription fees or number of channels as the case may be needs to be reworked at suitable interval of say 12 / 18 months. (Hathway)

10. Time limit of an agreement and their renewals should not be less than 1 year extendable mutually thereafter. There is no legal provision that agreements end after one year and cannot even be renewed as this is a violation of must provide interconnect regulation. Ideally once the licensee has signed an inter connect agreement it should be for the period of license and any disconnection should be exception and not rule and be allowed only if all other methods to resolve the dispute fail. If these contracts are not long

term contracts then this business will be uncertain and investment in this business will never be safe and not only service providers but the consumers will have to suffer if they have to change their service provider every year. It is evident from many Court cases that whenever there is a renewal of an agreement, broadcasters send notices for enhancing the revenue on the threat of denial of services or deny to renew the contract. It is also a restrictive trade practice on account of broadcasters since they insists on signing of agreement on a fixed number of subscriber base for a year and for any change in numbers of subscribers. They insist on

signing new agreements. It is felt that if there is an agreement then it should be for licensing or authorized distribution and the payment should be on the basis of declared subscriber base. For extension of contract, ideally negotiations should start before 60 days so that 30 days are given for negotiations and 30 days to approach TDSAT if the party's fail to reach the agreement.(COFI)

Issue for Consultation

Conversion of FTA channels into Pay channels

- **Whether any advance notice should be stipulated for FTA channels turning into Pay channels, so that in case the service providers are unable to reach an agreement, the subscribers get sufficient advance notice regarding discontinuation of those channels from the date of their conversion into Pay channels?**

Comments Received

1. Yes, at least 3 months. [Col V C Khare (Retd) - Cable TV Industry Observer]

2. The FTA channels are converted into Pay channel to enable the broadcasters to collect subscription revenue from the MSOs/Cable Operators. Therefore, it would become imperative for the broadcasters to enter into discussions with the MSOs/Cable Operators prior to such conversion. If the broadcasters and the MSOs/Cable Operators are unable to reach an agreement, it should give a one week's notice to the broadcaster and the consumers in terms of Clause 4.1A of the Regulations. (Star)

3. It is safe to assume that the broadcasters and MSOs / cable operators will enter commercial negotiations well in advance of the conversion date from free to pay. However, should the parties be unable to reach agreement for the conversion, they should be left to negotiate the fate of the free channel at the expiration of their existing agreement. If TRAI is determined to set a notice period, then 7 days is reasonable. (MPA)

4. The Act should stipulate a time period of 2 months for giving advance notice for FTA channels turning into Pay channels, so that in case the service providers are unable to reach an agreement, the subscribers get sufficient notice regarding discontinuation of those channels from the date of their conversion into pay channels. (ESPN)

5. The FTA channels getting converted to pay should be transmitted through CAS on STBs in order to avoid any increase in Tariff of the Basic Services. Since this cannot be done in retrospect, it should be done to avoid/stop the growing number of pay channels in the basic tier in the future especially due to the non availability of the pay tier. This will also reduce the growing burden on the lower income group customers who are at present subsidizing the upper income groups since the cost of every new pay channel is being distributed equally to all the subscribers including to the ones that do not even watch them. For this purpose and for ensuring uninterrupted services to the customers an advance notice of minimum six months should be fixed. The said period is the minimum one during which customers will be able to exercise their option and the service provider will be able to assess the no. of boxes/investment required to roll out the pay tier service to roll out the STBs. This will truly help TRAI to keep the existing so called (distorted) basic tier cost in control while the pay tier pricing will be determined by the market forces helping the operators to gradually enter the CAS regime without being rushed thus achieving the voluntary CAS objective. (Ortel)

6. Yes at least 2 months notice should be stipulated for FTA channels turning Pay channels so that sufficient time is there to get in an agreement and in case of failure to do so subscribers get sufficient notice regarding discontinuation of those channels. (B.N.B. Cables)

7. Normally channels going from FTA to pay mode do so well in advance however they should communicate to the public at large at least six months in advance at monthly intervals that they are going pay. This will help the consumer also to understand that if the service is to be availed then he may have to start paying more. Channels should file their rates with the regulators with the MRP and the distribution margins in the same. (ASC)

8. At least 3 months advance notice should be given by an existing FTA channel which wants to convert into a pay channel so that the distributors of channels can negotiate the agreement with such channel and the consumers also become aware that they need to pay for a particular channel resulting in monthly increase in their cable bills. Simultaneously a tariff declaration also needs to be filed with TRAI which should be displayed by TRAI on its web site. (Siti Cable)

9. Six months advance notice. (IMCL)

10. Yes once in every quarter only and i.e. 01st April, 01st July, 01st September and 01st January every year with an advance notice of three months in order for the system to know well in advance and the information should be passed on to the value chain in the system. (Hathway)

11. Six months advance notice.(COFI)

Issue for Consultation

Reference Interconnect Offer

- **Whether an RIO should be issued by TRAI for approving the terms and conditions of model subscription agreements of dominant players and to regulate their activities in the broadcasting and cable TV services? If so, what should be the elements of such a model subscription agreement?**

Comments Received

1. Yes. Some suggested elements could be such as detailed lists of channels/programs pertaining to agreement, subscriber base as on date of agreement, negotiated rates for each channel to mention MRP to the end viewer and wholesale rate to be charged from the distributor, narration of circumstances causing interruptions, if any, resolution of disputes and obligations in case of interruptions, safeguards against unauthorized distribution/piracy and actions to be taken on their detection, provision for arbitration and demise of agreement, accountability of Broadcaster, and Indemnity to Distributor, in any case of violation of content and advertising codes, refunds to subscribers in case of interruptions in service by the broadcasters, bank guarantees by Broadcasters to guard against unjustified interruptions and provisions for cancellation of down linking registration in case regulations are flouted by broadcasters. It is very difficult to visualize a scenario where broadcaster/distributor relations will be un-disputed. Therefore, consideration is merited on 'Who should store these agreements'? Present staffing of TRAI does not meet the work load as such. Hence there may be a case for opening up a Cable TV Regulation wing with TRAI, or establishing CRAI (Cable

TV Regulatory Authority of India) under the Ministry of I&B with adequate number of regional offices. [Col V C Khare (Retd) - Cable TV Industry Observer]

2. Broadcasters should be free to enter into commercial arrangement with MSO and cable operators which protect their interests. Such interests as the TRAI has already notified may be recorded orally, or reduced to writing in the form of subscription agreement. The RIO for telecom operators was issued by the TRAI given the incumbent monopoly of the state owned service provider. We would like to state that in the case of broadcasting this is not the case, and therefore, there is no need for an RIO to be issued. If however, the TRAI is of the view that it is imperative it could look at providing broad overview of what must be discussed between the parties before concluding a subscription agreement. (Star)

3. TRAI should not have an approval role for subscription agreements. This is tantamount to the government introducing a full regulatory regime for the sector, and would open the process to a level of regulatory involvement in the C&S sector seen in few if any countries. For the market to develop naturally, and for investors to understand the true value of any given market, there should not be any government intervention into commercial agreements. (USIBC)

4. The agreements are commercial agreements and the terms of the Agreement should be left to the freewill of the parties. No entity should have the right or power to force agreements. (ESPN)

5. This is the most important aspect of this Act and onus to end monopoly should be put on the broadcasters and the MSOs to appoint more than one operator in an area so that the consumers are not at the mercy of a single operator. (B.N.B. Cables)

6. There should be a Reference Interconnect Agreement as applicable and made effective in the area of Telecom. The defined principles should be such as: Declaration of Interconnect rates by the Broadcasters / MSOs and their publication on the TRAI website; Non Discriminatory application of such rates; Principles for provision of content within one month beyond any recourse on signing of agreement; Making Anti piracy measure of fingerprinting mandatory in the decoders which are provided; Making forced addressable Messaging mandatory to the particular operator and doing away with running of scrolls etc; Making web access for payments, accounting and authorizations mandatory for all the broadcasters and MSOs; Filing of monthly and yearly return by all Broadcasters and MSOs in the same pattern as prescribed by the FCC and Placement of all such data on the Web for access by all stake holders. (ASC)

6. The Hon'ble TDSAT in Petition No. 41C/2004 titled Star India Vs. IndusInd Media has mandated the execution of written agreements between the broadcasters and MSOs/cable operators as a mandatory requirement under the Interconnect Regulations. It is suggested that the TRAI should initiate a process for drafting and notifying the Standard Agreement for non-CAS areas which can be adopted by all the stakeholders as a model agreement and who can then either design/ align their agreements in accordance with the said model agreement stipulated by TRAI. The agreement should cover all the aspects of interconnection such as areas, subscriber base, mode of distribution, unauthorised distribution, content responsibility etc. Detailed inputs in this regard can be provided once TRAI initiates the process of formulating Standard Agreement. Siti Cable are of the view that Standard agreement should be formulated not only for Cable distribution but also for other distribution platforms. (Siti Cable)

7. RIO should be issued to regulate dominant players and the RIO should contain the elements such as the Authorization status/power; Area as asked for; Rate; Payment period; No of years; Transparency and Encourage competition and better services to the consumers. Till an RIO is finalized and also for the purpose of drafting an RIO, the issues need to be kept in mind are :MSO's cannot be made responsible for acts of cable operators / franchisee; there should not be a Minimum Guarantee provision; in case of negotiated subscriber base there should not be any need for provision of subscriber details / lists etc. and there should also not be any need for increase in subscriber base during the fixed term of the Agreement; in cases of Agreements on actual Subscriber base, a say 3 monthly revision (up or down) may be prescribed with a ceiling of say 5% both ways; industrial township should not be excluded from the Agreement; there should not be any restriction on expansion within the Service Area; Definition of Service Area should include both existing and new households within the demarcated service area; the

Agreement should be technologically neutral; situations for disconnection may be prescribed; uniform 30 days Notice Period may be prescribed in all cases except in case of piracy where notice period should be of seven days; it should be clarified that expansion within Service Area is not piracy; there should not be any requirement of provision of Maps; broadcasters should not be allowed to see MSO's Account Books/ Records; MSO's contractual relationship with other parties should not be the concern of the Broadcaster; Licensing etc. for content should be Broadcasters responsibility; it should clearly be provided in the "Must Provide Clause" that the channels / connectivity will be provided to the seeker thereof within a period of 30 days which period should include the period for all negotiations, communications including with the agents of the broadcaster or the MSO as the case may be and A La carte bouquet should be made available in all categories.(IMCL)

8. Yes. Only cover with the basic principles of the Indian Contract Act with rights and obligations for entering into the agreement, keeping the utmost interest of the consumers / end subscribers in mind. (Hathway)

9. RIO should be issued to regulate dominant players and the RIO should contain the elements such as the Authorization status/power; Area as asked for; Rate; Payment period; No of years; Transparency and Encourage competition and better services to the consumers. Till an RIO is finalized and also for the purpose of drafting an RIO, the issues need to be kept in mind are :MSO's cannot be made responsible for acts of cable operators / franchisee; there should not be a Minimum Guarantee provision; in case of negotiated subscriber base there should not be any need for provision of subscriber details / lists etc. and there should also not be any need for increase in subscriber base during the fixed term of the Agreement; in cases of Agreements on actual Subscriber base, a say 3 monthly revision (up or down) may be prescribed with a ceiling of say 5% both ways; industrial township should not be excluded from the Agreement; there should not be any restriction on expansion within the Service Area; Definition of Service Area should include both existing and new households within the demarcated service area; the Agreement should be technologically neutral; situations for disconnection may be prescribed; uniform 30 days Notice Period may be prescribed in all cases except in case of piracy where notice period should be of seven days; it should be clarified that expansion within Service Area is not piracy; there should not be any requirement of provision of Maps; broadcasters should not be allowed to see MSO's Account Books / Records; MSO's contractual relationship with other parties should not be the concern of the

Broadcaster; Licensing etc. for content should be Broadcasters responsibility; it should clearly be provided in the "Must Provide Clause" that the channels / connectivity will be provided to the seeker thereof within a period of 30 days which period should include the period for all negotiations, communications including with the agents of the broadcaster or the MSO as the case may be and A La carte bouquet should be made available in all categories. (COFI)

Issue for Consultation

Monopoly in the last mile

- **What steps need to be taken to ensure that the monopoly at the last mile is removed so that consumers can get choice?**
- **Should a regulatory framework be laid down wherein the areas of operation and the number of operators are clearly defined?**

Comments Received

1. It is incorrect to say that LCOs have monopoly. There is no prohibition against any one wanting to register for running a cable network. In near future, alternatives such as DTH and TV over IP will be available to viewers on Cable TV networks to choose between Cable TV, IP TV and DTH. Unless areas are auctioned like telecom circles, with investors also of that financial capability, the regulatory framework for laying down the areas of operation and the number of operators may not be feasible. In the system of registration with the post offices, area of operation of the applicant could be described with a representative sketch

forming a part of the registration certificate. The registration authority could issue a consolidated map/sketch showing area of operation of each registrant and more than registrant in the same area, if any. [Col V C Khare (Retd) - Cable TV Industry Observer]

2. While this issue may be partially addressed with the advent of other distribution platforms, the monopoly in the last mile can only be addressed with the laying down of a clear cut licensing regime. The TRAI should immediately consider implementing a regulatory framework which will involve licensing of cable operators in territories across India, in a manner similar to that of telecom. The TRAI can lay down the frame-work for appointing licensees for cable for either all of India, or for particular parts of India. These areas could be demarcated state-wise, city wise, etc. The TRAI could then, as is the case with Teleco, permit one or more cable operators for each area of operation. The license fees to be paid by the cable operators would ensure that only serious players willing to invest for the long term would operate in this market. (Star)

3. The "last mile" monopoly is already being removed through the growth of DTH satellite TV service. TRAI should quickly move to develop a licensing framework for cable operators in India, forcing operators to report their subscriber base and area of operation. The status quo, an absence of a licensing framework, is a root cause of many of the issues raised by TRAI in this consultation. In addition, much needed investment and consolidation in the last mile is slowed as investors shy away from the fragmented, opaque market. (USIBC)

4. DTH satellite television service is in fact already providing effective competition to "last mile" cable operators, serving as much as 15% of the overall pay TV subscribes in some areas and adding subscribers at impressive growth rates. TRAI should consider the level of competition more closely via a consultation on this specific issue. (MPA)

5. There should be a licensing regime for this purpose like in the telecom sector. It must be ensured that there are two to three licenses for each area. This is the best possible way to ensure competition at the LCO level. For the purpose of convenience, a regulatory framework may be laid down. (ESPN)

6. No regulation is recommended to regulate the carriage or its terms. (ASC)

7. With the launch of DTH, Broadband and HITS, the so-called existing de-facto monopoly of the last mile operator would no longer exist. In such a scenario any regulation in this regard is unnecessary. It is pertinent to mention that multiple operators in an area of operations encourage competition and ultimately consumers would be benefited. Limiting or restricting the number of operators in an area would be detrimental to such competition, would be counter productive and should not be resorted to at all. (Siti Cable)

8. It is too late for the regulator to define the area of operation and the number of operators since this would be very complicated on all India basis as there are no marked areas of operation or the number of operators. The situation is different from area to area and city to city. For instance in South Delhi there are 5-7 MSOs and independent operators, competing with each other with no monopoly in any area. There are also places like Faridabad where a vertical integrated company has a virtual monopoly in every area including the last mile and so far no MSO has been able to make an entry. Till the time the content is made available fairly and freely to new entrants last mile monopoly will remain. In fact it is IMCL's contention that there is no monopoly as such as there are thousands of operators. On the other hand there can be a potential monopoly of three to four DTH platform providers who would like to

provide exclusive content to the detriment of thousands of cable operators if there was no Interconnect Regulation (IMCL)

9. Choice comes only by way of the alternative platform like DTH, IPTV etc. and the so called monopoly in the last mile is a myth as there is enough competition in place. Defining areas of operation and the number of operators may be termed as anti competition and will lead to restrictive trade practice. Further it will be contrary to the Central legislation i.e. Cable TV Act, which provides license to operate in a particular Post Office jurisdiction / area. As long as he has the requisite Post Office license and Entertainment Tax Registration / Service Tax Registration and affiliation to any of the local MSOs is in place and he should give his true - full declaration and having valid Permanent Account Number under Income Tax Act (New Saral), the regulation can not have any conflicting view with the Central Government legislation and he should be entitled to provide signals to his total declared subscriber base.(Hathway)

10. There is no need for the regulator to define area of operation and number of operators since this should have been a part of licensing. In reality there is no monopoly in the last mile as any number of cable operators can register with post office to start a cable TV network. Monopoly is created only at the level of MSO/Broadcaster where

there are compromises and alliances working. Till the time the content is made available fairly and freely to new entrants last mile monopoly will remain. (COFI)

Issue for Consultation

Carriage fee regulation

•Whether carriage fees on cable networks should be regulated? If so, on what basis should this be done and how should carriage charges be calculated? •What should be the mechanism for ensuring that the ceiling for carriage charge is not exceeded?

Comments Received

1. Carriage fee on Cable Network should not be regulated. Carriage fee should be restricted to the maximum of revenue charged from the distributor for PAY TV. Perhaps carriage fee for FTA could be capped at 25% of the maximum chargeable for PAY TV. This should best be left to Network owners because this is also related to quality of headend equipment and, network hardware and degree of conformity to IS 13420. [Col V C Khare (Retd) - Cable TV Industry Observer]

2. The relationship between channel supplier and MSO should be left to market forces with no justification for price regulation of either channel supply or carriage. Star India's view, however, is that regulatory parity requires that while the price freeze on channel supply and subscription fees exists, a ceiling and freeze should be placed on carriage/placement fees. Such ceiling may be specified in terms of Rupees per subscriber reached, as declared by the MSOs. This is required to remove the incongruity that while revenues of broadcasters remain frozen, the broadcasters' costs (in terms of carriage fees) can increase in any proportion and at any frequency. The MSOs should be required to file copies of their carriage agreements with the TRAI so as to enable verification of payment within ceiling limits. The TRAI may consider withdrawal of such ceiling on carriage fees at the same time as withdrawal of price freeze over channel supply and subscription rates. The carriage fees may be paid by the

broadcaster to the large MSOs on per declared subscriber basis. This mechanism would ensure that the ceiling for carriage charge is not exceeded. (Star)

3. The relationship between channel supplier and MSO should be left to market forces. Hence, there is no justification for price regulation on other side of the exchange i.e. both channel supply or carriage rates are best left to commercial negotiations between the parties. (USIBC)

4. The relationship between channel supplier and MSO/cable operator is safely left to market forces given the degree of competition in the supply of programming. There is, therefore, no rationale for TRAI to impose price regulation on either channel or carriage rates. (MPA)

5. Application of carriage fees on cable networks must be regulated in the manner such as: (a) the stipulation of the amount of carriage fee should be rationalized, so that new entrants may not be discouraged, (b) the amount of carriage fee must be fixed at a reasonable amount for the initial months of launch of a channel, preferably a maximum cap be stipulated and (c) the new entrants should not be charged after a period of 2-3 years subsequent to their launch. (ESPN)

6. Regulation of Carriage fees is an undesirable phenomenon which has come into existence by the cable operators owing to the limited capacity of the cable plant. This is expected to give way to addressable systems. At present ASC do not recommend any regulations to regulate the carriage or its terms. (ASC)

7. It would be totally unreasonable if an attempt is made to regulate the carriage /placement fee so as to ensure the advertisement revenue of the channel. There is no regulation / restriction on the advertisement appearing on a TV channel or the rates thereof. These are governed by the market forces of demand and supply and also on the popularity and reach of the channel. The popularity and reach on the other hand depend upon the visibility of the channel. In order to ensure the said visibility, the placement fee is being paid by the broadcasters to the cable networks. There cannot be any regulation on such carriage /placement fee and in fact creation of more capacity on the cable networks by encouraging digitalization is the most viable and practical way instead of any attempt to regulate the same through some Regulation. Thus the carriage fee should be left to the mutually negotiated settlement between broadcasters and distributors of channels and no interference is called for from the Authority. (Siti Cable)

8. Carriage fee on cable networks cannot be regulated since it is a historical fact that carriage has come into this business for TRPs. Content carriers / broadcasters have agreed to pay placement fee so that they get good TRPs which in turn will get them better advertisement pie. They are paying placement fee from their share of advertisement pie to the cable operators and if there is no curb on advertisements on channels the same should apply to the sharing of that. If there is a control on advertisements to be carried on pay channels or carrying an advertisement on free to air channels, they will not pay carriage to the MSOs or cable operators since they will have no reason to pay placement fees. If broadcasters get more advertisements on their networks by virtue of being available on good frequencies on the cable networks, cable operators have every right to seek a part from that revenue. In today's situation cable operators are allowing broadcasters to use their network without getting anything in return (i.e. the margin on MRP, MSO bill, collect and pay on MRP). (IMCL)

9. No. Any regulation on carriage fees would lead to the multiplicity of disputes. Carriage Fees would be subject matter of negotiation and the same should be left with the market forces otherwise it leads to the lack of transparency/ encouraging bad/ malpractices. (Hathway)

10. Carriage fee on cable networks cannot be regulated since it is a historical fact that carriage has come into this business for TRPs. Content carriers / broadcasters have agreed to pay placement fee so that they get good TRPs which in turn will get them better the advertisement pie. They are paying placement fee from their share of advertisement pie to cable operators and if there is no curb on advertisements on channels the same should apply to the sharing of that. If there is a control on advertisements to be carried on pay channels or carrying an advertisement on free to air channels, they will not pay carriage to the MSOs or cable operators since they will have no reason to pay placement fees. If broadcasters get more advertisements on their networks by virtue of being available on good frequencies on the cable networks, cable operators have every right to seek a part from that revenue. In today's situation cable operators are allowing broadcasters to use their network without getting anything in return (i.e. the margin on MRP, LCOs bill, collect and pay on MRP). (COFI)

THE TELECOMMUNICATION (BROADCASTING AND CABLE SERVICES) INTERCONNECTION (FOURTH AMENDMENT) REGULATION, 2007

No. 9 of 2007

TELECOM REGULATORY AUTHORITY OF INDIA

NOTIFICATION

New Delhi, the 3rd September, 2007

F. No. 4-54/ 2007 - B&CS.-- In exercise of the powers conferred by section 36, and by sub-clauses (ii), (iii), (iv) and (v) of clause (b) of sub-section (1) and sub-section (2) of section 11 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), read with notification of the Government of India, in the Ministry of Communication and Information Technology (Department of Telecommunication) No.39,-----

(a) issued, in exercise of the powers conferred upon the Central Government under clause (d) of sub-section (1) of section 11 and proviso to clause (k) of sub section (1) of section 2 of the said Act, and

(b) published under notification No. S.O.44 (E) and 45 (E) dated the 9th January, 2004 in the Gazette of India, Extraordinary, Part III, Section 4,

the Telecom Regulatory Authority of India hereby makes the following regulation further to amend the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004 (13 of 2004) namely:-

1. (*1*) These regulations may be called the Telecommunication (Broadcasting and Cable Services) Interconnection (Fourth Amendment) Regulation, 2007.

(*2*) They shall come into force on the 1st day of December, 2007.

2. In the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004, (hereinafter referred to as the principal regulation), in clause 2,-

(i) after sub-clause (a), the following sub-clause shall be inserted, namely:- '(aa) "Act" means the Telecom Regulatory Authority of India Act 1997 (24 of 1997);'

(ii) after sub-clause (i), the following sub-clause shall be inserted, namely:- '(ia) "commercial subscriber" means any subscriber who receives a programming service at a place indicated by him to a service provider and uses signals of such service for the benefit of his clients, customers, members or any other class or group of persons having access to such place;

(iii) in sub-clause (k), the words "in KU band" shall be omitted;

(iv) after sub-clause (k), the following sub-clauses shall be inserted, namely :-

'(ka) "direct to home service" means distribution of multi channel TV programmes by using a satellite system by providing TV signals directly to subscriber's premises without passing through an intermediary such as cable operator or any other distributor of TV channels;

(kb) "direct to home subscriber" means a subscriber who receives the signals of a direct to home service;'

(v) after sub-clause (m), the following sub-clauses shall be inserted, namely :-

(ma) "ordinary subscriber" means any subscriber who receives a programming service from a service provider and uses the same for his domestic purposes;'

'(mb) "pay channel" means a channel for which fees is to be paid to the broadcaster by the person receiving the signals from the broadcaster, for its re-transmission through electromagnetic waves through cable or through space intended to be received by the general public either directly or indirectly;

(mc)"programme" means any television broadcast and includes-

(i) exhibition of films, features, dramas, advertisements and serials through video cassette recorders or video cassette players;

(ii) any audio or visual or audio-visual live performance or presentation**,**

and the expression 'programming service' shall be construed accordingly; (vi) after sub-clause (n), the following sub-clause shall be inserted namely *:-*

'(na)"subscriber" means a person who receives the signals of a service provider at a place indicated to the service provider by him without further transmitting it to any other person and includes ordinary subscribers and commercial subscribers unless specifically excluded;'

3. In regulation 13 of the principal regulation,---

(a) in sub-regulation 13.1, in the opening portion beginning with the figures and words "13.1. All broadcasters shall submit……", the following shall be

substituted, namely:-

"Reference Interconnect Offers for non-addressable systems.

13.1 All broadcasters shall submit----";

(b) after sub-regulation 13.2, the following shall be inserted, namely:-

"13.2A Reference Interconnect Offers for direct to home service.

13.2A.1 Every broadcaster, providing broadcasting services before the date of commencement of the Telecommunication (Broadcasting and Cable Services) Interconnection (Fourth Amendment) Regulation, 2007 (9 of 2007) and continues to provide such services after such commencement shall, within ninety days from the date of such commencement, intimate to all the direct to home operators existing on that date and coming into existence within the said period of ninety days, its Reference Interconnect Offer specifying, *inter-alia*, the technical and commercial terms and conditions for interconnection for the direct to home platform, including the following terms and conditions, namely:-

(a) rates of the channels on a-la-carte basis and the rates of bouquets offered by the broadcaster to the direct to home operator;

(b) details of discounts, if any;

(c) payment terms;

(d) security and anti-piracy requirements;

(e) subscriber reports based on subscriber management system and audit; (f) tenure of agreement;

(g) termination of agreements.

13.2A.2 Every broadcaster shall publish a copy of the Reference Interconnect Offer, referred to in sub regulation13.2A.1, on its website: Provided that any broadcaster, who had intimated or published on its website, before the commencement of the Telecommunication (Broadcasting and Cable Services) Interconnection (Fourth Amendment) Regulation, 2007 (9 of 2007), any Reference Interconnect Offer, shall modify such Reference Interconnect Offer so as to be in conformity with the Reference Interconnect offer referred to in regulation 13.2A.1 and publish the same as required under this sub-regulation.

13.2A.3 Every broadcaster, who begins to provide broadcasting services after the date of commencement of the Telecommunication (Broadcasting and Cable Services) Interconnection (Fourth Amendment) Regulation, 2007 (9 of 2007) shall, within ninety days of such commencement or before providing such services, whichever is later, intimate to all the direct to home operators existing on that date, its Reference Interconnect Offer specifying therein the the technical and commercial terms and conditions referred to in sub-

regulation13.2A.1 and publish the same, before or simultaneously with such intimation, on its website.

13.2A.4 Every direct to home operator, who has been granted a licence after ninety days from the date of commencement of the Telecommunication (Broadcasting and Cable Services) Interconnection (Fourth Amendment) Regulation, 2007 (9 of 2007), may request a broadcaster for being provided with a copy of Reference Interconnect Offer of such broadcaster and such broadcaster shall, within ten working days from the date of receipt of such a request, provide the same to the direct to home operator.

13.2A.5 Every broadcaster, who makes any modification to its Reference Interconnect Offer referred to in sub-regulation 13.2A.1 or sub-regulation 13.2A.3 , shall, immediately after such modifications, intimate to all the direct to home operators such modifications so made to its Reference Interconnect Offer:

Provided that all such modifications shall be published and exhibited on its website in the same manner as the Reference Interconnect Offer had been intimated to the direct to home operators and published on the website of the broadcasters.

Agreements between the broadcasters and direct to home operators.

13.2A.6 (1) The Reference Interconnect Offer of a broadcaster referred to in clause 13.2A.1 or 13.2A.3 or 13.2A.5, as the case may be, and intimated to the direct to home operators and published by the broadcaster on its website shall be the basis for all interconnection agreements to be entered into between the broadcaster and direct to home operators:

Provided that the broadcaster may enter, on non discriminatory basis, into agreements with different direct to home operators modifying the Reference Interconnect Offer on such terms and conditions as may be agreed upon between them :

Provided further that in case a broadcaster had entered, before the commencement of the Telecommunication (Broadcasting and Cable Services) Interconnection (Fourth Amendment) Regulation, 2007 (9 of 2007), into an agreement with any direct to home operator and publishes, subsequently, its Reference Interconnect Offer (including its modifications) under said regulations, such broadcaster shall, after publication of the said offer, give an option to such direct to home operator to either enter into an agreement in accordance with these regulations or continue with the agreement entered before such commencement till its validity.

(2) No broadcaster, who had, before the commencement of the Telecommunication (Broadcasting and Cable Services) Interconnection (Fourth Amendment) Regulation, 2007 (9 of 2007), entered into an agreement with a direct to home

operator and such direct to home operator has given an option under sub-regulation (1), to enter into an agreement with such broadcaster in accordance with the Reference Interconnect Offer published after such commencement, shall disconnect signals (except in accordance with these regulations or any other law for the time being in force) during the period beginning from the date on which such operator gave the option and ending on the date on which such agreement was entered in accordance with the Reference Interconnect Offer or the date of expiry of earlier agreement, whichever was earlier.

(3) No broadcaster, who had, before the commencement of the Telecommunication (Broadcasting and Cable Services) Interconnection (Fourth Amendment) Regulation, 2007 (9 of 2007), entered into an agreement with a direct to home operator and such direct to home operator has given an option under sub-regulation (1), to continue with the agreement entered, before such commencement, with such broadcaster, shall disconnect signals of such operator (except in accordance with these regulations or any other law for the time being in force) during the validity of such agreement.

Time limit for entering into agreements between the broadcasters and direct to home operators.

13.2A.7 (1) Every broadcaster shall, within a period of forty-five days from the date of receipt of request from a direct to home operator for entering into interconnection agreement or for modification of an interconnection agreement already entered, shall enter into an agreement, or, modify such agreement already entered, with such direct to home operator, in accordance with the Reference Interconnect Offer published under these regulations.

(2) In case a broadcaster intimates any modification as referred to in regulation 13.2A.5, the agreement referred to in sub-regulation (1) shall be modified at the option of the direct to home operator, in the same manner as that of entering into of an agreement under sub-regulation (1).

13.2A.8 In case the broadcaster and the direct to home operator fail to enter into an interconnection agreement, then both of them may jointly, without prejudice to the provisions of section 14A of the Act, at any time, request the Authority to facilitate in the process for entering into an interconnection agreement.

13.2A.9 Nothing contained in clause 13.2A.8 shall be construed to take away any legal right conferred upon the broadcaster and the direct to home operator under any law for the time being in force and either of them may, at any time during the facilitation process, exercise such right conferred upon them under any law for the time being in force.

13.2A.10Nothing contained in clause 13.2A.8 or 13.2A.9 shall apply to any matter or issue for which ---

(a) any proceedings are pending before any court or tribunal under the Act or any other law for the time being in force; or

(b) a decree, award or an order has already been passed by any competent court or tribunal or Authority, as the case may be.

Compulsory offering of channels on a-la-carte basis.

13.2A.11 It shall be mandatory on the part of the broadcasters to offer pay channels on a-la-carte basis to direct to home operators and such offering of channels on a-la-carte basis shall not prevent the broadcaster from offering such pay channels additionally in the form of bouquets:

Provided that no broadcaster shall, directly orindirectly, compel any direct to home operator to offer the entire bouquet or bouquets offered by the broadcaster to such operator in any package or scheme being offered by such direct to home operator to its direct to home subscribers.

13.2A.12 The rates for pay channels on a-la-carte basis and rates for bouquets shall be subject to the following conditions, namely:-

(a) The sum of the a-la-carte rates of the pay channels

forming part of such a bouquet shall in no case exceed one and half times of the rate of that bouquet of which such pay channels are a part; and

(b) the a-la-carte rates of each pay channel, forming part of such a bouquet, shall in no case exceed three times the average rate of a pay channel of that bouquet of which such pay channel is a part and the average rate of a pay channel of the bouquet be calculated in the following manner, namely:- If the bouquet rate is Rs. 'X' per month per subscriber and the number of pay channels is 'Y' in a bouquet, then the average pay channel rate of the bouquet shall be Rs. 'X' divided by number of pay channels 'Y'.

13.2A.13 Every direct to home operator, who, after the commencement of the Telecommunication (Broadcasting and Cable Services) Interconnection (Fourth Amendment) Regulation, 2007 (9 of 2007), opts for one bouquet or more bouquets (hereafter referred to as the opted bouquet) offered by a broadcaster, may decide the packaging of the channels from such bouquet

or bouquets which may be offered by it to its direct to home subscribers:

Provided that in a case where a direct to home operator--

(a) does not offer such opted bouquet as a whole to its direct to home subscribers but offers to such subscribers only certain channels comprised in such opted bouquet ; or

(b) packages the channels comprised in such opted bouquet in a manner resulting in different subscriber base for different channels comprised in such opted bouquet, then, the payment, to the broadcaster for such entire opted bouquet by the direct to home operator, shall be calculated on the basis of the subscriber base for the channel which has the highest subscriber base amongst the channels comprised in that bouquet.".

(c) for sub regulation 13.3 the following sub-regulation shall be substituted, namely "13.3 In case the Authority is of the opinion that the Reference Interconnect Offer requires modifications so as to protect the interests of service providers or consumers of the broadcasting sector and cable sector, or to promote or ensure orderly growth of the broadcasting sector and cable sector or the Reference Interconnect Offer has not been prepared in accordance with the provisions of these regulations, it may, after giving an opportunity of being heard to the concerned broadcaster, require the concerned broadcaster to modify the said offer and such broadcaster shall make such modifications and publish, within fifteen days of receipt of requirement for the modifications, the said offer after incorporating such modifications.".

(R. N. Choubey)
Principal Advisor (B&CS)

Note.1-----The principal regulations were published vide notification no. 8-26/2004-B&CS dated 10th December, 2004 and subsequently amended vide notifications no.3-57/2005-B&CS dated 3rd March, 2005, no.11-13/2006-B&CS dated 24th August, 2006 and no. 6-4/2006-B&CS dated 4th September, 2006.

Note.2-----The Explanatory Memorandum explains the objects and reasons of the Telecommunication (Broadcasting and Cable Services) Interconnection (Fourth Amendment) Regulation, 2007.

Annex

EXPLANATORY MEMORANDUM

A. Background

1. In a direct to home service (hereinafter referred to as DTH service), a large number of television channels are digitally compressed, encrypted and beamed from very high power satellites. The programmes transmitted through DTH can be directly received at homes by installing small dish antennas at convenient locations in the buildings. DTH service transmission does not require any commercial intermediary, since an individual user is directly served by the direct to home operator (hereinafter referred to as DTH operator). However, a digital receiver usually referred to as set top box is required to receive the multiplexed signals and view them on a Television set.

2. In India, DTH service is a comparatively recent entrant as compared to cable transmission. DTH is an addressable system and can cover the entire country. The authority to issue DTH licence vests with the Government of India (Ministry of Information & Broadcasting). Leaving aside the Doordarshan as a public service broadcaster, two DTH operators have commenced their operations after obtaining licence from the Government of India (Ministry of Information & Broadcasting). These are M/s ASC Enterprises (under the brand name of Dish TV) and M/s Tata Sky Ltd. Dish TV had launched its services in the month of October 2003 and Tata Sky launched its service in the month of August 2006. The two DTH operators offer several pay channels along with Free to Air channels and the number of their subscribers in the country is estimated to be about 3.2 million at present. As compared to this, the other addressable delivery platform, namely, Conditional Access System (CAS) for cable television has about 5.5 lakh subscribers in the CAS notified areas of the country. The Doordarshan provides free to air channels on its DTH service (called DD Direct) for which the subscribers have to buy the dish and the set top box from the open market. Since the Doordarshan signals are unencrypted and free to air, no accurate assessment is available about the number of viewers. Recently, licences for DTH service have also been given to M/s. Sun TV Ltd. and M/s. Reliance Blue Magic Ltd, and two more potential DTH operators are awaiting the licence.

3. As pointed out in the consultation paper, availability of content on the DTH platform was limited till very recently. Hence, even though DTH services were available in the country, these were not offering any real competition to the cable services. The situation has changed in the last one year with the availability of popular content on the DTH platform. In view of the increasing competition between DTH and cable TV for providing pay TV services, it has become necessary to examine the issue of level playing field for the two platforms.

4. With the roll out of Conditional Access System (CAS) in the notified areas of the three metropolitan cities of Delhi, Mumbai and Kolkata on the 31st December, 2006, addressability in

distribution of cable television services has been extended beyond Chennai, where CAS had been implemented in 2003. Roll out of CAS in the notified areas of the three metropolitan cities of Delhi, Mumbai and Kolkata was preceded by putting in place a regulatory framework for CAS by the Telecom Regulatory Authority of India (hereinafter referred to as the Authority). The regulatory framework for CAS primarily consisted of Quality of Service Regulation for cable services in CAS areas,

Standard Interconnection Agreements specified through an amendment to Interconnection Regulations dated the 10th December, 2004 and a Tariff order governing the prices of Basic Service Tier charges in CAS areas, ceiling on pay channel charges and standard tariff plans for set top boxes. Accordingly, there have been demands from the subscribers and some service providers for a similar regulatory framework for DTH service.

5. The DTH service providers have been representing that their agreements with some of the broadcasters force them to carry unpopular content also and that this leads to higher charges for all consumers. It has been pointed out by the DTH Operators that they had to sign the agreements with such clauses with the broadcasters in the consumer interest in the absence of any standard agreement and effective interconnect mechanism. The DTH service providers also requested the Authority to take action in the matter. One of the DTH operators has requested the Authority to formulate a "standard subscription agreement" for DTH distribution, which is uniformly applicable to all the broadcasters.

6. The regulatory framework for cable services in CAS areas, laid down at the time of roll out of CAS in notified areas of the three metropolitan cities of Delhi, Mumbai and Kolkata, included Standard Interconnection Agreements specified through an amendment to Interconnection Regulations dated the 10th December, 2004. In respect of cable services outside CAS areas (in non-addressable mode), the Interconnection Regulations dated the 10th December, 2004 were amended on the 4th September, 2006 whereby the broadcasters are now required to file their Reference Interconnect Offers. Accordingly, there have been demands from the existing DTH operators and potential operators for an effective interconnect mechanism for DTH services to ensure availability of content on reasonable terms.

B. Consultation Process

7. Sub-clauses (ii) & (iii) of clause (b) of sub-section (1) of Section 11 of the Telecom Regulatory Authority of India Act, 1997 (hereinafter referred to as the TRAI Act, 1997), provide for the Authority to fix the terms and conditions of inter-connectivity between the service providers and to ensure technical compatibility and effective inter-connection between different service providers. Sub-section (4) of Section 11 of the TRAI Act, 1997 requires the Authority to ensure transparency while exercising its powers and discharging its functions. Accordingly, the Authority decided to go in for a consultation process before providing for an effective interconnect mechanism for DTH services.

8. The process of consultation was initiated by circulating a consultation paper on the issues relating to DTH on the 2nd March, 2007 inviting inputs from the stakeholders. Responses were received from 27 stakeholders/representatives. An open house discussion was also held on the 18th May, 2007 in Bhubaneswar with representatives of stakeholders to further deliberate on various issues raised in the consultation paper.

C. Issues for Consultation

9. The issues which were raised for consultation in the consultation paper are as under:-

(i) Should the interconnection agreements between broadcasters and DTH service providers be regulated?

(ii) If yes, whether the Authority should formulate and mandate "Standard Interconnection Agreements" for provision of content by the broadcasters to DTH platforms or should the Reference Interconnect Offer (RIO) methodology be adopted for the purpose?

(iii) Is there any other method by which these agreements should be regulated?

10. The consultation paper also posed following issues regarding "must carry" provisions in the licence agreement and regulation of carriage fee for DTH services:-

(i) Should the DTH licence conditions be amended to do away with the clause requiring provision of access to various content providers/channels on a non-discriminatory basis?

(ii) Alternatively, whether carriage of only popular content should be mandated on the basis of viewer ship share as determined by independent monitoring agencies?

(iii) Should the carriage fee for DTH platforms be regulated? If so, how should it be done?

D. Analysis of the responses received during the consultation process

11. The responses received during the consultation process have been examined and analyzed in detail in the background of the above basic approach. While comments received from all the stakeholders have been considered, it is important to remember that in issues relating to interconnection, the subscribers, the DTH operators and the broadcasters are the directly affected parties. Other stakeholders like cable operators and multi system operators are not directly affected by interconnection framework for DTH services. The gist of comments received from the stakeholders during the consultation process had been placed on the website of the Authority. The succeeding paragraphs briefly cover the issue-wise comments received from various stakeholders and set out the basis and rationale for the regulation.

D.1 Interconnection Agreements for DTH

12. While the comments received from the existing and potential DTH Operators were along the expected lines with all of them suggesting standard interconnection agreements as the desired regulatory framework, the broadcasters were divided on the issue. Most of the broadcasters were in favour of no regulation of interconnection agreements. One broadcaster favoured the standard interconnection agreements methodology and another recommended the Reference Interconnect Offer route. The consumer organisations and individuals were of the view that there is a need for regulating the interconnection agreements between broadcasters and DTH service providers through standard interconnection agreements. The Cable operators favoured the Reference Interconnect Offer.

D.2 Must Carry/ Carriage Fee

13. Most of the existing and potential DTH Operators were of the view that the clause requiring provision of access to various content providers/channels on a non-discriminatory basis should be retained. Certain major broadcasters also expressed a similar view. However, certain smaller broadcasters wanted allocation of at least five channels to each broadcaster by a DTH Operator. This is understandable, because for a

broadcaster with less than five channels in his stable, such a formulation automatically implies "must carry", which is not the case with the existing clause requiring provision of access to various content providers/channels on a non-discriminatory basis. The cable operators, an MSO and one of the potential DTH Operators opined in favour of removal of the clause requiring provision of access to various content providers/channels on a non-discriminatory basis.

14. As regards regulation of carriage fee, there was near consensus that it should be left to the market forces. However, one of the potential DTH Operators recommended placing a ceiling on the amount of carriage fee. One of the smaller broadcasters and one association of the cable operators also wanted regulation of carriage fee.

E. Rationale for making amendment to the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004 (13 of 2004)

15. The Authority noted the fact that the two existing DTH Operators approached the Hon'ble Telecom Disputes Settlement and Appellate Tribunal (TDSAT) for getting access to popular content for their DTH platforms from some broadcasters in spite of clause 3.2 of the Interconnection Regulations clearly laying down that "Every broadcaster shall provide on request signals of its TV channels on non-discriminatory terms to all distributors of TV channels, which may include, but be not limited to a cable operator, direct to home operator, multi system operator, head ends in the sky operator….". In the present scenario, when more players are likely to launch their DTH platforms in the near future, it would be necessary to have a regulatory framework which will facilitate the existing as well as the new DTH Operators to get access to content of their choice and to ensure that the consumers can watch the channels of their choice on the DTH.

16. With the objective of having light touch regulation, the Authority has preferred Reference Interconnect Offer (RIO) over Standard Interconnection Agreements as the way of regulating interconnection agreements. This methodology gives the broadcaster the choice of framing their "Reference Interconnect Offer (RIO)" as per their business and marketing needs, within the broad guidelines decided by the Authority in its

regulations/ directions. At the same time it is necessary for the Authority to reserve to itself the power to intervene to protect the interests of consumers or service providers, or when an RIO is not in accordance with the interconnection regulation or to ensure growth of the sector. Accordingly, the RIO methodology has been provided in the regulations for regulating the interconnection agreements between broadcasters and DTH Operators.

17. The RIO methodology has been in vogue for cable television services being distributed through non-addressable systems (in non-CAS areas). However, DTH platforms are also addressable and this would remove any ambiguity relating to the subscriber base. Moreover, if most of the important terms and conditions are covered in the Reference Interconnect Offer, then the possibility of not being able to arrive at an interconnection agreement is greatly reduced. With this objective, the important terms and conditions to be compulsorily specified in the Reference Interconnect Offer have been enumerated in the Telecommunication (Broadcasting and Cable Services) Interconnection (Fourth Amendment) Regulation, 2007. Such terms and conditions inter alia relate to rates of channels and discounts, payment terms, security and anti-piracy requirements, subscriber reports and audit, tenure of agreement and termination of agreements etc. Thus, it is clear that the major financial terms and conditions (rate, discount, payment terms, and subscriber base) shall be covered in the Reference Interconnect Offers which have been left to the market forces in DTH services while making provisions for protecting interests of all stakeholders in DTH services. The other contentious issue of security and anti piracy measures shall also be

covered. Therefore, the Reference Interconnect Offers are likely to result in cutting down delays in arriving at interconnection agreements.

18. Since the number of DTH Operators seeking interconnection from the broadcasters is limited (two at present), it has been mandated that the broadcasters shall intimate their Reference Interconnect Offers to all the DTH Operators. Since licensing of DTH Operators is a continuous process, the new DTH Operators shall have a right to make a request for the Reference Interconnect Offers and be provided with a copy of the same by the broadcasters. At the same time, for ease of access and ready reference purposes, it has been made mandatory for the Reference Interconnect Offers to be published on the websites of the broadcasters. Similarly, any changes in the Reference

Interconnect Offers are also required to be communicated to the DTH operators and published on the website. The DTH operators have also been given the option to seek modifications in the existing interconnection agreements so as to be in consonance with the Reference Interconnect Offer published by a broadcaster under these regulations.

19. The Reference Interconnect Offer is only a methodology for arriving at interconnection agreements and the service providers and broadcasters can also enter into an interconnection agreement on mutually agreed terms and conditions. However, since the over riding principle is provision of signals on non discriminatory basis, the broadcaster shall be required to offer the same terms and conditions to any other DTH Operators if so requested by such other DTH Operators.

At the same time, principle of non discriminatory access implies that the DTH Operators who have already signed interconnection agreements with the broadcasters should also be given an option to enter into new interconnection agreements based on the Reference Interconnect Offer so published by the broadcaster.

20. For the Reference Interconnect Offer methodology to be an effective tool for access of content, it is important to specify a time limit within which the interconnection agreement based on the Reference Interconnect Offer shall be signed by the broadcaster with the DTH operator. Accordingly, a time limit of forty five days has been specified in the Telecommunication (Broadcasting and Cable Services) Interconnection (Fourth Amendment) Regulation, 2007.

21. The provisions relating to the situation where both parties namely the broadcaster and the DTH Operator jointly approach the Authority, requesting for facilitation of entering into an interconnection agreement, are based on similar provisions in the International Telecommunication Access to Essential Facilities at Cable Landing Stations Regulations, 2007 issued by the Authority on the 7th June, 2007. The provisions are merely for facilitation of an interconnection agreement by the Authority on a joint request of both the parties with a view to minimize litigation. These provisions do not in any way affect the legal rights and remedies available to the parties otherwise under any law for the time being in force.

22. There has been a persistent demand from the DTH service providers that Authority should facilitate access to content without the compulsion of carrying all the channels bundled together which in their view are relatively less popular. Even on a complaint relating to increase in tariff of DTH services, a DTH service provider has indicated bundling of channels as a reason for higher tariff. In this background, it was felt necessary that declaration of a-la-carte prices of channels in Reference Interconnect Offers should be mandated. Without the mandating provision of channels

on a-la-carte basis, the very purpose of amendments in the existing interconnection regulation will be defeated.

23. The Hon'ble TDSAT had observed in its order dated the 31st March, 2007 in Petition No.189(C) Of 2006 in the case of Tata Sky Limited Versus Zee Turner Limited and others, while discussing clause 7.6 of the terms and conditions of the DTH licence agreement, requiring provision of access to various content providers/channels on a non-discriminatory basis, that :-

> *"...If a DTH operator has to take all the channels of every broadcaster, it may not be physically possible to do so. Moreover, if every channel has to be taken it means that it will have to be paid for. This will increase the cost for the DTH operator. Ultimately, the cost will get passed on to the consumer. If DTH becomes expensive consumers will keep away from it. It will not be able to compete with CAS or cable. Thus, such an interpretation of clause 7.6 may be anti consumer…"*

24. Apart from increase in the cost of direct to home services to the subscribers, there is an important technical reason for mandating a-la-carte availability of channels to direct to home operators. There is a technical limitation on the number of channels that a direct to home operator can carry on its platform. Presently 270 channels are permitted under uplinking or downlinking guidelines in the country. The transponder capacity on a satellite is limited and a direct to home operator can beam around 12 channels per transponder, depending on the compression technology used. The availability of transponder space would limit the number of channels offered by the DTH service providers. Insat 4A and Insat 4B have a capacity of 12 Ku band and 12 C-band transponders each. Therefore, it is not technically possible for a direct to home operator using an Insat satellite to offer all the 270 channels. The Hon'ble TDSAT had also

observed in its order dated the 31st March, 2007 in Petition No.189(C) Of 2006 in the case of Tata Sky Limited Versus Zee Turner Limited and others, that:-

> *"...It is relevant and important that a DTH operator may not like to take all the channels of a particular broadcaster and exhaust its transponder capacity by taking unwanted channels. After all, the DTH operator is in business and it has to watch its business interest…"*

25. However, provision of channels on a-la-carte basis also necessitates the need for regulating the relationship between the prices of channels on a-la-carte basis and bouquet prices so as to ensure that the a-la-carte choice of channels does not become illusory on account of perverse pricing of channels and bouquets of channels. Accordingly, the formulation given by the Authority for co-relation between a-la-carte and bouquet prices for commercial subscribers of cable television services has been adopted for DTH Operators also.

26. The DTH Operators also sought the freedom to package channels of bouquets opted by them. They justified their demand by citing the need for packaging the content in such a manner that helped them in localising the content to suit the local tastes of different regions of the country. The Authority has decided to permit the same. At the same time, the interests of the broadcasters have been protected by mandating that the highest subscriber base for any channel in a bouquet shall be the basis for payment to the broadcaster for the entire bouquet.

27. Clause 7.6 of the terms and conditions of the DTH licence agreement requiring provision of access to various content providers/channels on a non-discriminatory basis is within the scope of the terms and conditions of the DTH licensing provisions for which the competent authority is Government of India (Ministry of Information & Broadcasting). Therefore, amendment of the

said clause is outside the purview of this regulation on interconnection issues. Accordingly, this issue is not being discussed further in this Explanatory Memorandum.

28. While making The Telecommunication (Broadcasting and Cable Services) Interconnection (Fourth Amendment) Regulation, 2007, the Authority has made all

efforts to maintain equity amongst the interests of various stakeholders, namely, the broadcasters, the DTH operators and the direct to home subscribers and to promote growth in the direct to home service, being one of the telecommunication service.

THE TELECOMMUNICATION (BROADCASTING AND CABLE SERVICES) INTERCONNECTION (FIFTH AMENDMENT) REGULATIONS, 2009

No. 4 of 2009

TELECOM REGULATORY AUTHORITY OF INDIA

NOTIFICATION

New Delhi, the 17th March, 2009

F. No. 3-21/ 2009 - B&CS.-- In exercise of the powers conferred by section 36, and by sub-clauses (ii), (iii), (iv) and (v) of clause (b) of sub-section (1) and sub-section (2) of section 11 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), read with notification of the Government of India, in the Ministry of Communication and Information Technology (Department of Telecommunication) No.39,-----

(a) issued, in exercise of the powers conferred upon the Central Government under clause (d) of sub-section (1) of section 11 and proviso to clause (k) of sub-section (1) of section 2 of the said Act, and

(b) published under notification No. S.O.44 (E) and 45 (E) dated the 9th January, 2004 in the Gazette of India, Extraordinary, Part III, Section 4,

the Telecom Regulatory Authority of India hereby makes the following regulations further to amend the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004 (13 of 2004), namely:-

1. (*1*) These regulations may be called the Telecommunication (Broadcasting and Cable Services) Interconnection (Fifth Amendment) Regulations, 2009.

2. In regulation 2 of the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004 (13 of 2004), (hereinafter referred to as the principal regulations), ------

(a) sub-clause (ia) shall be renumbered as sub-clause (ib);

(b) after sub-clause (i), the following sub-clause shall be inserted, namely:-

"(ia) "**carriage fee**" means any fee paid by a broadcaster to a distributor of TV channels, for carriage of the channels or bouquets of channels of that broadcaster on the distribution platform owned or operated by such distributor of TV channels,

without specifying the placement of various channels of the broadcaster vis-à-vis channels of other broadcasters;"

(c) after sub-clause (l), the following sub-clause shall be inserted, namely:-

"(la) "**Internet Protocol television service**" means delivery of multi channel TV programmes in addressable mode by using Internet Protocol over a closed network of one or more service providers;"

(d) sub-clause (mc) shall be renumbered as sub-clause (md);

(e) after sub-clause (mb), the following sub-clause shall be inserted, namely:-

"(mc) "**placement fee**" means any fee paid by a broadcaster to a distributor of TV channels, for placement of the channels of such broadcaster vis-à-vis channels of other broadcasters on the distribution platform owned or operated by such distributor of TV channels;".

3. In regulation 3 of the principal regulations, ------

(a) after the second proviso to sub-regulation 3.2, the following proviso shall be inserted, namely :-

"Provided also that the provisions of this sub-regulation shall not apply in the case of a distributor of TV channels, who seeks signals of a particular TV channel from a broadcaster, while at the same time demanding carriage fee for carrying that channel on its distribution platform.".

(b) the Explanation after the third proviso so inserted in sub-regulation 3.2 shall be numbered as Explanation 1;

(c) after Explanation 1 so numbered, the following explanation shall be inserted, namely:-

"Explanation 2. The stipulation of "placement frequency" or "package/ tier" by the broadcaster from whom the signals have been sought by a distributor of TV channels, as a "pre-condition" for making available signals of the requested channel(s) shall also amount to imposition of unreasonable terms."

4. In regulation 4 of the principal regulations,---

(a) in the first proviso to sub-regulation 4.1, for the words "an agreement, written or oral", the words "a written agreement" shall be substituted;

(b) in the second proviso to sub-regulation 4.1, for the words "agreement, written or oral," the words "written agreement" shall be substituted;

5. In the principal regulations, after regulation 4, the following regulations shall be inserted, namely:-

"4A. Interconnection Agreements to be in writing.

4A.1 It shall be mandatory for the broadcasters of pay channels and distributors of TV channels to reduce the terms and conditions of all their interconnection agreements to writing.

4A.2 No broadcaster of pay channels or distributor of TV channels, such as multi system operator or headend in the sky operator, shall make available signals of TV channels to any distributor of TV channels without entering into a written interconnection agreement.

4A.3Nothing contained in regulations 4A.1 or 4A.2 shall apply to any supply of signals or continuance of supply of signals of TV channels by a broadcaster or distributor of TV channels, such as multi system operator or headend in the sky operator, in pursuance of or in compliance with any order or direction or judgment of any court or tribunal, including any order or direction or judgment of any court or tribunal on any proceeding pending before such court or tribunal.

4A.4 It shall be the responsibility of every broadcaster of pay channels

who enters into an interconnection agreement with a distributor of TV channels to hand over a copy of signed interconnection agreement to such distributor of TV channels and obtain an acknowledgement in this regard within a period of 15 days from the date of execution of the agreement and, similarly, it shall be the responsibility of every multi system operator or headend in the sky operator, as the case may be, who enters into an interconnection agreement with a cable operator to hand over a copy of signed interconnection agreement to such cable operator and obtain an acknowledgement in this regard within a period of 15 days from the date of execution of the agreement.".

6. In regulation 13.2A of the principal regulations, -----

(a) for regulation 13.2A.1, the following regulation shall be inserted, namely:-

"13.2A.1 Every broadcaster, providing broadcasting services before the date of commencement of the Telecommunication (Broadcasting and Cable Services) Interconnection (Fifth Amendment) Regulation, 2009 (4 of 2009) and continues to provide such services after such commencement shall, within thirty days from the date of such commencement, intimate to all the direct to home operators existing on that date and coming into existence within the said period of thirty days, its Reference Interconnect Offer specifying, *inter-alia*, the technical and commercial terms and conditions for interconnection for the direct to home platform, including the terms and conditions listed in Schedule-III to these regulations.

Provided that no broadcaster shall, directly or indirectly, compel any direct to home operator not to make available its direct to home service to any class of subscribers including commercial subscribers.

Provided further that a broadcaster may have a different Reference Interconnect Offer for supply of signals by the direct to home operators----

(a) to the following categories of commercial subscribers, namely:- (i) hotels with rating of three star and above;

(ii) heritage hotels (as described in the guidelines for classification of hotels issued by Department of Tourism, Government of India);

(iii) any other hotel, motel, inn, and such other commercial establishment providing board and lodging and having fifty or more rooms; and

(b) in respect of programmes of such broadcaster, shown on the occasion of a special event for common viewing, at any place registered under the Entertainment Tax Law and to which access is allowed on payment basis for a minimum of fifty persons.

Explanation:

For removal of doubts, it is clarified that the reference interconnect offer containing various terms and conditions including commercial terms, published by a broadcaster for provision of signals to ordinary subscribers shall apply to provision of signals to commercial subscribers not specified in the second proviso."

(b) in the proviso to regulation 13.2A.2, for the words and figures "the Telecommunication (Broadcasting and Cable Services) Interconnection (Fourth Amendment) Regulation, 2007 (9 of 2007)", the words and figures

"the Telecommunication (Broadcasting and Cable Services) Interconnection (Fifth Amendment) Regulation, 2009 (4 of 2009)" shall be substituted;

(c) in regulation 13.2A.3, -----

(i) for the words and figures "the Telecommunication (Broadcasting and Cable Services) Interconnection (Fourth Amendment) Regulation, 2007 (9 of 2007)", the words and figures "the Telecommunication (Broadcasting and Cable Services) Interconnection (Fifth Amendment) Regulation, 2009 (4 of 2009)" shall be substituted; and

(ii) for the words "ninety days", the words "thirty days" shall be substituted;

(d) in regulation 13.2A.4, -----

(i) for the words "ninety days", the words "thirty days" shall be substituted; and

(ii) for the words and figures "the Telecommunication (Broadcasting and Cable Services) Interconnection (Fourth Amendment) Regulation, 2007 (9 of 2007)", the words and figures "the Telecommunication (Broadcasting and Cable

Services) Interconnection (Fifth Amendment) Regulation, 2009 (4 of 2009)" shall be substituted;

(e) in regulation 13.2A.6, -----

(i) in the second proviso to sub-regulation (1), for the words and figures "the Telecommunication (Broadcasting and Cable Services) Interconnection (Fourth Amendment) Regulation, 2007 (9 of 2007)", the words and figures "the Telecommunication (Broadcasting and Cable Services) Interconnection (Fifth Amendment) Regulation, 2009 (4 of 2009)" shall be substituted; and

(ii) in sub-regulation (2) and sub-regulation (3), for the words and figures "the Telecommunication (Broadcasting and Cable Services) Interconnection (Fourth Amendment) Regulation, 2007 (9 of 2007)", wherever they occur, the words and figures "the Telecommunication (Broadcasting and Cable Services) Interconnection (Fifth Amendment) Regulation, 2009 (4 of 2009)" shall be substituted;

(f) in the proviso to regulation 13.2A.11, for the words "the entire bouquet", the words "any channel or channels or bouquet" shall be substituted.

7. In the principal regulations, after regulation 13.2A.13, the following regulations shall be inserted, namely:-

"13.2B Reference Interconnect Offers for addressable systems other than direct to home service.

13.2B.1 Every broadcaster, providing broadcasting services before the date of commencement of the Telecommunication (Broadcasting and Cable Services) Interconnection (Fifth Amendment) Regulation, 2009 (4 of 2009) and continues to provide such services after such commencement shall, within thirty days from the date of such commencement, submit its Reference Interconnect Offer specifying, *inter-alia*, the technical and commercial terms and conditions including those listed in Schedule III for interconnection with addressable systems other than -----

(a) cable service in areas notified by the Central Government under sub-section (1) of section 4A of the Cable Television Networks (Regulation) Act, 1995 (7 of 1995);

(b) the direct to home service, -----

to the Authority.

13.2B.2 Every broadcaster, who begins to provide broadcasting services after the date of commencement the Telecommunication (Broadcasting and Cable Services) Interconnection (Fifth Amendment) Regulation, 2009 (4 of 2009) shall, within thirty days of such commencement or before providing such services, whichever is later, submit to the Authority, its Reference Interconnect Offer specifying therein

the technical and commercial terms and conditions referred to in sub-regulation 13.2B.1 and publish the same, before or simultaneously with such intimation, on its website.

13.2B.3 The provisions of regulations 13.2A.1, 13.2A.2, 13.2A.4, 13.2A.5, 13.2A.6, 13.2A.7, 13.2A.8, 13.2A.9, 13.2A.10, 13.2A.11, 13.2A.12 and 13.2A.13, relating to Reference Interconnect Offers for direct to home service, shall apply, mutatis mutandis, to such a Reference Interconnect Offer for interconnection with addressable systems other than cable service in areas notified by the Central Government under sub-section (1) of section 4A of the Cable Television Networks (Regulation) Act, 1995 (7 of 1995) and the direct to home service:

Provided that a broadcaster may have different Reference Interconnect Offers for different types of addressable systems.

13.2B.4 Any distributor of TV channels using an addressable system for distribution of TV channels seeking interconnection with a broadcaster in terms of the Reference Interconnect Offer referred to in regulation 13.2B.1 or 13.2B.2, as the case may be, shall ensure that the addressable system being used for distribution of TV channels satisfies the minimum specifications for addressable systems as specified in Schedule IV to these regulations:

Provided that in cases where a broadcaster is of the opinion that the addressable system being used for distribution of TV channels does not satisfy the minimum specifications for addressable systems as specified in Schedule IV to these regulations, upon being informed of such opinion by the broadcaster, the distributor of TV channels shall get the addressable system audited by M/s. Broadcast Engineering Consultants India Ltd., or any other agency as may be notified by the Authority from time to time for the purpose of such audit and obtain a certificate to the effect that the addressable system being used for distribution of TV channels satisfies the minimum specifications for addressable systems as specified in Schedule IV to these regulations:

Provided further that the finding of M/s. Broadcast Engineering Consultants

India Ltd., or any other agency notified by the Authority in this regard, as the case may be, based on such audit as referred to in the first proviso, about the addressable system being used for distribution of TV channels satisfying or not satisfying the minimum specifications for addressable systems as specified in Schedule IV to these regulations, shall be final.".

8. In the principal regulations, after Schedule II, the following Schedules shall be inserted, namely:-

"**Schedule III**

Terms and conditions which should compulsorily form part of Reference Interconnect Offers for interconnection for the direct to home platform and for other addressable platforms

Licence Fee	For each month or part thereof during the Term of the agreement, the DTH operator shall pay to _____ (name of the Broadcaster) the Monthly Licence Fee which shall be the Rate multiplied by the Monthly Average Subscriber Level. The a-la-carte and bouquet "Rate" per Subscriber is set out in Annexure to this RIO. The rates mentioned in the Annexure to this RIO, as referred to above, are exclusive of all taxes and levies. The "Monthly Average Subscriber Level" is equal to the sum of the number of subscribers on the first and last day of the month in question divided by two. For the purpose of calculation of the Monthly License Fee payable to _____ (name of the Broadcaster), "Subscriber" means, for any calendar month, each Set Top Box, which is availing the Channel(s) of _____ (name of the Broadcaster) throughthe DTH operator. **Calculation of License Fee:** I. In case a DTH operator avails one or more Bouquet(s) of _____ (name of the Broadcaster): *(a)* If the DTH operator is providing the Bouquet(s) as a whole to its DTH subscribers, the Monthly License Fee for such Bouquet(s) shall be equal to the Bouquet rate as set out in the Anenxure multiplied by the number of

	monthly average number of subscribers availing the Bouquet(s). *(b)* if the DTH operator does not offer such opted bouquet(s) as a whole to its direct to home subscriber but offers only certain channels comprised in such bouquet or packages the channels comprised in such opted bouquet in a manner resulting in different subscriber base for different channels comprised in such opted bouquet, then the payment to _____ (name of the Broadcaster) for such entire opted bouquet by the DTH operator, shall be calculated on the basis of subscriber base for the channel which has highest subscriber base amongst the channels comprised in the bouquet. II In case a DTH operator avails one or more or all channels of _____ (name of the Broadcaster) on ala carte rate basis: (a) If the DTH operator is providing the channels on ala carte basis to its DTH subscribers, the Monthly License Fee for such ala carte channels shall be equal to the ala carte rate as set out in the Annexure multiplied by the number of monthly average number of subscribers availing the channels on ala carte basis. (b) if the DTH operator does not offer such opted ala carte channel(s) as ala carte to its direct to home subscriber but offers the ala carte channel (s) in packages, then the payment to _____ (name of the Broadcaster) for each of the ala carte channels, shall be calculated on the basis of subscriber base of the package in which such opted ala carte channel has been placed. III In case a DTH operator avails one or more channels on ala carte rate basis and also opts for different Bouquet(s) not comprising of channels opted on ala carte basis of _____ (name of the Broadcaster): *(a)* For bouquet(s), the monthly license fee shall be calculated on the basis of sub clause I above. *(b)* For ala carte channels, the monthly license fee shall be calculated on the basis of sub clause II above. Payment of the License Fee shall be subject to deduction of any withholding tax/ TDS in accordance with the provisions of

	the Indian Income Tax Act, 1961, as amended from time to time.
Payment Terms	The Monthly Licence Fee shall be paid monthly in arrears within fifteen (15) days of receipt of invoice raised on the basis of report of the DTH operator by _____ (name of the Broadcaster) without any deduction except deduction of withholding tax/TDS as provided in this RIO. Within seven days of end of each month, the DTH operator shall provide opening, closing and average number of subscribers for that month, based on which _____ (name of the Broadcaster) shall raise an invoice on the DTH operator. In case the DTH operator fails to send the report within the said period of seven days, _____ (name of the Broadcaster) shall have the right to raise a provisional invoice and the DTH operator shall be under obligation to pay the license fee on the basis of such provisional invoice in accordance with the terms of this clause. However the provisional invoice shall be for an amount not more than the monthly license fee payable by the DTH operator for the immediately preceding month. On receipt of the report from the DTH operator, the parties would conduct reconciliation between the provisional invoice raised by _____ (name of the Broadcaster) and the report sent by the DTH operator. The DTH operator shall be required to make payments by the Due Date in accordance with the terms hereof, and any failure to do so on the part of the DTH operator shall constitute a material breach hereunder. Late payments shall also attract interest calculated from the date payment was due until the date payment is made in full at a pro rata monthly rate of _____%. The imposition and collection of interest on late payments does not constitute a waiver of the DTH operator's obligation to pay the License Fee by the Due Date, and _____ (name of the Broadcaster) shall retain all of its other rights and remedies under the Agreement. All Licence Fee payments hereunder are exclusive of all applicable indirect taxes including all and any service taxes, VAT, works contract taxes, customs duties, excise duties, entertainment taxes and other such taxes. All such taxes shall be at DTH operator's cost and will be charged at the prevailing rates by _____ (name of the Broadcaster) to the DTH operator.

	If payment of the Licence Fee is subject to deduction of any withholding tax/TDS in accordance with the provisions of the Indian Income Tax Act 1961, as amended, the DTH operator shall provide tax withholding certificates to _____ (name of the Broadcaster) within such period as has been specified in the Income Tax Act/ Rules/ Notifications/ Circulars issued thereunder.
Delivery and Security	All _____ (name of the Broadcaster) Channels must be delivered by DTH operator to subscribers in a securely encrypted manner and without any alteration. The uplink specifications, satellite capacity and infrastructure allocated by DTH operator in respect of the broadcast signal of the _____'s (name of the Broadcaster) Channels by DTH operator to its subscribers shall be no worse than that of the broadcast signal of any other channel within the same genre on its DTH platform.
Anti-Piracy	In order to prevent theft, piracy, unauthorized retransmissions, redistribution or exhibition, copying or duplication of any Channel, in whole or in part, (hereinafter collectively referred to as "Piracy"), the DTH operator shall, prior to the commencement of the Term of the agreement and at all times during such Term, employ, maintain, and enforce fully effective conditional access delivery and content protection and security systems, and related physical security and operational procedures (hereinafter collectively referred to as the "Security Systems") as may be specified (security specifications), in a non-discriminatory manner in writing, from time to time, by the _____ (name of the Broadcaster). To ensure the DTH operator's ongoing compliance with the security requirements set out in the Agreement, _____ (name of the Broadcaster) may require technical audits ("Technical Audit(s)") conducted by an independent security technology auditor ("Technical Auditor"), approved by _____ (name of the Broadcaster) in writing no more than twice per year during the Term, at _____ (name of the Broadcaster)'s cost and expense. If the results of any Technical Audit are not found to be satisfactory by either the DTH operator or _____ (name of the Broadcaster), then _____ (name of the Broadcaster) shall work with the DTH Operator in resolving this issue in the next fourteen (14) business days. If a solution is not reached at by then, _____ (name of Broadcaster) may, in its sole discretion, suspend the DTH operator's right to distribute the Channels or take other actions as provided under the Agreement, until such systems, procedures and security measures have been corrected to _____ (name of the

	Broadcaster)'s satisfaction. DTH operator shall bear the cost and expense of any subsequent Technical Audit to verify that the systems, procedures and security measures have been corrected by the DTH operator to _____ (name of the Broadcaster)'s satisfaction. DTH operator shall deploy finger printing mechanisms to detect any piracy, violation of copyright and unauthorized viewing of the Channels, distributed / transmitted through its Platform at least every 10 minutes on 24 x 7 x 365(6) basis. DTH operator shall not authorize, cause or suffer any portion of any of the Channels to be recorded, duplicated, cablecast, exhibited or otherwise used for any purpose other than for distribution by DTH operator at the time the Channels are made available. If DTH operator becomes aware that any unauthorized third party is recording, duplicating, cablecasting, exhibiting or otherwise using any or all of the Channels for any other purpose, DTH operator shall within ten minutes of so becoming aware of such recording, duplicating, cablecasting, exhibiting or otherwise using any or all of the Channels for any other purpose, notify _____ (name of the Broadcaster) and the DTH operator shall also switch off the concerned Set Top Box to prevent such unauthorized use. However, use of a Set Top Box with Personal Video Recorder/ Digital Video Recorder facility which has been supplied by the DTH operator shall not be treated as unauthorized use, as long as such Set Top Box is used in accordance with the terms and conditions of the subscription agreement between the DTH operator and the subscriber. If so instructed by Information (as defined below) by _____ (name of the Broadcaster), the DTH operator shall shut off or de-authorize the transmission to any unauthorized subscriber/ subscriber indulging in piracy, within ten minutes from the time it receives such instruction from _____ (name of the Broadcaster). Any communication under this clause shall be considered as valid Information only if (i) the information is sent through e mail in a format as mutually agreed by the parties and (ii) the information is sent by a person(s) who is designated to send such information. However the "information" may even be provided by _____ (name of the Broadcaster) representatives through other means of communications such as telephonic message, fax etc and the said "information" shall later be confirmed by _____ (name of the Broadcaster) through e mail and the DTH operator shall be under obligation to act upon such information.

Reports	DTH operator will maintain at its own expense a subscriber management system ("SMS") which should be fully integrated with the CAS (Conditional Access System). DTH operator shall provide to _____ (name of the Broadcaster) complete and accurate opening and closing subscriber monthly reports for the _____ (name of the Broadcaster) Channels and the tier and/or package containing the _____ (name of the Broadcaster) Channels within seven (7) days from the end of each month in the format provided by _____ (name of the Broadcaster). Such reports shall specify all information required to calculate the Monthly Average Subscriber Level (including but not limited to the number of Subscribers for each _____ (name of the Broadcaster) Channel and each package in which a _____ (name of the Broadcaster) Channel is included) and the Licence Fees payable to _____ (name of the Broadcaster) and shall be signed and attested by an officer of the DTH operator of a rank not less than Head of Department/Chief Financial Officer who shall certify that all information in the Report is true and correct.
Audit	_____ (name of the Broadcaster)'s representatives shall have the right, not more than twice in a calendar year, to review and / or audit the subscriber management system, conditional access system, other related systems and records of Subscriber Management System of the DTH operator relating to the Channel(s) provided by the broadcaster for the purpose of verifying the amounts properly payable to _____ (name of the Broadcaster) under the Agreement, the information contained in Subscriber Reports and full compliance with the terms and conditions of the Agreement. If such review and or audit reveals that additional fees are payable to _____ (name of the Broadcaster), the DTH operator shall immediately pay such fees, as increased by the Late Payment Interest Rate. If any fees due for any period exceed the fees reported by the DTH operator to be due for such period by two (2) percent or more, DTH operator shall pay all of _____ (name of the Broadcaster)'s costs incurred in connection with such review and / or audit, and take any necessary actions to avoid such errors in the future. The DTH operator shall remain the sole owner and holder of all customer databases compiled by the DTH operator under the Agreement. DTH operator will maintain at its own expense a subscriber

	management system ("SMS") capable of, at a minimum: (i) maintaining a computerised customer database capable of recording adequate details of each Subscriber, including name, address, chosen method of payment and billing; (ii) administering subscriptions of Subscribers by producing and distributing contracts for new Subscribers and setting up and maintaining an infrastructure whereby Subscriber contracts are collected and recorded in the SMS database for ongoing administration; (iii) handling all ongoing administrative functions in relation to Subscribers, including, without limitation, billing and collection of subscription payments, credit control, sales enquiries and handling of complaints; (iv) administering payments of any commission fees from time to time payable to the DTH operator's authorised agents for the sale to Subscribers of programming packages; (v) obtaining and distributing receivers and smartcards, if applicable, to Subscribers, and issue replacement smartcards from time to time in its discretion; and (vi) enable new Subscribers via the SMS over-the-air addressing system and disable defaulting Subscribers from time to time in its discretion.
Term	AS mutually agreed between _____ (name of the Broadcaster) and the DTH operator subject to a minimum of One (1) Year from the date of signing of the Agreement unless terminated earlier in accordance with the Agreement. The Term of the Agreement may be extended on terms and conditions to be mutually agreed and recorded in writing between the parties.
Termination	Either Party has a right to terminate this Agreement by a written notice, subject to applicable Law, to the other in the event of: 1. material breach of this Agreement by the other Party which has not been cured within thirty (30) days of being required in writing to do so; 2. the bankruptcy, insolvency or appointment of receiver over the assets of the other Party; 3. The DTH licence or any other material licence necessary for DTH operator to operate its DTH service being revoked at anytime other than due to the fault of DTH operator.

	_____ (name of the Broadcaster) shall have the right to terminate this Agreement by a written notice to DTH operator if (i) DTH operator breaches any of the Anti Piracy Requirements and fails to cure such breach within ten (10) days of being required in writing to do so; or (ii) _____ (name of the Broadcaster) discontinues the _____ (name of the Broadcaster) Channels with respect to all distributors in the Territory and provides DTH operator with at least ninety (90) days prior written notice. DTH operator shall have the right to terminate this Agreement on written notice to _____ (name of the Broadcaster) if DTH operator discontinues its DTH business and provides at least ninety (90) days prior written notice.
Jurisdiction	The Governing Law shall be the Indian Law and TDSAT, shall have exclusive jurisdiction in respect of any dispute between the parties, arising out of /in connection with or as a result of the Agreement.

Note: The expression "DTH operator" appearing in the Schedule above shall get replaced by the appropriate nomenclature connoting the addressable platform for which the Reference Interconnect Offer is to be issued by the broadcaster.

ANNEXURE TO SCHEDULE III LICENCE FEE RATES

(A) A LA CARTE RATES

Channels	Rate to DTH operator (Rs.)

(B) <u>BOUQUET RATES</u>

BOUQUET – 1

Channels	**Rate to DTH operator (Rs)**
1. 2. 3. 4. 5. 6. 7. 8.	

BOUQUET 2

Channels	**Rate to DTH operator (Rs)**
1. 2. 3. 4. 5. 6.	

BOUQUET 3

Channels	**Rate to DTH operator (Rs)**

1. 2. 3. 4. 5.	

Schedule IV

Specifications for Set-Top-Boxes (STBs), Conditional Access System (CAS) & Subscribers Management System (SMS) for implementation of Digital Addressable Systems

(A) STB Requirements:

1. All the STBs should have embedded Conditional Access.
2. The STB should be capable of decrypting the Conditional Access inserted by the Headend.
3. The STB should be capable of doing Finger printing. The STB should support both Entitlement Control Message (ECM) & Entitlement Management Message (EMM) based fingerprinting.
4. The STB should be individually addressable from the Headend.
5. The STB should be able to take the messaging from the Headend. 6. The messaging character length should be minimal 120 characters. 7. There should be provision for the global messaging, group messaging and the individual STB messaging.
8. The STB should have forced messaging capability.
9. The STB must be BIS compliant.
10. There should be a system in place to secure content between decryption & decompression within the STB.
11. The STBs should be addressable over the air to facilitate Over The Air (OTA) software upgrade.

(B) Fingerprinting Requirements:

1. The finger printing should not be removable by pressing any key on the remote.
2. The Finger printing should be on the top most layer of the video. 3. The Finger printing should be such that it can identify the unique STB number or the unique Viewing Card (VC) number.
4. The Finger printing should appear on all the screens of the STB, such as Menu, EPG etc.
5. The location of the Finger printing should be changeable from the Headend and should be random on the viewing device.
6. The Finger printing should be able to give the numbers of characters as to identify the unique STB and/ or the VC.
7. The Finger printing should be possible on global as well as on the individual STB basis.
8. The Overt finger printing and On screen display (OSD) messages of the respective broadcasters should be displayed by the MSO/LCO without any alteration with regard to the time, location, duration and frequency.
9. No common interface Customer Premises Equipment (CPE) to be used.
10. The STB should have a provision that OSD is never disabled.

(C) CAS & SMS Requirements:

1. The current version of the conditional access system should not have any history of the hacking.
2. The fingerprinting should not get invalidated by use of any device or software.
3. The STB & VC should be paired from head-end to ensure security. 4. The SMS and CA should be integrated for activation and deactivation process from SMS to be simultaneously done through both the systems. Further, the CA system should be independently capable of generating log of all activations and deactivations.
5. The CA company should be known to have capability of upgrading the CA in case of a known incidence of the hacking.

6. The SMS & CAS should be capable of individually addressing subscribers, on a channel by channel and STB by STB basis.

7. The SMS should be computerized and capable to record the vital information and data concerning the subscribers such as:

a. Unique Customer Id
b. Subscription Contract no
c. Name of the subscriber
d. Billing Address
e. Installation Address
f. Landline no
g. Mobile No
h. Email id
i. Service /Package subscribed to
j. Unique STB No
k. Unique VC No

8. The SMS should be able to undertake the:

a. Viewing and printing historical data in terms of the activations, deactivations etc

b. Location of each and every set top box/VC unit

c. The SMS should be capable of giving the reporting at any desired time about:

i. The total no subscribers authorized

ii. The total no of subscribers on the network

iii. The total no of subscribers subscribing to a particular service at any particular date.

iv. The details of channels opted by subscriber on a-la carte basis.

v. The package wise details of the channels in the package.

vi. The package wise subscriber numbers.

vii. The ageing of the subscriber on the particular channel or package

viii. The history of all the above mentioned data for the period of the last 2 years

9. The SMS and CAS should be able to handle at least one million concurrent subscribers on the system.

10. Both CA & SMS systems should be of reputed organization and should have been currently in use by other pay television services that have an aggregate of at least one million subscribers in the global pay TV market.

11. The CAS system provider should be able to provide monthly log of the activations on a particular channel or on the particular package. 12. The SMS should be able to generate itemized billing such as content cost, rental of the equipments, taxes etc.

13. The CA & SMS system suppliers should have the technical capability in India to be able to maintain the system on 24x7 basis throughout the year.

14. CAS & SMS should have provision to tag and blacklist VC numbers and STB numbers that have been involved in piracy in the past to ensure that the VC or the STB can not be re-deployed. ".

(N. Parameswaran)
Principal Advisor (B&CS)

Note.1-----The principal regulations were published vide notification no. 8-26/2004-B&CS dated 10th December, 2004 and subsequently amended vide notifications no.3-57/2005-B&CS dated 3rd March, 2005, no.11-13/2006-B&CS dated 24th August, 2006, no. 6-4/2006-B&CS dated 4th September, 2006 and no. 4-54/2007-B&CS dated 3rd September, 2007.

Note.2-----The Explanatory Memorandum explains the objects and reasons of the Telecommunication (Broadcasting and Cable Services) Interconnection (Fifth Amendment) Regulation, 2009.

Annex **EXPLANATORY MEMORANDUM**

Background

1. The Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004, was issued on 10th December, 2004 to provide for a regulatory framework for interconnection in respect of broadcasting and cable services. These regulations were issued to enable the distributors of TV channels to get non discriminatory access to content of all broadcasters and to mandate issue of a public notice by a broadcaster or MSO, as the case may be, before disconnection of signals so as to enable the consumers to protect their interests.

2. These Regulations have been amended four times since their issue. The amendment regulations were issued on 3rd March, 2005, 24th August, 2006, 4th September, 2006 and 3rd September, 2007 for amplification and modification of the existing provisions and to cover some new issues that had not been covered in the Regulations till then. Such amendments were necessitated by changes over time in the broadcasting and cable services sector on account of notification of CAS, growth of DTH and other addressable systems and experience gained in implementation of the interconnection regulation. Recently, a need has again been felt to consider amendments to these regulations on certain issues relating to addressable and non-addressable platforms. Accordingly, a consultation process was initiated as mentioned ahead.

Consultation Process

2. Sub-clause (ii), (iii) and (iv) of clause (b) of sub-section (1) of Section 11 of the Telecom Regulatory Authority of India Act, 1997 (hereinafter referred to as the TRAI Act, 1997), provides for the Authority to "(ii)…fix the terms and conditions of inter-connectivity between the service providers;", "(iii) ensure technical compatibility and effective inter-connection between different service providers;" and "(iv) regulate arrangement amongst service providers of sharing their revenue derived from providing telecommunication services;". Sub-section (4) of Section 11 of the TRAI Act, 1997 requires the Authority to ensure transparency while exercising its powers and discharging its functions. Accordingly, the Authority decided to go in for a consultation process before amending the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004.

3. The process of consultation was initiated by circulating a consultation paper on Interconnection issues relating to Broadcasting & Cable on 15th December, 2008 inviting inputs from the stakeholders. Responses were received from 29 stakeholders/ representatives. An open house discussion was also held on the 6th February, 2009 in Kolkata with representatives of stakeholders to further deliberate on various issues raised in the consultation paper. The Authority had released the draft amendment regulation for amending the Interconnection Regulations on its website on 26th February, 2009 for seeking comments of the stakeholders. The comments were invited till 7th March, 2009. Responses were received from 9 stakeholders. These comments have been taken into consideration while finalizing the regulations.

Issues for Consultation

4. The issues which were raised for consultation in the consultation paper are reproduced below.

A. Interconnection for Addressable Platforms

A.1 Whether the Interconnection Regulation should make it mandatory for the broadcasters to publish Reference Interconnect Offers (RIOs) for all addressable systems, and whether such RIOs should be same for all addressable systems or whether a broadcaster should be permitted to offer different RIOs for different platforms?

A.2 Is there any other methodology which will ensure availability of content to all addressable platforms on non-discriminatory basis?

A.3 What should be the minimum specifications/ conditions that any TV channel distribution system must satisfy to be able to get signals on terms at par with other addressable platforms? Are the specifications indicated in the Annexure to the Consultation Paper adequate in this regard?

A.4 What should be the methodology to ensure and verify that any distribution network seeking to get signals on terms at par with other addressable platforms satisfies the minimum specified conditions for addressable systems?

A.5 What should be the treatment of hybrid cable networks in non-CAS areas which provide both types of service, i.e., analogue (without encryption) and digital (with encryption) services?

A.6 Whether there is a need to define “Commercial Subscribers”, and what should be that definition?

A.7 Whether the Broadcasters may be mandated to publish RIOs for all addressable platforms for Commercial Subscribers as distinct from broadcasters’ RIOs for non-Commercial Subscribers?

A.8 Whether the regulation should mandate publishing of Reference Interconnect Agreements (RIAs) for addressable systems instead of Reference Interconnect Offers (RIOs)?

A.9 Whether the time period of 45 days prescribed for signing of Interconnection Agreements should be reduced if RIOs are replaced by RIAs as suggested above? A.10 Whether the regulation should specifically prohibit the broadcasters from imposing any kind of restrictions on packaging of channels on an addressable platform?

A.11 Whether the regulation should specifically prohibit the broadcasters from imposing any kind of restrictions on pricing of channels on an addressable platform?

B. Interconnection for non-addressable platforms

B.1 Whether the terms & conditions and details to be specifically included in the RIO for non-addressable systems should be specified by the Regulation as has been done for DTH?

B.2 What terms & conditions and details should be specified for inclusion in the RIO for non-addressable systems?

C. General Interconnection Issues

C.1 Whether it should be made mandatory that before a service provider becomes eligible to enjoy the benefits/ protections accorded under interconnect regulations, he must first establish that he fulfills all the requirements under quality of service regulations as applicable?

C.2 Whether applicability of clause 3.2 of the Interconnect Regulation should be restricted so that a distributor of TV channels is barred from seeking signals in terms of clause 3.2 of the Interconnect Regulation from a broadcaster for those channels in respect of which carriage fee is being demanded by the distributor of TV channels from the broadcaster?

C.3 Whether there is a need to regulate certain features of carriage fee, such as stability, transparency, predictability and periodicity, as well as the relationship between TAM/TRP ratings and carriage fee.

C.4 If so, then what should the manner of such regulation be.

C.5 Whether the standard interconnect agreement between broadcasters and MSOs should be amended to enable the MSOs, which have been duly approved by the Government for providing services in CAS areas, to utilize the infrastructure of a HITS operator for carriage of signals to the MSO's affiliate cable operators in CAS areas?

C.6 Whether the standard interconnect agreement between broadcasters and HITS operators need to be prescribed by the Authority, and whether these should be broadly the same as prescribed between broadcasters and MSOs in CAS notified areas?

C.7 What further regulatory measures need to be taken to ensure that DTH operators are able to provide six month protection for subscribers as provided by Sub clause (1) of Clause 9 of the Direct to Home Broadcasting Services (Standards of Quality of Service and Redressal of Grievances) Regulations, 2007?

C.8 Towards this objective, should it be made mandatory for broadcasters to continue to provide signals to DTH operators for a period of six months after the date of expiry of interconnection agreement to enable the DTH operators to discharge their obligation?

C.9 Is there any other regulatory measure which will achieve the same objective?

D. Registration of Interconnection Agreements

D.1 Whether it should be made mandatory for all interconnect agreements to be reduced to writing?

D.2 Whether it should be made mandatory for the Broadcasters/ MSOs to provide signals to any distributor of TV channels only after duly executing a written interconnection agreement?

D.3 Whether no regulatory protection should be made available to distributors of TV channels who have not executed Interconnect Agreements in writing?

D.4 How can it be ensured that a copy of signed interconnection agreement is given to the distributor of TV channels?

D.5 Whether it should be the responsibility of the Broadcaster to hand over a copy of signed Interconnect Agreement to MSO or LCO as the case may be, and obtain an acknowledgement in this regard? Whether similar responsibility should also be cast on MSOs when they are executing interconnection agreements with their affiliate LCOs?

Analysis of the responses received during the consultation process

RIO for all addressable systems

5. Most of the broadcasters were in favour of having RIOs for all addressable systems. However, a few broadcasters were opposed to the idea. All the distributors of TV channels wanted the broadcasters to publish RIOs for all addressable systems. Individuals and consumer groups also favoured the concept of RIOs for all addressable systems. However, on the issue of having same RIO for all addressable platforms, there was no unanimity amongst the broadcasters. The distributors of TV channels were also divided in their views on the subject.

Minimum specifications for addressable systems

6. Most of the Broadcasters were of the view that the specifications for addressable systems as given in the annexure to the Consultation paper were insufficient. The distributors of TV channels were divided in their views. While the consumer groups felt that the specifications were sufficient, the individuals termed the specifications for addressable systems as given in the annexure as inadequate.

Commercial Subscribers

7. Most of the broadcasters suggested that there was a need for defining "commercial subscribers". All the distributors of TV channels, with the exception of two DTH operators, also agreed with this view. The two DTH operators, who opposed the need for defining "commercial subscribers", have suggested that no distinction should be made between commercial and residential subscribers. It has been asserted by these DTH operators that in case of an addressable platform, each and every subscriber is accounted for and therefore there should not be any distinction between residential and commercial

subscribers. Same rates and terms and conditions should apply for supply of signals by addressable platforms to all types of subscribers including commercial subscribers. The consumer groups and individuals have also favoured defining "commercial subscribers". As regards the issue of mandating broadcasters to publish RIOs for all addressable platforms for commercial subscribers, most of the broadcasters agreed to such an amendment. All the distributors of TV channels, with the exception of two DTH operators, also wanted the broadcasters to be mandated to publish RIOs for all addressable platforms for commercial subscribers. The two DTH operators, who opposed the need for such RIOs for commercial operators, have suggested that no distinction should be made between commercial and residential subscribers.

Reference Interconnect Agreements for all addressable systems

8. The proposal has been opposed by most of the broadcasters. On the other hand, most of the distributors of TV channels have supported the proposal. The consumer groups and individuals have also supported the proposal.

Restrictions on packaging/ pricing of channels

9. All the broadcasters have opposed any kind of prohibition on broadcasters from imposing packaging restrictions on addressable platforms. All the distributors of TV channels want such a prohibition to be mandated. The consumer groups and individual stakeholders have also favoured such a prohibition. Similar comments have been received regarding prohibition on broadcasters

from imposing pricing restrictions on addressable platforms. However, one broadcasting company has agreed with the concept of restricting broadcasters from imposing pricing restrictions on addressable platforms. It has been stated by this broadcasting company that there is severe competition on the ground amongst platforms hence market forces should determine the pricing of channels by the platforms and the broadcasters should not be allowed to impose any restrictions on pricing of channels.

Interconnection for Non addressable platforms

10. The Eighth Amendment to the Non-CAS Tariff Order has been set aside by the Hon'ble TDSAT by its judgment dated 15th January, 2009 in Appeal No. 9(C) of 2006 and Appeal Nos. 10(C), 11(C), 12(C), 13(C) and 15(C) of 2007. Accordingly, the Authority has not deemed it appropriate at present to examine the issues relating to

interconnection for non-addressable platform because the objective of the proposed amendment relating to interconnection for non-addressable platforms was to harmonize the provisions of interconnection regulations with those of the tariff order.

Compliance with Quality of Service Regulations

11. Most of the stakeholders have favoured the concept that before a service provider becomes eligible to enjoy the benefits/ protections accorded under interconnect regulations, he must first establish that he fulfills all the requirements under quality of service regulations as applicable. However, this has been opposed by two of the DTH operators on the ground that such a move will deny the benefit of smoother inter connection and distribution of content, and could be a retrograde step and that linking the two issues would only create confusion and would give an excuse to Broadcasters for not providing signals to Service Provider on a non-discriminatory basis.

Carriage Fee – restricting the applicability of clause 3.2 of the Interconnect Regulation 12. All the broadcasters have demanded that the "must provide" provision should be restricted for those channels in respect of which carriage fee is being demanded by the distributor of TV channels. On the other hand, all the distributors of TV channels have opposed such a restriction. The consumer groups have agreed with the view of the broadcasters and the individual stakeholders are divided on the issue.

Carriage Fee – need for regulation

13. The distributors of TV channels have opposed any kind of regulation of carriage fee. It has been asserted by them that the issue is very complex and intricate and that there cannot be one universal rule for governing the carriage fee. It has been pointed out that the addressable platforms suffer huge operational losses due to mismatch between infrastructure cost and the meager subscription revenues. It has been highlighted that the advertisement revenue of a Broadcaster is incapable of being regulated, similarly carriage fee needs to be left to market forces to decide because the two are intimately linked. On the other hand the broadcasters have demanded some regulation of carriage fee. One broadcaster has suggested that the Regulator must achieve this purpose through a separate consultation process and through a process of constitution of a core consultative committee comprising all stakeholders to come up with a workable balanced mechanism

Standard Interconnect Agreements for CAS areas – use of HITS operator infrastructure 14. All the distributors of TV channels have demanded amendment in standard interconnect agreements for CAS areas to enable MSOs to utilize the infrastructure of HITS operators for carrying signals. Similar views have been expressed by consumer groups. The broadcasters are divided on this

issue. On the issue of need for prescribing standard interconnect agreements between Broadcasters and HITS operators, all the segments of stakeholders, namely broadcasters, distributors of TV channels and consumers are divided.

Tariff protection for DTH subscribers

15. The broadcasters are opposed to any kind of compulsion on broadcasters to continue to provide signals to DTH operators for a period of six months after the date of expiry of interconnection agreement to enable the DTH operators to discharge their obligation. The DTH operators want such a provision to be introduced. The MSOs are divided on the issue and the consumer groups agree with the broadcasters.

Mandating Written Interconnection Agreements

16. Almost all the stakeholders suggested that it should be mandatory for all interconnection agreements to be in writing. One broadcaster opposed the proposal on the ground that there should be no regulation in this regard. One DTH operator has commented that written interconnection agreements is not a requirement of law of the Country (As per the Contract Act) and therefore such requirement would be contrary to the established legal principles. Another DTH operator has opined that manner of entering into Interconnect Agreement is an operational matter and may be left to market forces to decide.

17. Most of the stakeholders are in favour of making it mandatory for the Broadcasters/ MSOs to provide signals only after duly executing a written interconnection agreement. However, a view has also been expressed that on finalization of terms and conditions, signals should be provided with an undertaking to execute an agreement within a stipulated time. One stakeholder has also pointed out that sometimes

signals are provided in compliance with the directions of courts of law without any formal agreement.

18. Most of the stakeholders have favoured withdrawal of regulatory protection to distributors of TV channels who have not executed interconnect agreements in writing. Similarly, on the issue of fixing responsibility for handing over copies of signed agreements to MSO/ LCO, most stakeholders want the Broadcaster/ MSO to be held responsible.

Analysis of the responses received during the second stage consultation process 19. One MSO and one DTH operator suggested that the definition of IPTV should be incorporated in the Interconnection Regulations as the Ministry of Information & Broadcasting has already issued the guidelines for provisioning of IPTV services on 8th September, 2008.

20. On the issue of restricting the applicability of Clause 3.2 of Interconnect Regulations in cases where carriage fee is also being demanded, two MSOs opposed the proposed amendment. The broadcasters have agreed with the proposed amendment. One DTH operator and one MSO have suggested that such a restriction should not prevent the distributors from charging placement fee.

21. Proposed amendment mandating written agreements was welcomed by one broadcaster, whereas another broadcaster opposed the proposal saying that such a stipulation imposed a commercial cost on the broadcasters. One DTH operator referred to the Contract Act and asserted that written agreements are not mandatory as per the Contract Act. It was pointed out by one DTH operator and one MSO that sometimes signals are provided in compliance of Court orders and the proposed amendment should take into account such cases also.

22. The proposed amendment requiring broadcasters and MSOs to hand over a copy of signed interconnect agreement to MSOs/ cable operators has been opposed by one broadcaster. Other stakeholders have welcomed the move. It has been suggested by two stakeholders that a time limit should be specified for handing over copies of signed agreements by the broadcasters, MSOs or HITS operators, as the case may be.

23. Two stakeholders have suggested amendments in Regulation 13.2A to specify the time limits for issue of revised RIOs by the Broadcasters for DTH operators. A time limit of seven days has been suggested.

24. The proposed amendments for enabling the DTH operators to supply signals to commercial subscribers have been welcomed by all the stakeholders except for one broadcaster who has opposed the amendment and asserted that the commercial subscribers have sufficient bargaining power to protect their interests. One stakeholder has welcomed the proposal to enable the DTH operators to supply signals to commercial subscribers and at the same time opposed any distinction between residential and commercial subscribers in the matter of RIO.

25. The proposed amendment regarding different RIO for commercial subscribers has been opposed by a broadcaster. The broadcaster has commented that if such a regulation has to be made, then different RIOs for different commercial subscribers should be permitted. Some other stakeholders have commented that permitting different RIOs for different addressable systems is a welcome step.

26. Two stakeholders have suggested amendments in Regulation 13.2B.1 to specify the time limits for issue of revised RIOs by the Broadcasters for addressable systems. A time limit of fifteen days has been suggested.

Rationale for making amendment to the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004

27. The Authority noted that with the advancement of technology the marketshare of addressable systems for distribution of TV channels is set to rise in coming years. Apart from DTH, the HITS and IPTV platforms are already present in the pay TV market. Digitalization of cable TV networks and introduction of voluntary CAS has also started in different pockets in the country. Therefore, the Authority felt that the interconnection regulations should facilitate interconnection agreements for addressable systems. Further, most of the stakeholders are in favour of having RIOs for all addressable platforms. Accordingly, the Authority has mandated publishing of RIOs for all addressable platforms by the broadcasters (other than cable service in CAS notified

areas). At the same time, the Authority has permitted the broadcasters to have different RIOs for different addressable systems. This flexibility has been given to the broadcasters to customize their RIOs depending upon different characteristics of different addressable systems. The definition of Internet Protocol Television Service (IPTV) has been inserted in the Regulations as the Ministry of Information & Broadcasting has already issued the guidelines for provisioning of IPTV services on 8th September, 2008 and many service providers have already rolled out their IPTV services.

28. The Authority also recognized the fact that certain minimum specifications of an addressable system need to be specified upfront so as to minimize disputes in this regard between broadcasters and distributors of TV channels. The Authority has decided to adopt the same minimum specifications for addressable systems (with minor modifications) which was earlier

recommended by the expert group consisting of members drawn from TRAI, Ministry of Information & broadcasting, Prasar Bharti, Broadcasters, MSOs, DTH operators, Cable Operator/ Distributor associations and consumer organizations constituted by the Authority to deliberate on the issues relating to Digitalization and Introduction of Voluntary CAS. These specifications were annexed as Annexure C to the report submitted by the expert group. Moreover, a mechanism has also been put in place for audit of such addressable system where the broadcaster is of the opinion that the addressable system deployed by a distributor of TV channels does not meet the minimum specifications.

29. The Authority has decided to not to lay down specific regulations in respect of hybrid cable networks in non-CAS areas which provide both types of service, i.e., analogue (without encryption) and digital (with encryption) services, as the interconnection regulations take care of addressable as well as non-addressable systems. Finer details can be worked out by the parties through commercial negotiations.

30. The Authority has also noted that the RIOs published by many broadcasters prohibit DTH operators from making available their services to subscribers other than residential subscribers. The Authority is of the view that such a stipulation prevents the DTH operators from supplying services to a large number of subscribers who may be interested in availing their services. At the same time, the interests of the broadcasters also need to be protected. Accordingly, the Authority has prohibited the broadcasters

from, directly or indirectly, compelling any DTH operator not to make available its direct to home service to any class of subscribers including commercial subscribers. At the same time, the broadcasters have been permitted to have a different Reference Interconnect Offer for supply of signals by the DTH operators to specified commercial subscribers as listed in item (ii) of sub-clause (f) of clause 2 of the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order 2004 as amended from time to time. These provisions are also applicable for RIOs for other addressable platforms.

31. The Authority has decided against mandating Reference Interconnect Agreements (RIAs) for addressable systems. Instead it was felt that the important terms and conditions of RIOs must be specified by the Authority so as to ensure that there are no provisions in the RIOs which are contrary to the objectives sought to be achieved by the Regulations. The Authority felt that RIAs need not be mandated in place of RIOs as the important terms and conditions have already been specified by the Authority.

32. The Authority has amended regulation 13.2A.11 to ensure that the DTH operators and other addressable platforms have complete flexibility regarding packaging of channels taken from any broadcaster. As regards pricing restrictions on channels on addressable platforms, the Authority is of the view that this is a commercial issue to be settled mutually by the broadcasters and distributors of TV channels.

33. The issue of whether fulfillment of all the requirements under quality of service regulations as applicable should be made a precondition for a service provider to become eligible to enjoy the benefits/ protections accorded under interconnect regulations has been analyzed in detail by the Authority. The Authority decided against introducing such a provision because it was felt that such a provision could open floodgates of litigation.

34. The Authority has decided against regulation of carriage fee at this stage for the following reasons:-

a. Carriage Fee is a market driven phenomenon and the levels of carriage Fee are determined by play of market forces. Carriage fee is a direct result of demand-supply mismatch due to capacity constraints of distribution platforms.

b. Payment of Carriage/ Placement/ Technical Fee by a broadcaster is intimately linked with the perceived benefit that the broadcaster would enjoy by way of increased advertising revenue. This linkage is manifested by higher levels of Carriage Fee in TAM cities (cities where the rating agencies have installed their metering devices in sample households). Therefore, regulation of Carriage Fee cannot be done in isolation without regulating the advertising revenue.

c. Payment of Carriage Fee ultimately gets recovered from the advertisers on TV channels by way of higher advertisement charges. However, no objections have been made by any advertiser in this regard so far.

d. Carriage Fee has emerged in the market primarily as a result of inadequate digitalization in the Broadcasting & Cable TV market in the country. A view has also been expressed by some distributors of TV channels that Carriage Fee is genuinely required to promote digitalization. Any attempt to regulate it by way of ceiling or specifying a charge on carriage may slow down deployment of digital networks.

e. The payment of Carriage Fee is often done in cash or kind (equipment for head-end, foreign tours, gifts etc.). Moreover many of the distributors of TV channels receiving Carriage Fee are small operators and their accounts are not subject to statutory audit.

Therefore any regulation of Carriage Fee is bound to be a very porous regulation. Further, enforcement problems are anticipated in Carriage Fee regulation which may lead to other distortions in the market.

f. If some kind of ceiling is laid down for carriage fee, then there is a possibility that more channels may be willing to pay the maximum permissible Carriage Fee than the number of available channel slots. Selection of which channels to carry in such a situation would again result in covert deals.

g. There are some distributors of TV channels having other businesses (such as newspapers, radio stations, amusement parks etc.) also. If such distributors of TV channels start collecting carriage fee disguised as payments for other goods or services sold by other companies within the group, then it will be practically impossible to regulate carriage fee.

h. Carriage Fee is also linked with popularity of a channel, which in turn is determined by the market. In such a scenario, laying down a carriage fee regime through regulation for channels of varying popularity will be extremely difficult.

i. There is no suitable mechanism for enforcement of any regulation on carriage Fee.

35. However, the Authority has amended regulation 3.2 to restrict its applicability in respect of those channels in respect of which any fee is being demanded by the

distributor of TV channels from a broadcaster for carriage of the channels on its distribution platform. This has been done to ensure that the broadcasters are not forced to supply their channel in terms of regulation 3.2 and at the same time forced to pay carriage fee for the same channel. This amendment has been made to prevent a distributor of TV channels from misusing the regulation 3.2. However, this amendment does not prevent the distributor of TV channels from charging a fee for placement of the channel of a broadcaster vis-à-vis channels of other

broadcasters on its distribution platform, in case the broadcaster wants the channel to be placed at a particular frequency spot.

36. The "placement fee" is paid by the broadcasters to the distributors of TV channels for placing their channel(s) at the desired frequency/tier/package for maximizing viewership and revenue of their channel(s). The placement fee is different from "carriage fee" and the said aspect has been explicitly recognized by the Authority by defining these two terms separately in the definition clause. The amendment seeks to address the issue of carriage fee only and not the placement fee, which is governed by the market forces and mutual negotiations between the broadcaster(s) and distributor(s) of TV channel.

37. The Ministry of Information & Broadcasting has not issued licensing policy for HITS platforms as yet. In such a scenario, the Authority did not deem it fit to come out with any regulations relating to HITS operators at present. Accordingly, the issues relating to HITS have not been addressed in the amendment regulation.

38. The Authority felt that the objective of providing six month tariff protection for DTH subscribers can be achieved by the DTH operators by appropriate interconnection agreements with the Broadcasters. Further, the DTH operators also have the option of stopping enrolment of new subscribers for a package from which a channel is to be dropped in coming six months. Accordingly, the Authority has decided not to introduce any regulatory measures at this stage for helping the DTH operators in providing six month tariff protection for subscribers as provided by Sub clause (1) of Clause 9 of the Direct to Home Broadcasting Services (Standards of Quality of Service and Redressal of Grievances) Regulations, 2007.

39. The Authority is of the opinion that absence of written interconnection agreements leads to a large number of disputes. Further, it is not possible to record oral agreements in the Register of Interconnection Agreements. In view to bring transparency in the sector the Authority has mandated that no broadcaster of pay channels or distributor of TV channels, such as multi system operator or headend in the sky operator, shall make available TV channel signals to any distributor of TV channels without entering into a written interconnection agreement. Further, the responsibility to hand over a copy of signed interconnection agreement to the distributor of TV channels and obtain an acknowledgement in this regard has been placed on the broadcasters of pay channels. Similar responsibility has been cast upon the multi system operators to hand over a copy of signed interconnection agreement to the cable operators and obtain an acknowledgement in this regard.

40. The Authority has not specified the minimum necessary details to be included in any interconnection agreement. Thus, a term sheet signed by two service providers will be sufficient for compliance with the requirement of this regulation. Therefore, the supply of signals can be commenced after signing of a term sheet. The detailed agreement can be signed later.

41. In order to curb the practice of oral interconnection agreements, the provisions of regulation 4.1 have also been amended to restrict the regulatory protection from disconnection without any notice to only those distributors of TV channels which have entered into written interconnection agreements.

42. However, considering the fact that sometimes signals are given to distributors of TV channels in compliance of orders of Courts of law, an exception has been made enabling the broadcasters/ distributors of TV channels (MSOs/ HITS operators) to give signals to distributors of TV channels (LCOs) without entering into written agreements.

THE TELECOMMUNICATION (BROADCASTING AND CABLE SERVICES) INTERCONNECTION (SIXTH AMENDMENT) REGULATIONS, 2010

(No. 4 of 2010)

TELECOM REGULATORY AUTHORITY OF INDIA

NOTIFICATION

New Delhi, the 30th July, 2010

F. No.6-7/2010 - B&CS.----- In exercise of the powers conferred by section 36, and by sub-clauses (ii), (iii), (iv) and (v) of clause (b) of sub-section (1) and sub-section (2) of section 11 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), read with notification of the Government of India, in the Ministry of Communication and Information Technology (Department of Telecommunications) No.39,-----

(a) issued, in exercise of the powers conferred upon the Central Government by proviso to clause (k) of sub section (1) of section 2 and clause (d) of sub-section (1) of section 11 of the said Act, and (b) published under notification No. S.O.44 (E) and 45 (E) dated 9th January, 2004 in the Gazette of India, Extraordinary, Part II, Section 3,----

the Telecom Regulatory Authority of India hereby makes the following regulations further to amend the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004 (13 of 2004), namely:-

1. (*1*) These regulations may be called the Telecommunication (Broadcasting and Cable Services) Interconnection (Sixth Amendment) Regulations, 2010.

2. In regulation 2 of the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004 (13 of 2004), (hereinafter referred to as the principal regulations), ------

(a) for sub-clause (l), the following sub-clause shall be substituted, namely:- "(l) **"head end in the sky operator"** or **"HITS operator"** means any person permitted by the Central Government to ------

(a) distribute multi channel TV programmes in C band or Ku band -----

(i)by using a satellite system, to intermediaries like cable operators and not directly to subscribers; and

(ii)by using its own cable network, if any, to the subscribers of such cable network through Quadrature Amplitude Modulation (QAM) set top boxes, after first downlinking the signals at its terrestrial receiving station; and

(b) provide passive infrastructure facilities like transponder space on satellite, earth station facilities, etc. to one or more multi system operators or to any consortium of multi system operators or cable operators, for distribution of multi channel TV programmes, in C band or Ku band through QAM set top boxes, using such infrastructure facilities;";

(b) for sub-clause (m), the following sub-clause shall be substituted, namely:-

"(m) **"multi system operator"** means any person who receives a broadcasting service from broadcasters or their authorized agencies or from a headend-in-the-sky operator and re-transmits the same to one or more cable operators or to consumers or to both and includes its authorised distribution agencies;".

3. In regulation 3 of the principal regulations, ----

(a) in sub-regulation 3.2., for the expression "Multi system operators shall also on request re-transmit signals received from a broadcaster, on a non-discriminatory basis to cable operators. ", the following expression shall be substituted, namely:-

"HITS operators and multi system operators shall also, on request, re-transmit signals received from a broadcaster, on a non-discriminatory basis to cable operators.";

(b) in sub-regulation 3.5, for the expression " broadcaster/multi system operator", wherever it occurs, the expression "broadcaster, multi system operator or HITS operator, as the case may be" shall be substituted.

4. In regulation 4 of the principal regulations, in sub-regulations 4.1 and 4.2, for the expression "broadcaster or multi system operator", wherever it occurs, the expression "broadcaster, multi system operator or HITS operator, as the case may be" shall be substituted.

5. In regulation 13.2A of the principal regulations, ------

(a) in sub-regulation 13.2A.1, for the words, figures, brackets and numbers "Telecommunication (Broadcasting and Cable Services) Interconnection (Fifth Amendment) Regulation, 2009 (4 of 2009)", the words, figures, brackets and numbers "Telecommunication (Broadcasting and Cable Services) Interconnection (Sixth Amendment) Regulations, 2010 (4 of 2010)" shall be substituted;

(b) in the proviso to sub-regulation 13.2A.2, for the words, figures, brackets and numbers "Telecommunication (Broadcasting and Cable Services) Interconnection (Fifth Amendment) Regulation, 2009 (4

of 2009)", the words, figures, brackets and numbers "Telecommunication (Broadcasting and Cable Services) Interconnection (Sixth Amendment) Regulations, 2010 (4 of 2010)" shall be substituted;

(c) in sub-regulations 13.2A.3 and 13.2A.4, for the words, figures, brackets and numbers "Telecommunication (Broadcasting and Cable Services) Interconnection (Fifth Amendment) Regulation, 2009 (4 of 2009)", wherever they occur, the words, figures, brackets and numbers "Telecommunication (Broadcasting and Cable Services) Interconnection (Sixth Amendment) Regulations, 2010 (4 of 2010)" shall be substituted;

(d) in clause (1), clause (2) and clause (3) of sub-regulation 13.2A.6, for the words, figures, brackets and numbers "Telecommunication (Broadcasting and Cable Services) Interconnection (Fifth Amendment) Regulation, 2009 (4 of 2009)", wherever they occur, the words, figures, brackets and numbers "Telecommunication (Broadcasting and Cable Services) Interconnection (Sixth Amendment) Regulations, 2010 (4 of 2010)" shall be substituted.

6. In regulation 13.2B of the principal regulations, in sub-regulations 13.2B.1 and 13.2B.2, for the words, figures, brackets and numbers "Telecommunication (Broadcasting and Cable Services) Interconnection (Fifth Amendment) Regulation, 2009 (4 of 2009)", wherever they occur, the words, figures, brackets and numbers "Telecommunication (Broadcasting and Cable Services) Interconnection (Sixth Amendment) Regulations, 2010 (4 of 2010)" shall be substituted.

(Subodh Kumar Gupta)
Advisor (B&CS)

Note.1-----The principal regulations were published vide notification no. 8-26/2004-B&CS dated 10th December, 2004 and subsequently amended vide notifications no.3-57/2005-B&CS dated 3rd March, 2005, no.11-13/2006-B&CS dated 24th August, 2006, no. 6-4/2006-B&CS dated 4th September, 2006, no. 4-54/2007-B&CS dated 3rd September, 2007 and No. 3-21/ 2009 - B&CS dated 17th March, 2009.

Note.2-----The Explanatory Memorandum explains the objects and reasons of the Telecommunication (Broadcasting and Cable Services) Interconnection (Sixth Amendment) Regulation, 2010.

Explanatory Memorandum

Background:

Government of India (Ministry of Information and Broadcasting)

announced Policy guidelines for providing Headend-in-the-Sky (HITS) broadcasting service in India on 26 Nov, 2009. Pursuant to the said announcement of HITS policy, the Ministry of Information and Broadcasting requested TRAI, vide its letter dated 10th December, 2009, to revisit the relevant interconnection regulations, tariff orders, etc., in order to take a view on whether there was any amendment required in them in the interest of the service so that the benefits of the policy can be fully achieved. On the basis of the said request, TRAI initiated a consultation process on the subject "Interconnection and Tariff Issues related to HITS services". A consultation paper for the purpose was issued on 6th April, 2010. The consultation paper had grouped the issues posed for consultation into two broad categories, namely, interconnection issues and tariff issues. Issues relating to tariff have been addressed separately.

Issues for Consultation:

2. As regards Interconnection, the consultation paper has noted that the existing definition of "headend in the sky operator", as contained in the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004 (13 of 2004), was a narrow definition which restricted the operations of the HITS operator to C-Band only whereas the HITS policy of the Government of India announced on 26th November, 2009, permitted HITS operations either in C-Band or Ku-Band. It was also noted in the consultation paper that the existing definition prohibited a HITS operator from serving the subscribers directly, whereas the policy guidelines now permitted the HITS operator to serve subscribers directly through its own cable network, if any, after first downlinking the signals to its terrestrial receiving station. These changes, brought about by the HITS policy of the Government, necessitated an amendment to the definition of "headend in the sky operator", as contained in the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004 (13 of 2004)

3. The Consultation paper had also noted that, since a multi system operator can now take signals not only from broadcasters and their authorized agencies but also from a HITS operator, the definition of "multi system operator" also needed amendment. The consultation paper had, accordingly, broadly outlined the amendments required in these provisions and raised the following issues for consultation with the stake-holders:- (i) Are the proposed amendments to the interconnect regulations to implement HITS policy in order?

(ii) What further amendments are required to implement HITS policy?

Stakeholder comments:

4. In all, 23 stakeholders offered their comments on the consultation paper. One stakeholder sent counter comments on the comments received from the

stakeholders. Open House Discussions (OHDs) were held in Delhi, Pune, Bangaluru and Kolkata on 1st June, 2010, 3rd June, 2010, 4th June, 2010 and 8th June, 2010, respectively.

5. On the issue of the proposed amendments to the Interconnect Regulations to implement HITS policy being in order, almost all the stakeholders including broadcasters and MSOs have expressed their agreement to the proposed amendments.

6. Considering all the aspects of the matter as emerging from the consultation process, the Authority has amended the interconnection regulation by amending the definition of the HITS operator to provide for use of both C and Ku band by these operators. Since the policy guidelines issued by the Ministry of Information and Broadcasting permit HITS operator to distribute multi channels TV programmes on its own cable network (after first downlinking the signals at its terrestrial receiving station) and also provides for HITS operator to be a passive infrastructure facility provider to other MSO or consortium of cable operators, the scope of the existing definitions of "HITS operator" and "multi system operator" have been appropriately enlarged.

7. Consequential minor amendments to regulations 3, 4, 13.2A and 13.2B have also been made.

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TELECOM REGULATORY AUTHORITY OF INDIA

NOTIFICATION

New Delhi, the 10th February, 2014

THE TELECOMMUNICATION (BROADCASTING AND CABLE SERVICES) INTERCONNECTION (SEVENTH AMENDMENT) REGULATION, 2014

No. 1 of 2014

No. 6-11/2014 - B&CS.-- In exercise of the powers conferred by section 36, and by sub-clauses (ii), (iii) and (iv) of clause (b) of sub-section (1) of section 11 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), read with notification of the Government of India, in the Ministry of Communication and Information Technology (Department of Telecommunication) No.39, ---------

(a) issued, in exercise of the powers conferred upon the Central Government by proviso to clause (k) of sub-section (1) of section 2 and clause (d) of sub-section (1) of section 11 of the said Act, and

(b) published under notification No. 39 (S.O. 44 (E) and 45 (E)) dated the 9th January, 2004 in the Gazette of India, Extraordinary, Part II- Section 3- Sub-section (ii), ----

the Telecom Regulatory Authority of India hereby makes the following regulations further to amend the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004 (13 of 2004), namely:-

1. (1)These regulations may be called the Telecommunication (Broadcasting and Cable Services) Interconnection (Seventh Amendment) Regulation, 2014 (1 of 2014).

2. In regulation 2 of the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004 (13 of 2004), (hereinafter referred to as the principal regulation),-----

(a) for clause (b), the following clause shall be substituted, namely:----

"(b) "authorised agent or intermediary" means any person including an individual, group of persons, public or private body corporate, firm or any organization or body authorised by a broadcaster or multi-system operator to make available its TV channels to a distributor of TV channels and such authorised agent or intermediary, while making available TV channels to the distributors of TV channels, shall always act in the name of and on behalf of the broadcaster or multi-system operator, as the case may be;"

(b) for clause (e), the following clause shall be substituted, namely:----

"(e) "broadcaster" means a person or a group of persons, or body corporate, or any organization or body who, after having obtained, in its name, uplinking permission or downlinking permission, as may be applicable for its channels, from the Central Government, provides programming services;"

(c) for clause (m), the following clause shall be substituted, namely:----

"(m) "multi system operator" means a cable operator who has been granted registration under the Cable Television Networks (Regulation) Act, 1995 and who receives a programming service from a broadcaster and re-transmits the same or transmits his own programming service for simultaneous reception either by multiple subscribers directly or through one or more local cable operators;" Page **2** of **20**

3. In regulation 3 of the principal regulation, the sub-regulation 3.4 shall be deleted;

4. After regulation 13 of the principal regulations, the following regulation shall be inserted, namely:-

--

"**13A. Composition of bouquet by the broadcasters.----** (1) Every broadcaster shall, within six months of the commencement of the Telecommunication (Broadcasting and Cable Services) Interconnection (Seventh Amendment) Regulations, 2014, ----

(a)ensure that bouquet of TV channels, contained in its Reference Interconnect Offer, is provided to the distributors of TV channels without any modification in its composition and such bouquet of TV channels, at the wholesale level, are not bundled with the bouquet or channels of other broadcasters:

Provided that a broadcaster may, while making a bouquet of TV channels, combine TV channels of its subsidiary company or holding company or subsidiary company of the holding company, which has obtained, in its name, the uplinking permission or downlinking permission, as may be applicable for its TV channels, from the Central Government and the broadcaster or any of such companies, authorized by them, may publish Reference Interconnect Offer for such bouquet of TV channels and sign the interconnection agreement with the distributors of TV channels;

Explanation: For the purpose of these regulations, the definition of „subsidiary company" and „holding company" shall be the same as assigned to them in the Companies Act, 2013(18 of 2013).

(b)publish its Reference Interconnect Offer to ensure compliance of the provision of clause (a);

(c)enter into new interconnection agreement; and

(d)file the Reference Interconnect Offer, referred to in clause (b) and interconnection agreement, referred to in clause (c) with the Authority.

(2) Every broadcaster, who begins its operations six months after commencement of the Telecommunication (Broadcasting and Cable Services) Interconnection (Seventh Amendment) Regulations, 2014, shall ensure that the bouquet of channels, contained in its Reference Interconnect Offer, is provided to the distributors of TV channels without any modification in its composition and such bouquet of TV channels, at the wholesale level, are not bundled with the bouquet or channels of other broadcasters."

(Sudhir Gupta)
Secretary, TRAI

Note.1-----The principal regulation was published in the Gazette of India, Extraordinary, Part III, Section 4, vide notification No. 8-26/2004-B&CS dated 10th December 2004, No. 3-57/2005/B&CS dated 3rd March 2005, No. 11-13/2006-B&CS dated 24th August 2006, No. 6-4/2006-B&CS dated 4th September 2006, No. 4-54/2007-B&CS dated 3rd September 2007, 3-21/2009-B&CS dated 17th March 2009 and No. 6-7/2010-B&CS dated 30th July 2010.

Note.2-----The Explanatory Memorandum explains the objects and reasons of the Telecommunication (Broadcasting and Cable Services) Interconnection (Seventh Amendment) Regulations, 2014 (1 of 2014).

Explanatory Memorandum

The need for amendment

1. The value chain in the distribution of television channels comprises the broadcaster, the Distribution Platform Operator (DPO), the last mile operator and the end consumer. The business of distribution of TV channels from the broadcaster to the consumer has two levels - i) bulk or wholesale level - wherein the distributor of TV channels i.e. DPO obtains the TV channels from the broadcasters, and ii) retail level - where the DPO offers these channels to the consumers, either directly or through the last mile operator. Amongst the DPOs, the Direct to Home (DTH) operator and the Internet Protocol Television (IPTV) operator serve the consumer directly, while the Multi System Operator (MSO) and the Headend in the Sky (HITS) operator generally serve the consumer through its linked Local Cable Operator (LCO).

2. At the wholesale level, as per the regulatory framework prescribed by TRAI, broadcasters are mandated to enter into interconnection agreements with the DPOs for the carriage of their TV channels. The broadcasters are to offer their channels on a non-discriminatory basis to all the DPOs in accordance with their Reference Interconnect Offer (RIO). The interconnection agreements are to be finalised on the basis of the commercial and technical terms and conditions specified in the RIO.

3. Many broadcasters, especially the larger ones, appoint authorised distribution agencies as intermediaries. Many such agencies operate as authorised agents for more than one broadcaster. These authorised distribution agencies have come to be popularly known as

„aggregators". These aggregators have indulged in the practice of publishing the RIOs, negotiate the rates for the bouquets/channels with DPOs and enter into interconnection agreement(s) with them.

4. As on date there are around 239 pay channels (including HD and advertisement- free channels) offered by 55 pay broadcasters. These channels are distributed by 30 broadcasters/aggregators/ agents of broadcasters. Table I below shows the number of channels being distributed to the DPOs by the top three aggregators.

Table I: Number of TV channels distributed by leading aggregators

Total number of pay TV channels : 239		
	Name of the aggregator	**Number of channels**
1	M/s Media Pro Enterprise India Private Limited	76
2	M/s IndiaCast UTV Media Distribution Private Limited	36
3	M/s MSM Discovery Private Limited	28
	Total	140 (58.6%)

Thus, the distribution business of 58.6% of the total pay TV market available today is controlled by the top three aggregators. These channels include almost all the popular pay TV channels.

5. The bouquets being offered by the aggregators comprise popular channels of the multiple broadcasters they represent. Thus, for purely business considerations, DPOs have no option but to subscribe to these bouquets. It is alleged that, exploiting this fact, the aggregators further start to piggy-back more channels on these bouquets especially the ones that have very less standalone market value. The aggregators being in a dominant position use their negotiating powers to „push" such bouquets to the DPOs. In such a scenario, at the retail end, the DPOs have no option but to somehow push these channels (though not necessarily in the form of the bouquets that they purchase from the aggregators) to the consumers so as to recover costs. Thus, in the process, the public, in general, ends up paying for „unwanted" channels and this, in effect, restricts consumer choice. Moreover, since the aggregators distribute a large number of popular channels of different broadcasters, they are in a position to, in effect coerce DPOs and sell the channels at terms favourable to them.

6. Recently it also came to the notice of the Authority that an aggregator M/s Media Pro was offering channels of a broadcaster, the New Delhi Television Ltd., as a part of certain bouquets only to platform operators of cable TV sector and not to the DTH operators. The DTH platform was directly dealt with by the said broadcaster. In effect, the situation was one where different distribution platforms were being treated differently. On enquiry, the aggregator claimed that since the

broadcaster has bestowed the right only to distribute the channels to platform operators of cable TV sector it is in full compliance with the provisions of the regulations. However, as per the

existing regulatory framework, the broadcaster is mandated to offer the same bouquet to all the distribution platforms. With this kind of arrangement with its aggregator, the broadcaster was, in effect, circumventing the regulations through an aggregator by creating a situation where the different DPOs (platforms) could be treated differently. It is a well established principle in law that what cannot be achieved directly, cannot be achieved indirectly. And, that is precisely what the broadcaster was able to do using the device of the aggregator.

7. The market distortions arising out of the current role assumed by the aggregators were amply reflected during the implementation of digital addressable cable TV systems (DAS), Phase I and Phase II. Several MSOs have complained that they were forced to accept unreasonable terms and conditions to obtain signals of the broadcasters through some of the major aggregators, that too at the fag end of the implementation deadline. According to the non-vertically integrated MSOs as well as smaller MSOs, they always get a raw deal. This impacted the smooth implementation of DAS. In the Open House Discussions (OHDs) held in various parts of the country on „Issues related to Media Ownership", concerns have been vehemently voiced by various MSOs and LCOs regarding the monopolistic practices of the major aggregators. While the issue was being examined at the Authority, the Ministry of Information and Broadcasting (MIB) also, echoed the complaints from MSOs in this regard, through its reference to TRAI vide D.O. No. 16/1/2013-BP&L dated 23rd May 2013, requesting the Authority for reviewing the regulatory framework on this aspect.

8. The regulatory framework has been reviewed to bring clarity in the roles and responsibilities of the broadcasters and their authorised agents. Accordingly, a Consultation Paper, in the form of draft amendments to the existing interconnection regulations, tariff orders and the register for interconnect regulations, were uploaded on the website of TRAI, seeking comments/views of stakeholders. In response, 102 comments were received from the stakeholders. An OHD was also held in Delhi on 12th September 2013, wherein 170 stakeholders participated in the discussions. Further, in response to the opportunity given by the Authority during the OHD, 26 further comments were received from stakeholders. Taking into account the views/comments of the stakeholders and after detailed analysis of the issues involved, amendments to the following regulations and tariff orders are being notified simultaneously:

i. The Telecommunication (Broadcasting and Cable Services) Interconnection (Seventh Amendment) Regulations, 2014 (1 of 2014),

ii. The Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) (Third Amendment) Regulations, 2014 (2 of 2014)

iii. The Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Tenth Amendment) Order, 2014 (1 of 2014),

iv. The Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff (Third Amendment) Order, 2014 (2 of 2014) and,

v. The Register of Interconnect Agreements (Broadcasting and Cable Services) (Fifth Amendment) Regulations, 2014 (3 of 2014).

9. The amendments incorporate the following changes to the existing regulatory framework. The framework defines a broadcaster as an entity having the necessary Government permissions

in its name. Further, that only the broadcaster can and should publish the RIOs and enter into interconnection agreements with DPOs. However, in case a broadcaster, in discharge of its regulatory obligations, is using the services of an agent, such agent can only act in the name of and on behalf of the broadcaster. Further the broadcaster shall ensure that such agent, while providing channels /bouquets to the DPOs, does not alter the bouquets as offered in the RIO of the broadcaster. In case an agent acts as an authorised agent of multiple broadcasters, the individual broadcasters shall ensure that such agent does not bundle its channels or bouquets with that of other broadcasters. However, broadcaster companies belonging to the same group can bundle their channels.

10.A time frame of six months has been prescribed for the broadcasters to amend their RIOs, enter into new interconnection agreements and file the amended RIOs and the interconnection agreements with the Authority. While amending their RIOs, certain bouquets may require reconfiguration to align them with the amended regulatory framework. The method for working out the rate of such reconfigured bouquets has also been illustrated.

Stakeholder comments

11.The response of the stakeholders can be broadly divided into two categories. One group, represented by leading/big broadcasters and aggregators, is against the proposed amendment whereas the other group, represented by DPOs, their

associations and small broadcasters, has supported the provisions of the proposed amendment and requested for its urgent implementation.

12.The broadcasters/aggregators have opposed the amendments on the ground that they are in violation of Article 19(1)(g) of the Constitution and on the ground of jurisdiction of TRAI in the said matter. They have stated that it is a competition issue and the Competition Commission of India (CCI) has sole jurisdiction over it. Apart from this, they have also stated that aggregators play a vital role in the distribution of TV channels and provide a balanced platform, especially to smaller broadcasters, for negotiations with the DPOs, who, according to the aggregators/ broadcasters, have substantial negotiating power. This group of stakeholders have

also stated that the practice of broadcasters to utilize distribution agencies/aggregators is a normal business practice as is prevalent in the other sectors like banking, telecom, insurance etc. and cannot be considered anti-competitive.

13.However, in contrast, and in a directly opposite stance, the small broadcasters, DPOs and cable operator associations, have stated that the proposed amendments would provide a level-playing-field and eliminate the monopolistic practices arising from the role that the aggregator has assumed viz. as surrogates for multiple major broadcasters. In support of the argument, one of the cable operator associations has stated that 186 cases were filed by MSOs and LCOs against Media Pro in TDSAT in the year 2012 which provides sufficient indication of the level of discontent amongst the DPOs vis-a-vis the aggregators. It has further stated that the maximum number of cases are against Media Pro and, unsurprisingly, there is no case filed by either DEN or Siti Cable against the aggregator, precisely because they are Media Pro‟s vertically integrated partners. It has also been opined by this set of stakeholders that removing the aggregator will reduce costs to consumers.

Analysis

14.Taking into account the views/comments of the stakeholders and after detailed analysis of the issues involved, this amendment to the interconnection regulation applicable for non-addressable, DTH and other addressable systems, excluding DAS, is being notified. The succeeding paragraphs explain the objects and reasons of the provisions of this amendment order along with the analysis of the issues raised.

Issue of jurisdiction

15.One of the objectives laid out in the preamble of the TRAI Act is to protect the interests of the service providers and consumers of the sector as well as to promote and ensure its orderly growth. TRAI has the powers to frame „ex-ante" rules/regulations to ensure that the objectives of the TRAI Act are met. In fact in a recent Judgment dated 6th December 2013, in the Civil Appeal No. 5253 of 2010 (Bharat Sanchar Nigam Ltd. Vs TRAI and Ors) the Hon"ble Supreme Court has made following observations:

"….. under sub section 1 of Section 36 of TRAI Act, the Authority can make regulations to carry out the purposes of the Act specified in various provisions…"

"……we hold that the power vested in the Authority under section 36(1) to make regulations is wide and pervasive. The exercise of this power is only subject to the provisions of the Act and the Rules framed under section 35 thereof. There is no other limitation on the excise of power by the Authority under section 36(1). It is not controlled or limited by section 36(2) or sections 11, 12 and 13. "

Thus, it is well within the jurisdiction of TRAI to issue regulations and amendments thereto on the subject matter.

Right to do business-Violation of 19(1)(g)

16.Another issue is whether these amendments are violative of Art. 19(1)(g) of the Constitution of India? As discussed earlier, the aggregators are not independent entities; rather, they are authorised agents of the leading broadcasters whose channels they distribute. Further, through the aggregators, the broadcasters are able to realise dominant positions as described above. The aggregators make their own bouquets which are a mix of channels of various broadcasters including certain non-popular ones. The DPOs who take up these bouquets are then compelled to offer them to the consumers to recover costs. This activity of the aggregators is beyond the scope of their agency; it involves an act which the broadcaster is not authorised to do under the existing regulations. It is thus not in public interest and the protection of the right to do business cannot be claimed for this.

17.These amendments do not restrict a broadcaster from appointing an authorised agent or intermediary to facilitate in carrying forward its businesses. If authorised by a broadcaster, they have the freedom to carry out the assigned jobs. However, the same is to be done on behalf of and in the name of the concerned broadcaster.

In no business, can any authorised agent or intermediary go beyond the scope of the business of its principal. The present amendment prescribes certain responsibilities for the broadcasters in order to ensure that their authorised distribution agencies (aggregators) do not indulge in certain activities beyond the scope of the business of their principals (broadcasters). Further, the amendments seek to ensure that the broadcaster publishes its RIO and maintains its sanctity. This is in conformity with various provisions of existing interconnection regulations.

Therefore, the current amendment to the interconnection regulations does not impinge upon the fundamental rights of the broadcasters and their authorised agents or intermediaries as granted to them under Art. 19(1)(g) of the Constitution.

Principal and Agent

18.It is well accepted that an agent always acts on behalf and in the name of its principal and the scope of action/activities of the agent cannot exceed that of the principal.

19.For example in the telecom sector, an agent does everything only on behalf of and in the name of the service provider (the principal) e.g. the consumer application

form is prescribed only by the service provider and filled up by the consumer thereby entering into an agreement directly with the service provider. The agent, who could also be a local corner store or a *paan wallah,* merely facilitates the process. However, in the case of aggregators operating in the broadcasting sector, it is the aggregators who are combining the offerings of different principals (broadcasters) and are directly entering into agreements in their name with the DPOs. Invariably, the aggregators are going beyond the scope of business of their principals. Thus, the analogy between agents of other sectors like telecom, insurance etc. and aggregators in the broadcasting sector does not hold any ground. In fact, this amendment aligns them, in principle, with authorised agents in other sectors.

Amendment to the Definitions of broadcaster/MSO/Authorised agent or intermediary

20.In the cited amendments, the definition of a broadcaster has been amended and an authorised agent or intermediary has been separately defined. A broadcaster of a TV channel, prior to commencing its services, has to obtain certain clearances and permissions following an elaborate process. This procedure and process involves

registration of its channel by the broadcaster with the MIB under the elaborate Uplinking/Downlinking Guidelines. These Guidelines, apart from others, require security clearance of the channel as well as clearance of the key executives managing the business affairs of a broadcaster. The broadcaster is also required to coordinate with the Department of Space (DoS) for getting the required satellite bandwidth and related permission to use it. Hence, the broadcaster has a separate and distinct identity and this should be maintained. The aggregator, on the other hand, requires no such clearances or permission and so cannot proxy as a broadcaster. Therefore, there is a need to bring clarity to the entire regulatory framework.

21.The definition of the broadcaster has been amended to clarify, and place beyond all doubt, the exclusive role of the broadcaster in publishing the RIOs and entering into the interconnect agreements with the DPOs, as prescribed in the interconnection regulations. The definition of authorised agent or intermediary has been separately framed to clarify their facilitative role in the business of TV channel distribution both for the broadcasters and MSOs. The definition of MSOs has also been accordingly amended.

With these amendments the sub-clause 3.4 of the principal regulation, which has become redundant, has been deleted.

Market power of Major aggregators

22.The popularity ratings of the channels in the form of Gross Rating Points (GRP) as provided by TAM India reveals that that the three major aggregators exercise control over the distribution of most of the popular channels. The GRP data for the years 2012 and 2013 have been analysed. A comparison of number of popular channels controlled by these aggregators reveals that between 2012 and 2013, the number of popular channels distributed/controlled by them is increasing. From the analysis it emerges that in the year 2013, out of the 10 most popular channels of various broadcasters, these three aggregators controlled distribution of around 9 channels (90%). Similar analysis, for the 5, 20, and 50 most popular channels, for the years 2012 and 2013 has been carried out and is tabulated below:

Table II: Number of channels distributed by top three aggregators, as per GRP ratings (Source: TAM India**)**

S.No	S.No Name of Aggregator	Among Top 5		Among Top 10		Among Top 20		Among Top 50	
		2012	**2013**	**2012**	**2013**	**2012**	**2013**	**2012**	**2013**
1	M/s Media Pro Enterprise India Private Limited	2	2	5	5	10	10	20	21
2	M/s MSM Discovery Private Limited	1	2	3	3	3	3	5	6
3	M/s IndiaCast UTV Media Distribution Private Limited	1	1	1	1	2	4	11	11
	Total	**4**	**5**	**9**	**9**	**15**	**17**	**36**	**38**

The above analysis corroborates the claims of the independent DPOs that they cannot afford to ignore these aggregators while finalising their business plans and they are obliged to strike deals with these aggregators to have a viable business proposition.

Bouquets/channels of a broadcaster not to be bundled with any other broadcaster's offerings

23. One of the major reasons for bringing in these amendments is that aggregators, who are authorised agents of more than one broadcaster, bundle popular channels of the multiple broadcasters they represent. Table III below presents an analysis of some of the large bouquets offered by the three largest aggregators.

Table III: Analysis of bouquets offered by Aggregators

S.No	Name of the Bouquet	Name of the aggregator	No. of channels in the bouquet	No. of Broadcasters whose channels have been aggregated in the bouquet
1	MP7	Media Pro Enterprise India Pvt Ltd	20	6
2	MP9	Media Pro Enterprise India Pvt Ltd	20	6
3	Bouquet 5	MSM Discovery Private Limited	15	3
4	Bouquet 2	IndiaCast UTV Media Distribution Pvt Ltd	13	6
5	Bouquet 3	IndiaCast UTV Media Distribution Pvt Ltd	13	9

This shows that aggregators are offering bouquets comprising as many as 20 channels of 6 broadcasters. Another bouquet, consisting of 13 channels, has channels drawn from 9 broadcasters.

24. As discussed earlier, aggregators tend to piggy-back less popular channels in such bouquets to prop them up viz. to help provide market access which otherwise may be elusive for such less popular channels. In case such channels belong to the broadcasters who own the aggregator, the broadcasters benefit in terms of both better advertisement and subscription revenues. In cases where such piggy-backed channels belong to the broadcaster who do not have stakes in the aggregator, the aggregator benefits in terms of better commission. In other words, the broadcaster(s) who own the aggregator gets benefits for its own channels as well as for channels of other broadcasters. Further, in both cases, the benefits accrue to aggregators at the

cost of "unwanted" channels being pushed to DPOs and ultimately to the consumers. As a result, both the DPOs and the consumers end up paying the inbuilt costs of such "unwanted" channels. This, in effect, also restricts consumer choice. This, is detrimental to public interest at large as well as to one of the prime objectives of the digitisation viz. empowering the consumer to effectively exercise choice of channels/services.

25.It has also been noted that even though the largest bouquets offered by the aggregators in their RIOs are in the range of 13 to 20 channels, the agreements entered into are for a package of channels consisting of almost all the channels they are authorised to distribute. For example M/s Media Pro has mostly entered into agreements with MSOs for around 65 channels out of the 76 pay channels it distributes. These MSOs include both smaller independent MSOs as well as MSOs operating at national level. Similarly, M/s IndiaCast and M/s MSM Discovery have mostly entered into agreements for around 30 (out of 36 channels being distributed by it) and 20 channels (out of 28 channels being distributed by it) respectively. This substantiates the allegation of the DPOs that the large aggregators are virtually compelling them to enter into agreements to subscribe to almost all of their channels. The agreements entered into with the aggregators in the first phase of DAS implementation validate this fact, namely that aggregators push all-channel bouquets to the DPOs.

26.The issues discussed in the preceding paragraphs prompted a study of the ownership structure of the major aggregators. The details of the ownership structure of these aggregators are available at Annexure I. The study reveals that these aggregators are <u>not</u> independent entities; they are extensions of the major

broadcasters they represent. In the case of M/s Media Pro, a DPO also has direct stakes, apart from three broadcasters. Further, if the ownership structure of the broadcasters having stakes in M/s Media Pro is analysed, it emerges that, directly or indirectly, two leading DTH operators and two MSOs operating at national level are vertically integrated with these broadcasters. It seems quite clear that the objective of creation of such aggregator entities is <u>not</u> merely facilitation of the channel distribution work but to serve some other extraneous considerations. In effect, the broadcasters, through these aggregators, are able to exercise market power (dominance) in the market to further their commercial interests. Such cartels become even more dangerous in cases where these aggregators are also integrated with major DPOs.

27. The channels being distributed by the three major aggregators have been analysed with respect to the ownership of the channels, the number of channels of different broadcasters, and the number distributed by these three major aggregators. The results are tabulated in Table IV below:

Table IV: Analysis of channels distributed by leading aggregators

	Name of the aggregator	Number of channels	No. of broadcasters whose channels are aggregated	No. of channels of the broadcaster groups owning the aggregator

1	M/s Media Pro Enterprise India Private Limited	76	15	□35 - Zee group □29 - Star group □ 5 - Turner International
2	M/s IndiaCast UTV Media Distribution Private Limited	36	8	□15 - Network 18 group □ 9 - UTV group
3	M/s MSM Discovery Private Limited	28	12	□11 - MSM group □ 8 - Discovery

It is quite clear from the above table, that the majority of the channels distributed by the aggregators belong to the broadcaster groups who own/control the aggregator (90.7%- Media Pro, 58%- IndiaCast and 57%- MSMD).

28. Further, if we look into the interconnection agreements entered into by these aggregators, two distinct trends are visible: (i) agreements with the DPOs who are vertically integrated with the aggregators and (ii) agreements with the DPOs who are independent with respect to the aggregators. The rates being charged from vertically integrated DPOs is considerably lower as compared to those charged from other DPOs. The rates being charged from non-vertically integrated DPOs are, in some cases, higher by 62% as compared to the vertically integrated DPOs. And, this is so even though the non-vertically integrated DPO has a higher subscriber base which commercially offers a better business proposition as compared to the vertically integrated DPO. The situation becomes even worse in the case of relatively smaller non-vertically integrated DPOs in which case the rates charged are higher by about 85% as compared to the vertically integrated DPOs. This analysis is based on the data contained in the interconnection agreements and the subscriber base submitted by the respective DPOs to the Authority for a particular city covered under first phase of DAS implementation. The absolute figures of the interconnection agreements and other details, being commercially sensitive in nature, though available with the Authority, are not being revealed.

29. Regarding the bundling of channels/bouquets of different broadcasters, the broadcaster-wise break-up of the top 5 and top 10 most popular channels distributed by the aggregators has been analysed and presented in Table V below:

Table V: Number of most popular channels (as per GRP), distributed by top three aggregators with the broadcaster wise break-up (Source: TAM India**)**

S.No	Name of Aggregator	Among Top 5		Among Top 10	
		2012	**2013**	**2012**	**2013**
1	M/s Media Pro Enterprise India Private Limited	2 (1-Star, 1-Zee)	2 (1-Star, 1 Zee)	5 (3-Star, 2-Zee)	5 (3-Star, 2-Zee)
2	M/s MSM Discovery Private Limited	1 MSM(Sony)	2 MSM(Sony)	3 MSM(Sony)	3 MSM(Sony)

3	M/s IndiaCast UTV Media Distribution Private Limited	1 (Viacom 18)	1 (Viacom18)	1 (Viacom18)	1 (Viacom18)
	Total	**4**	**5**	**9**	**9**

30.Presently, almost all the top 5 or 10 channels are distributed by 3 aggregators, around 50% by the leading aggregator Media Pro. With the restriction on bundling of channels/bouquets of different broadcasters, it can be seen that the top 5 and the top 10 most popular channels will get distributed amongst different

broadcasters. This will not only ensure a better spread of popular channels in different bouquets available to the DPOs but would also reduce the number of less popular channels pushed on to such bouquets. Therefore, DPOs would be in a better position to negotiate and enter into interconnect agreements with broadcasters. Further, even in case a DPO fails to arrive at an agreement with a particular broadcaster the opportunity of finalising agreements with other popular broadcasters is not lost. Thus, DPOs would be placed in a much better position to carry out their businesses. In order to give effect to this, suitable provision has been incorporated in sub-regulation 13A(1)(a).

Bouquets /Channels to be provided to DPOs as per RIO

31.A provision has been incorporated through this amendment which mandates a broadcaster to ensure that there is no change in the composition of the bouquet provided to distributors of TV channels from the composition of the bouquet published in its RIO.

32.In order to ensure a level-playing field and orderly growth of the sector, the interconnect regulations aim at making available the content to DPOs in a transparent and non-discriminatory manner. For this, it is important that the offerings of the broadcasters are available in the public domain. This is why broadcasters have been mandated to publish an RIO prescribing the technical and commercial terms for making available their TV channels to the DPOs. Therefore, in case, a broadcaster appoints an authorised agent or intermediary for distribution of its channels, it is important that the bouquets of the broadcasters, as offered in their respective RIOs, are <u>not</u> altered by such agent or intermediary while making available the channels to the DPOs. To ensure this, sub-regulation 13A(1)(a) has been incorporated through this amendment to the interconnection regulations.

Broadcasters of a group to be allowed to bundle their channels

33.An issue that was not part of the original Consultation Paper but was raised during the consultation process pertained to permitting channels of group broadcast companies to be offered as part of a common bouquet. In this regard,

they have requested that channels, belonging to the same „Group" (Parent/Promoter/Owner/ Management), though licensed under different entities, subsidiaries, associated companies, should be allowed to be bundled in a

bouquet and distributed. They have advanced the argument that broadcasters have established different companies/ventures at different points in time and have also acquired or sold channels and, as a consequence, a large broadcaster may have channels in the name of separate legal entities.

forming of bouquets, through bundling of channels of a broadcaster company with that of its, subsidiary companies, holding company, and subsidiary companies of the holding company, may be permitted as essentially they have a single point of control in all respects and represent the same beneficial interest group. However, such companies should have, in their name, the Uplinking permission or Downlinking permission, as applicable, for their channels, from the Central Government. Moreover, for such bouquets, any one of such companies, authorised by them jointly, shall publish the RIO, enter into interconnection agreements and file details of interconnection agreements with the Authority and carry out any other obligation prescribed in the regulatory framework. Further, bouquets or channels offered by such companies, either individually or as a group, shall be considered to be offerings of a common entity and will have to comply with the regulatory framework, such as "twin conditions" etc., prescribed by TRAI. Accordingly, a suitable proviso to sub-regulation 13A(1)(a) has been added to achieve this objective.

35. In summary, the above discussed amendments clearly bring out the distinct roles and responsibilities of a broadcaster and its authorised agent. This is expected to address the market distortions caused because of the present role assumed by the aggregators in the distribution of TV channels to various DPOs. They will also contribute to the orderly growth and overall development of the sector.

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Annexure I

Ownership structure of major aggregators

1.Media pro Enterprise India Pvt. Ltd: It is wholly (directly or indirectly) controlled by three broadcasters, two leading DTH operators and two MSOs operating at national level. The details of its shareholding is depicted below:

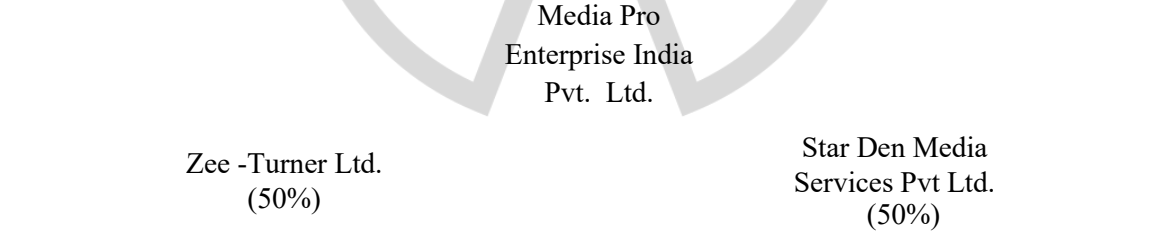


Fig. 1: Ownership structure of M/s Media pro Enterprise India Pvt.

2.MSM Discovery Pvt. Ltd.: It is wholly controlled by two broadcasters. The details of its shareholding is depicted below:

MSM Discovery
Pvt. Ltd.

Multi Screen Media Pvt. Ltd. (74%) India (26%)

Discovery Communications

Fig. 2: Ownership structure of M/s MSM Discovery Pvt. Ltd.

3.IndiaCast UTV Media Distribution Pvt. Ltd.: It is wholly (directly or indirectly)controlled by three broadcasters. The details of its shareholding is depicted below:

IndiaCast UTV Media

Indiacast (74%)

TV 18 (50%)

Viacom 18 (50%)

UTV Global Broadcast (UGBL) (26%)

Viacom (50%) TV 18 (50%)

Fig. 3: Ownership structure of M/s IndiaCast UTV Media Distribution Pvt. Ltd.

TELECOM REGULATORY AUTHORITY OF INDIA

NOTIFICATION

New Delhi, the 18th July, 2014

THE TELECOMMUNICATION (BROADCASTING AND CABLE SERVICES) INTERCONNECTION (EIGHTH AMENDMENT) REGULATION, 2014

(No. 8 of 2014)

No. 6-32/2014 - B&CS.-- In exercise of the powers conferred by section 36, and by sub-clauses (ii), (iii) and (iv) of clause (b) of sub-section (1) of section 11 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), read with notification of the Government of India, in the Ministry of Communication and Information Technology (Department of Telecommunication) No.39, ---------

(a) issued, in exercise of the powers conferred upon the Central Government by proviso to clause (k) of sub-section (1) of section 2 and clause (d) of sub-section (1) of section 11 of the said Act, and

(b) published under notification No. 39 (S.O. 44 (E) and 45 (E)) dated the 9th January, 2004 in the Gazette of India, Extraordinary, Part II- Section 3- Sub-section (ii), ----

the Telecom Regulatory Authority of India hereby makes the following regulations further to amend the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004 (13 of 2004), namely:-

1. (1)These regulations may be called the Telecommunication (Broadcasting and Cable Services) Interconnection (Eighth Amendment) Regulation, 2014 (8 of 2014).

2. In regulation 2 of the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004 (13 of 2004), (hereinafter referred to as the principal regulation),-----

(a) for clause (ib), the following clause shall be substituted, namely:----

"(ib)"**commercial establishment**" means any premises wherein any trade, business or any work in connection with, or incidental or ancillary thereto, is carried on and includes a society registered under the Societies Registration Act, 1860 (21 of 1860), and charitable or other trust, whether registered or not, which carries on any business, trade or work in connection with, or incidental or

ancillary thereto, journalistic, printing and publishing establishments,

educational, healthcare or other institutions run for private gain, theatres, cinemas, restaurants, eating houses, pubs, bars, residential hotels, malls, airport lounges, clubs or other places of public amusements or entertainment;"

(b) after clause (ib), so substituted, the following clause shall be inserted, namely:----

"(ic) **"commercial subscriber"** means any person who receives broadcasting services or cable services at a place indicated by him to a cable operator or multi system operator or direct to home operator or head end in the sky operator or Internet Protocol television service provider, as the case may be, and uses such services for the benefit of his clients, customers, members or any other class or group of persons having access to his commercial establishment;"

(c) for the clause (ma), the following clause shall be substituted, namely:-----

"(ma) "**ordinary subscriber**" means any subscriber who receives broadcasting services or cable services from multi system operator or cable operator or direct to

home operator or Internet Protocol television service provider or head end in the sky operator, as the case may be, and uses the same for his domestic purposes;"

(d) for the clause (na), the following clause shall be substituted, namely:-----

"(na) "**subscriber**" means a person who receives broadcasting services or cable services from a multi system operator or cable operator or direct to home operator or Internet Protocol television service provider or head end in the sky operator at a place indicated by him to the multi system operator or cable operator or direct to home operator or Internet Protocol television service provider or head end in the sky operator, as the case may be, without further transmitting it to any person and includes ordinary subscribers and commercial subscribers, unless specifically excluded;"

3. In regulation 13.2A.1 of the principal regulation, the second proviso and the Explanation appearing at the end shall be deleted.

(Sudhir Gupta)
Secretary, TRAI

Note.1-----The principal regulation was published in the Gazette of India, Extraordinary, Part III, Section 4, vide notification No. 8-26/2004-B&CS dated 10th December 2004, No. 3-57/2005/B&CS dated 3rd March 2005, No. 11-13/2006-B&CS dated 24th August 2006, No. 6-4/2006-B&CS dated 4th September 2006, No. 4-54/2007-B&CS dated 3rd September 2007, 3-

21/2009-B&CS dated 17th March 2009, No. 6-7/2010-B&CS dated 30th July 2010 and No. 6-11/2014 - B&CS dated the 10th February, 2014.

Note.2-----The Explanatory Memorandum explains the objects and reasons of the Telecommunication (Broadcasting and Cable Services) Interconnection (Eighth Amendment) Regulation, 2014 (8 of 2014).

Annexure

Explanatory Memorandum

Background

1. The Telecom Regulatory Authority of India (TRAI) was entrusted with the responsibility of regulating „broadcasting and cable TV" services in January, 2004. An interim Tariff Order was issued on 15.01.2004, which provided that the cable charges prevailing on 26.12.2003 shall be the ceilings at the respective levels. Thereafter, following extensive consultations, a detailed Tariff Order was issued on 01.10.2004. This order, while maintaining the sanctity of the ceiling of cable TV charges prevailing on 26.12.2003, also provided a window for introduction of new pay channels and conversion of existing Free-to-Air (FTA) channels to „pay channels" subject to prescribed conditions. The underlying objective of these Tariff orders was to give relief and protection to consumers of broadcasting and cable TV services from frequent hikes in cable TV charges.

2. Subscribers of broadcasting and cable TV services are basically of two kinds. First, there are ordinary subscribers who consume TV services domestically for their own pleasure. The second group comprises commercial subscribers who obtain TV services for the benefit of their clients, customers etc., at their commercial establishment. While issuing the Tariff Orders in 2004, as mentioned above, the Authority, however, did not differentiate between ordinary and commercial subscribers.

3. The matter pertaining to tariffs for commercial subscribers has been under judicial scrutiny since 2005, before the Hon"ble Telecom Disputes Settlement Appellate Tribunal (TDSAT), when Hotels and Restaurants Association (Western India) (HRAWI), a sister association of Federation of Hotel and Restaurant Associations of India (FHRAI), challenged differential tariffs imposed by some broadcasters. The Hon"ble TDSAT disposed of these petitions *vide* its judgment dated 17.01.2006 wherein it concluded that the members of the petitioner associations couldn"t be regarded as subscribers or consumers. It also asked the Authority to consider whether it was necessary or not to fix tariff for commercial cable TV subscribers.

4. As an interim measure, on 07.03.2006, the Authority issued an amendment to the principal Tariff Order of 01.10.2004. This Tariff Amendment Order defined the terms „Ordinary cable subscriber" and „Commercial cable subscriber". In the

meanwhile, the aforesaid judgment of the Hon"ble TDSAT was appealed by the Associations of Hotels and Restaurants before the Hon"ble Supreme Court. In an interim order on 19.10.2006, the Hon"ble Supreme Court directed the Authority to carry out the processes for framing the tariff under Section 11 of the TRAI Act, independently and not relying on or on the basis of any observation made by TDSAT. In its final order on 24.11.2006, the Hon"ble Supreme Court confirmed its interim orders and stated that it did not agree with the opinion

of the Hon‟ble TDSAT that the Authority should also consider whether it is necessary or not to fix tariff for commercial cable TV subscribers.

5. Based on the interim order of the Hon‟ble Supreme Court dated 19.10.2006, the Authority issued two Tariff Amendment Orders, on 21.11.2006, applicable to commercial subscribers in non-CAS and CAS areas, respectively. This tariff amendment order categorized commercial subscribers into the following two groups, namely:-

(a)A specified category of commercial subscribers comprising---

(i) Hotels with rating of 3 stars and above;

(ii)Heritage hotels (as defined by the Department of Tourism, Government of India);

(iii)Any hotel, motel, inn or commercial establishment providing board & lodging and having 50 or more rooms; and

(b)All other commercial subscribers (not falling under the specified category of commercial subscribers).

6. The tariff for cable TV services for the specified category of commercial subscribers was to be mutually determined by the parties. However, the tariff for commercial subscribers not falling in the specified categories (coming under the second category) was subject to the same charges as ordinary cable subscribers and thus the ceiling of rates prevailing as on 26.12.2003 was made applicable to them. The tariff amendment order also provided that whenever a commercial cable TV subscriber belonging to either of the two categories uses the programme of a broadcaster for public viewing by fifty or more persons on the occasion of special events at a place registered under the Entertainment Tax Act, the tariff will have to be mutually decided between the parties concerned.

7. These orders too were appealed against in the Hon‟ble TDSAT by way of appeals [Appeal No.17(C) of 2006 - East India Hotel Ltd. Vs TRAI & Ors and Appeal No. 18 (C) of 2006 – The Connaught Prominent Hotels Limited vs. TRAI & Ors] by the hotels and their associations. The Hon‟ble TDSAT passed its judgment on 28.05.2010 in the two appeals filed by the hotels against the tariff amendment

orders dated 21.11.2006. The operative portion of the judgment of the Hon‟ble TDSAT read:

“We, therefore, are of the opinion that it is a fit case where the impugned orders are required to be set aside. We direct accordingly. We, however, do not wish to issue any direction with regard to the refund of any amount but we would request the Authority to consider the case of commercial establishments once over again in a broad based manner”.

8. In sum, the sub-classification of commercial consumers into two categories was struck down by the Hon‟ble TDSAT. Aggrieved by the TDSAT judgement dated 28.05.2010, M/s ESPN Software India Pvt. Ltd. filed an appeal (CA No. 6040-41 of 2010 -M/s ESPN Software India Pvt. Ltd. Vs TRAI and Ors.) in the Supreme Court. The judgment of the Hon‟ble Supreme Court, dated 16.04.2014, in this case, directs as follows:

“…… we direct that for a period of three months, the impugned tariff, which is in force as on today, shall continue. Within the said period, TRAI shall look into the matter de novo, as directed in the impugned judgment, and shall re–determine the tariff after hearing the contentions of all the stake holders….”

9. Accordingly, as directed by the Hon‟ble Supreme Court in its judgment dated 16.04.2014, TRAI initiated a consultation process, as part of a de novo exercise, and issued a Consultation Paper (CP) on 11.06.2014 seeking comments/views of the stakeholders. The CP discussed and raised related consultation issues pertaining to various alternatives for tariff stipulations for the commercial subscribers, manner of offering of TV services to them, the definition of the 'commercial establishment', 'shop' and 'commercial subscriber', and sub-categorization of the commercial subscribers into similarly placed groups. In response to the CP, 24 stakeholders submitted their views/comments to the Authority. Subsequently, to further discuss the issues involved, an Open House Discussion (OHD) was also held at Delhi on 4th July 2014, wherein 59 stakeholders participated in the discussions.

10. This interconnection regulation is being notified after analyzing all the issues involved and the inputs received from various stakeholders.

Analysis of Issues

Definition of commercial subscribers, commercial establishment and shops

11. Draft definitions of commercial subscriber, commercial establishment and shops were discussed in the CP and views/comments of the stakeholders were solicited.

Stakeholder comments

12. Several broadcasters including the two prominent broadcasters, a broadcasting industry association, a Hotel industry association as well as a couple of cable TV operator associations have broadly agreed with the draft definitions. Some of them have pointed out that the „profession‟ appearing in the definition of „commercial establishments should be deleted as some court decisions have held that the premises of doctors, lawyers, engineers etc. should not be considered commercial establishments. Some other broadcasters have stated that shops, factories and public viewing areas should be included in the definition of „commercial establishment‟. It was also suggested by a broadcaster that „publishing‟ should also be included in the definition of „commercial establishments‟. An association of broadcasters and some other stakeholders from the broadcasters fraternity have put forth the view that any premise, indoor or outdoor, that is not a domestic premise should be categorized as commercial and commercial subscribers be defined in an all inclusive manner to include all subscribers except residential subscribers.

13. The majority of the distribution platform operators, cable and DTH, as well as a hotel and restaurant industry association are of the view that there is no need to make a distinction between ordinary and commercial subscribers and all subscribers should be treated at par. It has also been suggested to include the concept of commercial purpose and/or commercial exploitation into the definition of commercial establishment. Another industry association has proposed that commercial subscriber should be defined as the one who uses TV signals as its business or commercial activity or part thereof, irrespective of whether TV channels are charged or not from the viewers/audience.

Analysis

14. Taking into account the views of the stakeholders, the definition of „commercial establishment‟ has been included and the definition of „commercial subscriber‟ has been accordingly amended. This is also in line with the tariff prescription

and the manner of offering of television services to the commercial subscribers, which have been discussed in subsequent paragraphs.

Tariff for Commercial subscribers

15. In the CP, the following four alternatives were discussed for prescribing tariff for commercial subscribers, seeking views/comments of the stakeholders:

(i) The tariff for commercial subscribers is the same as that for ordinary subscribers.

(ii)The tariff for commercial subscribers has a linkage with the tariff for ordinary subscribers.

(iii)The tariff for commercial subscribers has no linkage with the tariff for ordinary subscribers but there are some protective measures prescribed to protect all the stakeholders such as mandatory a-la-carte offering, conditions to prevent perverse a-la-carte pricing vis-à-vis bouquet rates etc. (iv)The tariff for commercial subscribers is kept under total forbearance.

Stakeholder comments

16. Hotel industry associations and almost all distribution platform operators (DPOs) have advocated for adoption of the first alternative discussed in the CP i.e. the tariff for commercial subscribers should be same as that prescribed for the ordinary subscribers. To support their view, the main arguments put forth have been - (i) the ultimate consumer/viewer is the same whether the TV services are availed at the domestic premises of the consumer or in a hotel or hospital or any other commercial establishment, (ii) a consumer does not go to such commercial establishment specifically to view TV channels (iii) there is no extra cost to the broadcaster for production of content and its distribution in both the cases and the content/quality of signal remains the same. Some of them further stated that, in cases where the consumer goes to a commercial establishment specifically to avail TV services and pays for it, the tariff may be different from that for the ordinary subscribers.

17. On the other hand, all broadcasters and their representative bodies are of the view that the fourth alternative, prescribing total forbearance on tariff for commercial subscribers, be adopted. The main arguments presented by them in this regard are – (i) the TV services are basically non-essential services and, therefore, need not be regulated, (ii) in many international markets, differential pricing is done for the commercial subscribers, (iii) commercial subscribers

exploit the TV signals for commercial gains, therefore, the broadcasters are entitled to a fair share of the same. In response to a query during the OHD, an Association of broadcasters has indicated that the total revenue of the commercial subscribers that are „known" to subscribe to television are estimated at 1.5-2.2% of total distribution revenues.

18. A head end in the sky (HITS) operator has suggested for prescription of the second alternative which provides that there should be a certain linkage between the tariff for ordinary and commercial subscribers. A broadcaster and a couple of cable operator associations have expressed their preference for the third alternative. It has also been suggested by a multi system operator (MSO) that a broadcaster should prescribe the retail price of its channels for different categories of commercial subscribers and the revenue share for different stakeholders in the value chain should be determined by TRAI.

Analysis

19. The end consumer, whether at his domestic premises or at any commercial establishment, gets to view the same content with same quality of signals. In both the cases, the cost to the content owner (broadcaster) and the DPO, for supplying the signals, per se, does not vary on account of where the signals are supplied - at the domestic premises or the commercial establishment. Moreover, The Hon"ble Supreme Court in its judgment dated 24.11.2006 in appeal (Civil) 2061 of 2006 Hotel and Restaurants Association and Anr Vs Star India Pvt Ltd. and Ors has, amongst others, observed as under:

"....The owners of the hotels take TV signals for their customers/ guests. While doing so, they inter alia provide services to their customers. An owner of a hotel provides various amenities to its customers such as beds, meals, fans, television, etc. Making a provision for extending such facilities or amenities to the boarders would not constitute a sale by an owner to a guest. The owners of the hotels take TV signals from the broadcasters in the same manner as they take supply of electrical energy from the licensees. A guest may use an electrical appliance. The same would not constitute the sale of electricity by the hotel to him. For the said purpose, the 'consumer' and 'subscriber' would continue to be the hotel and its management. Similarly, if a television set is provided in all the rooms, as part of the services rendered by the management by way of an amenity, wherefor the guests are not charged separately, the same would not convert the guests staying in a hotel into consumers or subscribers....."

The said judgment further quotes another judgment of the Hon"ble Supreme Court (in The State of Punjab v. M/s. Associated Hotels of India Ltd. [(1972) 1 SCC 472)]) on similar issue, which is reproduced as under:

".... When a traveller, by plane or by steam-ship, purchases his passage-ticket, the transaction is one for his passage from one place to another. If, in the course of carrying out that transaction, the traveller is supplied with drinks or meals or cigarettes, no one would think that the transaction involves separate sales each time any of those things is supplied. The transaction is essentially one of carrying the passenger to his destination and if in performance of the contract of carriage something is supplied to him, such supply is only incidental to that services, not changing either the pattern or the nature of the contract. Similarly, when clothes are given for washing to a laundery, there is a transaction which essentially involves work or service, and if the launderyman stitches a button to a garment which has fallen off, there is no sale of the button or the thread. A number of such cases involving incidental uses of materials can be cited, none of which can be said to involve a sale as part of the main transaction. ...."

20. From the observations of the Hon"ble Supreme Court, cited above, it is clear that provision of TV services in a commercial establishment in only incidental to the service that the commercial establishment is providing to its clients. It cannot be construed as re-distribution or re-sale of TV services. In any case, there is no re-transmission. In sum, the question as to who is the subscriber has been settled through this judgment. It has also been settled by the said judgment that any service rendered to a guest by way of an amenity, wherefor the guests are not charged separately, the same would not constitute as sale of the said service to the guest. Further, this judgment specifically refers to the subject in hand. **Accordingly, the Authority was of the view that in the rates of TV services, which are per TV set in the analog and per set top box (STB) in case of digital addressable systems, there should be no differentiation**

between an ordinary subscriber and a commercial subscriber i.e. in both the cases the charges should be same and as per TV set (in analog systems) and per STB (in digital addressable systems).

21. However, in case, the commercial establishment specifically charges extra to its clients/visitors on account of viewing of channels at its premises, there is a case for broadcasters to have a share in such revenue of the commercial establishment. Therefore, where the commercial establishment is earning extra revenue from its clients specifically on account of providing TV services, the rates should be based on mutual negotiations between the broadcaster and the commercial subscriber. In such cases also, the commercial subscriber would be required to obtain such signals of TV channel through a DPO/cable operator only. In view of the above, suitable amendments have also been made in the tariff orders, applicable for both the addressable and non-addressable systems.

Manner of offering TV channels to the commercial subscribers

22. Three models of offering of TV channels to commercial subscribers were discussed in the CP. The first model envisages that the commercial subscriber enters into agreement with the broadcaster and obtains signals either from the broadcaster itself or a DPO designated by the broadcaster. In the second model, the commercial subscriber is to enter into agreement with the DPO and obtain the signals while DPO and broadcasters have their own mutually agreed arrangements. The third model discussed in the CP is a combination of the first and second models.

Stakeholder Comments

23. Almost all the broadcasters and their representative bodies and agents have stated that only the first model is viable and should be adopted. While suggesting a detailed procedure for implementation of this model they have reasoned that – (a) the second model is prone to commercial subscribers not getting signal because of potential breakdown of negotiations between broadcasters and DPOs and (b) the third model is prone to confusion, as both broadcasters and DPOs would be allowed to provide Reference Interconnect Offers(RIOs).

24. Almost all the DPOs have suggested adoption of second model. A couple of cable TV operator associations have opined that the regulator should fix the MRP based on which the broadcasters and DPOs make the RIO. However, broadcasters should not identify the DPO through which the commercial subscriber should get the signals of the broadcaster. They have also stated that in cases where commercial subscribers have their own headend, the broadcasters can directly negotiate with the commercial subscribers as per RIO. Another cable operator association has stated that the broadcaster and commercial subscribers should negotiate the rates while the DPO should give the services at the same rate as for ordinary subscriber.

25. One of the hotel and restaurant industry associations has stated the first model should not be adopted, while another hotel industry association has expressed its preference for the third model.

Analysis

26. The guideline for downlinking of TV channels in India prescribe as under:

"5.6. The applicant company shall provide Satellite TV Channel signal reception decoders only to MSOs/Cable Operators registered under the Cable Television Networks

(Regulation) Act 1995 or to a DTH operator registered under the DTH guidelines issued by Government of India or to an Internet Protocol Television (IPTV) Service Provider duly permitted under their existing Telecom License or authorized by Department of Telecommunications or to a HITS operator duly permitted under the policy guidelines for HITS operators issued by Ministry of Information and Broadcasting, Government of India to provide such service."

So, the broadcaster cannot supply signals directly to subscribers, including the commercial subscribers. Broadcasters should supply their signals through a DPO. It would also ensure competition in the market if a commercial subscriber can obtain TV signals from any MSO or its linked local cable operator /DTH operator etc. operating in his area. Accordingly, definitions of „ordinary subscriber" and „subscriber" have been suitably amended.

Sub-categorization of commercial subscribers

27. In the CP, the issue regarding sub-categorization of commercial subscribers into similarly placed groups and fixing the tariff therefor was discussed and views of the stakeholders were sought. Almost all the stakeholders, across all the segments, are of the view that any such sub-categorization and fixing of tariff for such sub-categories may not be the appropriate way forward.

Analysis

28. In view of the tariff prescription and the provisions regarding manner of offering of TV signals to the commercial subscribers, there is no need for sub- categorization of the commercial subscribers into similarly placed groups for the purpose of prescription of tariff dispensation for commercial subscribers. The only distinction required is to place the commercial subscribers into two broad classes – (i) those who offer television services/programmes as part of amenities to their guests and (ii) those who charge for the same in the manner as discussed in para 21 above. In view of the above, regulation 13.2A.1 has been suitably amended.

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TELECOM REGULATORY AUTHORITY OF INDIA

NOTIFICATION

New Delhi, the 14th September, 2015

THE TELECOMMUNICATION (BROADCASTING AND CABLE SERVICES) INTERCONNECTION (NINTH AMENDMENT) REGULATION, 2015

(No. 6 of 2015)

No. 6-30/2015 - B&CS.-- In exercise of the powers conferred by section 36, read with sub-clauses (ii), (iii) and (iv) of clause (b) of sub-section (1) of section 11, of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), read with notification of the Government of India, in the Ministry of Communication and Information Technology (Department of Telecommunication) No.39, ----------

(a) issued, in exercise of the powers conferred upon the Central Government by proviso to clause (k) of sub-section (1) of section 2 and clause (d) of sub-section (1) of section 11 of the said Act, and

(b) published under notification No. 39 (S.O. 44 (E) and 45 (E)) dated the 9th January, 2004 in the Gazette of India, Extraordinary, Part II- Section 3- Sub-section (ii), ----

the Telecom Regulatory Authority of India hereby makes the following regulations further to amend the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004 (13 of 2004), namely:-

1. (1)These regulations may be called the Telecommunication (Broadcasting and Cable Services) Interconnection (Ninth Amendment) Regulation, 2015 (6 of 2015).

2. In regulation 2 of the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004 (13 of 2004), -----

(a) sub-clause (ib)shall be deleted;

(b) for sub-clause (ic), the following sub-clause shall be substituted, namely:------

"(ic) **"commercial subscriber"** means a subscriber who causes the signals of TV channels to be heard or seen by any person for a specific sum of money to be paid by such person,"

(c) for the sub-clause (ma), the following sub-clause shall be substituted, namely:-----

"(ma) "**ordinary subscriber**" means a subscriber who is not a commercial subscriber.

(Sudhir Gupta)
Secretary, TRAI

Note.1-----The principal regulation was published in the Gazette of India, Extraordinary, Part III, Section 4, vide notification No. 8-26/2004-B&CS dated 10th December 2004 and subsequently amended vide notification No. 3-57/2005/B&CS dated 3rd March 2005, No. 11-

13/2006-B&CS dated 24th August 2006, No. 6-4/2006-B&CS dated 4th September 2006, No. 4-54/2007-B&CS dated 3rd September 2007, 3-21/2009-B&CS dated 17th March 2009, No. 6-7/2010-B&CS dated 30th July 2010, No. 6-11/2014 - B&CS dated the 10th February, 2014 and No. 6-32/2014 - B&CS dated the 18th July, 2014

Note.2-----The Explanatory Memorandum explains the objects and reasons of the

Telecommunication (Broadcasting and Cable Services) Interconnection (Ninth Amendment)

Regulation, 2015 (6 of 2015)

Annexure

Explanatory Memorandum

Background

1.The Telecom Regulatory Authority of India (TRAI) is a statutory body established by the Telecom Regulatory Authority of India Act, 1997 (hereinafter referred to as the TRAI Act). Since its inception some of the prime focus areas of TRAI have been, to protect the interests of consumers and service providers of the telecommunication sector and to promote the orderly growth of telecommunication services.

2.The Government of India, through a Notification dated 9 January 2004, notified "broadcasting services" and "cable services" as "telecommunication services". Accordingly, since 2004 TRAI has been regulating the broadcasting and cable TV sector in India by exercising its recommendatory as well as regulatory powers.

3.Soon after it came to be vested with regulation of broadcasting and cable TV services sector, TRAI notified, in the interim, the Telecommunication (Broadcasting and Cable) Services Tariff Order, 2004 on 15 January 2004. Vide this order charges payable by Cable subscribers to Cable Operators, Cable Operators to MSOs/Broadcasters and MSOs to Broadcasters as on 26 December 2003 were prescribed to be the ceiling for Free-to-Air (FTA) and pay channels, until final determination by TRAI. On that date, there was no categorization made amongst the cable subscribers. Thereafter, on 01 October 2004, TRAI notified the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order, 2004 (hereinafter referred to as 'Principal Non-CAS Tariff Order') superseding the interim tariff order issued on 15 January 2004. This tariff order also, retained the ceilings imposed on cable TV charges. In this tariff order also, no categorization was made amongst the TV subscribers.

4.On 08 August 2005, the Association of Hotels and Restaurants filed Petition Nos. 80(C) and 32(C) of 2005, before the Hon'ble TDSAT challenging the differential tariffs charged by some broadcasters. On 17 January 2006, the Hon'ble TDSAT dismissed the petition wherein it concluded that the members of the petitioner associations couldn't be regarded as subscribers or consumers. It also asked the Authority to consider whether it was necessary or not to fix tariff for commercial cable TV subscribers.

5.On 07 March 2006, TRAI, upon considering the observations made by TDSAT in its Order dated 17 January 2006 and a representation received from Federation of Hotel and Restaurants Association of India (FHRAI), in the interim, notified the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Fourth Amendment) Order, 2006(2 of 2006). In this order, two classes of subscribers - ordinary cable subscribers and commercial cable subscribers were defined. This order also provided that for the commercial cable subscribers, the rates (excluding taxes) payable by one party to the other by virtue of the written/oral agreement prevalent on 01 March 2006 shall be the ceiling and the principle applicable in the written/oral agreements prevalent on 01 March 2006, should be applied for determining the scope of the term "rates". Similar provision was also made for all subscribers other than commercial cable subscribers.

6.On 21 April 2006, a Consultation Paper was issued by TRAI for detailed consultations on the issue. In the meantime, Civil Appeal No. 2061 of 2006 was filed challenging the Hon'ble TDSAT's order dated 17 January 2006 by Associations of Hotels and Restaurants before the Hon'ble Supreme Court of India and the Hon'ble Supreme Court passed a "status quo" order on 28 April 2006. This status quo order was modified by the Hon'ble Supreme Court, on 19 October 2006, directing the Authority to carry out the processes for framing the tariff under Section 11 of the TRAI Act independently and not relying on or on the basis of any observation made by TDSAT. In the said order it was also mentioned that there is no need of issuing another consultation paper, however while issuing the Tariff Order it should be ensured that all the provisions of the TRAI Act have been complied with.

7.Accordingly in pursuance of the directions of the Hon'ble Supreme Court, draft tariff amendment orders seeking comments of the stakeholders was placed on the website of TRAI.

8.After following the due consultation process, in pursuance of the directions of the Hon'ble Supreme Court, the Authority issued two Amendment Orders on 21 November 2006, viz

The Telecommunications (Broadcasting & Cable) Services (Second) Tariff (Seventh Amendment) Order, 2006 (8 of 2006) and The Telecommunication (Broadcasting and Cable) Services (Third) (CAS Areas) Tariff Order, 2006 (6 of 2006), applicable to commercial subscribers in Non-CAS and CAS areas respectively. These tariff amendment orders had the following main provisions:

(a) With respect to hotels with ratings of 3 stars and above, heritage hotels and hotels with a capacity of 50 or more rooms (hereinafter referred to as "the Excluded Categories of Hotels"), the charges were to be mutually negotiated.

(b) The charges for other categories of hotels (except excluded categories of hotels) shall be at the same rate as for ordinary subscribers and other commercial subscribers.

(c) In respect of programmes of a broadcaster, shown on the occasion of a special event for common viewing, at any place registered under the Entertainment Tax Law and to which access is allowed on payment basis for a minimum of 50 persons by the commercial cable subscribers, the tariff shall be as mutually determined between the parties.

9.On 24 November 2006, the Hon'ble Supreme Court of India decided Civil Appeal No. 2061 of 2006 and reversed the order of the TDSAT dated 17 January 2006 and remanded the matter back to TRAI directing it to carry on the process for fresh determination of tariff independently.

10. Hotels which formed a part of the excluded category under the Notifications dated 21 November 2006 and the Federation of Hotel and Restaurants Association of India (FHRAI), filed Appeals No.17(c) of 2006 (East India Hotel Ltd vs. TRAI and Ors) and 18(c) of 2006 (The Connaught Prominent Hotels Ltd vs. TRAI and Ors) before the Hon'ble TDSAT challenging inter alia the Tariff Order/ Notification dated 21 November 2006, issued by TRAI. The Hon'ble TDSAT, by its judgment dated 28 May 2010, allowed appeals and

quashed the tariff order and, amongst others, asked the Authority to consider the case of commercial establishments afresh in a broad based manner.

11.Civil Appeal Nos. 6040-6041 of 2010 filed by one of the broadcasters (M/s ESPN) and other connected appeal Nos. 10476-10477 of 2010 and 8358-8359 of 2010 were filed before the Hon'ble Supreme Court challenging the judgment of the Hon'ble TDSAT dated 28 May 2010, wherein:

(a) On 16 August 2010, the Hon'ble Supreme Court passed an *ad interim* order of stay on the order of the TDSAT dated 28 May 2010.

(b) By its judgment dated 16 April 2014, the Hon'ble Supreme Court dismissed Civil Appeal No. 6040-41 of 2010 and other connected appeals. The Hon'ble Supreme Court further directed TRAI to consider the matter de-novo within 3 months and to re-determine tariff.

12. Accordingly, TRAI issued a consultation paper on 11 June 2014 and subsequently, after following the due consultative process notified the following Regulations and Orders–

(a) The Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Twelfth Amendment) Order, 2014 (5 of 2014) on 16 July 2014.

(b) The Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff (Fourth Amendment) Order, 2014 (6 of 2014) on 18 July 2014. (c) The Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) (Fourth Amendment) Regulation, 2014 (9 of 2014) on 18 July 2014.

(d) The Telecommunication (Broadcasting and Cable Services) Interconnection (Eighth Amendment) Regulation, 2014 (8 of 2014) on 18 July 2014.,

13. The above two Tariff Amendment Orders were challenged by the Indian Broadcasting Foundation and Others, in Appeal No. 7(C) of 2014, before the Hon'ble TDSAT. A Writ Petition No. 5161 of 2014 (Star India vs. TRAI and Ors.) was filed before the Hon'ble High Court of Delhi challenging the above amendments dated 16 July 2014 and 18 July 2014, to the Tariff Orders and to the Interconnect Regulations applicable to Non-CAS areas and to DAS areas.

14. The Hon'ble TDSAT in its order dated 09 March 2015, allowed the appeal filed by the Indian Broadcasting Foundation, quashing the two tariff amendment orders dated 16 July 2014 and 18 July 2014. The Hon'ble TDSAT while allowing the appeal also, inter-alia, directed TRAI to issue fresh orders within six months from the date of the judgment. Further, it was also mentioned in the said judgment that the Authority may also take a decision with regard to any interim arrangement within one month from the date of the judgment.

15. In Writ Petition No. 5161 of 2014, the Hon'ble High Court of Delhi, issued an order on 15 May 2015, holding that while determining the tariff in terms of the order of TDSAT dated 09 March 2015, TRAI shall not consider itself bound by the regulations impugned in the petition in any manner whatsoever.

16. TRAI has filed an appeal (Civil appeal No 4851 of 2015 (TRAI vs. IBF and others)) in the Hon'ble Supreme Court challenging the order dated 09 March 2015, delivered in appeal No 7(C) of 2014, of the Ld. TDSAT.

17. TRAI issued a press release, dated 13 May 2015, clarifying its position with respect to the interim arrangement referred to in the Hon'ble TDSAT order dated 09 March 2015. The relevant extracts of the press release are given below-

> *"....an ad interim measure, the "Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order 2004" (6 of 2004) dated 01.10.2004, the "Telecommunication (Broadcasting and Cable) Services (Third) (CAS Areas) Tariff Order 2006 (6 of 2006) dated 31.08.2006 and the "Telecommunication (Broadcasting and Cable) Services) (Fourth) (Addressable Systems) Tariff Order, 2010 (1 of 2010) dated 21.07.2010 respectively shall apply subject to the outcome of the civil appeal filed by TRAI before the Hon'ble Supreme Court challenging the order dated 9th March, 2015 of the Hon'ble TDSAT."*

18. The Authority, as per the Hon'ble TDSAT order initiated a consultation process and issued a consultation paper (CP) titled "Tariff issues related to commercial subscribers" on 14 July 2015 seeking comments/ views of all the stakeholders. The CP took a fresh and holistic approach without being biased with previous determinations to the issue. A total of 22 comments were received, however no counter-comment was received. An Open-House discussion (OHD) was conducted on 18 August 2015 at New Delhi wherein 73 stakeholders

participated. A total of 11 post-OHD comments were also received.

19. This amendment to the interconnection regulations is being issued after comprehensive study and analysis of the issues while taking into consideration comments/ views of all the stakeholders in response to consultation paper as well as discussions in OHD.

Analysis of Issues

Need for differentiation between ordinary and commercial subscribers and requirement for separate definition

20.The consultation paper sought the views of all stakeholders on the basic issue of whether there is a need to define and differentiate between ordinary and commercial subscribers for provision of TV signals. The views/opinions of the stakeholders who responded during the consultation process are summarized below.

Stakeholder comments

21.All broadcasters and their association have brought out that it is essential to define and differentiate between ordinary and commercial subscribers for provision of TV signals.

22.Most of the DPOs have stated that there is no need to define and differentiate between the ordinary and commercial subscribers. Some of the reasons put forward to justify their view are as follows:

(a) In an addressable regime, each STB is a subscriber and is thereby fully accounted for.

(b) There is no difference in the TV service that is provided to an ordinary or a commercial subscriber.

23.Some DPOs also suggested that the only exception when such a differentiation must

actually be made is when a commercial establishment charges separately for the TV services provided to his clients thereby exploiting the TV signals for commercial gains.

24.Almost all hotels and their associations have submitted that no differentiation is required between the ordinary and commercial subscribers. Some of the reasons put forth in support of their argument are as follows:

(a)Television service in hotels is a necessity by virtue of the Ministry of Tourism guidelines issued vide letter no 8-TH-I93)/2013 dated 16.12.2014.

(b)TV service is an essential service to be provided to the guests as per the decision of the Ld. TDSAT dated 27 February 2007.

(c)Hotels and restaurants do not recover the cost of TV subscription from their guests.

(d)Commercial subscribers have no better bargaining power than residential subscribers especially vis-à-vis the broadcasters.

25.Individuals including an industry observer and an industry association have opined that there is no need for differentiation between ordinary and commercial subscribers. However, one individual has suggested that there should be a categorization of the subscribers as ordinary and commercial and the commercial subscribers can be further categorized based on the scale and type of commercial activity that is carried out at such a subscriber's location.

Analysis

26. The penetration of TV services in the country in the last few decades has been on the rise exponentially and most of the households and other establishments in urban and semi-urban areas now have access to pay TV services. There has been paradigm shift from the way TV was looked at in 2006 when initially TRAI gave separate classification for commercial subscribers. Viewing Pay TV channels in Hotels in 2006 was considered a luxury and many a time separate rates for similar rooms with TV and without TV were quoted. Now pay TV has become ubiquitous and classifying hotels as commercial TV subscribers merely on the basis that they provide TV signal viewing facility in hotel rooms does not holds ground. Now a days, it is not only the hotels and restaurants but various other public places such as Airports, Malls, Shopping complexes, Hospitals, Doctors' Clinics etc., where one can have

access to viewing of TV channels. Most of the individual visiting these establishments would have in the normal case already paid for domestic access to the TV content. Viewing of TV programs, if at all, at such places is not novelty and in no way adds to special experience. It can safely be presumed that an individual visiting these establishments cannot be doing so solely for the purpose of watching TV content. Moreover, with pervasiveness of TV services in the country and widespread availability of paid TV content, it no longer is a distinctive value proposition for these establishments to attract clientele on the basis of such TV services. In most cases, the TV services in a basic form are offered to the client akin to any other basic amenity. However, there may be instances where the establishments do charge their clients for providing premium TV content with enhanced attractiveness. In these specific cases, such establishments may be said to be exploiting the display of premium TV content to bring in additional revenues and thereby they do stand to benefit commercially by causing the TV broadcast to be heard or seen by the public on payment of charges.

27. The Authority is therefore of the view that TV services being used at these establishments, may broadly be classified in two categories - (i) where the client does not have to pay separately to use the TV services or where use of TV services is incidental to the primary purpose; in other words, when the TV services are not being separately charged and (ii) where the client does pays separately for use of the TV services and the establishments earn revenues from provision of such TV services. Hence, depending upon the type of the usage of TV services, there is a need to differentiate and define 'ordinary subscriber' and a 'commercial subscriber' separately.

Basis or criterion for the classification of subscribers of TV services

28. The issue raised in the consultation paper was that in case a classification of subscribers of TV services is necessary, then what should be the basis or criterion for such a classification. Consultation paper flagged various possibilities of such classification based on place of viewing TV signal, type of usage criteria for TV signals, method of provisioning of TV signals, type of content of TV signal, perceived value of TV services and also sought suggestions from the stakeholders for any other criteria which they may like to suggest. The views/opinions of the stakeholders who responded during the consultation process are summarized below.

Stakeholder comments

29.Most of the broadcasters and their association have opined that it is essential to differentiate between ordinary and commercial subscribers for provision of TV signals. Further, differentiation based on 'type of usage' and the 'place of usage' has been suggested by them as the most appropriate criteria. Broadcasters have also suggested that the commercial establishments should further be classified into the following:–

a)Hotel rooms.

b)All commercial outlets that include restaurants, shops, factories and offices with exemption however being granted to the following:-

(i) Those with less than twenty employees.

(ii)Premises of area less than 2500 sq. ft. within city limits and 5000 sq. ft. outside city limits.

* with a caveat that exemptions under (i) and (ii) above must not apply in metropolitan cities, state capitals and class A/B cities.

(iii)Micro-enterprises under the MSME Act 2006.

c)Public viewing areas including airport lounges, banquet and party halls, hotel lobbies, theatres and auditoriums etc.

30.One of the broadcasters has suggested that the classification of TV subscribers can also be done on the basis of the fact that whether the service availed by the establishment is "incidental" or "essential" to the core area of its business. In the event that they choose to use an incidental service such as TV to enhance their businesses in any way, this will be for commercial gains. Service providers (broadcasters) of such services should have the right to charge separately as it is used for a clear commercial gain.

31.DPOs and their associations have stated that there is no need to differentiate between ordinary household subscriber and commercial establishments such as Hotels, Restaurants, Airports, Malls, Shopping complexes, Hospitals, Doctors' Clinics, where one

can have access to viewing of TV channels without being charged separately. They also mentioned that since satellite footprint is available across India, hence, possibility of shifting DTH receiver from one location to other location by subscribers can not be ruled out. Hence, any differentiation between commercial subscribers and ordinary household subscriber based on location of uses of TV signals is difficult to be implemented on ground.

32.Some of them have further suggested that the only exception when such a differentiation must actually be made is when a commercial subscriber charges his customers separately for the TV service provided to his clients thereby exploiting the TV service for commercial gains.

33.Almost all hotels and their associations have submitted that there is no differentiation required between the ordinary and commercial subscribers except in case of those subscribers who commercially exploit the TV signals by charging separate fee/entry fee.

34.An individual has opined that there is no need for any differentiation between ordinary and commercial subscribers. An industry association has however suggested that small and medium shop owners should not be considered as commercial subscribers while all organizations providing 1-5 star services should be treated as commercial subscribers.

Analysis

35.Majority of Comments/ suggestions of various stakeholders indicate that there is no need for classification of subscribers while suggesting that the only exception that needs to be made is when clients are charged separately for the provision of TV services. Broadcasters are of the view that 'type of usage' of the TV services as well as the 'place of usage' of the TV services should be the criteria for classification of subscribers. The Authority, having come to the conclusion that while there is a need to define and differentiate subscribers of TV services into ordinary and commercial subscriber categories, is of the opinion that the classification must be simple, unambiguous, and practically implementable across the entire value chain whilst interest of every stakeholder is adequately protected.

36.The Authority has noted that in 2006, the commercial subscribers were defined by relying on "place of usage" of TV signal especially in Hotels irrespective of the type of usage,

which has been contested time and again by the Hotel Industry. Broadcasters have now asked that commercial subscribers to be defined based on both "place of usage" and "type of usage". Other stakeholders are persistently demanding that no distinction should be made either based on place of usage or on type of usage or any other criteria. They are of the view that Authority must consider only those entities for defining commercial subscribers who explicitly exploit the TV signals for commercial gains.

37.In view of above, the Authority has carefully considered various options for classification suggested by the stakeholders. It is noted that in most of the cases, the TV signal in commercial establishments is used only for the infotainment purpose without separately charging for viewing of TV signals. Pay TV channel viewing has become ubiquitous and in most of the places where such commercial establishment exists, almost every household has access to pay TV programs. Therefore, provision of TV services in such establishment does not make any value proposition for the clients visiting such establishment. Further, viewing of TV programs in such establishments is not novelty and most of the clients would have already subscribed for such content. It may not be out of place to mention here that from such viewing of TV channels Broadcasters also get advantage by way of more advertisements due to increased viewership. Further, Ministry of Tourism has mandated provision of TV services in rooms for 3 star hotels and above and in lobby for other hotels in Dec 2014. As such, considering the scenario where content is monopolistic in nature and hotels are mandated to provide such content, the regulatory framework must balance the interest of stakeholders in the value chain.

38.The Authority has noted that there may be instances where TV signals are commercially exploited by separately charging for exhibiting the TV programs. Therefore the distinguishing criteria can be the 'type of usage of TV signals' i.e., where the signals are commercially exploited by charging separately for its exhibition for earning revenues out of it.

39.Moreover, the Hon'ble Supreme Court in its judgment dated 24.11.2006 in appeal (Civil) 2061 of 2006 Hotel and Restaurants Association and Anr Vs Star India Pvt Ltd. and Ors has, amongst others, observed as under:

"….The owners of the hotels take TV signals for their customers/ guests. While doing so, they inter alia provide services to their customers. An owner of a hotel provides various amenities to its customers such as beds, meals, fans, television, etc. Making a provision for

extending such facilities or amenities to the boarders would not constitute a sale by an owner to a guest. The owners of the hotels take TV signals from the broadcasters in the same manner as they take supply of electrical energy from the licensees. A guest may use an electrical appliance. The same would not constitute the sale of electricity by the hotel to him. For the said purpose, the 'consumer' and 'subscriber' would continue to be the hotel and its management. Similarly, if a television set is provided in all the rooms, as part of the services rendered by the management by way of an amenity, wherefor the guests are not charged separately, the same would not convert the guests staying in a hotel into consumers or subscribers….."

40. The said judgment further quotes another judgment of the Hon'ble Supreme Court (in The State of Punjab v. M/s. Associated Hotels of India Ltd. [(1972) 1 SCC 472)]) on similar issue, which is reproduced as under:

"…. When a traveller, by plane or by steam-ship, purchases his passage-ticket, the transaction is one for his passage from one place to another. If, in the course of carrying out that transaction, the traveller is supplied with drinks or meals or cigarettes, no one would think that the transaction involves separate sales each time any of those things is supplied. The transaction is essentially one of carrying the passenger to his destination and if in performance of the contract of carriage something is supplied to him, such supply is only incidental to that services, not changing either the pattern or the nature of the contract. Similarly, when clothes are given for washing to a laundry, there is a transaction which essentially involves work or service, and if the laundryman stitches a button to a garment which has fallen off, there is no sale of the button or the thread. A number of such cases involving incidental uses of materials can be cited, none of which can be said to involve a sale as part of the main transaction. …."

41.From the observations of the Hon'ble Supreme Court, cited above, it is clear that provision of TV services in a commercial establishment is only incidental to the service that the commercial establishment is providing to its clients. Thus, it has also been settled by the said judgment that any service rendered to a guest by way of an amenity, wherefore the guests are not charged separately, the same would not constitute as sale of the said service to the guest.

42.In view of above deliberations, the Authority is of the view that the basic criteria for classification of subscribers should be whether the TV services, irrespective of its place of

provisioning, are being commercially exploited, by the subscriber to earn revenues by charging separately for such services. In other words, the criteria for classification of subscribers should be the 'type of usage' of TV signals by the subscriber and not the subscriber's 'place of usage of signals'. In view of the discussions in paragraphs above, the Authority has decided that the subscribers who charge their clients separately to use the TV services, amounting to commercial exploitation of TV services to earn revenues out of it from their clients, shall be classified as 'commercial subscribers'. And all other subscribers shall be classified as 'ordinary subscribers'. Accordingly, 'ordinary subscriber' and 'commercial subscriber' have been defined in this amendment to the interconnection regulations.

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