

Consultation Paper No. 6/2006



Telecom Regulatory Authority of India

Consultation Paper

on

Interconnection Issues relating to

Broadcasting & Cable Services

MAY 11, 2006

**TRAI HOUSE
A-2/14, SAFDARJUNG ENCLAVE**

NEW DELHI-110029

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PREFACE

The TRAI had sent its Recommendations to the Government in October, 2004 on Issues Relating to Broadcasting and Distribution of TV Channels. Meanwhile, TRAI had also issued Regulations covering certain issues relating to Interconnection. The primary objectives of these regulations were:

- i) To provide a framework for access to content by various distributors so as to enhance competition and consumer choice.
- ii) To minimise disconnection and inconvenience to consumers on account of disputes between service providers.
- iii) Registration of details of interconnection agreements in accordance with the provisions of the TRAI Act.

2. More than a year has elapsed since these regulations were issued. It is felt that it is time to take a comprehensive review of the regulations in the light of the experience gathered so far. Further certain new issues have arisen which were not addressed in the earlier regulations. Accordingly a Consultation Note had been issued on 21st March, 2006 inviting stake-holders to give inputs on the issues that could be raised in the Consultation Paper.

3. Drawing upon the response to the Consultation Note this Consultation Paper has been prepared. After giving the background in Section-1, Section-2 deals with issues relating to amplification and modification of the existing provisions and Section-3 deals with widening the scope of the regulations.

4. Written comments are invited on the issues raised which may please be sent to Secretary, TRAI by 31.5.2006. For any further clarification on the matter Secretary, TRAI may be contacted on rstrai@gmail.com (Telephone No.011-26167448) or Advisor (B&CS) on rkacker@traigov.in (Telephone No.011-26713291). The fax number of TRAI is 011-26713442.

(Nripendra Misra)
Chairman

New Delhi
May 11, 2006

CHAPTER – 1: INTRODUCTION

1.1 The Government of India had issued a Notification No.39 dated 09.01.04 whereby the meaning and scope of the expression ‘telecommunication services’ (defined in Section 2 (1) (k) of the Telecom Regulatory Authority of India Act, 1997) was expanded to include the broadcasting services and cable services also. Consequently, the Telecom Regulatory Authority of India was entrusted with the additional task of regulation of cable and broadcasting services in the country.

1.2. The TRAI issued Tariff Orders and Regulations to regulate the industry. The Tariff Orders were issued with the objective of regulating the price paid by the consumers for Cable TV services. The Telecommunication (Broadcasting and Cable Service) Interconnection Regulation 2004 dated 10.12.2004 (hereafter referred to as the Interconnect Regulations) was issued to ensure non-discriminatory access of content to all distributors of television channels and to safeguard the interests of consumers in case of disconnection of signals to a service provider in case of a dispute. The Regulation does apply to all areas – CAS and Non CAS but nevertheless it is necessary to make a distinction between the two while analysing issues. This is because there is a fundamental difference in the way interconnection issues are dealt with in the two regimes – in CAS areas there would be no conflict over subscriber base while in Non CAS areas the major source of conflict is the estimation of subscriber base. Many of the issues that have been raised in this paper may be relevant only in a non CAS environment.

1.3. The Interconnection Regulation was issued more than one year 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. There were also some requests for review/ amendment of the Interconnect Regulations. There were a large number of complaints regarding violation of The Interconnect Regulation. Many cases were filed by service providers in the TDSAT. Out of 80 judgments posted on the website of TDSAT as on 5.4.2006, the number of judgments relating to cable TV sector was 54. Thus a need was felt to expand the scope of Interconnect Regulations so as to minimize the doubts and disputes/ litigation.

1.4. The Authority began its process of examination of the relevant issues by issue of a Consultation Note on 21.3.2006 so as to have the necessary platform for discussing them. This Consultation Paper has been 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 (hereafter referred to as the Registration of Agreements Regulation) have also been included. Some responses to the Consultation Note raised issues related to amendment of Tariff Orders. The process of consultation for amendment of Tariff Orders was separately undertaken by the Authority vide Consultation Paper dated 7th November 2005 and has been completed. The Authority would be taking a final view in the matter shortly.

1.5. Some stakeholders have reported problems in implementing the existing regulations. There have also been comments that the existing regulations are not comprehensive enough. In particular, the request for formulation of a Reference Interconnect Offer (RIO) has been made recently. This Consultation Paper covers issues relating to amendments of the existing Regulations as well as expansion of the existing Regulations.

1.6. The purpose of this Consultation Paper is to invite comments from all stakeholders on various interconnection issues related to broadcasting and cable services in India. The Consultation Paper's primary objective is to provide inputs which can form the basis for review and expansion of the existing interconnection framework for the broadcasting and cable industry in the country. The Paper has been divided into two parts – Section 2 deals with the amendment of the existing provisions of the Regulations while section 3 deals with the expansion of the scope of the existing Regulations.

CHAPTER – 2: AMENDMENT OF EXISTING REGULATIONS

2.1 The experience of implementation of the existing interconnection regulations has shown that there are certain clauses which need to be amended for the sake of clarity. Any ambiguity in the regulations leads to different interpretations of the regulation and ultimately results in litigation. There are other clauses which are not ambiguous but are sometimes difficult to implement on account of difficulties in verification of facts. The possible amendments to existing regulations are discussed in this chapter.

2.2 Two Notice Periods

2.2.1 Two notice periods of One Month/ Two Working Days have been provided in the regulations for the notice to be given to a distributor of TV channels prior to disconnection of signals. The provisions of clause 4.1 of The Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004 provide that-

*“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 retransmitting 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”.*

Thus two notice periods have been prescribed in the regulation. This was done to ensure that in the case of unauthorized distribution the broadcaster could quickly react and not allow the violation of his rights

to continue unchecked. This leads to disputes regarding notice period applicable in specific cases. For example -

- cases where the broadcaster claims that the MSO/ LCO is providing signals outside the authorized area;
- cases where the agreement has expired and no valid agreement is in force;
- cases where a new LCO has joined an MSO;
- cases in which there is no written agreement.
- different areas prescribed for the same LCO/MSO by different broadcasters.

While the signal provider gives a notice of two working days, the distributor of TV channels insists that a notice of one month should have been given. Thus the different meanings of piracy/ unauthorized retransmission of signals adopted by different service providers leads to disputes.

2.2.2 The issues for consultation are:

- **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?**

2.3 Notice to disconnect

2.3.1 The Broadcasters/ MSOs are required to give notice to the distributor of TV channels prior to disconnection of signals. They are also required to inform the consumers about the impending disconnection of signals. As of now the Broadcasters/multi system operators have the option to inform the consumers about the notice to disconnect signals by way of a public notice in two local/ national newspapers or by way of a scroll on the concerned channels. The provisions of clause 4.2 of The Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004 provide that

*“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)”.*

2.3.2 The issues that arise out of this requirement are:

- Sometimes, the notice to disconnect is given to the service provider but the public notice is not issued simultaneously. As a result the viewers get less than the stipulated time for protecting their interests;
- Sometimes there is a dispute between the service providers as to whether the scroll was run or not.
- There is also confusion as to whether the scroll should be run on all the channels in case the notice of disconnection relates to a bouquet of channels and time for which the scroll should be run.

2.3.3 Further there have also been cases of the channels of Broadcasters being switched off by MSO and Cable Operators. This causes inconvenience to the consumers for no fault of theirs. The existing Regulations have provisions for notice by the MSOs to the Cable Operators and consumers. However there is some lack of clarity on whether this would apply to switch off of all channels or would even apply to selective switch off of a few channels.

2.3.4 The issues for consultation are:

- **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?**

2.4 Access to content

2.4.1 An important feature of The Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004 is the clause which mandates non discriminatory access to TV channel signals to all similarly based distributors of TV channel(s). The broadcasters/ MSOs have been given the option to provide the signals either directly or through a particular designated agent or any other intermediary. The provisions of clause 3.4 of The Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004 provide that

“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)”.

2.4.2 Thus any agent or any other intermediary of a broadcaster/multi system operator must respond within thirty days of the request for providing signals of TV channel(s). However, there are complaints that even though the agent/ intermediary of the Broadcaster/multi system operator responds within the stipulated time, the distributors of TV channels are asked to furnish irrelevant details just to delay the matter. At times negotiations are needlessly prolonged defeating the purpose of the Regulation

2.4.3 On the other hand suggestions have been made by some stakeholders that DTH and IPTV entail a consumer entry cost and therefore, there is need to induce consumers to incur a cost to change their present viewing arrangements. One possibility for expansion of viewer-ship of such platforms would be the availability of driver content and non-discriminatory access of all channels to all distributors of TV channels should not be mandated by regulation.

2.4.4 The issues for consultation are:

- **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 applicant 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?**

2.5 Area of operation

2.5.1 Interconnect, in the context of pay TV channels represents the licensing, for a consideration, of Intellectual Property Rights (“IPR”) in creative content for the purpose of ultimate delivery to a paying subscriber. The area of operation is the basis on which, in the present non-addressable environment, broadcasters and cable operators enter into commercial arrangements. It has been represented that the expansion of area of operation of MSOs and LCOs should be authorized, paid for and respectful of the IPR of all parties and accordingly the obligations on broadcasters and their authorized distributors / agents should apply with regard to demarcated areas of operation only.

2.5.2 The issue for consultation is:

- **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?**

2.6 MSO as an agent of Broadcaster

2.6.1 Clause 3.3 of the Interconnect Regulation authorizes a broadcaster or his / her authorized distribution agency to provide signals of TV channels directly or through a particular designated agent or any other intermediary. The proviso to the said clause reads as under:-

“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.”

2.6.2 The interpretation of this Clause has resulted in a number of disputes and many petitions have been filed in TDSAT. The disputes mainly pertain to the issue as to whether an MSO can be appointed as an agent of the broadcasters or not. The TDSAT has already adjudicated this matter in the Sea TV case (Petition No. 41© of 2005, Judgment dated 24 August 2005) and an appeal against this judgment is pending in the Supreme Court.

2.6.3 The issue for consultation is:

- **Whether the Regulations should specifically prohibit appointment of an MSO, directly or indirectly, as an agent of a broadcaster?**

2.7 Payment defaulters

2.7.1 The Interconnect Regulations provide that the clause which mandates non discriminatory access to TV channel signals to all similarly based distributors of TV channel(s) would not apply in the case

of a distributor of TV channels having defaulted in payment. 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.

2.7.2 The issue for consultation is:

- **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?**

CHAPTER – 3: EXPANSION OF EXISTING REGULATIONS

3.1 There have been requests for expansion of existing regulations so as to bring more issues in their fold. As already mentioned the request for formulation of a Reference Interconnect Offer (RIO) has been recently made. Apart from this, there are other issues also. The possible expansions to existing regulations are discussed in this chapter.

3.2 Subscriber Base

3.2.1 The service providers in non-CAS areas enter into interconnection agreements on the basis of negotiated subscriber base. The lack of any mechanism to measure/determine the correct subscriber base is the basic cause of many disputes. This problem can be divided into the following sub sections-

- (i) Disputes on subscriber base between broadcaster/MSO and between MSO/cable operator during the course of a subsisting contract.
- (ii) Disputes on subscriber base between broadcaster/MSO and between MSO/cable operator at the end of a contract and during negotiations for the extension of the contract.
- (iii) Disputes on subscriber base between broadcaster/MSO and between MSO/cable operator at the start of the contract i.e for a new service provider.

3.2.2 Disputes on subscriber base between broadcaster/MSO and between MSO/cable operator during the course of a subsisting contract

The dispute between the Broadcaster and the MSO typically occurs when there is a migration of one or more cable operators from one MSO to the other. One way of dealing with this issue is for the agreements to have a provision for declaration of the 'Subscription Line Report' (SLR). This method had been recognized in the TDSAT judgment in petition No. 142© and 145 © (Indian Cable Net Co. Ltd. vs. Star India Pvt. Ltd) dated March 29, 2006. Alternatively a mechanism could be set up for the outgoing MSO to furnish details of the payments by these cable operators to the respective broadcasters/incoming MSO and this could form the basis for the adjustments to the concerned MSOs and Broadcasters. So far as the subscriber base of the LCO to the MSO is concerned the dispute would arise if the LCO were to significantly expand his area and add to the number of subscribers. In the absence of a base line number which can be authenticated by an independent person there would be some difficulty in correctly assessing this number. Moreover at times the contract between the LCO and MSO is based on lump sum and not on the basis of a rate and subscriber base.

3.2.3 Disputes on subscriber base between broadcaster/MSO and between MSO/cable operator at the end of a contract and during negotiations for the extension of the contract.

The agreements between service providers have provision regarding revision of subscriber base. However the periodicity of revision of subscriber base is often a matter of dispute. At present there is no mechanism/methodology to determine the increase or reduction in subscriber-base. The problems in this regard are bound to multiply with expansion of DTH services in near future, which would result in shifting of some consumers from cable services to DTH. In Petition No. 39© of

2004 (Asianet Vs Star India Pvt. Ltd) TDSAT had , in its judgment dated March 3, 2006, laid down the principle of parity and had calculated the subscriber base for the petitioner on the basis of the agreed levels of subscriber base with other operators. Once a contract has ended the other issue that arises is on what terms and conditions should the contract be allowed to continue while the negotiations are in progress.

3.2.4 Disputes on subscriber base between broadcaster/MSO and between MSO/cable operator at the start of the contract i.e for a new service provider.

This issue had been tackled by the TDSAT in its judgment in EA No 2 of 2005 dated 17.01.2006 (Sea TV vs. Star India Pvt. Ltd.). The principle adopted here was based on the assessment of the Entertainment Tax Department. However it may not always be the case that there is an assessment which can be relied upon. Moreover in some States the Entertainment Tax is levied on a per network basis and not on a per subscriber basis. Further there are other States where there is no Entertainment Tax at all. In this situation, given the lack of addressability and absence of any local level machinery to enforce the regulations/collect information, there is need to identify other methods to assess subscriber base in such situations.

3.2.5 The issues for consultation are:

- **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?**

3.3 Multi System Operator

3.3.1 The term “Multi System Operator” has been defined in The Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004 as under:-

“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.

In the light of TDSAT judgment in the case of Sea TV Network Ltd., many Cable Operators have started insisting on getting signals directly from the broadcasters claiming to be Multi System Operators. To bring down the number of disputes on this account, it may be worthwhile to define the term “Multi System Operator” more clearly.

3.3.2 The issue for consultation is:

- **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?**

3.4 Renewal of Agreements

3.4.1 The interconnection agreements are normally valid for one year. Renewal of agreements is not done before the expiry of earlier agreement

leading to allegations of unauthorized transmission/pressure tactics. This problem can be overcome if the renewal negotiations are done before the expiry of the existing agreement.

3.4.2 The issue for consultation is:

- **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?**

3.5 Conversion of FTA channels into Pay channels

3.5.1 Some FTA channels are converted into pay channels with time due to change in the business model of the broadcasters. In such cases, all the distributors of TV channels which are distributing the particular FTA channels have to enter into an agreement with the broadcaster/ MSO for continued access to the signals of these channels. Presently no advance intimation is required to be given for conversion of any FTA channel into a Pay channel. Clause 4 of The Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order 2004 lays down the reporting requirement as under:-

“The broadcasters of such new pay channel(s) that have been introduced after 26-12-2003 or of any channel(s) that was a free to air channel on 26-12-2003 is/are converted to a pay channel subsequently, shall furnish to the Authority information in respect of charges for these channels in Schedule I of this Order. This information shall be furnished within seven days of coming into force of this

order or the launch of new pay channel(s)/conversion of free to air channel (s) to pay channels, whichever is applicable”.

It has been represented that the information regarding conversion of a FTA channel into a Pay channel should be given in advance.

3.5.2 The issue for consultation is:

- **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?**

3.6 Reference Interconnect Offer

3.6.1 It has been represented that the TRAI should undertake an exercise similar/ akin to the RIO Regulations dated 12.7.2002 applicable to the telecom services – 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. Similarly demands have been made to issue guidelines with respect to fair, reasonable and non-discriminatory terms for the future agreements between broadcasters and MSOs.

3.6.2 The telecom industry and broadcasting & cable industry differ significantly on account of the fact that there is 100% addressability in the telecom industry, whereas the broadcasting & cable industry has to make a lot of progress in this direction. Moreover, the interconnection

issues in CAS areas are very different from interconnection issues in non CAS areas.

3.6.3 The issues for consultation are:

- **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?**

3.7 Monopoly in the last mile

3.7.1 It has been stated by a stakeholder that an important characteristic of the Cable industry is that the LCO network is generally a local monopoly. At MSO level, the Cable industry is in a contestable market situation. Market entry by new MSOs or territory expansion by incumbent MSOs does not necessarily improve consumer choice, viewing quality or lower consumer price. On the other hand it could simply increase benefits to the last mile operators. Accordingly it has been suggested that there should be consultation on how to increase benefits to the consumers.

3.7.2 The issues for consultation are:

- **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?**

3.8 Carriage fee regulation

3.8.1 Interconnect results in the provision of TV channels by a broadcaster to a distributor and the carriage thereof by such distributor to the consumer home. The limited delivery platform choice compels all broadcasters to use the capacity constrained analogue C&S platform to reach consumers. This has given rise to increase in carriage fees. TRAI had addressed this issue in its Recommendations on Digitalisation of Cable TV. It had been concluded there that it would not be possible to regulate Carriage fees till digitalisation happens and Non Discriminatory Carriage can be insisted upon. This issue has again been raised

3.8.2 The issue for consultation is:

- **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?**

CHAPTER – 4 : ISSUES FOR CONSULTATION

4.1 Amendment of Existing Regulations

4.1.1 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?**

4.1.2 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?**

4.1.3 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?**

4.1.4 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?**

4.1.5 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?**

4.1.6 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?**

4.2 Expansion of Existing Regulations

4.2.1 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?**

4.2.2 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?**

4.2.3 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?**

4.2.4 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?**

4.2.5 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?**

4.2.6 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?**

4.2.7 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?**

Annexure - I

Telecom Regulatory Authority of India

A-2/14, Safdarjung Enclave,

New Delhi 110029

NOTIFICATION

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

Dated:

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 of its publication in the Official Gazette.

2. Definitions:

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 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;
- (c) **“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 the Section 2 of the Cable Television Networks (Regulation) Act, 1995, as amended;
- (e) **“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;
- (f) **“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;

- (g) “**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 of programmes including re-transmission by cables of any broadcast television signals;
- (i) “**cable television network**” means any system consisting of a set of closed transmission paths and associated signal generation, control and distribution equipment designed to provide cable service for reception by multiple subscribers;
- (j) “**distributor of TV channels**” means any person including an individual, group of persons, public or body corporate, firm or any organization or body re-transmitting TV channels through electromagnetic waves through cable or through space intended to be received by general public directly or indirectly. The person may include, but is not limited to a cable operator, direct to home operator, multi system operator, head ends in the sky operator;
- (k) “**direct to home operator**” means an operator licensed by the central government to distribute multi channel TV programmes in KU band by using a satellite system directly to subscriber’s premises without passing through intermediary such as cable operator or any other distributor of TV channels;
- (l) “**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 no notice 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.

'Must Provide' through whom

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.

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.

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TRAI’s response

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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 intermediary.
- iii) Broadcasting services – it should be clarified that these refer to those services intended to be received by the general public *in India*.
- iv) Cable operator – the definition should include one who provides such a service either directly or indirectly.

- v) Cable service – it should be clarified that this means the transmission only with the authorization of the broadcaster.
- vi) The definition of MSO should exclude with reference to consumers, since an MSO is not supposed to reach subscribers directly.
- vii) 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 direct connections to subscribers. If this definition is to be amended as proposed it would mean considerable realignment of the business – this should 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).**
- (ii) 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.

- (iii) This is not necessary since the TRAI Act in any case applies to the whole of India.
- (iv) 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 broadcaster then no protection can be given; this is also being clarified in clause 4.1
- (vi) 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 distributors of TV channels rather than only the cable operator (clause 2(k) amended accordingly).**
- (x) **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.

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Stake-holders comments

- (i) Non- discriminatory access should not be mandated by regulation. Ban on exclusive contracts will hit premium programming and adversely affect competition.

- (ii) 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.
- (iii) 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 Indian Constitution and the rights of broadcasters in the TRIPS agreement and the Berne convention.
- (vi) 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.
- (vii) 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 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.
- (x) 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 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.

- (ii) As has already been explained in the recommendations exclusivity at this stage will only harm the consumers. The provisions of MRTTP 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 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) .**
- (iv) 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 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.
- (vii) 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 systems.
- ii) 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 provide for a minimum of 15/30 days notice for the defaulting distributor to make good the default in payment. The Authority has made similar provisions for telecom service providers for disconnection on the ground of non payment of dues.
- iii) In view of the bandwidth constraint in analogue systems, it may not be possible to re-transmit all the channels requested by the distributor.
- iv) After the words Multi-System Operators “and Cable Operators” should be added.
- v) 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 to those who have indulged in piracy or material breach of commercial terms like under-declaration of subscriber base.
- vii) 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 that content is made available to all distributors so that competition is developed. The addition of the words “similar/equitable” would not help in meeting this objective.

(ii) 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.

(iii) 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 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)**

(vi) 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 agents/intermediaries.
- ii) Multi-system operators should not be allowed to act as a designated distributor agent.
- iii) 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 within that territory and distributor should be able to receive signals of a channel directly from the satellite.
- v) The second and third sentences of this section can be deleted.
- vi) 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 has been added. (proviso added to 3.3)
- (ii) This has been addressed in 2(i) above.
- (iii) The tariff order is an independent order and its provisions will have to be complied with.
- (iv) 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 that the signals are received by the distributor. The primary responsibility has to be that of the broadcaster/MSO.
- (vi) As in 3.2 (i).

3.4

Stake-holders comments

- i) If the agent denies content, the broadcaster must respond to his complaint 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.
- ii) 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 because of their acts of omission/refusal on the part of a broadcaster, MSO or their agent/intermediary.
- iv) It should be stipulated that the broadcaster must provide the signals within 15 days of the request having been made provided that there are no pending dues to the broadcaster/ respond within 30 days.
- v) After the word “broadcaster” the word “MSO” should be added.
- vi) The broadcaster/MSO should ensure that signals are provided to the applicant within 7/30 days.
- vii) This clause should apply even if the broadcaster is not located in India as long as the broadcasting services are marketed in India
- viii) 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 charged as well as declared subscriber base.
- ii) The words “based on number of subscribers” should be deleted from the clause as well as the explanation and the words “use the same distribution technology” should also be deleted from the explanation.
- iii) The words “use the same distribution technology” should be replaced by “irrespective of the technology used for distribution of signals”.
- iv) 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.

- v) Volume discounting should be left to the market and there should be no insistence on a standard scheme.
- vi) 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 there must be some justification for it – in the absence of such justification such discrimination could be used to 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) 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.

3.6

Stake-holders comments

- i) There should be safeguards in place to prevent this clause being used to harass the distributor.
- ii) The “appropriate forum” should be spelt out.
- iii) 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 days is too short to obtain relief in cases of unjustified disconnection. The words "authorisation" and "commercial interest" should be defined.
- (ii) 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) In case of piracy the distributor should be given an opportunity to rectify the problem and protect the commercial interest of the broadcaster/MSO.
- (v) For checking piracy certain safeguards should be specified in the Regulation.
- (vi) The words “for which he/she is not authorized and” should be replaced by the words “by stealing the same in an illegal manner”.
- (vii) 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) 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.
- (iii) 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 be 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 nature of piracy more than two days notice would not be desirable.
- (v) 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.
- (vi) 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

March 3, 2005.

New Delhi

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)".
- (ii) It shall come into force from the date of its publication in the official Gazette.

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

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.

Annexure - II

THE REGISTER OF INTERCONNECT AGREEMENTS (BROADCASTING AND CABLE SERVICES) REGULATION, 2004¹

No. 5-29/2004-B&CS—In exercise of the powers conferred upon it under Section 36 read with clauses (iv), (vii) and (viii) of sub-section 1(b) of section 11 of the Telecom Regulatory Authority of India Act, 1997, the Telecom Regulatory Authority of India hereby makes the following regulation, namely:

1. Short title, extent and commencement—

- (i) This regulation shall be called ‘The Register of Interconnect Agreements (Broadcasting and Cable Services) Regulation, 2004’ (15 of 2004) (hereinafter called regulation).
- (ii) This regulation prescribes the modalities for the maintenance of the register of interconnect agreements entered into by broadcasters, multi system operators and cable operators.
- (iii) This regulation shall be applicable to:
 - (a) All broadcasters, direct to home operators, head ends in the sky operators, multi system operators and cable operators;
 - (b) All interconnect agreements entered into by broadcasters, direct to home operators, head ends in the sky operators, multi system operators and cable operators throughout the territory of India; and
 - (c) All interconnect agreements entered into by the broadcasters, direct to home operators, head ends in the sky operators, multi system operators and cable operators before or after coming into effect of this regulation.
- (iv) This regulation shall come into effect from the date of its publication in the Official Gazette.

2. Definitions—In the regulation, unless the context otherwise requires:

- (i) ‘Act’ means the Telecom Regulatory Authority of India Act, 1997;
- (ii) ‘Authority’ means the Telecom Regulatory Authority of India;
- (iii) ‘broadcaster’ means any person who/which is providing broadcasting service and includes his/her authorised distribution agencies;
- (iv) ‘broadcasting service’ 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

¹ Notification issued by Telecom Regulatory Authority of India, vide F. No. 5-29/2004- B&CS, dated 31 December 2004.

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;

- (v) '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;
- (vi) 'cable service' means the transmission by cables of programmes including re-transmission by cables of any broadcast television signals;
- (vii) 'cable television network' means any system consisting of a set of closed transmission paths and associated signal generation, control and distribution equipment, designed to provide cable services for reception by multiple subscribers;
- (viii) 'consumer' means any person, who is subscriber of any broadcasting service(s) in the country;
- (ix) 'direct to home operator' means an operator licensed by the Central Government to distribute multi channel TV programmes in KU band by using a satellite system directly to subscriber's premises without passing through intermediary such as cable operator or any other distributor of TV channels;
- (x) 'fee' means any charge(s) prescribed by the Authority from time to time for inspection of the register of interconnect agreements, or for copies thereof;
- (xi) '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;
- (xii) 'interconnection' means the technical arrangements under which service providers connect, including through electro-magnetic signals, their equipment, networks and services to enable their customers to have access to the customers, services and/or networks of other service providers;
- (xiii) 'interconnection agreement' for the purpose of this regulation means agreements on interconnection including standard affiliation agreement/ service contract, memorandum of understanding and all its grammatical variations and cognate expressions providing, inter alia, also the commercial terms and conditions of business between the parties to the agreement;
- (xiv) 'multi system operator' means any person who receives a broadcasting service from a broadcaster and/or their authorised 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;

(xv) 'Person' includes –

- (i) a firm whether registered or not;
- (ii) a Hindu undivided family;
- (iii) a cooperative society;
- (iv) a company registered under the Company's Act, 1956;
- (v) every other association of persons whether registered or not under Societies Registration Act, 1860 (21 of 1860).

(xvi) 'register' means the register of interconnect agreements maintained by the Authority either in the print form as a Register and/or maintained as a data base in electronic medium or in any other form as the Authority may prescribe from time to time.

(xvii) Words and expressions used in this regulation and not defined here shall bear the same meaning as assigned to them in the Act.

3. Contents of the register. – The register shall be maintained in two parts. Part A will contain list of all interconnect agreements with the names of interconnecting service providers, service areas of their operation and the dates of execution of such agreements and such other information which are not declared confidential in terms of clause 4 of this regulation. Part B of the register will contain information which the Authority may direct to be kept confidential and it shall not be open to inspection by the public.

4. Confidential portion of the register. –

- (i) If the Authority on the request of any party to an interconnect agreement or suo motu, is satisfied that there are good grounds for so doing, it may direct that any part of such interconnect agreement be kept confidential.
- (ii) If the Authority declines the request to keep any portion of the interconnect agreement confidential, it shall record its reason for doing so and furnish a copy of its order to the party making the request. In that event, such party will have the right to make a representation and/or to be heard by the Authority against such order.
- (iii) The Authority may, at any time disseminate confidential information in part B of the register if in its opinion, the disclosure of the information would be in public interest. Before making such disclosure, the Authority shall afford an opportunity of hearing to the party to the interconnect agreement at whose request such information had been kept confidential.
- (iv) Where there is any request for keeping any part of the interconnect agreement confidential, such part of the agreement shall remain

confidential until the Authority decides otherwise in accordance with the above provisions.

5. Registration of interconnect agreements. —

- (a) All broadcasters shall register with the Authority interconnect agreements entered into by them or modifications/amendments thereto with the Authority within the time frame specified under clause 5(b).
- (b) The time limit for registering the interconnect agreement and amendments/ modifications thereto shall be:
 - (1) First Reporting for existing broadcasters—15 February 2005 for all interconnect agreements, which had been entered into prior to the date of this notification including amendments and modifications made upto 31 December 2004.
 - (2) First Reporting for new broadcasters—Thirty days from the signing of the interconnect agreements.
 - (3) Quarterly Updation—30 April, 31 July, 31 October and 31 January of the calendar year for the modification/ amendments made in all interconnect agreements as well as new interconnect agreements during the preceding quarter of January to March, April to June, July to September and October to December, respectively.

6. The broadcasters shall furnish to the Authority, information relating to the interconnect agreement in two parts namely, Part A and Part B, in print form alongwith a soft copy of the same in electronic form with Part A in Microsoft Word Software and Part B in Microsoft Excel Software or in any other form as may be prescribed from time to time as detailed below:

- (a) Part A containing the standard affiliation agreement/service contract/ memorandum of understanding, duly authenticated in duplicate.
- (b) Part B containing in tabular form the details - of individual agreements, of contracting parties with addresses, of service area covered by the agreement, of integrated receiver decoder number and terms of hiring of integrated receiver decoder, of contract number, of date of entering contract, of date of expiry of contract, of number of channels, of details of channels, of subscriber base, of charges per subscriber per month, of discounts in the case of Non-Conditional Access System (CAS) areas.
- (c) Part B for CAS areas shall additionally contain details of maximum retail price of each individual channel; of bouquet of channels; of minimum subscriber guarantee if any, besides what is required to be provided in non-CAS areas under clause 6(b) of the regulation above:

Provided the Authority may from time to time prescribe such formats for seeking disaggregated information on such parts of standard affiliation agreement/service contract/memorandum of understanding

referred to as Part A over and above and in addition to what is required to be furnished as Part B, as may be necessary, for maintaining the register as provided in clause 3 of this regulation.

7. Access to the register. – Subject to the provisions contained in clauses 3 and 4 of this regulation, the register shall be open for inspection by any member of the public on payment of prescribed fee and on his fulfilling such other conditions as may be provided for in the regulation or as may be notified by the Authority from time to time.

8. Any person seeking inspection of the register shall apply to the officer designated for the purpose by the Authority, detailing therein the information he/ she seeks.

9. The designated officer shall allow inspection of the register and also make available extracts of the relevant portions of the register on payment of such fee as may be prescribed from time to time.

10. The Authority may also allow access to the register through the web-site maintained by the Authority on the same conditions and on payment of such fee as may be prescribed from time to time.

11. Levy of fees and other charges. – (i) There shall be levied a fee of Rs. 50 per hour for inspection of the register.

(ii) A fee of Rs. 20 per page shall be charged for copies of extracts from the register.

12. General. – In case of any doubt with regard to the interpretation of any of the provisions of the regulation, the decision of the Authority shall be final and binding.

ANNEXURE A

EXPLANATORY MEMORANDUM

1. The Telecom Regulatory Authority of India had notified the Register of Interconnect Agreement Regulation, 1999 (2 of 1999) and it came into effect w.e.f. 1 September 1999. These regulations contain the modalities for the maintenance of the Register of Interconnect Agreements between service providers and matters connected therewith. Broadcasting and Cable Services was brought within the ambit of telecommunication services in terms of section 2(k) of the Telecom Regulatory Authority of India Act, 1997, as amended. The principal regulations were amended on 3.2.2004 to include the Broadcasting and Cable services. In terms of the amended regulation, in respect of Broadcasting and Cable Services, the Broadcasters including their authorised distribution agencies and Multi-Service operators are required to register with the Authority any interconnect agreement to which they are parties. A number of definitions relating to the Broadcasting and Cable Services were also added to the principal regulations.

2. While processing cases of registration of the Interconnect Agreements, on the Broadcasting and Cable services side, it was found, that Broadcasters and MSOs use standard form of Interconnect Agreements for a particular type of arrangements entered into with a group of subscribers. These standard forms vary from group to group and between MSOs/Broadcasters depending upon the nature and type of arrangements. Besides the volume in terms of number of agreements expected to be registered is also likely to be very large if the MSOs/Broadcasters were to submit agreements individually. Further most of the MSOs/ Broadcasters state that the information furnished particularly, on the number of subscribers, subscription rate, number and details of channels, discounts schemes etc. are commercially sensitive and therefore, have to be kept confidential.

3. Besides, it was noted that:

- (i) The nature of Broadcasting and Cable Services Industry is different from that of the Telecom Sector.
- (ii) The practices prevailing in the Industry relating to the nature and type of commercial and technical agreements entered into are such that the provisions of the existing regulations in general and in particular, on maintenance of Register of Interconnect Agreements and structure of formats in which the information is furnished, would not cater to the specific needs of this sector.

- (iii) The desire on the part of service providers to keep almost the entire information confidential so as to keep their commercial interest protected and this confidential data being very specific the requirement of non-confidential summary as per the existing regulations was found to serve no useful purpose.
- (iv) The volumes of agreements that would require to be handled if individual agreements entered into by Broadcaster and MSO where they are parties were to be registered.

4. The above experiences suggested that the existing regulations would require extensive amendments to suit the specific requirements of Broadcasting and Cable Services and it was also felt this could lead to lack of clarity in the interpretation of the provisions. In view of the above factors, it is viewed, as necessary, to formulate separate set of Register of Interconnect Agreements Regulations for Broadcasting and Cable Services instead of amending the existing principal regulations of 1999. This would be simpler and also avoid difficulties and confusion on interpreting the various provisions of the regulations.

5. The new Register of Interconnect Regulations requires all Broadcasters to register with the Authority all Interconnect Agreements entered into by them as against the provisions in the existing regulations which require the filing of interconnect agreements to which not only the Broadcasters but also multi service operator are parties. The changed provision is in line with the position spelt out in TRAI's Recommendations on Broadcasting and Distribution of TV Channels dated 1.10.2004 stating that the agreements entered into between an MSO and an LCO shall be registered with the Authorised Officer and agreements entered into between broadcasters, MSOs, DTH operators and HITS operators shall be filed with the Authority. Broadcasters would, therefore, have to file all their interconnection agreements with the Authority of the following distributors:

- (i) Cable Operators.
- (ii) MSO's.
- (iii) DTH Operators.
- (iv) HITS Operators.

6. The new Register of Interconnect Regulation stipulates that the amendments/ modifications to the agreements as well as new agreements pertaining to a particular quarter need to be filed within one month of the end of

the respective quarter. This has been done keeping in view the volume of agreements in the Broadcasting and Cable TV services.

7. The new regulation provides that Interconnect Agreements shall be filed in two parts. Part A containing the standard Affiliation Agreement/Service Contract/ Memorandum of Understanding; and Part B containing details in tabular form covering the details of individual agreements relating to contracting parties, service area, date of entering into contract etc. The term 'Interconnection Agreement' has been defined to cover the nature of agreements, which are generally in the form of 'Standard Affiliate Agreement'. The regulation also provides powers to the Authority to prescribe formats seeking disaggregated information. In view of the past experience on requests for keeping the majority of information to be provided in Part B as confidential for reasons of commercial interest and this information being very specific, the preparation of non-confidential summary of confidential information would not serve any purpose and has, therefore, been dispensed with in the new regulations.

8. In view of the separate Register of Interconnect regulations for Broadcasting and Cable Services, The Register of Interconnect Agreement Regulations, 1999 is being amended so as to restore the earlier position and undoing the amendment carried out on 3 February 2004. The separate repealing notification, however, provides that all acts done under the earlier regulations will be valid unless otherwise specifically provided in the new regulations.

The Register of Interconnect Agreement (Broadcasting and Cable Services) (First Amendment) Regulation, 2005

No. 6-6/2005-B&CS

March 4, 2005

In exercise of powers conferred by section 36 read with clauses (iv), (vii) and (viii) of Sub-section 1(b) of Section 11 of the Telecom Regulatory Authority of India Act, 1997, the Telecom Regulatory Authority of India hereby makes the following regulation, namely:

1. Short title, extent and commencement

- i) This regulation shall be called The Register of Interconnect Agreement (Broadcasting and Cable Services) (First Amendment) Regulation, 2005 (4 of 2005)
- ii) It shall come into force from the date of its publication in the Official Gazette.

2. The following entries shall substitute the entries relating to regulation 4 of The Register of Interconnect Agreement (Broadcasting and Cable Services) Regulation, 2004 dealing with confidential portion of the register-

“ Where any party to an Interconnect Agreement requests the Authority to keep the whole or any part of the agreement as confidential, the Authority shall take a decision thereon in accordance with the with the relevant provisions of The Telecom Regulatory Authority of India (Access to Information) Regulation, 2005.”

3. Explanatory Memorandum

An explanatory memorandum dealing with the background of this regulation is annexed

By order

(Harsha Vardhana Singh)
Secretary cum Principal Advisor

Explanatory Memorandum

Telecom Regulatory Authority of India has made a comprehensive Regulation on confidentiality of information provided to it, as such there is no necessity of having similar provisions in the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004 (13 of 2004) and therefore the relevant provision have been amended.

The Register of Interconnect Agreement (Broadcasting and Cable Services) (Second Amendment) Regulation, 2005

No. 6-20/2005-B&CS

Dated: 2nd December 2005

In exercise of the powers conferred upon it under section 36 read with clauses (iv), (vii) and (viii) of Sub-section 1(b) of Section 11 of the Telecom Regulatory Authority of India Act, 1997, the Telecom Regulatory Authority of India hereby makes the following regulation, namely:

1. Short title, extent and commencement

- (i) This regulation shall be called “The Register of Interconnect Agreement (Broadcasting and Cable Services) (Second Amendment) Regulation, 2005 (12 of 2005)”
- (ii) This regulation shall come into force from the date of its publication in the Official Gazette.

2. In regulation 6 of “The Register of Interconnect Agreements (Broadcasting & Cable Services) Regulation, 2004” (15 of 2004), the following paragraphs and entries shall substitute the existing paragraphs and entries:-

“The broadcaster shall furnish to the Authority, the information relating to the interconnect agreement in two parts namely, Part A and Part B, as detailed below:-

- a) Part A containing the standard affiliation agreement/service contract/memorandum of understanding, duly authenticated in duplicate.
- b) Part B containing in tabular form the details of individual agreements, of contracting parties with addresses, service area covered by the agreement, integrated receiver decoder number and terms of hiring of integrated receiver decoder, contract number, date of entering contract, date of expiry of contract, number of channels, details of channels, subscriber base, charges per subscriber per month and discounts in the case of non-Conditional Access System (CAS) areas.

c) Part B for CAS areas shall additionally contain details of maximum retail price of each individual channel, bouquet of channels, minimum subscriber guarantee if any, besides what is required to be provided in non-CAS areas under clause (b) above.

Provided that the Authority may from time to time prescribe formats for seeking disaggregated information on such parts of standard affiliation agreement/ service contract/memorandum of understanding referred to as Part A over and above and in addition to what is required to be furnished as Part B, as may be necessary, for maintaining the register as provided in clause 3 of this regulation.

Provided further that the Authority may from time to time specify the requirements, in regard to the manner of filing of data or information, the form or formats of filing, the number of copies to be filed, and other procedural aspects connected and incidental to the filing of details of interconnect agreements.”

3. The entries relating to regulation 5 (b) (3) of “The Register of Interconnect Agreements (Broadcasting & Cable Services) Regulation, 2004” (15 of 2004), shall be substituted by the following entries:

“30th April, 31st July, 31st October and 31st January of the calendar year for the modification/ amendments made in all interconnect agreements as well as new interconnect agreements during the preceding quarter of January to March, April to June, July to September and October to December, respectively or as may be specified from time to time in terms of the 2nd proviso to regulation 6 of this regulation”.

4. Explanatory Memorandum

An explanatory memorandum dealing with the background of this regulation is annexed as Annexure “A”

By order
(RAKESH KACKER)
Acting Secretary - cum -Advisor (B &CS)

Annexure A

Explanatory Memorandum

Telecom Regulatory Authority of India notified separate regulation namely, The Register of Interconnect Agreements (Broadcasting and Cable Services) Regulation 2004". (15 of 2004) on 31.12.2004, for the purpose of registration of interconnect agreements entered into by broadcasters with the service providers. In terms of clause 5 read with clause 6 of the The Register of Interconnect Agreements (Broadcasting and Cable Services) Regulation 2004". (15 of 2004) as amended, the broadcasters are required to file details of interconnect agreements entered into with the service providers in part A containing standard forms of contract/agreement/MOU etc and in Part B containing specified details of individual agreements both in print and electronic form with quarterly updation at the expiry of one month from the end of each quarter.

2. A proposal for amendment to the above regulation was received from a broadcaster expressing difficulties in filing in print form of part B at the end of every quarter. It was indicated that new agreements are entered /renewed/modified continuously throughout the year. In view of a large number of agreements involved, the process of tracing amendments /changes becomes laborious and time consuming and the filing in print form at the end of every quarter becomes very voluminous. It was pointed out that it is easier to file the entire updated details of agreements at the end of every quarter in Electronic form and requested for amendment to the above regulation to provide freedom to the broadcasters to file details of part B in Electronic Format at the time of quarterly updation.

3. The request for amendment and options for facilitating filing in Electronic format without compromising on authenticity and security of data was examined in consultation with major broadcasters/distributors of TV channels. It has been experienced during the implementation of above regulations that the filing in print form, in view of the large number of agreements, becomes very voluminous. It was noted that various options of filing in electronic form ranging from filing in CD-ROM bearing the signature of the authorized representative of the service provider to e-filing with digital signature have distinct merits and demerits and could become a viable option over a period of time. While examining the proposal it was also viewed from a broader angle that the regulations would need to be made flexible enough to facilitate adopting a particular procedure not only with reference to a particular form in which the filing is to be done but also with reference to a number of other procedural matters, through a simplified process, instead of resorting to the need to amend the regulations time and again.

4. Accordingly TRAI has decided to amend the existing clause 6 of the above regulation so as to enable the Authority to specify a particular procedure in regard to the manner of filing of data or information; to the form or formats of filing; to the number of copies to be filed; and, to such other procedural issues connected to the filing of details of interconnect agreements through a simplified process instead of the need to amend the regulation every time whenever a change in procedure is necessitated. Consequential amendment in clause 5 of the regulation has also been made to give effect to the proposed change. The Authority would separately be specifying the procedure to be adopted by the broadcasters for the filing(s) due after amended regulations are notified.

The Register of Interconnect Agreement (Broadcasting and Cable Services) (Third Amendment) Regulation, 2006

No 6-1 /2006 -B &CS

New Delhi, the 10th March, 2006

In exercise of the powers conferred upon it under Section 36 read with clauses (iv),(vii)and (viii) of sub-section 1(b) of Section 11 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 Register of Interconnect Agreement (Broadcasting and Cable Services) (Third Amendment Regulation, 2006 (3 of 2006).”
- (ii) This regulation shall come into force from the date of its publication in the Official Gazette.

2. In “The Register of Interconnect Agreements (Broadcasting & Cable Services) Regulation, 2004” (15 of 2004) in place of the existing heading of regulation 5 and entries relating thereto, the following heading shall be substituted:-

“5. Registration of interconnect agreements by broadcasters”.

3. In “The Register of Interconnect Agreements (Broadcasting & Cable Services) Regulation, 2004” (15 of 2004), after regulation 5, the following new regulation shall be inserted as regulation 5-A:-

“5-A. Registration of interconnect agreements by Direct to Home (DTH) operators

- (a) All direct to home operators shall register with the Authority interconnect agreements entered into by them with broadcasters as well as subsequent modifications/amendments thereto, within the time frame specified under clause 5-A(b).
- (b) The time limit for registering the interconnect agreement and amendments/modifications thereto shall be:

(1) First Reporting for existing DTH operators

30th April 2006 for all interconnect agreements, which had been entered into prior to the date of this

notification, including amendments and modifications made upto March 31, 2006.

(2) First Reporting for new DTH operators

Thirty days from the signing of the interconnect agreements.

(3) Quarterly Updation

30th April, 31st July, 31st October and 31st January of the calendar year for the modifications/amendments made in all interconnect agreements as well as new interconnect agreements during the preceding quarter of January to March, April to June, July to September and October to December, respectively or as may be specified from time to time in terms of the 2nd proviso to regulation 6-A of this regulation."

4. In "The Register of Interconnect Agreements (Broadcasting & Cable Services) Regulation, 2004" (15 of 2004), after regulation 6 and entries relating thereto, the following new regulation and entries relating thereto shall be inserted as regulation 6-A:

"6-A. The direct to home operator shall furnish to the Authority, a duly authenticated copy of each of the agreement/contract/memorandum of understanding entered into with the broadcaster signed by the parties to the contract/agreement/Memorandum of Understanding with all its annexures containing, inter alia, the full addresses of the parties to the contract, contract number, date of entering into the contract, dates of commencement and expiry of the contract, number of subscribers including minimum subscriber guarantee, if any, number and details of names of channel(s)/ bouquet(s), price(s) of each individual channel(s)/bouquet(s)

Provided that the Authority may, from time to time, prescribe formats for seeking disaggregated information on such parts of agreement/contract/memorandum of understanding, as may be necessary, for maintaining the register as provided in clause 3 of this regulation.

Provided further that the Authority may from time to time specify the requirements, in regard to the manner of filing of data or information, the form or formats of filing, the number of copies to be filed, and other procedural aspects connected and incidental to the filing of information on interconnect agreements.”

5. This regulation contains an Explanatory Memorandum at Annex A that explains the reasons for the above amendments.

By Order

RAKESH KACKER
Acting Secretary cum Advisor (B&CS)

EXPLANATORY MEMORANDUM

TRAI issued separate regulations on 31.12.2004 for filing and registration of interconnect agreements entered into by broadcasters with service providers under different platforms. In line with the detailed recommendations of TRAI on Issues relating to broadcasting and distribution of TV channels it was stated in para 5 of the explanatory memorandum to the above regulation that the agreements entered into by between MSO and LCO shall be registered with the Authorized officers. Subsequently on 2nd December 2005 these regulations were amended to facilitate to provide flexibility in adopting procedures as regard to the manner of filing, formats of filing etc of the interconnect agreements.

2. There have been developments, which point to the likelihood of the DTH platform having more operators in the next 6-9 months. Further the details of agreements as applicable to the delivery through the cable medium would also require changes with reference to DTH platform of delivery. Therefore a provision making the DTH operator to also file the interconnect agreements is considered necessary from the point of view of better monitoring. Since the number of agreements that would be entered into by a DTH operator with the broadcaster will not be voluminous as in the case of cable it should be possible to provide for filing of copies of individual agreements. This would also obviate the need to require filing of information in tabular form in Part B, the details of individual agreements. To this extent the filing requirements would be different to that of agreements entered into between broadcaster and MSO/LCO.

3. The definition of broadcaster read with the clause 1(iii) would cover even interconnect agreements entered into by a broadcaster or its distribution agencies with DTH operator throughout the territory of India. The operating clause 5(a) of the existing regulation limits the filing to broadcasters only and this could pose difficulties in roping in the agreements entered into by broadcasters who may avoid compliance on the ground that they are operating from outside the country and therefore not governed by Indian laws. In such an event it would be desirable to make the DTH operator also file the interconnect agreements entered with the broadcasters with TRAI. Unlike the MSOs the number of DTH operators is not expected to be large, the reason why TRAI decided to make the agreements between MSOs and LCOs to be filed with the Authorized officer.

4. It has therefore been decided by the Authority to amend the Register of Interconnect Agreement Regulation (15 of 2004) by requiring the DTH service

provider also to file interconnect agreements entered into with the broadcaster with the Authority. Two clauses namely, clause 5A and 6A are being added to the existing regulation.

5. This would be besides the existing obligation placed on the broadcasters, in terms of the 31st December regulation referred to above, to file their interconnect agreements entered with a DTH operator. The amendment to provide for filing by the Direct to Home operator has been done to facilitate better monitoring and to provide for specific informational requirements relevant to DTH platform. The Authority would separately be specifying the procedure to be adopted by the Direct to Home Operator for the filing(s) due after amended regulations are notified.
