TELECOM REGULATORY AUTHORITY OF INDIA

NOTIFICATION

New Delhi, the 31st December, 2004

F. 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".** (15of 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 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 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;

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**

February 15, 2005 for all interconnect agreements, which had been entered into prior to the date of this notification including amendments and modifications made upto December 31, 2004.

(2) **First Reporting for new broadcasters**

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 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.

Access to the register

7. 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.

Levy of fees and other charges

11. (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.

General

12. 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.

RAKESH KACKER, Advisor (B&CS)
[ADVT./III/IV/Exty./142/04]

Annex 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. 1st Sept 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

authorized 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 1/10/04 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 February 3, 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.

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Notification

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.

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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)

Annexure

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.

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TELECOM REGULATORY AUTHORITY OF INDIA

NOTIFICATION

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:

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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."

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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". (15of 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.

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TELECOM REGULATORY AUTHORITY OF INDIA

NOTIFICATION

New Delhi, the 10th March, 2006

No 6-1 /2006 –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 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.

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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. <u>Registration of interconnect agreements by broadcasters"</u>.

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**. **<u>Registration of interconnect agreements by Direct to Home (DTH) operators</u>**

(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)

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Annex A

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.

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TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART III, SECTION 4

THE REGISTER OF INTERCONNECT AGREEMENTS (BROADCASTING AND CABLE SERVICES) (FOURTH AMENDMENT) REGULATIONS, 2009

(5 OF 2009)

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TELECOM REGULATORY AUTHORITY OF INDIA

NOTIFICATION

New Delhi, the 18th March, 2009

F. No. 6-4/2009- B&CS.-- In exercise of the powers conferred by section 36, read with sub-clauses (iv), (vii) and (viii) of clause (b) of sub-section (1) of section 11 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), read with notification of the Government of India, in the Ministry of Communication and Information Technology (Department of Telecommunication) No.39,-----

(a) issued, in exercise of the powers conferred upon the Central Government under clause (d) of sub-section (1) of section 11 and proviso to clause (k) of sub-section (1) of section 2 of the said Act, and

(b) published under notification No. S.O.44 (E) and 45 (E) dated the 9th January, 2004 in the Gazette of India, Extraordinary, Part III, Section 4,

the Telecom Regulatory Authority of India hereby makes the following regulations to further amend the Register of Interconnect Agreements (Broadcasting and Cable Services) Regulation 2004 (15 of 2004) , namely:-

1. *(1)* These regulations may be called the Register of Interconnect Agreements

(Broadcasting and Cable Services) (Fourth Amendment) Regulations, 2009.

(2) They shall come into force with effect from the date of their publication in the Official Gazette.

2. In regulation 2 of the Register of Interconnect Agreements (Broadcasting and Cable Services) Regulation, 2004, (hereinafter referred to as the principal regulations),-----

(a) after the clause numbered as **"**ix.", the following clause shall be inserted, namely:-

"(ix-a.) **"distributor of TV channels"** means any person including an individual, group of persons, public or body corporate, firm or any organisation or body re-transmitting TV channels through electromagnetic waves through cable or through space intended to be received by general public directly or indirectly and such person may include, but is not limited to, a cable operator, direct to home operator, multi system operator, head ends in the sky operator and a service provider offering Internet Protocol television service;**"**;

(b) in the clause numbered as "xi.", for the words " **"head ends in the sky operator"** means " , the words " **"head ends in the sky operator"** or **"HITS operator"** means " shall be substituted;

(c) after the clause numbered as "xiii.", the following clause shall be inserted, namely:-

"(xiii-a.) **"Internet Protocol television service"** or **"IPTV service"** means delivery of multi channel television programmes in addressable mode by using Internet Protocol over a closed network of one or more service providers;".

3. In regulation 5 of the principal regulations, ------

(a) for sub-clause (3) of clause (b), the following sub-clause shall be substituted, namely:-

"**(3) Annual Reporting.** The reporting of interconnection agreements shall be done on or before the 31st day of July of each year for all interconnection agreements including modifications or amendments made therein, which remained valid as on the 30th day of June of that year or during a part of the period from 1st July of the

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previous year till the 30th day of June of that year, as the case may be, or as may be specified by the Authority from time to time in terms of the second proviso to regulation 6:

Provided that the Authority may, without prejudice to its powers under section 12 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), at any time, call for the details of any interconnect agreement from any broadcaster, and such broadcaster shall furnish such details within such time limit as may be specified by the Authority in the communication calling for such details.".

4. In regulation 5-A of the principal regulations, ----

(a) in the heading, for the words and brackets "**Direct to Home (DTH) operators**", the words and brackets "**Direct to Home (DTH) operators, HITS operators and IPTV service providers**" shall be substituted;

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(b) in clause (a), for the words "All direct to home operators", the words "All direct to home operators, HITS operators and IPTV service providers" shall be substituted;

(c) in clause (b), for sub-clauses (2) and (3), the following sub-clauses shall be substituted, namely:-

"**(2) First Reporting for new DTH operators and for HITS operators and IPTV service providers.** The first reporting of interconnection agreements shall be done ------

(i) within thirty days from the signing of the interconnect agreements in the case of DTH operators; and

(ii) within thirty days from the signing of the interconnect agreements or the 31st day of July, 2009, whichever is later, in the case of HITS operators and IPTV service providers.

(3) Annual Reporting. The reporting of interconnection agreements shall be done on or before the 31st day of July of each year for all interconnection agreements including modifications or amendments made therein, which remained valid as on the 30th day of June of that year or during a part of the period from 1st July of the previous year till the 30th day of June of that year, as the case may be, or as may be specified by the Authority from time to time in terms of the second proviso to regulation 6A:

Provided that the Authority may, without prejudice to its powers under section 12 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), at any time, call for the details of any interconnect agreement from any direct to home operator, HITS operator or IPTV service provider, and such direct to home operator, HITS operator or IPTV service provider, as the case may be, shall furnish such details within such time limit as may be specified by the Authority in the communication calling for such details.".

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5. In clause (a) of regulation 6 of the principal regulations, after the words "in duplicate", the following words shall be inserted, namely:-

"and also containing ------

(i) a certificate to the effect that the provisions of sub-regulation 4A.4 of regulation 4A of the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004 (13 of 2004) have been complied with in respect of all interconnect agreements included in Part B;

(ii) a certificate to the effect that all the interconnect agreements or the modifications or amendments to the interconnect agreements, as the case may be, included in Part B, are compliant with all regulations, Orders and Directions made or issued by the Authority under the Telecom Regulatory Authority of India Act, 1997 (24 of 1997) and that they do not contravene the provisions contained in any such regulation, Order or Direction".

6. In regulation 6A of the principal regulations, for the words "The direct to home operator", the words " Every direct to home operator, HITS operator and IPTV service

provider" shall be substituted.

7. In regulation 7 of the principal regulations, the following proviso shall be inserted, namely:-

"Provided that the provisions of this regulation shall not apply to an interconnection agreement entered in the register -----

(i) in respect of which a period of three years has expired from the date of reporting of such agreement, or

(ii) in respect of which the period of validity as specified in the agreement has expired,

whichever is later."

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(N. Parameswaran)

Principal Advisor (B&CS)

Note.1----- The principal regulations were published vide notification no. 5-29/2004-B&CS dated 31st December, 2004 and subsequently amended vide notifications no. 6-6/2005-B&CS dated 4th March, 2005, no. 6-20/2005-B&CS dated 02nd December, 2005 and no. 6-1/2006-B&CS dated 10th March, 2006.

Note.2----- The Explanatory Memorandum explains the objects and reasons of the Register of Interconnect Agreements (Broadcasting and Cable Services) (Fourth Amendment) Regulations, 2009.

Annexure

Explanatory Memorandum

1. As per sub-clauses (vii) & (viii) of clause (b) of sub-section (1) of Section 11 of the Telecom Regulatory Authority of India Act, 1997, the Telecom Regulatory Authority of India is required to maintain a register of interconnect agreements and to keep such register open for inspection, subject to confidentiality requirements, to any member of public on payment of such fee and compliance of such other requirement as may be provided in the regulations.

2. TRAI issued regulations on December 31, 2004 for filing and registration of interconnect agreements entered into by broadcasters with service providers under different platforms. The Regulation was amended on March 04, 2005 to bring it in line with the Telecom Regulatory Authority of India (Access to Information) Regulation, 2005. The Regulation was again amended on December 02, 2005 to enable the Authority to specify the procedure for filing of data, formats for filing and other procedural issues through a simplified process instead of amending the regulation. The Regulation was last amended on March 10, 2006 to expand the scope of provisions to require the DTH operators also to file their Interconnect agreements.

3. The details of interconnect agreements are at present filed quarterly by the broadcasters and DTH operators in compliance with these regulations. However, the Authority noted that the Industry practice is largely to sign Interconnection Agreements on annual basis, mainly for a calendar year or for the financial year. At the same time, the process of signing of interconnection agreements continues throughout the year on account of agreements with new distributors of TV channels, launch of new channels/ bouquets, amendments in terms and conditions of existing agreements etc. In case of DTH, the Interconnection agreements are sometimes for five years or for even longer durations.

4. The Authority discussed the issue of periodicity of filing the agreements in the consultation paper titled "Consultation paper on Interconnection Issues relating to

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broadcasting & Cable Services" issued on December 15, 2008. A majority of stakeholders are in favour enlarging the periodicity of filing these agreements with the Authority. Based on the analysis of the written comments received, and open house held at Kolkata on February 06, 2009, the Authorty has come to the conclusion that the filing of the interconnection agreements should be on annual basis. The Authority has decided to receive annual filing for period 1st July to 30th June by 31st July of every year. The period is chosen to cover the industry practices of agreements on calendar year basis or financial year basis.

5. The Authority has also decided that all the interconnection agreements should be in written form by the broadcasters. Accordingly, a provision has been made by an amendment dated March 17, 2009 to the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004 (13 of 2004) whereby it is the responsibility of the broadcasters and MSOs to hand over such written agreements after execution to the distributor of TV channels. Correspondingly, a provision of submitting a certificate in this regard has also been incorporated in the present regulation.

6. Though the Authority is empowered under Section 12 of the TRAI Act, 1997 as amended to call for information from the Service providers, the issue of notice period to be given to a service provider for any specific interconnection agreement was discussed in above mentioned consultation paper. The stakeholders were of the view of having 15 to 30 days notice period for furnishing such information. Upon careful consideration of the issue, the Authority has decided that the time frame for submission of such information/details may be specified in the communication calling for such information/detail, based upon the need and urgency.

7. The Authority has also discussed the period for retention of the details of interconnection filing with the Authority in the above mentioned consultation paper. The comments for retention period varied from 3 to 5 years. Based on the inputs from the stakeholders and considering large volume of data being filed by various service providers, the Authority is of the view that these filings may be kept for a period of three years from the date of their filing or till the expiry of the validity period of the agreement,

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whichever is later and accordingly the regulations have been suitably amended for this purpose.

8. These regulations have also been amended to enable the new platform such as HITS operators and IPTV service providers to file their interconnection agreements with the broadcasters on annual basis to the Authority.

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TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY,

PART III, SECTION 4

TELECOM REGULATORY AUTHORITY OF INDIA

NOTIFICATION

New Delhi, the 10th February, 2014

THE REGISTER OF INTERCONNECT AGREEMENTS (BROADCASTING AND CABLE SERVICES) (FIFTH AMENDMENT) REGULATION, 2014

(No. 3 of 2014)

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No. 6-11/2014- B&CS.-- In exercise of the powers conferred by section 36, read with sub-clauses (iv), (vii) and (viii) of clause (b) of sub-section (1) of section 11 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), read with notification of the Government of India, in the Ministry of Communication and Information Technology (Department of Telecommunication) No.39,

(a) issued, in exercise of the powers conferred upon the Central Government by proviso to clause (k) of sub-section (1) of section 2 and clause (d) of sub-section (1) of section 11 of the said Act, and

(b) published under notification No. 39 (S.O. 44 (E) and 45 (E)) dated the 9th January, 2004 in the Gazette of India, Extraordinary, Part II- Section 3- Sub-section (ii), ----

the Telecom Regulatory Authority of India hereby makes the following regulations to further amend the Register of Interconnect Agreements (Broadcasting and Cable Services) Regulation, 2004 (15 of 2004) , namely:-

1. (1) These regulations may be called the Register of Interconnect Agreements (Broadcasting and Cable Services) (Fifth Amendment) Regulation, 2014 (3 of 2014).

(2) They shall come into force from the date of their publication in the Official Gazette.

2. In regulation 2 of the Register of Interconnect Agreements (Broadcasting and Cable Services) Regulation, 2004 (15 of 2004), (hereinafter referred to as the principal regulation),----

(a) after clause i., the following clause ia. shall be inserted, namely:----

"ia. "authorised agent or intermediary" means any person including an individual, group of persons, public or private body corporate, firm or any organization or body authorised by a broadcaster or multi-system operator to make available its TV channels to a distributor of TV channels and such authorised agent or intermediary, while making available TV channels to the distributors of TV channels, shall always act in the name of and on behalf of the broadcaster or multi-system operator, as the case may be;"

(b) for clause iii., the following clause shall be substituted, namely:----

"iii. "broadcaster" means a person or a group of persons, or body corporate, or any organization or body who, after having obtained, in its name, uplinking permission or downlinking permission, as may be applicable for its channels, from the Central Government, provides programming services;"

(c) for clause xiv, the following clause shall be substituted, namely:----

"xiv. "multi system operator" means a cable operator who has been granted registration under the Cable Television Networks (Regulation) Act, 1995 and who receives a programming service from a broadcaster and re-transmits the same or transmits his own programming service for simultaneous reception either by multiple subscribers directly or through one or more local cable operators;"

(Sudhir Gupta)
Secretary, TRAI

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Note.1-----The principal regulation was published in the Gazette of India, Extraordinary, Part-III, Section 4 vide notification No. 5-29/2004-B&CS dated 31st December 2004 and subsequently amended vide notifications No. 6-6/2005-B&CS dated 4th March 2005, No. 6-20/2005-B&CS dated 2nd December 2005, No. 6-1/2006-B&CS dated 10th March 2006 and No. 6-4/2009-B&CS dated 18th March,2009.

Note.2-----The Explanatory Memorandum explains the objects and reasons of the Register of Interconnect Agreements (Broadcasting and Cable Services) (Fifth Amendment) Regulations, 2014 (3 of 2014).

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The need for amendment

1. The value chain in the distribution of television channels comprises the broadcaster, the Distribution Platform Operator (DPO), the last mile operator and the end consumer. The business of distribution of TV channels from the broadcaster to the consumer has two levels - i) bulk or wholesale level - wherein the distributor of TV channels i.e. DPO obtains the TV channels from the broadcasters, and ii) retail level - where the DPO offers these channels to the consumers, either directly or through the last mile operator. Amongst the DPOs, the Direct to Home (DTH) operator and the Internet Protocol Television (IPTV) operator serve the consumer directly, while the Multi System Operator (MSO) and the Headend in the Sky (HITS) operator generally serve the consumer through its linked Local Cable Operator (LCO).

2. At the wholesale level, as per the regulatory framework prescribed by TRAI, broadcasters are mandated to enter into interconnection agreements with the DPOs for the carriage of their TV channels. The broadcasters are to offer their channels on a non-discriminatory basis to all the DPOs in accordance with their Reference Interconnect Offer (RIO). The interconnection agreements are to be finalised on the basis of the commercial and technical terms and conditions specified in the RIO.

3. Many broadcasters, especially the larger ones, appoint authorised distribution agencies as intermediaries. Many such agencies operate as authorised agents for more than one broadcaster. These authorised distribution agencies have come to be popularly known as 'aggregators'. These aggregators have indulged in the practice of publishing the RIOs, negotiate the rates for the bouquets/channels with DPOs and enter into interconnection agreement(s) with them.

4. As on date there are around 239 pay channels (including HD and advertisement-free channels) offered by 55 pay broadcasters. These channels are distributed by 30 broadcasters/aggregators/ agents of broadcasters. Table I below shows the number of channels being distributed to the DPOs by the top three aggregators.

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Table I: Number of TV channels distributed by leading aggregators

Total number of pay TV channels : 239		
	Name of the aggregator	**Number of channels**
1	M/s Media Pro Enterprise India Private Limited	76
2	M/s IndiaCast UTV Media Distribution Private Limited	36
3	M/s MSM Discovery Private Limited	28
	Total	140 (58.6%)

Thus, the distribution business of 58.6% of the total pay TV market available today is controlled by the top three aggregators. These channels include almost all the popular pay TV channels.

5. The bouquets being offered by the aggregators comprise popular channels of the multiple broadcasters they represent. Thus, for purely business considerations, DPOs have no option but to subscribe to these bouquets. It is alleged that, exploiting this fact, the aggregators further start to piggy-back more channels on these bouquets especially the ones that have very less standalone market value. The aggregators being in a dominant position use their negotiating powers to 'push' such bouquets to the DPOs. In such a scenario, at the retail end, the DPOs have no option but to somehow push these channels (though not necessarily in the form of the bouquets that they purchase from the aggregators) to the consumers so as to recover costs. Thus, in the process, the public, in general, ends up paying for 'unwanted' channels and this, in effect, restricts consumer choice. Moreover, since the aggregators distribute a large number of popular channels of different broadcasters, they are in a position to, in effect coerce DPOs and sell the channels at terms favourable to them.

6. Recently it also came to the notice of the Authority that an aggregator M/s Media Pro was offering channels of a broadcaster, the New Delhi Television Ltd., as a part of certain bouquets only to platform operators of cable TV sector and not to the DTH operators. The DTH platform was directly dealt with by the said broadcaster. In effect, the situation was one where different distribution platforms were being treated differently. On enquiry, the aggregator claimed that since the broadcaster has bestowed the right only to distribute the channels to platform operators of cable TV sector it is in full compliance with the provisions of the regulations. However, as per the existing regulatory framework, the broadcaster is mandated to offer the same bouquet to all the distribution platforms. With this

kind of arrangement with its aggregator, the broadcaster was, in effect, circumventing the regulations through an aggregator by creating a situation where the different DPOs (platforms) could be treated differently. It is a well established principle in law that what cannot be achieved directly, cannot be achieved indirectly. And, that is precisely what the broadcaster was able to do using the device of the aggregator.

7. The market distortions arising out of the current role assumed by the aggregators were amply reflected during the implementation of digital addressable cable TV systems (DAS), Phase I and Phase II. Several MSOs have complained that they were forced to accept unreasonable terms and conditions to obtain signals of the broadcasters through some of the major aggregators, that too at the fag end of the implementation deadline. According to the non-vertically integrated MSOs as well as smaller MSOs, they always get a raw deal. This impacted the smooth implementation of DAS. In the Open House Discussions (OHDs) held in various parts of the country on 'Issues related to Media Ownership", concerns have been vehemently voiced by various MSOs and LCOs regarding the monopolistic practices of the major aggregators. While the issue was being examined at the Authority, the Ministry of Information and Broadcasting (MIB) also, echoed the complaints from MSOs in this regard, through its reference to TRAI vide D.O. No. 16/1/2013-BP&L dated 23rd May 2013, requesting the Authority for reviewing the regulatory framework on this aspect.

8. The regulatory framework has been reviewed to bring clarity in the roles and responsibilities of the broadcasters and their authorised agents. Accordingly, a Consultation Paper, in the form of draft amendments to the existing interconnection regulations, tariff orders and the register for interconnect regulations, were uploaded on the website of TRAI, seeking comments/views of stakeholders. In response, 102 comments were received from the stakeholders. An OHD was also held in Delhi on 12th September 2013, wherein 170 stakeholders participated in the discussions. Further, in response to the opportunity given by the Authority during the OHD, 26 further comments were received from stakeholders. Taking into account the views/comments of the stakeholders and after detailed analysis of the issues involved, amendments to the following regulations and tariff orders are being notified simultaneously:

    i. The Telecommunication (Broadcasting and Cable Services) Interconnection (Seventh Amendment) Regulations, 2014 (1 of 2014),

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ii. The Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) (Third Amendment) Regulations, 2014 (2 of 2014)

iii. The Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Tenth Amendment) Order, 2014 (1 of 2014),

iv. The Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff (Third Amendment) Order, 2014 (2 of 2014) and,

v. The Register of Interconnect Agreements (Broadcasting and Cable Services) (Fifth Amendment) Regulations, 2014 (3 of 2014).

9. The amendments incorporate the following changes to the existing regulatory framework. The framework defines a broadcaster as an entity having the necessary Government permissions in its name. Further, that only the broadcaster can and should publish the RIOs and enter into interconnection agreements with DPOs. However, in case a broadcaster, in discharge of its regulatory obligations, is using the services of an agent, such agent can only act in the name of and on behalf of the broadcaster. Further the broadcaster shall ensure that such agent, while providing channels /bouquets to the DPOs, does not alter the bouquets as offered in the RIO of the broadcaster. In case an agent acts as an authorised agent of multiple broadcasters, the individual broadcasters shall ensure that such agent does not bundle its channels or bouquets with that of other broadcasters. However, broadcaster companies belonging to the same group can bundle their channels.

10. A time frame of six months has been prescribed for the broadcasters to amend their RIOs, enter into new interconnection agreements and file the amended RIOs and the interconnection agreements with the Authority. While amending their RIOs, certain bouquets may require reconfiguration to align them with the amended regulatory framework. The method for working out the rate of such reconfigured bouquets has also been illustrated.

Stakeholder comments

11. The response of the stakeholders can be broadly divided into two categories. One group, represented by leading/big broadcasters and aggregators, is against the proposed amendment whereas the other group, represented by DPOs, their associations and small broadcasters, has supported the provisions of the proposed amendment and requested for its urgent implementation.

12. The broadcasters/aggregators have opposed the amendments on the ground that they are in violation of Article 19(1)(g) of the Constitution and on the ground of jurisdiction of TRAI in the said matter. They have stated that it is a competition issue and the Competition Commission of India (CCI) has sole jurisdiction over it. Apart from this, they have also stated that aggregators play a vital role in the distribution of TV channels and provide a balanced platform, especially to smaller broadcasters, for negotiations with the DPOs, who, according to the aggregators/ broadcasters, have substantial negotiating power. This group of stakeholders have also stated that the practice of broadcasters to utilize distribution agencies/aggregators is a normal business practice as is prevalent in the other sectors like banking, telecom, insurance etc. and cannot be considered anti-competitive.

13. However, in contrast, and in a directly opposite stance, the small broadcasters, DPOs and cable operator associations, have stated that the proposed amendments would provide a level-playing-field and eliminate the monopolistic practices arising from the role that the aggregator has assumed viz. as surrogates for multiple major broadcasters. In support of the argument, one of the cable operator associations has stated that 186 cases were filed by MSOs and LCOs against Media Pro in TDSAT in the year 2012 which provides sufficient indication of the level of discontent amongst the DPOs vis-a-vis the aggregators. It has further stated that the maximum number of cases are against Media Pro and, unsurprisingly, there is no case filed by either DEN or Siti Cable against the aggregator, precisely because they are Media Pro's vertically integrated partners. It has also been opined by this set of stakeholders that removing the aggregator will reduce costs to consumers.

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Analysis

14. Taking into account the views/comments of the stakeholders and after detailed analysis of the issues involved, this amendment to the register of interconnect regulation applicable to both addressable and non-addressable systems is being notified. The succeeding paragraphs explain the objects and reasons of the provisions of this amendment order along with the analysis of the issues raised.

Issue of jurisdiction

15. One of the objectives laid out in the preamble of the TRAI Act is to protect the interests of the service providers and consumers of the sector as well as to promote

and ensure its orderly growth. TRAI has the powers to frame 'ex-ante' rules/regulations to ensure that the objectives of the TRAI Act are met. In fact in a recent Judgment dated 6th December 2013, in the Civil Appeal No. 5253 of 2010 (Bharat Sanchar Nigam Ltd. Vs TRAI and Ors) the Hon'ble Supreme Court has made following observations:

"….. under sub section 1 of Section 36 of TRAI Act, the Authority can make regulations to carry out the purposes of the Act specified in various provisions…"

"……we hold that the power vested in the Authority under section 36(1) to make regulations is wide and pervasive. The exercise of this power is only subject to the provisions of the Act and the Rules framed under section 35 thereof. There is no other limitation on the excise of power by the Authority under section 36(1). It is not controlled or limited by section 36(2) or sections 11, 12 and 13. "

Thus, it is well within the jurisdiction of TRAI to issue regulations and amendments thereto on the subject matter.

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Right to do business-Violation of 19(1)(g)

16. Another issue is whether these amendments are violative of Art. 19(1)(g) of the Constitution of India? As discussed earlier, the aggregators are not independent entities; rather, they are authorised agents of the leading broadcasters whose channels they distribute. Further, through the aggregators, the broadcasters are able to realise dominant positions as described above. The aggregators make their own bouquets which are a mix of channels of various broadcasters including certain non-popular ones. The DPOs who take up these bouquets are then compelled to offer them to the consumers to recover costs. This activity of the aggregators is beyond the scope of their agency; it involves an act which the broadcaster is not authorised to do under the existing regulations. It is thus not in public interest and the protection of the right to do business cannot be claimed for this.

17. These amendments do not restrict a broadcaster from appointing an authorised agent or intermediary to facilitate in carrying forward its businesses. If authorised by a broadcaster, they have the freedom to carry out the assigned jobs. However, the same is to be done on behalf of and in the name of the concerned broadcaster. In no business, can any authorised agent or intermediary go beyond the scope of the business of its principal. The present amendment prescribes certain responsibilities for the broadcasters in order to ensure that their authorised

distribution agencies (aggregators) do not indulge in certain activities beyond the scope of the business of their principals (broadcasters). Further, the amendments seek to ensure that the broadcaster publishes its RIO and maintains its sanctity. This is in conformity with various provisions of existing interconnection regulations. Therefore, the current amendment to the interconnection regulations does not impinge upon the fundamental rights of the broadcasters and their authorised agents or intermediaries as granted to them under Art. 19(1)(g) of the Constitution.

Principal and Agent

18. It is well accepted that an agent always acts on behalf and in the name of its principal and the scope of action/activities of the agent cannot exceed that of the principal.

19. For example in the telecom sector, an agent does everything only on behalf of and in the name of the service provider (the principal) e.g. the consumer application form is prescribed only by the service provider and filled up by the consumer thereby entering into an agreement directly with the service provider. The agent, who could also be a local corner store or a *paan wallah,* merely facilitates the process. However, in the case of aggregators operating in the broadcasting sector, it is the aggregators who are combining the offerings of different principals (broadcasters) and are directly entering into agreements in their name with the DPOs. Invariably, the aggregators are going beyond the scope of business of their principals. Thus, the analogy between agents of other sectors like telecom, insurance etc. and aggregators in the broadcasting sector does not hold any ground. In fact, this amendment aligns them, in principle, with authorised agents in other sectors.

Amendment to the Definitions of broadcaster/MSO/Authorised agent or intermediary

20. In the cited amendments, the definition of a broadcaster has been amended and an authorised agent or intermediary has been separately defined. A broadcaster of a TV channel, prior to commencing its services, has to obtain certain clearances and permissions following an elaborate process. This procedure and process involves registration of its channel by the broadcaster with the MIB under the elaborate Uplinking/Downlinking Guidelines. These Guidelines, apart from others, require security clearance of the channel as well as clearance of the key executives

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managing the business affairs of a broadcaster. The broadcaster is also required to coordinate with the Department of Space (DoS) for getting the required satellite bandwidth and related permission to use it. Hence, the broadcaster has a separate and distinct identity and this should be maintained. The aggregator, on the other hand, requires no such clearances or permission and so cannot proxy as a broadcaster. Therefore, there is a need to bring clarity to the entire regulatory framework.

21. The definition of the broadcaster has been amended to clarify, and place beyond all doubt, the exclusive role of the broadcaster in publishing the RIOs and entering into the interconnect agreements with the DPOs, as prescribed in the interconnection regulations. The definition of authorised agent or intermediary has been separately framed to clarify their facilitative role in the business of TV channel distribution both for the broadcasters and MSOs. The definition of MSOs has also been accordingly amended.

22. In summary, the above discussed amendments clearly bring out the distinct roles and responsibilities of a broadcaster and its authorised agent. This is expected to address the market distortions caused because of the present role assumed by the aggregators in the distribution of TV channels to various DPOs. They will also contribute to the orderly growth and overall development of the sector.

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