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

TELECOM REGULATORY AUTHORITY OF INDIA
NOTIFICATION

New Delhi the 30th April, 2012

F. No. 3- 24/2012- B&CS – In exercise of the powers conferred by section 36, read with sub-clauses (ii), (iii), (iv) and (v) 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,-----

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(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, namely:-

THE TELECOMMUNICATION (BROADCASTING AND CABLE SERVICES) INTERCONNECTION (DIGITAL ADDRESSABLE CABLE TELEVISION SYSTEMS) REGULATIONS, 2012
No. 9 of 2012

CHAPTER – I
PRELIMINARY

1. Short title and commencement.- (1) These regulations may be called the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012.

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

2. **Definitions.-** In these regulations, unless the context otherwise requires : -

(a) "Act" means the Telecom Regulatory Authority of India Act 1997 (24 of 1997);

(b) "addressable system" means an electronic device (which includes hardware and its associated software) or more than one electronic device put in an integrated system through which signals of cable television network can be sent in encrypted form, which can be decoded by the device or devices, having an activated Conditional Access System at the premises of the subscriber within the limits of authorisation made, through the Conditional Access System and the subscriber management system, on the explicit choice and request of such subscriber, by the cable operator to the subscriber;

(c) "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;

(d) **"**a-la-carte**"** with reference to offering of a TV channel means offering the channel individually on a standalone basis;

(e) "a-la-carte rate" means the rate at which a standalone individual channel is offered to the distributor of TV channels or to the subscriber, as the case may be;

(f) "Authority" means the Telecom Regulatory Authority of India established under sub-section (1) of section 3 of the Telecom Regulatory Authority of India Act, 1997;

(g) "broadcaster" means a person or a group of persons, or body corporate, or any organisation or body providing programming services and includes his or its authorised distribution agencies;

(h) "broadcasting services" means the dissemination of any form of communication such as 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;

(i) “bouquet” or “bouquet of channels” means an assortment of distinct channels, offered together as a group or as a bundle;

(j) “bouquet rate” or “rate of bouquet” means the rate at which a bouquet of channels is offered to the distributor of TV channels or to the subscriber, as the case may be;

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(k) "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 and fulfils the prescribed eligibility criteria and conditions;

(l) "cable service" means the transmission by cables of programmes including re-transmission by cables of any broadcast television signals;

(m) "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;

(n)"carriage fee" means any fee paid by a broadcaster to a distributor of TV channels, for carriage of the channels or bouquets of channels of that broadcaster on the distribution platform owned or operated by such distributor of TV channels, without specifying the placement of various channels of the broadcaster vis-a-vis channels of other broadcasters;

(o) "commercial subscriber" means any subscriber who receives a programming service at a place indicated by him to a service provider and uses signals of such service for the benefit of his clients, customers, members or any other class or group of persons having access to such place;

(p) “DAS area” means the areas where in terms of notifications issued by the Central Government under sub-section (1) of section 4A of the Cable Television Networks (Regulation) Act, 1995 (7 of 1995), it is obligatory for every cable operator to transmit or re-transmit programmes of any channel in an encrypted form through a digital addressable system;

(q) "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 and such person may include, but is not limited to a multi system operator;

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(r) “free-to-air channel”, in respect of a cable television network, means a channel for which no subscription fee is to be paid by the cable operator to the broadcaster for its re-transmission on cable;

(s) “Multi-System Operator” means a cable operator who has been granted registration under rule 11C of the Cable Television Networks Rules, 1994, and who receives a programming service from a broadcaster or its authorised agencies 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 and includes his authorised distribution agencies, by whatever name called;

(t) "ordinary subscriber" means any subscriber who receives a programming service from a multi system operator directly or through his linked local cable operator and uses the same for his domestic purposes;

(u) "pay channel", in respect of a cable television network, means a channel for which subscription fees is to be paid to the broadcaster by the cable operator and due authorisation needs to be taken from the broadcaster for its re-transmission on cable;

(v) "placement fee" means any fee paid by a broadcaster to a distributor of TV channels, for placement of the channels of such broadcaster vis-à-vis channels of other broadcasters on the distribution platform owned or operated by such distributor of TV channels;

(w) "programme" means any television broadcast and includes-

(i) exhibition of films, features, dramas, advertisements and serials through video cassette recorders or video cassette players;

(ii) any audio or visual or audio-visual live performance or presentation

and the expression "programming service" shall be construed accordingly;

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(x) "RIO" means the Reference Interconnect Offer published by a service provider specifying terms and conditions on which other service provider may seek interconnection form the service provider making the offer;

(y) "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;

(z) “set top box” means a device, which is connected to, or is part of a television and which allows a subscriber to receive in unencrypted and descrambled form subscribed channels through an addressable system;

(za) "subscriber" means a person who receives the signals of a service provider at a place indicated by him to the service provider without further transmitting it to any other person and includes ordinary subscribers and commercial subscribers unless specifically excluded;

(zb)"subscriber base" means the number of subscribers reflected in the subscriber management system, of the digital addressable systems;

(zc) "subscriber management system" means a system or device which stores the subscriber records and details with respect to name, address and other information regarding the

hardware being utilised by the subscriber, channels or bouquets of channels subscribed to by the subscriber, price of such channels or bouquets of channels as defined in the system, the activation or deactivation dates and time for any channel or bouquets of channels, a log of all actions performed on a subscriber's record, invoices raised on each subscriber and the amounts paid or discount allowed to the subscriber for each billing period;

(zd) "TV channel" means a channel, which has been registered under -----

(i) the guidelines for uplinking from India, issued vide No.1501/2/2002-TV(I)(Pt.) dated the 2nd December, 2005; or

(ii) policy guidelines for downlinking of televisions channels, issued vide No. 13/2/2002-BP&L/BC-IV dated the 11th November, 2005, ---------

as amended from time to time, or such other guidelines for uplinking or downlinking of television channels, as may be issued from time to time by Government of India (Ministry of Information and Broadcasting) and reference to the term 'channel' shall be construed as a reference to "TV channel";

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(ze) all other words and expressions used in this regulations but not defined, and defined in the Act and rules and regulations made thereunder or the Cable Television Networks (Regulation) Act, 1995 (7 of 1995) and the rules and regulations made thereunder, shall have the meanings respectively assigned to them in those Acts or the rules or regulations, as the case may be.

C H A P T E R - II
INTERCONNECTION

3. General Provisions relating to interconnection.-(1) No broadcaster of TV channels shall engage in any practice or activity or enter into any understanding or arrangement, including exclusive contract with any multi system operator for distribution of its channel which may prevent any other multi system operator from obtaining such TV channels for distribution.

(2) Every broadcaster shall provide signals of its TV channels on non-discriminatory basis to every multi system operator having the prescribed channel capacity and registered under rule 11 of the Cable Television Networks Rules, 1994, making request for the same.

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Provided that nothing contained in this sub-regulation shall apply in the case of a multi system operator who is in default of payment.

Provided further that imposition of any term which is unreasonable shall be deemed as a denial of request.

(3) Every broadcaster or his authorized agent shall provide the signals of TV channels to a multi system operator, in accordance with its reference interconnect offer or as may be mutually agreed, within sixty days from the date of receipt of the request and in case the request for providing signals of TV Channels is not agreed to, the reasons for such refusal to provide signals shall be conveyed to the person making a request within sixty days from the date of request.

(4) Every multi system operator while seeking interconnection with the broadcaster, shall ensure that its digital addressable system installed for the distribution of TV channels meets the digital addressable system requirements specified in Schedule I to these regulations:

Provided that in case the broadcaster finds that the digital addressable system being used by the multi system operator for distribution of TV channel does not meet the requirements

specified in the Schedule I, it shall inform such multi system operator who shall get its digital addressable system audited by M/s. Broadcast Engineering Consultants India Ltd., or any other agency as may be specified by the Authority by direction issued from time to time and obtain a certificate from such agency that its system meets the requirements specified in Schedule I to these regulations :

Provided further that the findings of the agency referred to in the first proviso shall be final.

(5) A multi system operator, who seeks signals of a particular TV channel from a broadcaster, shall not demand carriage fee for carrying that channel on its distribution platform.

(6) If a broadcaster before providing signals to a multi system operator insist for placement of its channel in a particular slot as a pre-condition for providing signals, such pre-condition shall amount to imposition of unreasonable terms.

(7) Every broadcaster or his authorised agent who collects payment on behalf of such broadcaster, shall issue monthly invoice to the multi system operator for providing signals to the multi system operator and such invoice/s shall clearly specify the current payment dues and arrears, if any, along with the due date for payment.

(8) Every multi system operator, operating in the areas notified by the Central Government under sub-section (1) of the section 4A of the Cable Television Networks (Regulation) Act, 1995, shall have the capacity to carry a minimum of five hundred channels not later than the date mentioned in the said notification applicable to area in which the multi system operator is operating.

Provided that a multi system operator operating in the Municipal boundary of Greater Mumbai, National Capital Territory of Delhi, Kolkata Metropolitan area and Chennai Metropolitan area shall have a capacity to carry a minimum of two hundred channels as on the 30th June, 2012 and such capacity shall be enhanced to a minimum of five hundred channels by 1st January, 2013:

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Provided further that all multi system operators operating in the area referred to in the first proviso and having subscriber base of less than twenty five thousand shall have the capacity to carry a minimum of five hundred channels by the 1st April, 2013.

(9) No multi system operator shall enter into any understanding or arrangement with any broadcaster that may prevent any other broadcaster from obtaining access to the cable network of such multi system operator.

(10) Every multi system operator shall, within sixty days of receipt of request from the broadcaster or its authorised agent or intermediary, provide on non-discriminatory basis, access to its network or convey the reasons for rejection of request if the access is denied to such broadcaster.

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Provided that it shall not be mandatory for a multi system operator to carry the channel of a broadcaster if the channel is not in regional language of the region in which the multi system operator is operating or in Hindi or in English language and the broadcaster is not willing to pay the uniform carriage fee published by the multi system operator in its Reference Interconnect Offer.

Provided further that nothing contained in this sub-regulation shall apply in case of a broadcaster who has failed to pay the carriage fee as per the agreement and continues to be in default.

Provided also that imposition of unreasonable terms and conditions for providing access to the cable TV network shall amount to the denial of request for such access.

Provided also that it shall not be mandatory for the multi system operator to carry a channel for a period of next one year from the date of discontinuation of the channel, if the subscription for that particular channel, in the last preceding six months is less than or equal to five per cent. of the subscriber base of that multi system operator taken as an average of subscriber base of the preceding six months.

(11) If a multi system operator before providing access to its network to a broadcaster insist on placement of the channel of such broadcaster in a particular slot or bouquet, such precondition shall amount to imposition of unreasonable terms.

(12) Every multi system operator shall publish in its Reference Interconnect Offer the carriage fee for carrying a channel of a broadcaster for which no request has been made by the multi system operator:

Provided that the carriage fee shall be uniform for all the broadcasters and the same shall not be revised upwards for a minimum period of two years from the date of publication in the Reference Interconnect Offer.

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(13) Every multi system operator or his authorised agent who collects on behalf of such multi system operator the carriage fee from a broadcaster shall issue monthly invoice/s to such broadcaster and such invoice/s shall clearly specify the current payment dues and arrears, if any, along with the due date of payment.

(14) Every multi system operator or their authorized agent shall provide the signals of TV Channels to a local cable operator in accordance with its reference interconnect offer or as may be mutually agreed, within sixty days from the date of receipt of the request and in case the request for providing signals of TV Channels is not agreed to, the reasons for such refusal to provide signals shall be conveyed to the person making a request within sixty days from the date of request.

(15) Every multi system operator or his authorised agent who collects on behalf of such multi system operator the payment from the local cable operator for providing signals shall issue monthly invoice/s to such cable operator and such invoice/s shall clearly specify the current payment dues and arrears, if any, along with the due date of payment.

(16) Every demand of arrears under these regulations shall be accompanied by the proof of service of invoices for the period for which the arrears pertain.

C H A P T E R - III
REFERENCE INTERCONNECT OFFER

4. General Provisions relating to Reference Interconnection Offer.--(1) Every broadcaster shall, within thirty days of commencement of these regulations, submit to the Authority its Reference Interconnect Offer specifying the technical and commercial terms and conditions including the terms and conditions as mentioned in Schedule II of this regulation and publish it on its website.

Provided that a broadcaster may submit different interconnect offers for different types of digital addressable system.

(2) No broadcaster shall, directly or indirectly, prohibit any digital addressable cable TV system operator from providing its services to any subscriber.

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(3) A broadcaster may specify different Reference Interconnect Offers for supply of signals by the multi system operators to different categories of commercial subscribers such as --

(a) hotels with rating of three stars and above;

(b) heritage hotels, as specified in the guidelines for classifications of hotels issued by the Department of Tourism, Govt. of India ;

(c) any other hotel, motel, inn and other commercial establishments providing boarding and lodging having fifty or more rooms ; and

may also specify different reference interconnect offers for programmes telecast on the occasion of special events and viewed on payment basis by fifty persons or more at a place registered under the applicable law for such viewing:

Provided that the Reference Interconnect Offer applicable for ordinary subscriber shall also apply for the commercial subscribers other than those specified in this sub-regulation.

(4) Every broadcaster shall modify their existing Reference Interconnect Offer within thirty days of commencement of these regulations so as to bring them in conformity with provisions of these regulations.

(5) Any broadcaster, who begins its operation after the commencement of these regulations, shall, thirty days prior to commencement of its operations, submit to the Authority its Reference Interconnect Offer and publish such offer on its website.

(6) Every broadcaster shall submit to the Authority within seven days any amendment made in its Reference Interconnect Offer and simultaneously publish such amendments on its website in the same manner in which the original Reference Interconnect Offer was published.

(7) Every multi system operator shall, within thirty days from the date of commencement of these regulations publish its Reference Interconnect Offer specifying the technical and commercial terms and conditions for providing access to its network by the broadcaster and submit a copy to the Authority.

(8) Every person or firm or company who begins its services as multi system operator shall, before providing its services, publish its Reference Interconnect Offer specifying the technical and commercial terms and conditions for providing access to its network by the broadcaster and submit a copy to the Authority.

(9) The Authority may, in order to protect the interest of the consumer and the service provider and to promote and ensure orderly growth of broadcasting and cable services, direct the service provider to modify its Reference Interconnect Offer.

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C H A P T E R - IV
INTERCONNECTION AGREEMENTS

5. General Provisions relating to interconnection agreements.- (1) A multi system operator may enter into an agreement with the broadcaster in accordance with the terms and conditions of the Reference Interconnect Offer published by the broadcaster on such non-discriminatory terms and conditions.

(2) Every broadcaster shall, who publishes revised Reference Interconnect Offer after the commencement of these regulations, give an option to all multi system operators to enter into an agreement in accordance with the revised Reference Interconnect Offer and it shall be open to the multi system operator to enter into fresh agreement or continue with the existing agreement.

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(3) Every broadcaster shall, within a period of thirty days from the date of receipt of request from the multi system operator, enter into an interconnection agreement or modify the existing interconnect agreement in accordance with the terms and conditions of the Reference Interconnect Offer published under these regulations or as may be mutually agreed.

(4) Every broadcaster shall offer all its channels to the multi system operator on a-la-carte basis :

Provided that the broadcaster may, in addition to offering all its channels on a-la–carte basis, offer its channels in the form of bouquet.

(5) No broadcaster shall compel any multi system operator to include its channels or bouquet of channels in any package or scheme offered by the multi system operator to its subscribers.

(6) It shall be mandatory for the broadcasters of pay channels to reduce the terms and conditions of the interconnection agreements into writing.

(7) No broadcaster of pay channels shall make available signals of TV channels to any multi system operator without entering into a written interconnection agreement.

(8) Nothing contained in regulations (6) or (7) shall apply to any supply of signals or continuance of supply of signals of TV channels by a broadcaster in pursuance of or in compliance with any order or direction or judgment of any court or tribunal, including any order or direction or judgment of any court or tribunal on any proceeding pending before such court or tribunal.

(9) It shall be the responsibility of every broadcaster of pay channels who enters into an interconnection agreement with a multi system operator to hand over a copy of signed interconnection agreement to such multi system operator and obtain an acknowledgement in this regard within a period of 15 days from the date of execution of the agreement.

(10) In case a broadcaster wants to modify its interconnection agreement entered into with a multi system operator, it shall give a notice of thirty days to the multi system operator and any modification in such agreement may be made as per the terms and conditions of the Reference Interconnect Offer published by the broadcaster under these regulations or as may be mutually agreed.

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(11) In case the broadcaster and the multi system operator fail to enter into an interconnection agreement, such broadcaster or multi system operator, without prejudice to the provision of section 14 A of the Act or any other law for time being in force , at any time, may make a request to the Authority to facilitate the process of entering into such agreement and the Authority may issue such directions to the broadcaster and the multi-system operator as it may deem fit.

(12) Nothing contained in sub-regulation (11) shall apply to any matter or issue pending adjudication before any court or tribunal or in respect of which a decree, award or an order has been passed by a court or tribunal.

(13) The interconnection agreement between the multi system operator and its linked local cable operator shall have the details of various services rendered by the local cable operator to the multi system operator and the charges to be paid by the multi system operator to the local cable operator for these services.

(14) The interconnection agreement between the multi system operator and its linked local cable operator shall clearly earmark the responsibility of generation of subscribers' bill by the multi system operator and the roles and responsibilities of the multi system operator and its linked local cable operator on conformance to the quality of service regulations issued by the Authority from time to time.

(15) It shall be open to a multi system operator to decide the packaging of the channels offered to the subscribers from bouquet of channels provided to it by the broadcaster :

Provided that in case the multi system operator does not offer to a subscriber the entire bouquet of channels provided to it by the broadcaster but only certain channels of such bouquet or packages the channels of such bouquet in a manner resulting in different subscriber base for different channels of such bouquet, the payment to the broadcaster for such bouquet shall be calculated on the basis of the subscriber base for that channel of the bouquet which has highest subscriber base.

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(16) Every service provider shall enter into a new agreement before the expiry of the existing agreement and in case the service provider fails to enter into the new agreement before the expiry of the said agreement, the provisions of the existing agreement shall continue to apply till the new agreement is entered into between the service providers or for the next three months from the date of expiry of existing agreement, whichever is earlier and if the service providers are able to enter into an agreement before the expiry of the said three months, the new agreement shall apply from the date of expiry of earlier agreement:

Provided that if service providers are not able to enter into a new agreement, they may be entitled to disconnect the signals of TV Channels by giving three weeks notice published in two local newspapers, out of which one shall be published in the newspaper of the regional language of the area for which the said agreement is applicable.

(17) It shall be mandatory for the multi system operator to reduce the terms and conditions of the interconnection agreements into writing.

(18) No multi system operator, shall make available signals of TV channels to any linked local cable operator without entering into a written interconnection agreement.

(19) Nothing contained in regulations (l7) or (18) shall apply to any supply of signals or continuance of supply of signals of TV channels by a multi system operator in pursuance of or in compliance with any order or direction or judgment of any court or tribunal, including any order or direction or judgment of any court or tribunal on any proceeding pending before such court or tribunal.

(20) It shall be the responsibility of every multi system operator to hand over a copy of signed interconnection agreement who enters into an interconnection agreement with a linked local cable operator/s to hand over a copy of signed interconnection agreement to such cable operator and obtain an acknowledgement in this regard within a period of 15 days from the date of execution of the agreement.

(21) No service provider shall demand from any other service provider a minimum guaranteed amount as subscription fee for the channels provided by such service provider.

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C H A P T E R - V

DISCONNECTION OF SIGNALS OF TV CHANNELS

6. Disconnection of signals of TV Channel .- (1) No broadcaster shall disconnect the signals of a TV Channels of a multi system operator without giving three weeks notice to such multi system operator, clearly specifying the reasons for the proposed disconnection.

(2) No multi system operator shall disconnect the signals of a TV Channels of a linked local cable operator, without giving three weeks notice to such local cable operator, clearly specifying the reasons for the proposed disconnection.

(3) No multi system operator shall disconnect the re-transmission of any TV channel without giving three weeks notice to the broadcaster, clearly specifying the reasons for the proposed disconnection.

(4) No local cable operator shall disconnect the re-transmission of any TV channel without giving three weeks notice to the multi system operator, clearly specifying the reasons for the proposed disconnection.

(5) Every notice of disconnection of signals of TV channel under sub-regulation (1), (2), (3) and (4) and every notice of disconnection of re-transmission of TV channel under sub-regulation (2), (3) and (4) shall be published in two leading local newspapers of the State in which the service provider is providing the services, out of which one notice shall be published in the newspaper in local language.

(6) The period of three weeks specified under sub-regulation (1), (2), (3) and sub-regulation (4) shall start from the date of publication of the notice in newspapers or the date of service of the notice on service provider, whichever is later and in case the notices are published in newspaper on different dates, the period of three weeks shall be counted from the later of the two dates.

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C H A P T E R - VI
MISCELLANEOUS

7. Conversion of free to air channel into pay channel or a pay channel into free to air channel.- A channel once declared free to air channel or pay channel shall remain such channel for at least a period of one year and any broadcaster shall, before converting a free to air channel into pay channel or a pay channel into free to air channel, inform the Authority and shall give one month's notice before such conversion in two local newspapers, out of which one shall be published in the newspaper of the regional language of the area in which such conversion takes place.

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8. Intervention by the Authority .- The Authority may, in order to protect the interest of the consumer or service provider or to promote and ensure orderly growth of the broadcasting and cable sector or for monitoring and ensuring compliance of these regulations, by order or direction, intervene, from time to time.

9. Reporting Requirements.- (1) Every multi system operator shall submit to the Authority information, in the proforma specified in Schedule-III to these regulations, all interconnect agreements entered into by it with the broadcaster and local cable operator and subsequent modifications made therein.

(2) Every existing multi system operator shall submit to the Authority by 31st July, 2012, all interconnect agreements entered into by it and amendments made therein prior to the date of notification of these regulations.

(3) Every multi system operator commencing its services after the notifications of these regulations shall submit to Authority its interconnection agreement within thirty days of entering into the agreement or 31st July, 2012 whichever is later.

(4) Every broadcaster shall furnish the details of carriage fee paid by him to the multi system operator along with the information furnished by him under the Register of Interconnect Agreements (Broadcasting and Cable Services) Regulation 2004 (15 of 2004),

as amended from time to time. Such information henceforth shall also include details of carriage fee paid to the multi system operator by the broadcaster.

(Wasi Ahmad)
Advisor (B&CS)

Note.-----The Explanatory Memorandum explains the objects and reasons of the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulation, 2012.

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Schedule I

Digital Addressable cable TV Systems Requirements

A) Conditional Access System (CAS) & Subscriber Management System (SMS) :

1.The current version of the conditional access system should not have any history of the hacking.

2. The fingerprinting should not get invalidated by use of any device or software.

3. The STB & VC should be paired from head-end to ensure security.

4. The SMS and CA should be integrated for activation and deactivation process from SMS to be simultaneously done through both the systems. Further, the CA system should be independently capable of generating log of all activation and deactivations.

5. The CA company should be known to have capability of upgrading the CA in case of a known incidence of the hacking.

6. The SMS & CAS should be capable of individually addressing subscribers, on a channel by channel and STB by STB basis.

7. The SMS should be computerized and capable to record the vital information and data concerning the subscribers such as:
   a. Unique Customer Id
   b. Subscription Contract number
   c. Name of the subscriber
   d. Billing Address
   e. Installation Address
   f. Landline telephone number
   g. Mobile telephone number
   h. Email id
   i. Service/Package subscribed to
   j. Unique STB Number
   k. Unique VC Number

8. The SMS should be able to undertake the:
   a. Viewing and printing historical data in terms of the activations, deactivations etc
   b. Location of each and every set top box VC unit
   c. The SMS should be capable of giving the reporting at any desired time about:

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i. The total no subscribers authorized

ii. The total no of subscribers on the network

iii. The total no of subscribers subscribing to a particular service at any particular date.

iv. The details of channels opted by subscriber on a-la carte basis.

v. The package wise details of the channels in the package.

vi. The package wise subscriber numbers.

vii. The ageing of the subscriber on the particular channel or package

viii. The history of all the above mentioned data for the period of the last 2 years

9. The SMS and CAS should be able to handle at least one million subscribers on the system.
10. Both CA & SMS systems should be of reputed organization and should have been currently in use by other pay television services that have an aggregate of at least one million subscribers in the global pay TV market.
11. The CAS system provider should be able to provide monthly log of the activations on a particular channel or on the particular package.
12. The SMS should be able to generate itemized billing such as content cost, rental of the equipments, taxes etc.
13. The CA & SMS system suppliers should have the technical capability in India to be able to maintain the system on 24x7 basis throughout the year.
14. CAS & SMS should have provision to tag and blacklist VC numbers and STB numbers that have been involved in piracy in the past to ensure that the VC or the STB can not be re-deployed.

(B) Fingerprinting:

1. The finger printing should not be removable by pressing any key on the remote.
2. The Finger printing should be on the top most layer of the video.
3. The Finger printing should be such that it can identify the unique STB number or the unique Viewing Card (VC) number.
4. The Finger printing should appear on all the screens of the STB, such as Menu, EPG etc.
5. The location of the Finger printing should be changeable from the Headend and should be random on the viewing device.
6. The Finger printing should be able to give the numbers of characters as to identify the unique STB and/or the VC.

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7. The Finger printing should be possible on global as well as on the individual STB basis.
8. The Overt finger printing and On screen display (OSD) messages of the respective broadcasters should be displayed by the MSO/LCO without any alteration with regard to the time, location, duration and frequency.
9. No common interface Customer Premises Equipment (CPE) to be used.
10. The STB should have a provision that OSD is never disabled.

(C) Set Top Box (STB) :

1. All the STBs should have embedded Conditional Access.
2. The STB should be capable of decrypting the Conditional Access inserted by the Headend.
3. The STB should be capable of doing Finger printing. The STB should support both Entitlement Control Message (ECM) & Entitlement Management Message (EMM) based fingerprinting.
4. The STB should be individually addressable from the Headend.
5. The STB should be able to take the messaging from the Headend.
6. The messaging character length should be minimal 120 characters.
7. There should be provision for the global messaging, group messaging and the individual STB messaging.
8. The STB should have forced messaging capability.
9. The STB must be BIS compliant.
10. There should be a system in place to secure content between decryption & decompression within the STB.
11. The STBs should be addressable over the air to facilitate Over The Air (OTA) software upgrade.

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Schedule II

Terms and conditions which should compulsorily form part of Reference Interconnect Offers for interconnection between broadcaster and multi system operator for the Digital Addressable Cable TV System platforms.

Licence Fee	For each month or part thereof during the Term of the agreement, the multi system operator shall pay to _____ (name of the Broadcaster) the Monthly Licence Fee which shall be the Rate multiplied by the Monthly Average Subscriber Level. The a-la-carte and bouquet "Rate" per Subscriber is set out in Annexure to this RIO. The rates mentioned in the Annexure to this RIO, as referred to above, are exclusive of all taxes and levies. The "Monthly Average Subscriber Level" is equal to the sum of the number of subscribers on the first and last day of the month in question divided by two. For the purpose of calculation of the Monthly License Fee payable to _____ (name of the Broadcaster), "Subscriber" means, for any calendar month, each Set Top Box, which is availing the Channel(s) of _____ (name of the Broadcaster) through the multi system operator. **Calculation of License Fee:** I. In case a multi system operator avails one or more Bouquet(s) of _____ (name of the Broadcaster): (a) If the multi system operator is providing the Bouquet(s) as a whole to its subscribers, the Monthly License Fee for such Bouquet(s) shall be equal to the Bouquet rate as set out in the Anenxure multiplied by the number of monthly average number of subscribers availing the Bouquet(s).

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	(b) if the multi system operator does not offer such opted bouquet(s) as a whole to its subscriber but offers only certain channels comprised in such bouquet or packages the channels comprised in such opted bouquet in a manner resulting in different subscriber base for different channels comprised in such opted bouquet, then the payment to _____ (name of the Broadcaster) for such entire opted bouquet by the multi system operator, shall be calculated on the basis of subscriber base for the channel which has highest subscriber base amongst the channels comprised in the bouquet. II In case a multi system operator avails one or more or all channels of _____ (name of the Broadcaster) on ala carte rate basis: (a) If the multi system operator is providing the channels on ala carte basis to its subscribers, the Monthly License Fee for such ala carte channels shall be equal to the ala carte rate as set out in the Annexure multiplied by the number of monthly average number of subscribers availing the channels on ala carte basis. (b) if the multi system operator does not offer such opted ala carte channel(s) as ala carte to its subscriber but offers the ala carte channel (s) in packages, then the payment to _____ (name of the Broadcaster) for each of the ala carte channels, shall be calculated on the basis of subscriber base of the package in which such opted ala carte channel has been placed. III In case a multi system operator avails one or more channels on ala carte rate basis and also opts for different Bouquet(s) not comprising of channels opted on ala carte basis of _____ (name of the Broadcaster): (a) For bouquet(s), the monthly license fee shall be calculated on the basis of sub clause I above. (b) For ala carte channels, the monthly license fee shall be calculated on the basis of sub clause II above. Payment of the License Fee shall be subject to deduction of any withholding tax/ TDS in accordance with the provisions of the Indian Income Tax Act,

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	1961, as amended from time to time.
Payment Terms	The Monthly Licence Fee shall be paid monthly in arrears within fifteen (15) days of receipt of invoice raised on the basis of report of the multi system operator by _____ (name of the Broadcaster) without any deduction except deduction of withholding tax/TDS as provided in this RIO. Within seven days of end of each month, the multi system operator shall provide opening, closing and average number of subscribers for that month, based on which _____ (name of the Broadcaster) shall raise an invoice on the multi system operator. In case the multi system operator fails to send the report within the said period of seven days, _____ (name of the Broadcaster) shall have the right to raise a provisional invoice and the multi system operator shall be under obligation to pay the license fee on the basis of such provisional invoice in accordance with the terms of this clause. However the provisional invoice shall be for an amount not more than the monthly license fee payable by the multi system operator for the immediately preceding month. On receipt of the report from the multi system operator, the parties would conduct reconciliation between the provisional invoice raised by _____ (name of the Broadcaster) and the report sent by the multi system operator. The multi system operator shall be required to make payments by the Due Date in accordance with the terms hereof, and any failure to do so on the part of the multi system operator shall constitute a material breach hereunder. Late payments shall also attract interest calculated from the date payment was due until the date payment is made in full at a pro rata monthly rate of _____%. The imposition and collection of interest on late payments does not constitute a waiver of the multi system operator's obligation to pay the License Fee by the Due Date, and _____ (name of the Broadcaster) shall retain all of its other rights and remedies under the Agreement. All Licence Fee payments hereunder are exclusive of all applicable indirect taxes including all and any service taxes, VAT, works contract taxes, customs duties, excise duties, entertainment taxes and other such taxes. All such taxes

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	shall be at multi system operator's cost and will be charged at the prevailing rates by _____ (name of the Broadcaster) to the multi system operator. If payment of the Licence Fee is subject to deduction of any withholding tax/TDS in accordance with the provisions of the Indian Income Tax Act 1961, as amended, the multi system operator shall provide tax withholding certificates to _____ (name of the Broadcaster) within such period as has been specified in the Income Tax Act/ Rules/ Notifications/ Circulars issued thereunder.
Delivery and Security	All _____ (name of the Broadcaster) Channels must be delivered by multi system operator to subscribers in a securely encrypted manner and without any alteration. The transmission specifications and infrastructure allocated by multi system operator in respect of the broadcast signal of the _____'s (name of the Broadcaster) Channels by multi system operator to its subscribers shall be no worse than that of the cable signal of any other channel within the same genre on its digital addressable cable TV system platform.
Anti-Piracy	In order to prevent theft, piracy, unauthorized retransmissions, redistribution or exhibition, copying or duplication of any Channel, in whole or in part, (hereinafter collectively referred to as "Piracy"), the multi system operator shall, prior to the commencement of the Term of the agreement and at all times during such Term, employ, maintain, and enforce fully effective conditional access delivery and content protection and security systems, and related physical security and operational procedures (hereinafter collectively referred to as the "Security Systems") as may be specified (security specifications), in a non-discriminatory manner in writing, from time to time, by the _____ (name of the Broadcaster). To ensure the multi system operator's ongoing compliance with the security requirements set out in the Agreement, _____ (name of the Broadcaster) may require technical audits ("Technical Audit(s)") conducted by an independent security technology auditor ("Technical Auditor"), approved by _____ (name of the Broadcaster) in writing no more than twice per year

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	during the Term, at _____ (name of the Broadcaster)'s cost and expense. If the results of any Technical Audit are not found to be satisfactory by either the multi system operator or _____ (name of the Broadcaster), then _____ (name of the Broadcaster) shall work with the multi system operator in resolving this issue in the next fourteen (14) business days. If a solution is not reached at by then, _____ (name of Broadcaster) may, in its sole discretion, suspend the multi system operator's right to distribute the Channels or take other actions as provided under the Agreement, until such systems, procedures and security measures have been corrected to _____ (name of the Broadcaster)'s satisfaction multi system operator shall bear the cost and expense of any subsequent Technical Audit to verify that the systems, procedures and security measures have been corrected by the multi system operator to _____ (name of the Broadcaster)'s satisfaction. Multi system operator shall deploy finger printing mechanisms to detect any piracy, violation of copyright and unauthorized viewing of the Channels, distributed / transmitted through its Platform at least every 10 minutes on 24 x 7 x 365(6) basis. Multi system operator shall not authorize, cause or suffer any portion of any of the Channels to be recorded, duplicated, cablecast, exhibited or otherwise used for any purpose other than for distribution by multi system operator at the time the Channels are made available. If multi system operator becomes aware that any unauthorized third party is recording, duplicating, cable casting, exhibiting or otherwise using any or all of the Channels for any other purpose ,multi system operator shall within ten minutes of so becoming aware of such recording, duplicating, cable casting, exhibiting or otherwise using any or all of the Channels for any other purpose, notify _____ (name of the Broadcaster) and the multi system operator shall also switch off the concerned Set Top Box to prevent such unauthorized use. However, use of a Set Top Box with Personal Video Recorder/ Digital Video Recorder facility which has been supplied by the multi system operator shall not be treated as unauthorized use, as long as such Set Top Box is used in accordance with the terms and conditions of the subscription agreement between the multi system

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	operator and the subscriber. If so instructed by Information (as defined below) by _____(name of the Broadcaster), the multi system operator shall shut off or de-authorize the transmission to any unauthorized subscriber/ subscriber indulging in piracy, within ten minutes from the time it receives such instruction from _____ (name of the Broadcaster). Any communication under this clause shall be considered as valid Information only if (i) the information is sent through e mail in a format as mutually agreed by the parties and (ii) the information is sent by a person(s) who is designated to send such information. However the "information" may even be provided by _____ (name of the Broadcaster) representatives through other means of communications such as telephonic message, fax etc and the said "information" shall later be confirmed by _____ (name of the Broadcaster) through e mail and the multi system operator shall be under obligation to act upon such information.
Reports	Multi system operator will maintain at its own expense a subscriber management system ("SMS") which should be fully integrated with the CAS (Conditional Access System). Multi system operator shall provide to _____ (name of the Broadcaster) complete and accurate opening and closing subscriber monthly reports for the _____ (name of the Broadcaster) Channels and the tier and/or package containing the _____ (name of the Broadcaster) Channels within seven (7) days from the end of each month in the format provided by _____ (name of the Broadcaster). Such reports shall specify all information required to calculate the Monthly Average Subscriber Level (including but not limited to the number of Subscribers for each _____ (name of the Broadcaster) Channel and each package in which a _____ (name of the Broadcaster) Channel is included) and the Licence Fees payable to _____ (name of the Broadcaster) and shall be signed and attested by an officer of the multi system operator of a rank not less than Head of Department/Chief Financial Officer who shall certify that all information in the Report is true and correct.

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Audit	_____ (name of the Broadcaster)'s representatives shall have the right, not more than twice in a calendar year, to review and / or audit the subscriber management system, conditional access system, other related systems and records of Subscriber Management System of the multi system operator relating to the Channel(s) provided by the broadcaster for the purpose of verifying the amounts properly payable to _____ (name of the Broadcaster) under the Agreement, the information contained in Subscriber Reports and full compliance with the terms and conditions of the Agreement. If such review and or audit reveals that additional fees are payable to _____ (name of the Broadcaster), the multi system operator shall immediately pay such fees, as increased by the ------- Late Payment Interest Rate. If any fees due for any period exceed the fees reported by the multi system operator to be due for such period by two (2) percent or more, multi system operator shall pay all of _____ (name of the Broadcaster)'s costs incurred in connection with such review and / or audit, and take any necessary actions to avoid such errors in the future. The multi system operator shall remain the sole owner and holder of all customer databases compiled by the multi system operator under the Agreement. Multi system operator will maintain at its own expense a subscriber management system ("SMS") capable of, at a minimum: (i) maintaining a computerised customer database capable of recording adequate details of each Subscriber, including name, address, chosen method of payment and billing; (ii) administering subscriptions of Subscribers by producing and distributing contracts for new Subscribers and setting up and maintaining an infrastructure whereby Subscriber contracts are collected and recorded in the SMS database for ongoing administration; (iii) handling all ongoing administrative functions in relation to Subscribers, including, without limitation, billing and collection of subscription payments,

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	credit control, sales enquiries and handling of complaints; (iv) administering payments of any commission fees from time to time payable to the multi system operator's authorised agents for the sale to Subscribers of programming packages; (v) obtaining and distributing receivers and smartcards, if applicable, to Subscribers, and issue replacement smartcards from time to time in its discretion; and (vi) enable new Subscribers via the SMS over-the-air addressing system and disable defaulting Subscribers from time to time in its discretion.
Term	As mutually agreed between _____ (name of the Broadcaster) and the multi system operator subject to a minimum of One (1) Year from the date of signing of the Agreement unless terminated earlier in accordance with the Agreement. The Term of the Agreement may be extended on terms and conditions to be mutually agreed and recorded in writing between the parties.
Termination	Either Party has a right to terminate this Agreement by a written notice, subject to applicable Law, to the other in the event of: 1. material breach of this Agreement by the other Party which has not been cured within thirty (30) days of being required in writing to do so; 2. the bankruptcy, insolvency or appointment of receiver over the assets of the other Party; 3. The digital addressable cable TV system licence or any other material licence necessary for multi system operator to operate its digital addressable cable TV system service being revoked at anytime other than due to the fault of multi system operator. _____ (name of the Broadcaster) shall have the right to terminate this Agreement by a written notice to multi system operator if (i)multi system operator breaches any of the Anti Piracy Requirements and fails to cure such

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	breach within ten (10) days of being required in writing to do so; or (ii) _____ (name of the Broadcaster) discontinues the _____ (name of the Broadcaster) Channels with respect to all distributors in the Territory and provides multi system operator with at least ninety (90) days prior written notice. Multi system operator shall have the right to terminate this Agreement on written notice to _____ (name of the Broadcaster) if multi system operator discontinues its digital addressable cable TV system business and provides at least ninety (90) days prior written notice.
Jurisdiction	The Governing Law shall be the Indian Law and TDSAT, shall have exclusive jurisdiction in respect of any dispute between the parties, arising out of /in connection with or as a result of the Agreement.

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ANNEXURE TO SCHEDULE II

LICENCE FEE RATES

(A) A LA CARTE RATES

Channels	Rate to multi system operator (Rs.)

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(B) BOUQUET RATES

BOUQUET – 1

Channels	Rate to multi system operator (Rs)
1. 2. 3. 4. 5. 6. 7. 8.	

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BOUQUET- 2

Channels	Rate to multi system operator (Rs)
1. 2. 3. 4. 5.	

6.	

BOUQUET 3

Channels	**Rate to multi system operator (Rs)**
1. **2.** **3.** **4.** **5.**	

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Schedule – III

Performa for reporting by Multi System Operator of interconnect agreements entered into by them with Broadcasters & Local Cable Operators									
Column →	1	2	3	4	5	6	7	8	9
	S. No	Name of contracting parties	Complete Address of party with District, State, Pin Code and telephone number	Service Area of Operation	Name of the Bouquet with Number of channels	Rate of bouquet	Subscriber Base (Month wise w.e.f. July of the previous year and upto June of the current year)	Name of a-la-carte Channel & Number of channels	Rate of a-la-carte channel

Column →	10	11	12	13	14	15	16	17	18
	Discount, if any	Subscriber Base (Month wise w.e.f. July of the previous year and upto June of the current year)	IRD/VC No. - Channel Wise	Term of IRD	Agreement Number with date	Date of Commence-ment of the agreement	Date of expiry of the agreement	Carriage fee paid by the broadcaster	Remarks, if any

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Annexure

Explanatory Memorandum

I. Background

1. On 10.12.2004, TRAI made an interconnection regulation applicable for broadcasting and cable TV sector. The regulation was called the "Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004 (13 of 2004)". There have been six amendments made to this regulation.

2. The interconnection regulations provide for the basic structure on the matters of interconnection. These regulations cover arrangements among service providers for interconnection and revenue share, for all broadcasting and cable services. The main features of the regulations are: provision of 'must provide' (i.e. non discriminatory access) for the broadcasters and the provision for 'disconnection of TV signals'. The regulations prescribe notice period for disconnection. In the notice for disconnection, the reasons for disconnection are to be given. No notice for disconnection is required if there is no written agreement permitting distribution of signals. For the information of the consumers, it has been provided that the notice for disconnection should be published in newspapers in accordance with the relevant provisions of the regulations. These regulations also provide for publishing of Reference Interconnect Offer by broadcasters for non-addressable as well as addressable cable TV systems.

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3. In the last few years, the exponential growth in the number of TV channels (both Free To Air and Pay) combined with the inherent limitations of the analogue cable TV systems, has posed several challenges in the cable TV sector, mainly due to capacity constraints and non-addressable nature of the network. With time and evolution of technology, new addressable digital TV platforms like DTH, IPTV etc. were introduced to the masses. The evolution of technology also paved way for bringing about digitization with addressability in the cable TV sector. Accordingly, after studying the subject at length and undertaking a public consultation process, the Authority, on 5th August 2010, gave its recommendations on implementation of Digital Addressable Cable TV Systems (DAS) across the country along with a roadmap to achieve the same.

4. The Government, on 25th October, 2011, issued an Ordinance amending the Cable Television Networks (Regulation) Act, 1995, paving way for the implementation of digital addressable cable TV systems in India. Thereafter, the Government also issued a notification dated 11th November, 2011, which laid down the roadmap for implementation, in a four phased manner, from June 2012 to December, 2014. The Ordinance dated 25th October, 2011, subsequently, in December, 2011, became an Act.

5. Considering the amended provisions of the Cable Television Networks (Regulation) Act, 1995, and the notification dated 11.11.2011 mentioned above, the Authority initiated a consultation process on the issues relating to implementation of digital addressable cable TV systems. In this connection a consultation paper titled "Issues related to Implementation of Digital Addressable Cable TV Systems" was issued on 22.12.2011. The issues for consultation related to the amendments to the existing interconnection regulations, the subscription revenue share between the MSO and LCO, whether "must carry" provision should be mandated for the MSOs, whether the carriage fee is to be regulated and whether there should be a specified standard interconnection agreement between service providers applicable for DAS areas. An Open House Discussion (OHD) was also held in New Delhi on 13th March, 2012.

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II. Analysis of issues

6. The following is a summary of main issues, comments of the stakeholders and analysis thereon.

Note: To make it convenient for ease of reference and understanding by all the stakeholders, the instant regulations consolidate all the earlier interconnection regulations and the regulations now made are applicable for digital addressable cable TV systems.

A. Suggested Amendments to Interconnection Regulations

The issue for consideration was whether any of the existing clauses of the Interconnection Regulations require modifications.

7. During the course of the consultation process, broadcasters/aggregators suggested modifications in certain clauses of the existing interconnection regulations such as reduction in notice period for disconnection of signals, procedure for auditing of the Subscriber Management System (SMS) of the service provider and on the technical side it was suggest that a provision be made in the interconnection regulations for integration of SMS and the Conditional Access System (CAS) so as to ensure complete addressability of the system. It was also suggested that the provisions may be made in the regulations for anti piracy and fingerprinting measures and for making provision for filing of interconnect agreements by MSOs/LCOs and also a provision for minimum period of subscription. It was also suggested that clause 3.2 of the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004, relating to "must provide" may also be qualified by making it inoperative in cases of service providers who have failed to comply with any of the regulations. It was also suggested by the stakeholders that certain definitions in the existing interconnection regulation may be required to be amended to bring them in line with the provisions of Cable Television Act as amended in 2011. Some MSOs expressed the view that they are not in favor of any modification in existing clauses. Some of the LCOs have suggested that there is a need to amend the clauses of interconnection regulations relating to the notice period for disconnection and for making provisions for revenue sharing arrangements.

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8. On the issue of filing of interconnect agreements by the MSOs, the Authority considered the suggestion and decided to incorporate a provision in this regard in this regulation so as to bring in the transparency in the system. A provision has been made in this regulation for reporting the details of interconnect agreements by the MSOs along with the details of carriage fee paid by the broadcasters. The reporting requirement, prescribed in the present regulations, makes a provision for the broadcasters to file the details of carriage fee paid by them. On the issue of amendments to definitions, the definitions such as "addressable system", "broadcaster", "cable operator", "multi system operator", "pay channel" and "subscriber management system" have been aligned with that of the amended Cable Television Networks (Regulation) Act, 1995 and also the amended Cable Television Networks Rules, 1994. On the issue of minimum period of subscription, a provision has been made in the Telecommunication (Broadcasting and Cable) Services (Digital Addressable Cable TV Areas) Tariff Order, 2012. On the issue of Notice period for disconnection, the Authority considered the fact that the notice period should be sufficient for the affected

parties to be able to approach the appropriate forum to plead for intervention and to give the consumers an opportunity to approach the necessary forum. The Authority, therefore, decided that the existing period of the notice of 21 days is to be retained. On the suggestion of the audit of SMS, the Authority considered the fact that the existing provisions of the interconnect regulations provide for upto two audits in a calendar year. The Authority felt that this is sufficient opportunity for audit and, therefore, decided that there is no need to modify the existing provisions in this regard. On the issue of integration of SMS and CAS, the Authority observed that the existing interconnection framework provides for integration of SMS and CA system for activation and deactivation process from SMS to be simultaneously done through both the systems. The Authority is of the view that this provision is adequate and therefore no change is required. On the issue of Anti Piracy and fingerprinting the Authority observed that the existing framework provides that operator shall deploy finger printing mechanisms to detect any piracy, violation of copyright and unauthorized viewing of the Channels, distributed / transmitted through its platform. The Authority is of the view that this provision is adequate and therefore no change is required on this issue. On the issue of Qualified "Must Provide", the Authority observed that the violations of regulations are to be dealt with as per the provisions of the TRAI Act, 1997. The Authority is, therefore, of the view that no further qualifications are required in this provision.

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B. The "Must Carry" provision

9. The issue is that should the 'must carry' provision be mandated for the MSO. If so, what should be the qualifying conditions and the manner in which an MSO should offer access to its network for the carriage of TV channel. The majority of the broadcasters are in favour of mandating must carry provisions to balance out the 'must provide' clause prescribed in the existing interconnect regulations. They have suggested that the manner of offering network access should be on a non-discriminatory basis and the qualifying conditions may include openness to audit & transparency, non-discriminatory listing of channels and all channels should feature genre-wise in the EPG of MSO. One broadcaster has also suggested that the 'must carry' provisions need not be mandated.

10. Majority of the MSOs and LCOs have suggested that there should not be any must carry provision. Some of them have suggested that it can be mandated only for DD channels. Regarding the manner, one LCO has suggested that Carriage fee should be the qualifying

condition for all 'must carry' channels except Doordarshan channels. Few LCOs have supported the must carry provision and stated that it should be regulated by TRAI. Other stakeholders who have offered their comments are not in favour of 'must carry' provision.

11. In the digital transmission environment, the capacity to carry the channels is very high. So one of the main advantages of a digital environment to the subscriber is the availability of large number of channels. However, there is a component of cost to carry channels. If the operator is compensated for the cost of carriage of a channel, there should not be any technological or other infrastructural constraints for the operator to carry a channel. Further, as per the Cable Television Networks (Amendment) Rules, 2012, the channel carrying capacity of the multi system operator is to be specified by the Authority.

12. The analysis of the operational channels (Annexure-A attached with this Explanatory Memorandum) shows that the maximum number of channels that are relevant to a State or Union Territory, language-wise, are 473 (in Andhra Pradesh) out of the 650 operational private channels (as on April, 2012). Besides this there are 18 channels of the Prasar Bharati and one Lok Sabha channel (in total 19 channels) that may also be relevant for all the States and the UTs to cater to the infotainment requirements of minority populace of these States and UTs. It is also noted that the Ministry of Information and Broadcasting has granted permission to 831 channels under uplinking/downlinking guidelines, as on 6th March, 2012. It is also likely that certain more channels may get operational by 1.1.2013. Thus, it is logical that maximum number of channels that may be required to be carried in a digital addressable cable TV system network, for present, is taken as 500 channels per headend. Therefore, the present regulations provide for creating a capacity of 500 channels per headend by 1.1.2013. Further, it has been seen that there are two types of MSOs viz., large sized MSOs having subscriber base of more than 25,000 subscribers with upper limit running into lakhs of subscribers and smaller MSOs having around 25,000 subscribers or lesser number of subscribers. Due to the larger size of operations, the large sized MSOs are better equipped to have the capacity to set up digital addressable cable TV systems in lesser time than the smaller sized MSOs. Therefore, to provide more time to smaller MSOs to create capacity of 500 channels per head end, the time line has been prescribed as 1st April, 2013 and for the large sized MSOs, the time line has been kept as 1st January, 2013. However, considering the fact that the four metros of Delhi, Mumbai, Kolkata and Chennai are to go digital on 1st July, 2012, and many of the MSOs may not be able to create a capacity

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to carry a minimum 500 channels per headend by this date, in the first instant, they have been allowed to operate with a minimum capacity of 200 channels per headend.

13. To allow the multi system operator to provide the access to its cable network smoothly, a time frame of sixty (60) days has been provided for in the regulations which is equivalent to the time frame given to the broadcaster under the must provide provisions. In no case this time period be more than sixty days (60 days) from the date of request seeking access to the network of the multi system operator.

14. A responsibility has also been cast upon the broadcaster or the access seeker to the cable network of the MSO under the provisions of 'must carry' to ensure the subscription of the channel at a minimum level of more than or equal to five per cent. (5%) of the subscriber base of that MSO taken on an average of subscriber base for the preceding six months. In case of failure to maintain this subscriber base, the network provider, in his discretion, can refuse to grant further access to the network for a period of next one year. Such a refusal would not be considered a violation of the "Must carry" provision.

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C. "Carriage fee"

15. The issues are should the carriage fee be regulated and if so, should its quantum be linked to some parameters. News Broadcaster Association is of the view that carriage fee should be regulated. This Association is of the view that if must carry is mandated, the question of carriage fee does not arise. Majority of the broadcasters and one association of broadcasters are not in favor of regulating the carriage fee and have suggested that it should be based on the mutual negotiation between the broadcaster and MSO. Few who favored suggested that the parameters can be the subscriber base of the MSO, number of STB installed etc. One of the broadcaster suggested that carriage fee should not exceed 10% of the subscription fee collected for the channels not covered under the must carry mandatory clause.

16. MSOs are not in favor of any kind of regulatory intervention on carriage fee. Most of the LCOs are not in favor of regulating the carriage fee. Some of the LCOs suggested that the carriage fee should be regulated and can be linked with the no. of STBs installed, gross collection of subscription amount, size and locality of the network etc. Some LCOs are suggesting that LCO should also get a part from the carriage fee.

17. In the addressable systems, due to transparency in ascertaining the number of subscribers, the subscription revenue is expected to go up. Therefore, the dependence of MSOs on the carriage fee, as a source of revenue, is likely to be reduced. Considering all the aspects, the Authority is of the view that there is a need to regulate the carriage fee. Accordingly, the following scheme has been worked out. The MSOs who charge carriage fee are required to declare the carriage fee for carrying a TV channel. The carriage fee shall be charged in a non-discriminatory and transparent manner. Also the carriage fee can not be revised upward for a minimum period of 2 years. The details of the carriage fee is to be filed with the Authority. In case the Authority finds it necessary, it shall intervene and ask for appropriate modifications in the carriage fee.

D. Standard Interconnect Agreement (SIA)

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18. The issue is whether TRAI prescribe a standard interconnection agreement between service providers. Nearly half of the broadcasters who offered their comments on the issue are not in favour of prescribing SIA by the Authority whereas others are in favour of SIA prescription by the Authority. Those who favoured, suggested that the piracy and termination clauses should be reviewed.

19. MSOs are in favour of SIA prescription by the Authority except for one MSO who has suggested that RIO based mechanism, has worked well for DTH sector, so it should be extended to DAS. Majority of LCOs are in favour of SIA whereas some of them have suggested that there is no immediate requirement of SIA.

20. The Authority is of the view that as the interconnection regulations already provide for the necessary regulatory framework for addressable systems, in the form of RIO, which were not there in the year 2006 when SIA was prescribed for CAS, there is no need for prescribing Standard Interconnect Agreement between Broadcaster and MSO and also between MSO and LCO in the Digital Addressable Cable TV System. The Authority is of the view that the RIO based prescription should prevail in DAS also.

E. Advertisement free (ad-free) channels

21. The issues are what should be the provisions in the interconnection regulations in respect of advertisement free channels and what should be the revenue sharing arrangement between the broadcasters and distributors in respect of such channels. Some broadcasters and an MSO

stated that existing requirements/stipulations of Interconnect Regulations, viz. 'must provide' should not apply to advertisement free channels and the broadcasters & respective service providers should be free to enter into agreements on mutually acceptable terms in order to provide incentives to all the players in the value chain to create, develop and market new innovative and non-mass-market advertisement based television content. Majority of other stakeholders, who have responded to these issues, say that the provisions of the existing interconnection regulations should be applicable to advertisement free channels also so that consumers are not deprived of such channels. Some cable operators are of the view that provisions of the interconnection regulations as applicable to the notified CAS areas should be applied for the advertisement free channels. As far as the sharing of the subscription revenue of the ad-free channels is concerned, all the broadcasters have expressed the views that it should be left for the commercial negotiations between the service providers. Some of the other stakeholders have suggested that revenue share be decided in the same way as any other pay channel while others have suggested different percentages for broadcaster, MSO and LCO, however, without any justification for this suggestion.

22. The issue of rates of advertisement free channels and sharing of subscription revenues of such channels has been dealt with by separately in the provisions of the Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff (First Amendment) Order, 2012. Authority is of the view that there is no need to change the existing policy of leaving it to the market forces. To prevent denial of the signals of the channels by the broadcaster to the MSO or denial by the MSO to carry the channels, such channels can not be mandated to be outside of the purview of the clauses on 'must provide' and 'must carry' of the interconnection regulations as this would not be in the interests of the consumers.

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Annexure-A

State-wise/UT-wise maximum number of TV channels language-wise relevant to the particular state or UT out of operational 650 private channels granted permission by the Ministry of Information and Broadcasting under the downlinking guidelines (data as on April, 2012)			
Sl. No.	**States**	**Number of channels**	**Languages**
1	Andhra Pradesh	473	Hindi/ English/Telgu+19 channels*
2	Arunachal Pradesh	425	Hindi/ English/NE and Assamese+19 channels
3	Assam	425	Hindi/ English/NE and Assamese+19 channels
4	Bihar	428	Hindi/ English/Bhojpuri+19 channels
5	Chhattisgarh	420	Hindi/ English+19 channels
6	Goa	438	Hindi/ English/Marathi+19 channels
7	Gujarat	428	Hindi/ English/Gujrati+19 channels
8	Haryana	441	Hindi/ English/Punjabi+19 channels
9	Himachal Pradesh	441	Hindi/ English/Punjabi+19 channels
10	Jammu and Kashmir	424	Hindi/ English/Urdu+19 channels
11	Jharkhand	428	Hindi/ English/Bhojpuri+19 channels
12	Karnataka	437	Hindi/ English/Kannada+19 channels
13	Kerala	451	Hindi/ English/Malyalam+19 channels
14	Madhya Pradesh	420	Hindi/ English/+19 channels
15	Maharashtra	438	Hindi/ English/Marathi+19 channels
16	Manipur	425	Hindi/ English/NE and Assamese+19 channels
17	Meghalaya	425	Hindi/ English/NE and Assamese+19 channels
18	Mizoram	425	Hindi/ English/NE and Assamese+19 channels
19	Nagaland	425	Hindi/ English/NE and Assamese+19 channels
20	Orissa	434	Hindi/ English/Oriya+19 channels
21	Punjab	441	Hindi/ English/Punjabi+19 channels
22	Rajasthan	420	Hindi/ English+19 channels
23	Sikkim	446	Hindi/ English/Bengali+19 channels
24	Tamil Nadu	462	Hindi/ English/Tamil+19 channels
25	Tripura	425	Hindi/ English/NE and Assamese + 19 channels
26	Uttaranchal	424	Hindi/ English/Urdu+19 channels
27	Uttar Pradesh	424	Hindi/ English/Urdu+19 channels
28	West Bengal	446	Hindi/ English/Bengali+19 channels
29	Andaman and Nicobar Islands	420	Hindi/ English+19 channels
30	Dadar and Nagar Haveli	420	Hindi/ English+19 channels
31	Daman and Diu	420	Hindi/ English+19 channels

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32	Lakshadeep	420	Hindi/ English+19 channels
33	Delhi	441	Hindi/ English/Punjabi+19 channels
34	Chandigarh	441	Hindi/ English/Punjabi+19 channels
35	Pondicherry	441	Hindi/English/ Tamil/ French+19 channels

* 19 channels includes 8 channels to be carried as per the provisions of the Cable Television Networks (Regulation) Act, 1995 and 11 regional Prasar Bharati channels.

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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 14th May, 2012

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F. No. 3- 24/2012- B&CS – In exercise of the powers conferred by section 36, read with sub-clauses (ii), (iii), (iv) and (v) 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, namely:-

THE TELECOMMUNICATION (BROADCASTING AND CABLE SERVICES) INTERCONNECTION (DIGITAL ADDRESSABLE CABLE TELEVISION SYSTEMS) (FIRST AMENDMENT) REGULATIONS, 2012

No. 14 of 2012

1. (1) These regulations may be called the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) (First Amendment) Regulations, 2012.

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

2. In regulation 3 of the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 (hereinafter referred to as the principal regulations), after sub-regulation (11), the following sub-regulation shall be inserted, namely:- -

"(11A) No multi system operator shall demand from a broadcaster any placement fee."

3. In regulation 4 of the principal regulations, after sub-regulation (8), the following sub-regulation shall be inserted, namely:- -

"(8A) Every Reference Interconnect Offer submitted to the Authority under sub-regulation (7) and sub-regulation (8) shall also contain the basis on which the carriage fee payable by the broadcaster has been determined."

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4. In regulation (5) of the principal regulations, after sub-regulation (14), the following sub-regulation shall be inserted, namely:-

"(14A) Every broadcaster shall declare the genre of its channels and such genre shall be either News and Current Affairs or Infotainment or Sports or Kids or Music or Lifestyle or Movies or Religious or Devotional or General Entertainment (Hindi) or General Entertainment (English) or General Entertainment (regional language).

14(B) The multi system operator shall place the channels of a broadcaster in the genre declared by such broadcaster.

14(C) No broadcaster shall demand from the multi-system operator to assign a particular number to its channels."

5. In regulation (5) of the principal regulations, after proviso to sub-regulation (15), the following sub-regulation shall be inserted, namely:-

"(15A) Every multi system operator shall display, in his Electronic Programme Guide, all the channels offered by him, in the same genre in which a particular channel has been indicated by the broadcaster and one channel shall appear in only one genre."

(Wasi Ahmad)
Advisor (B&CS)

Note.-----The Explanatory Memorandum explains the objects and reasons of the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) (First Amendment) Regulation, 2012.

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Annexure

Explanatory Memorandum

1. After following an extensive consultation process, the Authority had notified the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 (9 of 2012) (hereinafter referred to as the principal Regulation) on 30th April, 2012. While the principal regulation is specifically applicable for digital addressable cable TV systems, the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004 (13 of 2004) is applicable for non-addressable cable TV systems and also addressable systems such as DTH, IPTV etc.

2. A question has arisen regarding charging of placement fee by the multi system operator. In the digital addressable cable TV systems, the technology provides for a Electronic Program Guide (EPG) wherein the channels being carried on an MSO's network can be arranged in a simple easy to understand manner so that the subscriber can easily go through this guide and select the channel of choice instead of flipping through all the channels. This display of channels can be genre-wise where all the channels of a particular genre can be listed under that genre in the genre-wise list of EPG. Thus, in digital addressable cable TV systems, there is hardly any justification for charging of the placement fee. In sub-regulation 11 of the regulation 3 of the principal regulation dated 30th April, 2012, it has clearly been provided that insistence by multi system operator on placement of a channel in a particular slot or bouquet amounts to imposition of unreasonable terms. The intention of making this provision was that placement fee cannot be charged. However, to clarify the position in this regard, in the amendment regulation, a specific provision has been made so that the multi system operator does not charge any placement fee from any broadcaster.

3. The matter relating to charging of carriage fee by the multi system operator has been dealt with in sub-regulation 12 of regulation 3 and in sub-regulations 7 and 8 of the regulation 4 and also in the paragraphs 15 to 17 of the principal regulation. The multi system operators are to file a copy of the Reference Interconnect Offer with the Authority including the quantum of carriage fee per channel that would be charged from the broadcasters. With digital technology, the capacity to carry the channels is no longer a constraint. Also, the Subscriber Management System (SMS) provides the full declaration of the subscribers, increasing the percentage of subscription revenue to the multi system operator. With all these, the carriage fee is expected to go down substantially. It was presumed that the Reference Interconnect Offer that would be filed with the Authority would include the detailed basis on which the carriage fee has been worked out. The same has been clarified in the sub-regulation which has been inserted in this regard.

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4. In sub-regulation 15 of regulation 5 of the principal regulation dated 30th April, 2012, a provision has been made that it shall be open to a multi system operator to decide the packaging of the channels offered to the subscribers from bouquet of channels provided to it by the broadcaster. A question has arisen regarding placement of channels by the multi system operator. To avoid any eventuality of a channel being placed in a disadvantageous position as compared to another channel of the same genre, a provision has now been made whereunder a broadcaster has to indicate the genre of a channel and the multi system operator has to include that channel in the genre declared by the broadcaster. The multi system operator is required to ensure that all the channels falling in a particular genre appear in its network's Electronic Programme Guide (EPG) under the same genre. With this the subscriber would be able to see the list of channels that are available genre-wise and thus making the service more customer friendly.

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PART III, SECTION 4

TELECOM REGULATORY AUTHORITY OF INDIA

THE TELECOMMUNICATION (BROADCASTING AND CABLE SERVICES) INTERCONNECTION (DIGITAL ADDRESSABLE CABLE TELEVISION SYSTEMS) (SECOND AMENDMENT) REGULATIONS, 2013

(No. 12 of 2013)

NOTIFICATION

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New Delhi the 20th September, 2013

F. No. 3-24/2012-B&CS----In exercise of powers conferred by section 36, read with sub-clauses (ii), (iii), (iv) and (v) 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. 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 amend the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2013 (9 of 2012), namely:-

1. (1) These regulations may be called the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) (Second Amendment) Regulations, 2013.

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

2. In regulation 3 of the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 (9 of 2012),---

(a) in sub-regulation (2), the phrase "having the prescribed channel capacity and" shall be omitted;

(b) in sub-regulation (2), after the second proviso, the following proviso shall be inserted, namely:-

"*Provided also that* nothing contained in this sub-regulation shall apply in the case of a multi-system operator, who seeks signals of a particular TV channel from a broadcaster, while at the same time demands carriage fee for carrying that channel on its distribution platform."

(c) sub-regulation (5), sub-regulation (8) and sub-regulation (11A) shall be omitted.

(Sudhir Gupta)
Secretary(I/C), TRAI

Note.1-----The principal regulations were published vide notification no. 3-24/2012-B&CS dated 30th April 2012 and subsequently amended vide notifications No. 3-24/2012-B&CS dated 14th May 2012.

Note.2-----The Explanatory Memorandum explains the objects and reasons of the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) (Second Amendment) Regulation, 2013 (No. 12 of 2013).

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Annexure

Explanatory Memorandum

I. Background

1. In the last few years, the exponential growth in the number of TV channels (both free-to-air [FTA] and pay) combined with the inherent limitations of the analog cable TV systems has posed several challenges in the cable TV sector, mainly due to capacity constraints and non-addressable nature of the network. With time and evolution of technology, new addressable TV platforms like direct-to-home (DTH), internet protocol television (IPTV) etc. became available. The evolution of technology also paved way for introducing digitization with addressability in the cable TV sector. Accordingly, after studying the subject at length and undertaking a public consultation process, the Authority, on 5th August 2010, gave its recommendations on implementation of Digital Addressable Cable TV Systems (DAS) across the country along with a roadmap to achieve the same.

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2. The Government has accepted the recommendations of TRAI and on 25th October, 2011, promulgated an Ordinance amending the Cable Television Networks (Regulation) Act, 1995, enabling the implementation of Digital Addressable Cable TV Systems in India. Thereafter, the Government also issued a notification dated 11th November, 2011 and its amendment dated 21st June 2012, which laid down the roadmap for implementation of Digital Addressable Cable TV Systems in the country in a phased manner in four phases, with the first phase by 31st Oct. 2012 and the final phase to be completed by 31st December 2014. This will lead to sunset of Analogue Cable TV Systems in the entire country. With the Parliament passing the bill, the Ordinance dated 25th October, 2011, became an Act on 30th December, 2011. Subsequently, the Central Government amended the Cable television Networks Rules 1994, vide amendment dated 28th April 2012. These legislative enactments paved way for the implementation of DAS in the country.

3. In order to lay down a comprehensive regulatory framework for the digital addressable cable TV systems (DAS), the Authority initiated a consultation process on the issues relating to implementation of DAS. After following an extensive public consultation process, the tariff

amendment order, regulations for quality of service and redressal of consumer grievances, and the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 dated 30th April 2012, were notified. The interconnection regulations prescribe various provisions relating to the interconnection between Broadcaster, MSO and LCO. Subsequently, an amendment to the interconnection regulations was also notified on 14th May 2012.

4. Some of the provisions of the said interconnection regulations were challenged in appeal numbers 5(C) of 2012, 11 (C) of 2012 and 12 (C) of 2012 before Hon'ble Telecom Disputes and Settlement Appellate Tribunal (TDSAT) by some MSOs. The Hon'ble TDSAT vide its judgment dated 19th October 2012 partly allowed the appeals and set aside three provisions of the said interconnection regulations. The provisions set aside pertain to prohibition of demanding carriage fee by the MSO while seeking signals of a channel from a broadcaster (sub-regulation 3(5) of the said regulations), MSOs to have a minimum channel carrying capacity of 500 channels (sub-regulation 3(8) of the said regulations) and prohibition regarding charging of placement fee by the MSOs (sub-regulation 11A of the said regulations).

5. While setting aside the provisions of sub-regulation 3(5) of the Interconnection Regulations applicable for DAS, the Hon'ble TDSAT had opined, inter alia, that there should not be any difference between 2nd proviso to sub-regulation 3.2 of "The Telecommunication (broadcasting and Cable Services) Interconnection Regulation 2004 (12 of 2004)" as amended from time to time as applicable to non-CAS/DTH operators and sub-regulation 3(5)of "The Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulation 2012". On the issue of provision of capacity to carry minimum 500 channels, the Hon'ble TDSAT, in its judgment, had observed that since market forces play an important and significant role in the matter of carrying capacity of the MSO, the same may not be required to be regulated. It has been further observed by the Hon'ble TDSAT that if the regulator deems fit, it may consider making provision for MSOs to have capacity to carry number of channels based on different categories of areas i.e. city/towns/rural area etc. in which MSO will be operating. Further, the

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Hon'ble TDSAT has set aside the provisions of sub-regulation 11A of the interconnection regulation 2012 on the ground that the restriction placed on the MSO for demanding placement fees in terms of May 2012, Regulation is bad in law. It has been further mentioned that the same restriction is not applicable for the DTH operators, the placement charges, if any, will depend upon the mutual agreement between the Broadcasters and the MSO. Consequent to the said judgment of the Hon'ble TDSAT, the Authority initiated a consultation process with the stakeholders to bring in finality to the provisions set aside by the Hon'ble TDSAT.

6. In this connection, a consultation paper titled "Issues related to amendments to the Interconnection Regulations applicable for Digital Addressable Cable TV Systems & Tariff Order applicable for Addressable Systems" was issued on 20th December, 2012. In this consultation paper, inter-alia, the following issues were posed for the stakeholders to offer their comments:

   (a) Introduction of following proviso (in line with the 2nd proviso to the sub-regulation 3.2 of the interconnection regulation applicable for the platforms, other than DAS) in the sub-regulation 3(2) of the interconnection regulations applicable for DAS areas, and deletion of the sub-regulation 3(5) from the same regulation:

   "*provided that* the provisions of this sub-regulation shall not apply in the case of a multi-system operator, who seeks signals of a particular TV channel from a broadcaster, while at the same time demanding carriage fee for carrying that channel on its distribution platform".

   (b) Need to specify certain minimum channel carrying capacity for the MSOs based on different categories (cities/town/rural area) of areas in the interconnection regulations.

   (c) Need for regulating the placement fee in all the Digital Addressable Systems and how it should be regulated.

7. In response to this consultation paper, a total of 48 comments were received from stakeholders. Taking into consideration the comments/views of the stakeholders and analysis of the issues, the draft interconnection regulation was prepared and uploaded on the TRAI website on 4th June 2013, seeking views/comments of the stakeholders on the same. In response, 27 stakeholders put forth their views/comments. Based on the above said

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consultation process, the interconnection regulation applicable to digital addressable cable TV systems has been amended through this interconnection amendment regulation namely the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) (Second Amendment) Regulations, 2013.

II. Analysis of Issues

8. The following is the summary of issues taken up for consultation, comments of the stakeholders and analysis thereon.

A. "Carriage Fee"

9. The issue is that whether the following proviso should be introduced in the sub-regulation 3(2) of the interconnection regulations for DAS and the existing sub-regulation 3(5) of interconnection Regulation for DAS should be deleted:

"*Provided that the provisions of this sub-regulation shall not apply in the case of a multi-system operator, who seeks signals of a particular TV channel from a broadcaster, while at the same time demanding carriage fee for carrying that channel on its distribution platform.*"

10. Several broadcasters, in their response to the issue, expressed the opinion that they are in favour of continuation of the existing clauses. They have further stated that if the carriage fee is imposed, it should be for a limited period and during such period the fee must be regulated by TRAI which must be rational, non-discriminatory and based upon actual, verifiable subscriber base and once the digitization is completed, no carriage fee must be chargeable at all. Several other broadcasters were in favour of TRAI's proposal to amend sub-regulation 3(5) and to bring it in line with that of Interconnect Regulation, 2004, applicable for DTH, IPTV, HITS and non-addressable cable TV systems, wherein, it has been provided that the seeker of the TV signals while seeking signals, cannot demand carriage fee at the same time.

11. Majority of the MSOs, in their response to the issue, have stated that the sub-regulation 3(5) should be deleted while the proposed proviso should not be included in the sub-regulation

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3(2). They have further stated that the issue of carriage fee should be left to market forces and should not be regulated as there are already adequate safeguards provided in the interconnection regulations in the form of prescription of uniform carriage fee, to be charged by the MSOs, for all broadcasters, and restriction on upward revision of carriage fee for a minimum two years.

12. All private DTH operators and their association except one DTH operator, in their response to the issue, have suggested that the issue should be left to the market forces since it is a matter of commercial negotiations which does not involve consumers. They further stated that even after complete digitalization, capacity will always be a constraint to carry all the channels. DAS operators have stated that they should have the freedom to choose the channels to carry and suitably charge in order to recover its carriage cost and since there is no limit on advertisement rates, which is driven by demand & supply, there is no reason as to why there should be any limit on carriage / placement fee. One DTH operator has opined that the regularization and clarity need to be brought in carriage fee payment by regulating the carriage fee on per active subscriber basis. Another DTH operator has suggested that to maintain transparency, DAS operator should file details of interconnect agreement with broadcaster w.r.t. carriage fee.

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13. While one of the LCO associations has supported the proposal, another has suggested that TRAI should fix carriage fee based on genre of the channel and its Television Rating Points (TRP) and carriage fee received by MSO should be shared between MSO and LCO as LCOs' infrastructure is much larger than that of MSOs'.

14. The issue has been analysed. The Interconnection Regulation applicable for DAS has the following safeguards with regard to charging of carriage fee. (1) Carriage fee to be transparently declared in the RIO of the MSO, (2) The carriage fee is to be uniformly charged (3) The carriage fee not to be revised upwardly for a minimum period of 2 years, and (4) The details of the carriage fee are to be filed with the Authority and the Authority has a right to intervene in cases it deems fit.

15. The intention for including the above said proviso to the sub-regulation 3(2) was to ensure that the broadcasters are not forced to supply their channel in terms of sub-regulation 3(2) and at the same time pay carriage fee for the same channel. Also, inclusion of such a proviso prevents a distributor of TV channels from misusing the sub-regulation 3(2). It is worthwhile to note that same provision (2nd proviso to sub-regulation 3.2) exists in the interconnection regulations for other addressable and non-addressable platforms since 2009.

16. Considering all the above aspects, the Authority is of the view that the proposed proviso shall be included in the sub-regulation 3(2) and sub-regulation 3(5) shall be deleted.

B. "Channel carrying capacity for MSOs"

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17. Another issue raised in the consultation paper was whether there is a need to specify certain minimum channel carrying capacity for the MSOs in the interconnection regulations for DAS and if so what should be the different categories (cities/town/rural area etc.) of areas for which minimum channel carrying capacity should be prescribed and what should be the capacity for each category.

18. While some of the broadcasters, in their response, have suggested that the issue should be left to the market forces, others have suggested that certain minimum channel carrying capacity should be prescribed by TRAI to ensure effective roll out of digitization of the cable TV sector. They have stated that if minimum capacity is not prescribed, MSO's are not likely to upgrade their systems and the number of channels available to the consumers will remain limited and the broadcasters will continue paying unreasonable carriage fee. They further stated that if the issue is left to the market forces at this time, it may lead to anti-competitive practices through cartelization or misuse of monopolistic positions, as the case may be. Some of the broadcasters, who are in favour of prescribing minimum channel capacity, have further suggested that the minimum capacity of 500 channels should be prescribed universally, irrespective of category of areas. One broadcaster has suggested that the carrying capacity can be linked with the size of the MSO, depending upon their subscriber base.

19. All the MSOs, in their response, have stated that the issue should be left to the market forces since there is enough competition in the market which will compel the MSOs to carry all relevant channels. Further, no MSO should be required to carry channels unless there is a market demand or an opportunity, making economic sense. They have further stated that any prescription for minimum channel carrying capacity will only help the broadcasters who do not have a viable subscription model and the said unreasonable mandate of certain minimum channel carrying capacity will only help such broadcasters to develop their advertising model. One of the MSO has suggested that if the Authority deems it necessary to specify it, the same should be limited to the minimum FTA channels as presently regulated by TRAI and for the pay channels, the market forces should be allowed to decide.

20. DTH operators are also not in favour of fixing a minimum channel carrying capacity for the DAS service providers. They have stated that it should be left to the discretion of the MSO to decide, based on the market requirements. One of the DTH operators and the DTH Association have suggested that, in case, it is prescribed by TRAI, it should be lesser than 500 channels, so that DTH operators also have a level-playing-field vis-a-vis MSOs, as DTH is constrained due to limited satellite bandwidth capacity available to them.

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21. While two LCO associations, in their response to the issue, are in favour of not regulating the channel carrying capacity, another association has suggested that the minimum carrying capacity should be a certain percentage of the FTA channels permitted by Ministry of Information & Broadcasting. One consumer organization has stated that the minimum carrying capacity for MSOs needs to be mandated otherwise it will defeat the very purpose of digitization. The organization further suggested that the Authority may prescribe a minimum 300 channels immediately and 500, by March 2014.

22. The issue has been analysed. Sub-regulation 3(10) of the interconnection regulation for DAS mandates the MSO to carry channel(s) if it is in the regional language of the region in which that MSO is operating or if it is in Hindi language or in English language. Thus, in other words, there is a 'must carry' provision for regional language channels (specific to a region) and channels in Hindi and English languages. If channel(s) fall within these categories, MSO

has to carry the channel(s). With these provisions, the concerns of the broadcasters regarding MSOs creating artificial scarcity of channel carrying capacity for justifying charging of unreasonable carriage fee are adequately taken care of. In view of this, there appears no real need for prescribing a minimum channel carrying capacity. In addition to this, sub-regulation 3(10) of the interconnection regulations also makes it mandatory for the MSOs to provide to the broadcasters access to its cable network, within a time frame of sixty (60) days which is equivalent to the time frame given to the broadcaster under the 'must provide' provisions. Further, a responsibility has also been cast upon the broadcaster under the provisions of 'must carry' to ensure that the subscription of the channel does not fall below a certain minimum level. This minimum level has been prescribed in the regulations as five percent of the subscriber base of that MSO, taken as an average of subscriber base, for the preceding six months. In case the channel fails to maintain this minimum subscriber base, the MSO has the discretion to refuse access to its network for a period of next one year. Such a refusal would not be considered as a violation of the 'must carry' provision. Considering all the aspects, the Authority is of the view that the interests of the broadcasters have already been taken care of in the 'must carry' provisions of the regulation and as such no further prescription may be required.

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23. The Authority has decided that the phrase "having the prescribed channel capacity" appearing in sub-regulation 3(2) should be deleted as the same will have no relevance with the deletion of the minimum channel carrying capacity criteria from the regulations.

24. For the time being, the Authority has decided not to specify the capacity to carry a minimum number of channels by the MSOs, on the expectation that market dynamics will take care of the emerging situation. However, in the event the Authority notices that the market dynamics are not allowed to function freely by the service providers, resulting in creation of an artificial capacity constraint, it will intervene appropriately.

C. "Placement Fee"

25. The issue raised in the consultation paper was whether there is a need for regulating the placement fee in all the Digital Addressable Systems. If so, how it should be regulated.

26. Some of the broadcasters, in their response to the issue, have stated that in DAS, since an MSO is obligated to provide electronic programme guide (EPG), the requirement of placement fee does not arise. However, broadcasters should have the flexibility to pay reasonable amount towards tiering / packaging fee, if they so desire, as part of their commercial negotiation and that it should be left to market forces. One of the broadcasters' associations has stated that charging of placement fee, by whatever name called, should be prohibited by regulation since in DAS environment broadcasters would no longer demand any specific or preferential placement, except to the limited extent that their channels be placed in the correct and rational genre/sub-genre. One of the broadcasters, who is in favour of regulating the placement fee, suggested that the regulations should take into account the carriage cost, EPG placement, packaging of channels and any other fee, called by any other name, in a transparent and non-discriminatory manner.

27. All the MSOs, in their response to the issue, have stated that they are not in favour of regulating the placement fee. They have stated that placement fee is purely a commercial transaction with no impact to the end consumers. It has been further mentioned that, since, India is a low ARPU market, recovery of infrastructure cost is not possible with such ARPU as compared to mature markets where cost of access for the MSO's come in the form of revenue share or through sharing of some of the advertisement time with the MSOs. They have further stated that market will evolve over a period of time as other mature markets have and will find its own model. Till then, it should not be regulated. They have further stated that demand and supply will balance placement fee in the market by itself as presently only few channels have demand for specific placements to suit their business model.

28. One DTH operator has stated that the placement fee should be regulated across all addressable platforms in such a manner that placement fee is same for any two operators if they carry channel with same priority. All other operators are not in favour of regulating it.

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However, one DTH operator has suggested that the MSOs should publish RIO for placement fee and agreement details regarding placement fee should be filed under register of interconnect regulation.

29. While two LCO associations have stated that it should be left to market forces, another LCO association has suggested that it should be regulated by TRAI on slab-wise basis which should be based on TRP ratings.

30. The issue has been analysed. In DAS, the technology provides for an EPG wherein the channels being carried on an MSO's network can be arranged in a simple, easy to understand, manner so that the subscriber can easily go through this guide and select the channel of his choice instead of flipping through all the channels. The genre-wise display of channels in the EPG, where all the channels of a particular genre are listed under relevant genre, has been mandated through regulations. Moreover, in digital systems, signal quality of the channels is independent of the placement of the channel. Further, the Interconnection Regulation already has a provision (sub-regulation 3 (11)) that if an MSO, before providing access to its network, insists on placement of the channel in a particular slot or bouquet, such precondition amounts to imposition of unreasonable terms. Thus, adequate provisions already exist in the regulations. Accordingly, sub-regulation 11A of regulation 3 of the interconnection regulation has been deleted.

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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

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THE TELECOMMUNICATION (BROADCASTING AND CABLE SERVICES) INTERCONNECTION (DIGITAL ADDRESSABLE CABLE TELEVISION SYSTEMS) (THIRD AMENDMENT) REGULATION, 2014

(No. 2 of 2014)

No. 3-24/2012- B&CS – In exercise of the powers conferred by section 36, read with sub-clauses (ii), (iii) and (iv) of clause (b) of sub-section (1) of section 11 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), read with notification of the Government of India, in the Ministry of Communication and Information Technology (Department of Telecommunication) No.39,-----

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

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

the Telecom Regulatory Authority of India hereby makes the following regulations to further amend the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations 2012 (9 of 2012), namely:-

1. (1)These regulations may be called the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) (Third Amendment) Regulation, 2014 (2 of 2014).

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

2. In regulation 2 of the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 (9 of 2012), (hereinafter referred to as the principal regulations),---

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

"(c) "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 (g), the following clause shall be substituted, namely:----

"(g) "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;"

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

"(s) "multi system operator" means a cable operator who has been granted registration under rule 11C of the Cable Television Networks Rules, 1994 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;"

3. After regulation 9 of the principal regulations, the following regulation shall be inserted, namely:----

"**10. Composition of bouquet by the broadcasters.----** (1) Every broadcaster shall, within six months of the commencement of the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) (Third Amendment) Regulation, 2014, ----

(a) ensure that bouquet of TV channels, contained in its Reference Interconnect Offer, is provided to the distributors of TV channels without any modification in its composition and such bouquet of TV channels, at the wholesale level, are not bundled with the bouquet or channels of other broadcasters:

Provided that a broadcaster may, while making a bouquet of TV channels, combine TV channels of its subsidiary company or holding company or subsidiary company of the holding company, which has obtained, in its name, the uplinking permission or downlinking permission, as may be applicable for its TV channels, from the Central Government and the broadcaster or any of such companies, authorized by them, may publish Reference Interconnect Offer for such bouquet of TV channels and sign the interconnection agreement with the distributors of TV channels;

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Explanation: For the purpose of these regulations, the definition of 'subsidiary company' and 'holding company' shall be the same as assigned to them in the Companies Act, 2013(18 of 2013).

(b) publish its Reference Interconnect Offer to ensure compliance of the provision of clause (a);

(c) enter into new interconnection agreement; and

(d) file the Reference Interconnect Offer, referred to in clause (b) and interconnection agreement, referred to in clause (c) with the Authority.

(2) Every broadcaster, who begins its operations six months after commencement of the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) (Third Amendment) Regulation, 2014, shall ensure that the bouquet of channels, contained in its Reference Interconnect Offer, is provided to the distributors of TV channels without any modification in its composition and such bouquet of TV channels, at the wholesale level, are not bundled with the bouquet or channels of other broadcasters."

(Sudhir Gupta)
Secretary, TRAI

Note.1-----The principal regulation was published in the Gazette of India, Extraordinary, Part III, Section 4,vide its notification No. 3- 24/2012- B&CS dated the 30th April 2012 and subsequently amended vide notifications No. 3- 24/2012- B&CS dated the 14th May 2012 and No. 3-24/2012-B&CS dated the 20th September 2013.

Note.2-----The Explanatory Memorandum explains the objects and reasons of the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) (Third Amendment) Regulation, 2014 (2 of 2014).

Explanatory Memorandum

The need for amendment

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

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

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

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

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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

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

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

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

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

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

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

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

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

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

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

Stakeholder comments

11. The response of the stakeholders can be broadly divided into two categories. One group, represented by leading/big broadcasters and aggregators, is against the proposed amendment whereas the other group, represented by DPOs, their

associations and small broadcasters, has supported the provisions of the proposed amendment and requested for its urgent implementation.

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

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

Analysis

14. Taking into account the views/comments of the stakeholders and after detailed analysis of the issues involved, this amendment to the interconnection regulation for digital 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.

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.

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Principal and Agent

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

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

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

20. In the cited amendments, the definition of a broadcaster has been amended and an authorised agent or intermediary has been separately defined. A broadcaster of a TV channel, prior to commencing its services, has to obtain certain clearances and permissions following an elaborate process. This procedure and process involves registration of its channel by the broadcaster with the MIB under the elaborate Uplinking/Downlinking Guidelines. These Guidelines, apart from others, require security clearance of the channel as well as clearance of the key executives managing the business affairs of a broadcaster. The broadcaster is also required to coordinate with the Department of Space (DoS) for getting the required satellite bandwidth and related permission to use it. Hence, the broadcaster has a separate and distinct identity and this should be maintained. The aggregator, on the other hand, requires no such clearances or permission and so cannot proxy as a broadcaster. Therefore, there is a need to bring clarity to the entire regulatory framework.

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

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Market power of Major aggregators

22. The popularity ratings of the channels in the form of Gross Rating Points (GRP) as provided by TAM India reveals that that the three major aggregators exercise control over the distribution of most of the popular channels. The GRP data for the years 2012 and 2013 have been analysed. A comparison of number of popular channels controlled by these aggregators reveals that between 2012 and 2013, the number of popular channels distributed/controlled by them is increasing. From the analysis it emerges that in the year 2013, out of the 10 most popular channels of various broadcasters, these three aggregators controlled distribution of around 9 channels (90%). Similar analysis, for the 5, 20, and 50 most popular channels, for the years 2012 and 2013 has been carried out and is tabulated below:

Table II: Number of channels distributed by top three aggregators, as per GRP ratings
(Source: TAM India**)**

S.No	Name of Aggregator	Among Top 5		Among Top 10		Among Top 20		Among Top 50	
		2012	**2013**	**2012**	**2013**	**2012**	**2013**	**2012**	**2013**
1	M/s Media Pro Enterprise India Private Limited	2	2	5	5	10	10	20	21
2	M/s MSM Discovery Private Limited	1	2	3	3	3	3	5	6
3	M/s IndiaCast UTV Media Distribution Private Limited	1	1	1	1	2	4	11	11
	Total	**4**	**5**	**9**	**9**	**15**	**17**	**36**	**38**

The above analysis corroborates the claims of the independent DPOs that they cannot afford to ignore these aggregators while finalising their business plans and they are obliged to strike deals with these aggregators to have a viable business proposition.

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Bouquets/channels of a broadcaster not to be bundled with any other broadcaster's offerings

23. One of the major reasons for bringing in these amendments is that aggregators, who are authorised agents of more than one broadcaster, bundle popular channels of the multiple broadcasters they represent. Table III below presents an analysis of some of the large bouquets offered by the three largest aggregators.

Table III: Analysis of bouquets offered by Aggregators

S.No	**Name of the Bouquet**	**Name of the aggregator**	**No. of channels in the bouquet**	**No. of Broadcasters whose channels have been aggregated in the bouquet**
1	MP7	Media Pro Enterprise India Pvt Ltd	20	6
2	MP9	Media Pro Enterprise India Pvt Ltd	20	6
3	Bouquet 5	MSM Discovery Private Limited	15	3
4	Bouquet 2	IndiaCast UTV Media Distribution Pvt Ltd	13	6
5	Bouquet 3	IndiaCast UTV Media Distribution Pvt Ltd	13	9

This shows that aggregators are offering bouquets comprising as many as 20 channels of 6 broadcasters. Another bouquet, consisting of 13 channels, has channels drawn from 9 broadcasters.

24. As discussed earlier, aggregators tend to piggy-back less popular channels in such bouquets to prop them up viz. to help provide market access which otherwise may be elusive for such less popular channels. In case such channels belong to the broadcasters who own the aggregator, the broadcasters benefit in terms of both better advertisement and subscription revenues. In cases where such piggy-backed channels belong to the broadcaster who do not have stakes in the aggregator, the aggregator benefits in terms of better commission. In other words, the broadcaster(s) who own the aggregator gets benefits for its own channels as well as for channels of other broadcasters. Further, in both cases, the benefits accrue to aggregators at the cost of "unwanted" channels being pushed to DPOs and ultimately to the consumers. As a result, both the DPOs and the consumers end up paying the inbuilt costs of such "unwanted" channels. This, in effect, also restricts consumer choice. This, is detrimental to public interest at large as well as to one of the prime objectives of the digitisation viz. empowering the consumer to effectively exercise choice of channels/services.

25. It has also been noted that even though the largest bouquets offered by the aggregators in their RIOs are in the range of 13 to 20 channels, the agreements entered into are for a package of channels consisting of almost all the channels they are authorised to distribute. For example M/s Media Pro has mostly entered into agreements with MSOs for around 65 channels out of the 76 pay channels it distributes. These MSOs include both smaller independent MSOs as well as MSOs operating at national level. Similarly, M/s IndiaCast and M/s MSM Discovery have mostly entered into agreements for around 30 (out of 36 channels being distributed by it) and 20 channels (out of 28 channels being distributed by it) respectively. This substantiates the allegation of the DPOs that the large aggregators are virtually compelling them to enter into agreements to subscribe to almost all of their channels. The agreements entered into with the aggregators in the first phase of DAS implementation validate this fact, namely that aggregators push all-channel bouquets to the DPOs.

26. The issues discussed in the preceding paragraphs prompted a study of the ownership structure of the major aggregators. The details of the ownership structure of these aggregators are available at Annexure I. The study reveals that these aggregators are not independent entities; they are extensions of the major

broadcasters they represent. In the case of M/s Media Pro, a DPO also has direct stakes, apart from three broadcasters. Further, if the ownership structure of the broadcasters having stakes in M/s Media Pro is analysed, it emerges that, directly or indirectly, two leading DTH operators and two MSOs operating at national level are vertically integrated with these broadcasters. It seems quite clear that the objective of creation of such aggregator entities is not merely facilitation of the channel distribution work but to serve some other extraneous considerations. In effect, the broadcasters, through these aggregators, are able to exercise market power (dominance) in the market to further their commercial interests. Such cartels become even more dangerous in cases where these aggregators are also integrated with major DPOs.

27. The channels being distributed by the three major aggregators have been analysed with respect to the ownership of the channels, the number of channels of different broadcasters, and the number distributed by these three major aggregators. The results are tabulated in Table IV below:

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Table IV: Analysis of channels distributed by leading aggregators

	Name of the aggregator	Number of channels	No. of broadcasters whose channels are aggregated	No. of channels of the broadcaster groups owning the aggregator
1	M/s Media Pro Enterprise India Private Limited	76	15	• 35 - Zee group • 29 - Star group • 5 - Turner International
2	M/s IndiaCast UTV Media Distribution Private Limited	36	8	• 15 - Network 18 group • 9 - UTV group
3	M/s MSM Discovery Private Limited	28	12	• 11 - MSM group • 8 - Discovery

It is quite clear from the above table, that the majority of the channels distributed by the aggregators belong to the broadcaster groups who own/control the aggregator (90.7%- Media Pro, 58%- IndiaCast and 57%- MSMD).

28. Further, if we look into the interconnection agreements entered into by these aggregators, two distinct trends are visible: (i) agreements with the DPOs who are vertically integrated with the aggregators and (ii) agreements with the DPOs who are independent with respect to the aggregators. The rates being charged from vertically integrated DPOs is considerably lower as compared to those charged from other DPOs. The rates being charged from non-vertically integrated DPOs are, in some cases, higher by 62% as compared to the vertically integrated DPOs. And, this is so even though the non-vertically integrated DPO has a higher subscriber base which commercially offers a better business proposition as compared to the vertically integrated DPO. The situation becomes even worse in the case of relatively smaller non- vertically integrated DPOs in which case the rates charged are higher by about 85% as compared to the vertically integrated DPOs. This analysis is based on the data contained in the interconnection agreements and the subscriber base submitted by the respective DPOs to the Authority for a particular city covered under first phase of DAS implementation. The absolute figures of the interconnection agreements and other details, being commercially sensitive in nature, though available with the Authority, are not being revealed.

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29. Regarding the bundling of channels/bouquets of different broadcasters, the broadcaster-wise break-up of the top 5 and top 10 most popular channels distributed by the aggregators has been analysed and presented in Table V below:

Table V: Number of most popular channels (as per GRP), distributed by top three aggregators with the broadcaster wise break-up (Source: TAM India**)**

S.No	Name of Aggregator	Among Top 5		Among Top 10	
		2012	**2013**	**2012**	**2013**
1	M/s Media Pro Enterprise India Private Limited	2 (1-Star, 1-Zee)	2 (1-Star, 1 Zee)	5 (3-Star, 2-Zee)	5 (3-Star, 2-Zee)
2	M/s MSM Discovery Private Limited	1 MSM(Sony)	2 MSM(Sony)	3 MSM(Sony)	3 MSM(Sony)
3	M/s IndiaCast UTV Media Distribution Private Limited	1 (Viacom 18)	1 (Viacom18)	1 (Viacom18)	1 (Viacom18)
	Total	**4**	**5**	**9**	**9**

30. Presently, almost all the top 5 or 10 channels are distributed by 3 aggregators, around 50% by the leading aggregator Media Pro. With the restriction on bundling

of channels/bouquets of different broadcasters, it can be seen that the top 5 and the top 10 most popular channels will get distributed amongst different broadcasters. This will not only ensure a better spread of popular channels in different bouquets available to the DPOs but would also reduce the number of less popular channels pushed on to such bouquets. Therefore, DPOs would be in a better position to negotiate and enter into interconnect agreements with broadcasters. Further, even in case a DPO fails to arrive at an agreement with a particular broadcaster the opportunity of finalising agreements with other popular broadcasters is not lost. Thus, DPOs would be placed in a much better position to carry out their businesses. In order to give effect to this, sub-regulation 10(1)(a) has been incorporated.

Bouquets /Channels to be provided to DPOs as per RIO

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31. A provision has been incorporated through this amendment which mandates a broadcaster to ensure that there is no change in the composition of the bouquet provided to distributors of TV channels from the composition of the bouquet published in its RIO.

32. In order to ensure a level-playing field and orderly growth of the sector, the interconnect regulations aim at making available the content to DPOs in a transparent and non-discriminatory manner. For this, it is important that the offerings of the broadcasters are available in the public domain. This is why broadcasters have been mandated to publish an RIO prescribing the technical and commercial terms for making available their TV channels to the DPOs. Therefore, in case, a broadcaster appoints an authorised agent or intermediary for distribution of its channels, it is important that the bouquets of the broadcasters, as offered in their respective RIOs, are <u>not</u> altered by such agent or intermediary while making available the channels to the DPOs. To ensure this, sub-regulation 10(1)(a) has been incorporated through this amendment to the interconnection regulations.

Broadcasters of a group to be allowed to bundle their channels

33. An issue that was not part of the original Consultation Paper but was raised during the consultation process pertained to permitting channels of group broadcast companies to be offered as part of a common bouquet. In this regard,

they have requested that channels, belonging to the same 'Group' (Parent/Promoter/Owner/ Management), though licensed under different entities, subsidiaries, associated companies, should be allowed to be bundled in a bouquet and distributed. They have advanced the argument that broadcasters have established different companies/ventures at different points in time and have also acquired or sold channels and, as a consequence, a large broadcaster may have channels in the name of separate legal entities.

34. The Authority is of the view that forming of bouquets, through bundling of channels of a broadcaster company with that of its, subsidiary companies, holding company, and subsidiary companies of the holding company, may be permitted as essentially they have a single point of control in all respects and represent the same beneficial interest group. However, such companies should have, in their name, the Uplinking permission or Downlinking permission, as applicable, for their channels, from the Central Government. Moreover, for such bouquets, any one of such companies, authorised by them jointly, shall publish the RIO, enter into interconnection agreements and file details of interconnection agreements with the Authority and carry out any other obligation prescribed in the regulatory framework. Further, bouquets or channels offered by such companies, either individually or as a group, shall be considered to be offerings of a common entity and will have to comply with the regulatory framework, such as 'twin conditions' etc., prescribed by TRAI. Accordingly, a suitable proviso to sub-regulation 10(1)(a) has been added to achieve this objective.

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

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Annexure I

Ownership structure of major aggregators

1. Media pro Enterprise India Pvt. Ltd: It is wholly (directly or indirectly) controlled by three broadcasters, two leading DTH operators and two MSOs operating at national level. The details of its shareholding is depicted below:

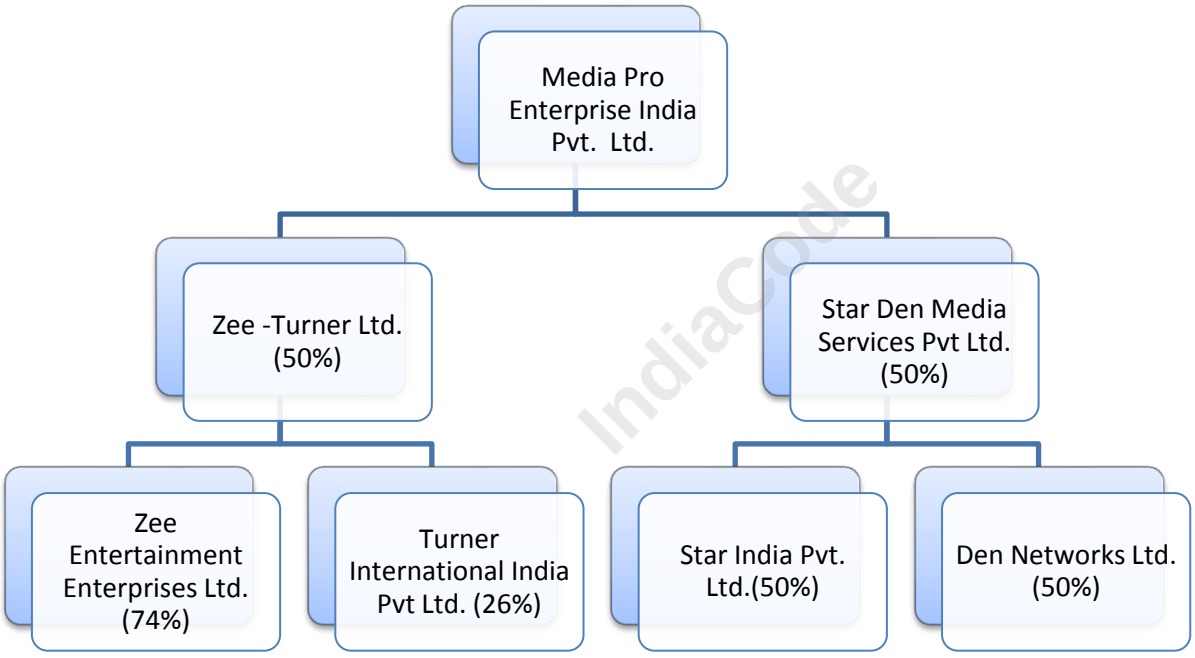


Fig. 1: Ownership structure of M/s Media pro Enterprise India Pvt.

2. MSM Discovery Pvt. Ltd.: It is wholly controlled by two broadcasters. The details of its shareholding is depicted below:

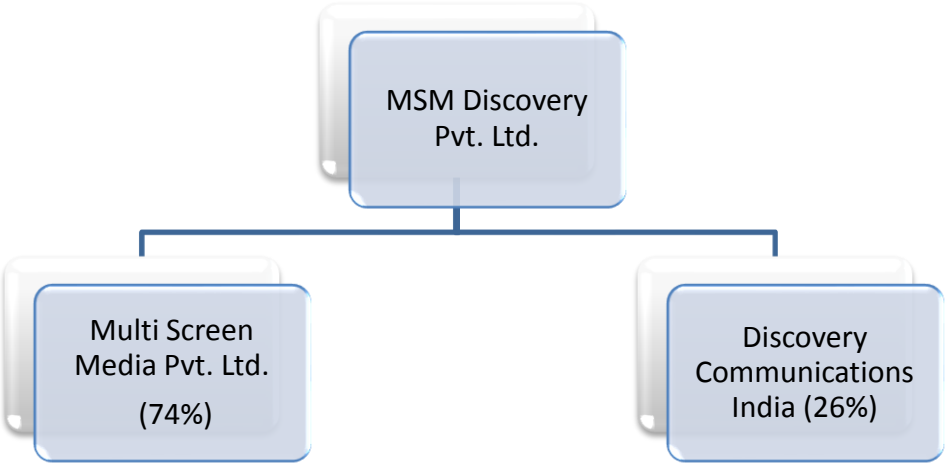


Fig. 2: Ownership structure of M/s MSM Discovery Pvt. Ltd.

3. IndiaCast UTV Media Distribution Pvt. Ltd.: It is wholly (directly or indirectly)controlled by three broadcasters. The details of its shareholding is depicted below:

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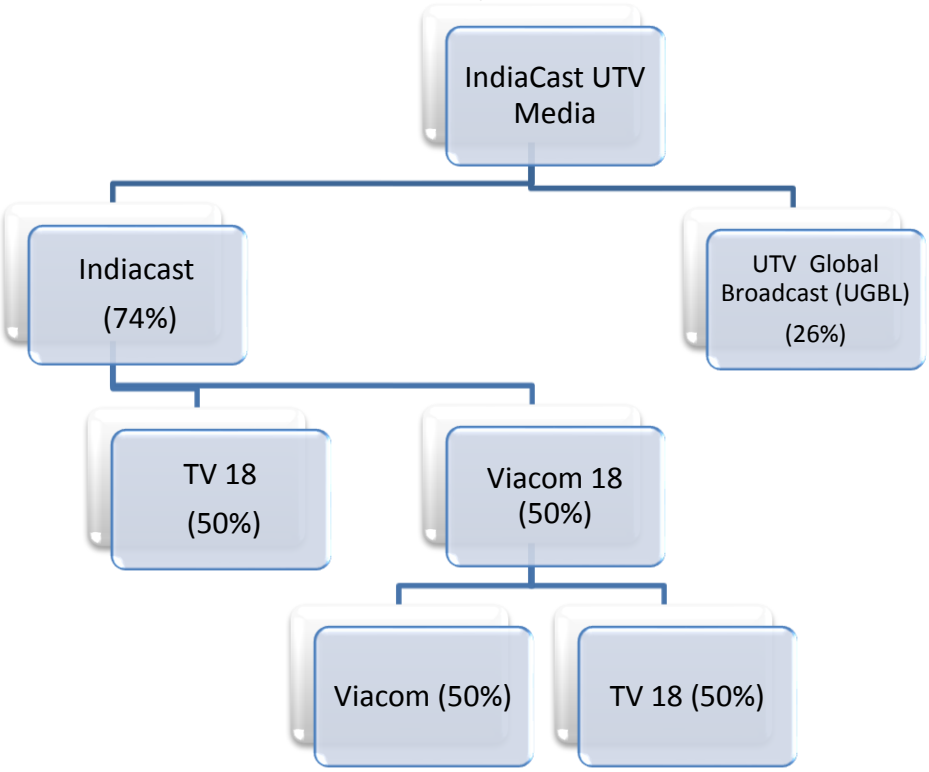


Fig. 3: Ownership structure of M/s IndiaCast UTV Media Distribution Pvt. Ltd.

TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY,

PART III, SECTION 4

TELECOM REGULATORY AUTHORITY OF INDIA

NOTIFICATION

New Delhi the 18th July, 2014

THE TELECOMMUNICATION (BROADCASTING AND CABLE SERVICES) INTERCONNECTION (DIGITAL ADDRESSABLE CABLE TELEVISION SYSTEMS) (FOURTH AMENDMENT) REGULATION, 2014

(No. 9 of 2014)

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No. 6-33/2014- B&CS -----In exercise of the powers conferred by section 36, read with sub-clauses (ii), (iii) and (iv) of clause (b) of sub-section (1) of section 11 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), read with notification of the Government of India, in the Ministry of Communication and Information Technology (Department of Telecommunication) No.39,-----

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

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

the Telecom Regulatory Authority of India hereby makes the following regulations to further amend the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations 2012 (9 of 2012), namely:-

1. (1)These regulations may be called the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) (Fourth Amendment) Regulation, 2014 (9 of 2014).

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

2. In regulation 2 of the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 (9 of 2012), (hereinafter referred to as the principal regulations),---

(a) after the clause (n), the following clause shall be inserted, namely:----

"(na) "commercial establishment" means any premises wherein any trade, business or any work in connection with, or incidental or ancillary thereto, is carried on and includes a society registered under the Societies Registration Act, 1860 (21 of 1860), and charitable or other trust, whether registered or not, which carries on any business, trade or work in connection with, or incidental or ancillary thereto, journalistic, printing and publishing establishments, educational, healthcare or other institutions run for private gain, theatres, cinemas, restaurants, eating houses, pubs, bars, residential hotels, malls, airport lounges, clubs or other places of public amusements or entertainment;"

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

"(o) "commercial subscriber" means any person who receives broadcasting services or cable services at a place indicated by him to a cable operator or multi system operator or direct to home operator or head end in the sky operator or Internet Protocol television service provider, as the case may be, and uses such services for the benefit of his clients, customers, members or any other class or group of persons having access to his commercial establishment;"

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(c) for the clause (za), the following clause shall be substituted, namely.-----

"(za) "subscriber" means a person who receives broadcasting services or cable services from a multi system operator or cable operator or direct to home operator or Internet Protocol television service provider or head end in the sky operator at a place indicated by him to the multi system operator or cable operator or direct to home operator or Internet Protocol television service provider or head end in the sky operator, as the case may be, without further transmitting it to any person and includes ordinary subscribers and commercial subscribers, unless specifically excluded;"

3. In regulation 4 of the principal regulations, sub-regulation (3) shall be deleted.

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(Sudhir Gupta)
Secretary, TRAI

Note.1-----The principal regulation was published in the Gazette of India, Extraordinary, Part III, Section 4, vide its notification No. 3- 24/2012- B&CS dated the 30th April 2012 and subsequently amended vide notifications No. 3- 24/2012- B&CS dated the 14th May 2012, No. 3-24/2012-B&CS dated the 20th September 2013 and No. 3-24/2012- B&CS dated the 10th February, 2014.

Note.2-----The Explanatory Memorandum explains the objects and reasons of the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) (Fourth Amendment) Regulation, 2014 (9 of 2014).

Annexure

Explanatory Memorandum

Background

1. The Telecom Regulatory Authority of India (TRAI) was entrusted with the responsibility of regulating 'broadcasting and cable TV' services in January, 2004. An interim Tariff Order was issued on 15.01.2004, which provided that the cable charges prevailing on 26.12.2003 shall be the ceilings at the respective levels. Thereafter, following extensive consultations, a detailed Tariff Order was issued on 01.10.2004. This order, while maintaining the sanctity of the ceiling of cable TV charges prevailing on 26.12.2003, also provided a window for introduction of new pay channels and conversion of existing Free-to-Air (FTA) channels to 'pay channels' subject to prescribed conditions. The underlying objective of these Tariff orders was to give relief and protection to consumers of broadcasting and cable TV services from frequent hikes in cable TV charges.

2. Subscribers of broadcasting and cable TV services are basically of two kinds. First, there are ordinary subscribers who consume TV services domestically for their own pleasure. The second group comprises commercial subscribers who obtain TV services for the benefit of their clients, customers etc., at their commercial establishment. While issuing the Tariff Orders in 2004, as mentioned above, the Authority, however, did not differentiate between ordinary and commercial subscribers.

3. The matter pertaining to tariffs for commercial subscribers has been under judicial scrutiny since 2005, before the Hon'ble Telecom Disputes Settlement Appellate Tribunal (TDSAT), when Hotels and Restaurants Association (Western India) (HRAWI), a sister association of Federation of Hotel and Restaurant Associations of India (FHRAI), challenged differential tariffs imposed by some broadcasters. The Hon'ble TDSAT disposed of these petitions *vide* its judgment dated 17.01.2006 wherein it concluded that the members of the petitioner associations couldn't be regarded as subscribers or consumers. It also asked the Authority to consider whether it was necessary or not to fix tariff for commercial cable TV subscribers.

4. As an interim measure, on 07.03.2006, the Authority issued an amendment to the principal Tariff Order of 01.10.2004. This Tariff Amendment Order defined the terms 'Ordinary cable subscriber' and 'Commercial cable subscriber'. In the meanwhile, the aforesaid judgment of the Hon'ble TDSAT was appealed by the

Associations of Hotels and Restaurants before the Hon'ble Supreme Court. In an interim order on 19.10.2006, the Hon'ble Supreme Court directed the Authority to carry out the processes for framing the tariff under Section 11 of the TRAI Act, independently and not relying on or on the basis of any observation made by TDSAT. In its final order on 24.11.2006, the Hon'ble Supreme Court confirmed its interim orders and stated that it did not agree with the opinion of the Hon'ble TDSAT that the Authority should also consider whether it is necessary or not to fix tariff for commercial cable TV subscribers.

5. Based on the interim order of the Hon'ble Supreme Court dated 19.10.2006, the Authority issued two Tariff Amendment Orders, on 21.11.2006, applicable to commercial subscribers in non-CAS and CAS areas, respectively. This tariff amendment order categorized commercial subscribers into the following two groups, namely:-

(a) A specified category of commercial subscribers comprising---
    (i) Hotels with rating of 3 stars and above;
    (ii) Heritage hotels (as defined by the Department of Tourism, Government of India);
    (iii) Any hotel, motel, inn or commercial establishment providing board & lodging and having 50 or more rooms; and
(b) All other commercial subscribers (not falling under the specified category of commercial subscribers).

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6. The tariff for cable TV services for the specified category of commercial subscribers was to be mutually determined by the parties. However, the tariff for commercial subscribers not falling in the specified categories (coming under the second category) was subject to the same charges as ordinary cable subscribers and thus the ceiling of rates prevailing as on 26.12.2003 was made applicable to them. The tariff amendment order also provided that whenever a commercial cable TV subscriber belonging to either of the two categories uses the programme of a broadcaster for public viewing by fifty or more persons on the occasion of special events at a place registered under the Entertainment Tax Act, the tariff will have to be mutually decided between the parties concerned.

7. These orders too were appealed against in the Hon'ble TDSAT by way of appeals [Appeal No.17(C) of 2006 - East India Hotel Ltd. Vs TRAI & Ors and Appeal No. 18 (C) of 2006 – The Connaught Prominent Hotels Limited vs. TRAI & Ors] by the hotels and their associations. The Hon'ble TDSAT passed its judgment on

28.05.2010 in the two appeals filed by the hotels against the tariff amendment orders dated 21.11.2006. The operative portion of the judgment of the Hon'ble TDSAT read:

"We, therefore, are of the opinion that it is a fit case where the impugned orders are required to be set aside. We direct accordingly. We, however, do not wish to issue any direction with regard to the refund of any amount but we would request the Authority to consider the case of commercial establishments once over again in a broad based manner".

8. In sum, the sub-classification of commercial consumers into two categories was struck down by the Hon'ble TDSAT. Aggrieved by the TDSAT judgement dated 28.05.2010, M/s ESPN Software India Pvt. Ltd. filed an appeal (CA No. 6040-41 of 2010 -M/s ESPN Software India Pvt. Ltd. Vs TRAI and Ors.) in the Supreme Court. The judgment of the Hon'ble Supreme Court, dated 16.04.2014, in this case, directs as follows:

"…… we direct that for a period of three months, the impugned tariff, which is in force as on today, shall continue. Within the said period, TRAI shall look into the matter de novo, as directed in the impugned judgment, and shall re-determine the tariff after hearing the contentions of all the stake holders…."

9. Accordingly, as directed by the Hon'ble Supreme Court in its judgment dated 16.04.2014, TRAI initiated a consultation process, as part of a de novo exercise, and issued a Consultation Paper (CP) on 11.06.2014 seeking comments/views of the stakeholders. The CP discussed and raised related consultation issues pertaining to various alternatives for tariff stipulations for the commercial subscribers, manner of offering of TV services to them, the definition of the 'commercial establishment', 'shop' and 'commercial subscriber', and sub-categorization of the commercial subscribers into similarly placed groups. In response to the CP, 24 stakeholders submitted their views/comments to the Authority. Subsequently, to further discuss the issues involved, an Open House Discussion (OHD) was also held at Delhi on 4th July 2014, wherein 59 stakeholders participated in the discussions.

10. This interconnection regulation is being notified after analyzing all the issues involved and the inputs received from various stakeholders.

Analysis of Issues

Definition of commercial subscribers, commercial establishment and shops

11. Draft definitions of commercial subscriber, commercial establishment and shops were discussed in the CP and views/comments of the stakeholders were solicited.

Stakeholder comments

12. Several broadcasters including the two prominent broadcasters, a broadcasting industry association, a Hotel industry association as well as a couple of cable TV operator associations have broadly agreed with the draft definitions. Some of them have pointed out that the 'profession' appearing in the definition of 'commercial establishments should be deleted as some court decisions have held that the premises of doctors, lawyers, engineers etc. should not be considered commercial establishments. Some other broadcasters have stated that shops, factories and public viewing areas should be included in the definition of 'commercial establishment'. It was also suggested by a broadcaster that 'publishing' should also be included in the definition of 'commercial establishments'. An association of broadcasters and some other stakeholders from the broadcasters fraternity have put forth the view that any premise, indoor or outdoor, that is not a domestic premise should be categorized as commercial and commercial subscribers be defined in an all inclusive manner to include all subscribers except residential subscribers.

13. The majority of the distribution platform operators, cable and DTH, as well as a hotel and restaurant industry association are of the view that there is no need to make a distinction between ordinary and commercial subscribers and all subscribers should be treated at par. It has also been suggested to include the concept of commercial purpose and/or commercial exploitation into the definition of commercial establishment. Another industry association has proposed that commercial subscriber should be defined as the one who uses TV signals as its business or commercial activity or part thereof, irrespective of whether TV channels are charged or not from the viewers/audience.

Analysis

14. Taking into account the views of the stakeholders, the definition of 'commercial establishment' has been included and the definition of 'commercial subscriber' has been accordingly amended. This is also in line with the tariff prescription

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and the manner of offering of television services to the commercial subscribers, which have been discussed in subsequent paragraphs.

Tariff for Commercial subscribers

15. In the CP, the following four alternatives were discussed for prescribing tariff for commercial subscribers, seeking views/comments of the stakeholders:

(i) The tariff for commercial subscribers is the same as that for ordinary subscribers.
(ii) The tariff for commercial subscribers has a linkage with the tariff for ordinary subscribers.
(iii) The tariff for commercial subscribers has no linkage with the tariff for ordinary subscribers but there are some protective measures prescribed to protect all the stakeholders such as mandatory a-la-carte offering, conditions to prevent perverse a-la-carte pricing vis-à-vis bouquet rates etc.
(iv) The tariff for commercial subscribers is kept under total forbearance.

Stakeholder comments

16. Hotel industry associations and almost all distribution platform operators (DPOs) have advocated for adoption of the first alternative discussed in the CP i.e. the tariff for commercial subscribers should be same as that prescribed for the ordinary subscribers. To support their view, the main arguments put forth have been - (i) the ultimate consumer/viewer is the same whether the TV services are availed at the domestic premises of the consumer or in a hotel or hospital or any other commercial establishment, (ii) a consumer does not go to such commercial establishment specifically to view TV channels (iii) there is no extra cost to the broadcaster for production of content and its distribution in both the cases and the content/quality of signal remains the same. Some of them further stated that, in cases where the consumer goes to a commercial establishment specifically to avail TV services and pays for it, the tariff may be different from that for the ordinary subscribers.

17. On the other hand, all broadcasters and their representative bodies are of the view that the fourth alternative, prescribing total forbearance on tariff for commercial subscribers, be adopted. The main arguments presented by them in this regard are – (i) the TV services are basically non-essential services and, therefore, need not be regulated, (ii) in many international markets, differential pricing is done for the commercial subscribers, (iii) commercial subscribers exploit the TV signals for commercial gains, therefore, the broadcasters are

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entitled to a fair share of the same. In response to a query during the OHD, an Association of broadcasters has indicated that the total revenue of the commercial subscribers that are 'known' to subscribe to television are estimated at 1.5-2.2% of total distribution revenues.

18. A headend in the sky (HITS) operator has suggested for prescription of the second alternative which provides that there should be a certain linkage between the tariff for ordinary and commercial subscribers. A broadcaster and a couple of cable operator associations have expressed their preference for the third alternative. It has also been suggested by a multi system operator (MSO) that a broadcaster should prescribe the retail price of its channels for different categories of commercial subscribers and the revenue share for different stakeholders in the value chain should be determined by TRAI.

Analysis

19. The end consumer, whether at his domestic premises or at any commercial establishment, gets to view the same content with same quality of signals. In both the cases, the cost to the content owner (broadcaster) and the DPO, for supplying the signals, per se, does not vary on account of where the signals are supplied - at the domestic premises or the commercial establishment. Moreover, The Hon'ble Supreme Court in its judgment dated 24.11.2006 in appeal (Civil) 2061 of 2006 Hotel and Restaurants Association and Anr Vs Star India Pvt. Ltd. and Ors has, amongst others, observed as under:

"….The owners of the hotels take TV signals for their customers/ guests. While doing so, they inter alia provide services to their customers. An owner of a hotel provides various amenities to its customers such as beds, meals, fans, television, etc. Making a provision for extending such facilities or amenities to the boarders would not constitute a sale by an owner to a guest. The owners of the hotels take TV signals from the broadcasters in the same manner as they take supply of electrical energy from the licensees. A guest may use an electrical appliance. The same would not constitute the sale of electricity by the hotel to him. For the said purpose, the 'consumer' and 'subscriber' would continue to be the hotel and its management. Similarly, if a television set is provided in all the rooms, as part of the services rendered by the management by way of an amenity, wherefor the guests are not charged separately, the same would not convert the guests staying in a hotel into consumers or subscribers….."

The said judgment further quotes another judgment of the Hon'ble Supreme Court (in The State of Punjab v. M/s. Associated Hotels of India Ltd. [(1972) 1 SCC 472)]) on similar issue, which is reproduced as under:

"…. When a traveller, by plane or by steam-ship, purchases his passage-ticket, the transaction is one for his passage from one place to another. If, in the course of carrying out that transaction, the traveller is supplied with drinks or meals or cigarettes, no one would think that the transaction involves separate sales each time any of those things is supplied. The transaction is essentially one of carrying the passenger to his destination and if in performance of the contract of carriage something is supplied to him, such supply is only incidental to that services, not changing either the pattern or the nature of the contract. Similarly, when clothes are given for washing to a laundery, there is a transaction which essentially involves work or service, and if the launderyman stitches a button to a garment which has fallen off, there is no sale of the button or the thread. A number of such cases involving incidental uses of materials can be cited, none of which can be said to involve a sale as part of the main transaction. …."

20. From the observations of the Hon'ble Supreme Court, cited above, it is clear that provision of TV services in a commercial establishment in only incidental to the service that the commercial establishment is providing to its clients. <u>It cannot be construed as re-distribution or re-sale of TV services.</u> In any case, there is no re-transmission. In sum, the question as to who is the subscriber has been settled through this judgment. It has also been settled by the said judgment that any service rendered to a guest by way of an amenity, wherefor the guests are not charged separately, the same would not constitute as sale of the said service to the guest. Further, this judgment specifically refers to the subject in hand. **Accordingly, the Authority was of the view that in the rates of TV services, there should be no differentiation between an ordinary subscriber and a commercial subscriber i.e. in both the cases, the charges should be the same and on per set top box basis.** In view of the above, clause 6 of the tariff order applicable for addressable systems namely, the Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff Order, 2010, has been suitably amended.

21. However, in case, the commercial establishment specifically charges extra to its clients/visitors on account of viewing of channels at its premises, there is a case for broadcasters to have a share in such revenue of the commercial establishment. Therefore, where the commercial establishment is earning extra revenue from its clients specifically on account of providing TV services, the rates should be based on mutual negotiations between the broadcaster and the commercial subscriber. In such cases also, the commercial subscriber would be required to obtain such signals of TV channel through a DPO/cable operator only. Accordingly, sub-clause (5) has been added to clause 6 of the

Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff Order, 2010.

Manner of offering TV channels to the commercial subscribers

22. Three models of offering of TV channels to commercial subscribers were discussed in the CP. The first model envisages that the commercial subscriber enters into agreement with the broadcaster and obtains signals either from the broadcaster itself or a DPO designated by the broadcaster. In the second model, the commercial subscriber is to enter into agreement with the DPO and obtain the signals while DPO and broadcasters have their own mutually agreed arrangements. The third model discussed in the CP is a combination of the first and second models.

Stakeholder Comments

23. Almost all the broadcasters and their representative bodies and agents have stated that only the first model is viable and should be adopted. While suggesting a detailed procedure for implementation of this model they have reasoned that – (a) the second model is prone to commercial subscribers not getting signal because of potential breakdown of negotiations between broadcasters and DPOs and (b) the third model is prone to confusion, as both broadcasters and DPOs would be allowed to provide Reference Interconnect Offers(RIOs).

24. Almost all the DPOs have suggested adoption of second model. A couple of cable TV operator associations have opined that the regulator should fix the MRP based on which the broadcasters and DPOs make the RIO. However, broadcasters should not identify the DPO through which the commercial subscriber should get the signals of the broadcaster. They have also stated that in cases where commercial subscribers have their own headend, the broadcasters can directly negotiate with the commercial subscribers as per RIO. Another cable operator association has stated that the broadcaster and commercial subscribers should negotiate the rates while the DPO should give the services at the same rate as for ordinary subscriber.

25. One of the hotel and restaurant industry associations has stated the first model should not be adopted, while another hotel industry association has expressed its preference for the third model.

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Analysis

26. The guideline for downlinking of TV channels in India prescribe as under:

"5.6. The applicant company shall provide Satellite TV Channel signal reception decoders only to MSOs/Cable Operators registered under the Cable Television Networks (Regulation) Act 1995 or to a DTH operator registered under the DTH guidelines issued by Government of India or to an Internet Protocol Television (IPTV) Service Provider duly permitted under their existing Telecom License or authorized by Department of Telecommunications or to a HITS operator duly permitted under the policy guidelines for HITS operators issued by Ministry of Information and Broadcasting, Government of India to provide such service."

So, the broadcaster cannot supply signals directly to subscribers, including the commercial subscribers. Broadcasters should supply their signals through a DPO. It would also ensure competition in the market if a commercial subscriber can obtain TV signals from any MSO or its linked local cable operator /DTH operator etc. operating in his area. Accordingly, definition of 'subscriber' has also been suitably amended.

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Sub-categorization of commercial subscribers

27. In the CP, the issue regarding sub-categorization of commercial subscribers into similarly placed groups and fixing the tariff therefor was discussed and views of the stakeholders were sought. Almost all the stakeholders, across all the segments, are of the view that any such sub-categorization and fixing of tariff for such sub-categories may not be the appropriate way forward.

Analysis

28. In view of the tariff prescription and the provisions regarding manner of offering of TV signals to the commercial subscribers, there is no need for sub-categorization of the commercial subscribers into similarly placed groups for the purpose of prescription of tariff dispensation for commercial subscribers. The only distinction required is to place the commercial subscribers into two broad classes – (i) those who offer television services/programmes as part of amenities to their guests and (ii) those who charge for the same in the manner as discussed in para 21 above. In view of the above, the sub-regulation 3 of regulation 4 has been deleted.

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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 14th September, 2015

THE TELECOMMUNICATION (BROADCASTING AND CABLE SERVICES) INTERCONNECTION (DIGITAL ADDRESSABLE CABLE TELEVISION SYSTEMS) (FIFTH AMENDMENT) REGULATION, 2015

(No. 7 of 2015)

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No. 6-29/2015- B&CS –----In exercise of the powers conferred by section 36, read with sub-clauses (ii), (iii), (iv) and (v) 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 Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations 2012 (9 of 2012), namely:-

1. (1) These regulations may be called the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) (Fifth Amendment) Regulation, 2015 (7 of 2015).

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

2. In regulation 2 of the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 (9 of 2012),---

(a) sub-clause (na) shall be deleted.

(b) for sub-clause (o), the following sub-clause shall be substituted, namely:----

"(o) **"commercial subscriber"** means a subscriber who causes the signals of TV channels to be heard or seen by any person for a specific sum of money to be paid by such person;"

(c) for the sub-clause (t), the following sub-clause shall be substituted, namely.-----

"(t) "ordinary subscriber" means a subscriber who is not a commercial subscriber;"

(Sudhir Gupta)
Secretary, TRAI

Note.1-----The principal regulation was published in the Gazette of India, Extraordinary, Part III, Section 4, vide its notification No. 3- 24/2012- B&CS dated the 30th April 2012 and subsequently amended vide notifications No. 3- 24/2012- B&CS dated the 14th May 2012, No. 3-24/2012-B&CS dated the 20th September 2013, No. 3-

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24/2012- B&CS dated the 10th February, 2014 and No. 6-33/2014-B&CS dated the 18th July 2014

Note.2-----The Explanatory Memorandum explains the objects and reasons of the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) (Fifth Amendment) Regulation, 2015 (7 of 2015).

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Annexure

Explanatory Memorandum

Background

1. The Telecom Regulatory Authority of India (TRAI) is a statutory body established by the Telecom Regulatory Authority of India Act, 1997 (hereinafter referred to as the TRAI Act). Since its inception some of the prime focus areas of TRAI have been, to protect the interests of consumers and service providers of the telecommunication sector and to promote the orderly growth of telecommunication services.

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2. The Government of India, through a Notification dated 9 January 2004, notified “broadcasting services” and “cable services” as "telecommunication services". Accordingly, since 2004 TRAI has been regulating the broadcasting and cable TV sector in India by exercising its recommendatory as well as regulatory powers.

3. Soon after it came to be vested with regulation of broadcasting and cable TV services sector, TRAI notified, in the interim, the Telecommunication (Broadcasting and Cable) Services Tariff Order, 2004 on 15 January 2004. Vide this order charges payable by Cable subscribers to Cable Operators, Cable Operators to MSOs/Broadcasters and MSOs to Broadcasters as on 26 December 2003 were prescribed to be the ceiling for Free-to-Air (FTA) and pay channels, until final determination by TRAI. On that date, there was no categorization made amongst the cable subscribers. Thereafter, on 01 October 2004, TRAI notified the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order, 2004 (hereinafter referred to as ‘Principal Non-CAS Tariff Order’) superseding the interim tariff order issued on 15 January 2004. This tariff order also, retained the ceilings imposed on cable TV charges. In this tariff order also, no categorization was made amongst the TV subscribers.

4. On 08 August 2005, the Association of Hotels and Restaurants filed Petition Nos. 80(C) and 32(C) of 2005, before the Hon’ble TDSAT challenging the differential tariffs charged by

some broadcasters. On 17 January 2006, the Hon'ble TDSAT dismissed the petition wherein it concluded that the members of the petitioner associations couldn't be regarded as subscribers or consumers. It also asked the Authority to consider whether it was necessary or not to fix tariff for commercial cable TV subscribers.

5. On 07 March 2006, TRAI, upon considering the observations made by TDSAT in its Order dated 17 January 2006 and a representation received from Federation of Hotel and Restaurants Association of India (FHRAI), in the interim, notified the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Fourth Amendment) Order, 2006(2 of 2006). In this order, two classes of subscribers - ordinary cable subscribers and commercial cable subscribers were defined. This order also provided that for the commercial cable subscribers, the rates (excluding taxes) payable by one party to the other by virtue of the written/oral agreement prevalent on 01 March 2006 shall be the ceiling and the principle applicable in the written/oral agreements prevalent on 01 March 2006, should be applied for determining the scope of the term "rates". Similar provision was also made for all subscribers other than commercial cable subscribers.

6. On 21 April 2006, a Consultation Paper was issued by TRAI for detailed consultations on the issue. In the meantime, Civil Appeal No. 2061 of 2006 was filed challenging the Hon'ble TDSAT's order dated 17 January 2006 by Associations of Hotels and Restaurants before the Hon'ble Supreme Court of India and the Hon'ble Supreme Court passed a "status quo" order on 28 April 2006. This status quo order was modified by the Hon'ble Supreme Court, on 19 October 2006, directing the Authority to carry out the processes for framing the tariff under Section 11 of the TRAI Act independently and not relying on or on the basis of any observation made by TDSAT. In the said order it was also mentioned that there is no need of issuing another consultation paper, however while issuing the Tariff Order it should be ensured that all the provisions of the TRAI Act have been complied with.

7. Accordingly in pursuance of the directions of the Hon'ble Supreme Court, draft tariff amendment orders seeking comments of the stakeholders was placed on the website of TRAI.

8. After following the due consultation process, in pursuance of the directions of the Hon'ble Supreme Court, the Authority issued two Amendment Orders on 21 November 2006, viz The Telecommunications (Broadcasting & Cable) Services (Second) Tariff (Seventh Amendment) Order, 2006 (8 of 2006) and The Telecommunication (Broadcasting and Cable) Services (Third) (CAS Areas) Tariff Order, 2006 (6 of 2006), applicable to commercial subscribers in Non-CAS and CAS areas respectively. These tariff amendment

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orders had the following main provisions:

(a) With respect to hotels with ratings of 3 stars and above, heritage hotels and hotels with a capacity of 50 or more rooms (hereinafter referred to as "the Excluded Categories of Hotels"), the charges were to be mutually negotiated.

(b) The charges for other categories of hotels (except excluded categories of hotels) shall be at the same rate as for ordinary subscribers and other commercial subscribers.

(c) In respect of programmes of a broadcaster, shown on the occasion of a special event for common viewing, at any place registered under the Entertainment Tax Law and to which access is allowed on payment basis for a minimum of 50 persons by the commercial cable subscribers, the tariff shall be as mutually determined between the parties.

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9. On 24 November 2006, the Hon'ble Supreme Court of India decided Civil Appeal No. 2061 of 2006 and reversed the order of the TDSAT dated 17 January 2006 and remanded the matter back to TRAI directing it to carry on the process for fresh determination of tariff independently.

10. Hotels which formed a part of the excluded category under the Notifications dated 21 November 2006 and the Federation of Hotel and Restaurants Association of India (FHRAI), filed Appeals No.17(c) of 2006 (East India Hotel Ltd vs. TRAI and Ors) and 18(c) of 2006 (The Connaught Prominent Hotels Ltd vs. TRAI and Ors) before the Hon'ble TDSAT challenging inter alia the Tariff Order/ Notification dated 21 November 2006, issued by TRAI. The Hon'ble TDSAT, by its judgment dated 28 May 2010, allowed appeals and quashed the tariff order and, amongst others, asked the Authority to consider the case of commercial establishments afresh in a broad based manner.

11. Civil Appeal Nos. 6040-6041 of 2010 filed by one of the broadcasters (M/s ESPN) and other connected appeal Nos. 10476-10477 of 2010 and 8358-8359 of 2010 were filed before the Hon'ble Supreme Court challenging the judgment of the Hon'ble TDSAT dated 28 May 2010, wherein:

(a) On 16 August 2010, the Hon'ble Supreme Court passed an *ad interim* order of stay on the order of the TDSAT dated 28 May 2010.

(b) By its judgment dated 16 April 2014, the Hon'ble Supreme Court dismissed Civil Appeal No. 6040-41 of 2010 and other connected appeals. The Hon'ble Supreme Court further directed TRAI to consider the matter de-novo within 3 months and to re-determine tariff.

12. Accordingly, TRAI issued a consultation paper on 11 June 2014 and subsequently, after following the due consultative process notified the following Regulations and Orders–

(a) The Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Twelfth Amendment) Order, 2014 (5 of 2014) on 16 July 2014.

(b) The Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff (Fourth Amendment) Order, 2014 (6 of 2014) on 18 July 2014. (c) The Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) (Fourth Amendment) Regulation, 2014 (9 of 2014) on 18 July 2014.

(d) The Telecommunication (Broadcasting and Cable Services) Interconnection (Eighth Amendment) Regulation, 2014 (8 of 2014) on 18 July 2014.,

13. The above two Tariff Amendment Orders were challenged by the Indian Broadcasting Foundation and Others, in Appeal No. 7(C) of 2014, before the Hon'ble TDSAT. A Writ Petition No. 5161 of 2014 (Star India vs. TRAI and Ors.) was filed before the Hon'ble High Court of Delhi challenging the above amendments dated 16 July 2014 and 18 July 2014, to the Tariff Orders and to the Interconnect Regulations applicable to Non-CAS areas and to DAS areas.

14. The Hon'ble TDSAT in its order dated 09 March 2015, allowed the appeal filed by the Indian Broadcasting Foundation, quashing the two tariff amendment orders dated 16 July 2014 and 18 July 2014. The Hon'ble TDSAT while allowing the appeal also, inter-alia, directed TRAI to issue fresh orders within six months from the date of the judgment. Further, it was also mentioned in the said judgment that the Authority may also take a decision with regard to any interim arrangement within one month from the date of the judgment.

15. In Writ Petition No. 5161 of 2014, the Hon'ble High Court of Delhi, issued an order on 15

May 2015, holding that while determining the tariff in terms of the order of TDSAT dated 09 March 2015, TRAI shall not consider itself bound by the regulations impugned in the petition in any manner whatsoever.

16. TRAI has filed an appeal (Civil appeal No 4851 of 2015 (TRAI vs. IBF and others)) in the Hon'ble Supreme Court challenging the order dated 09 March 2015, delivered in appeal No 7(C) of 2014, of the Ld. TDSAT.

17. TRAI issued a press release, dated 13 May 2015, clarifying its position with respect to the interim arrangement referred to in the Hon'ble TDSAT order dated 09 March 2015. The relevant extracts of the press release are given below-

> *"….an ad interim measure, the "Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order 2004" (6 of 2004) dated 01.10.2004, the "Telecommunication (Broadcasting and Cable) Services (Third) (CAS Areas) Tariff Order 2006 (6 of 2006) dated 31.08.2006 and the "Telecommunication (Broadcasting and Cable) Services) (Fourth) (Addressable Systems) Tariff Order, 2010 (1 of 2010) dated 21.07.2010 respectively shall apply subject to the outcome of the civil appeal filed by TRAI before the Hon'ble Supreme Court challenging the order dated 9th March, 2015 of the Hon'ble TDSAT."*

18. The Authority, as per the Hon'ble TDSAT order initiated a consultation process and issued a consultation paper (CP) titled "Tariff issues related to commercial subscribers" on 14 July 2015 seeking comments/ views of all the stakeholders. The CP took a fresh and holistic approach without being biased with previous determinations to the issue. A total of 22 comments were received, however no counter-comment was received. An Open-House discussion (OHD) was conducted on 18 August 2015 at New Delhi wherein 73 stakeholders participated. A total of 11 post-OHD comments were also received.

19. This amendment to the interconnection regulations is being issued after comprehensive study and analysis of the issues while taking into consideration comments/ views of all the stakeholders in response to consultation paper as well as discussions in OHD.

Analysis of Issues

Need for differentiation between ordinary and commercial subscribers and requirement for separate definition

20. The consultation paper sought the views of all stakeholders on the basic issue of whether there is a need to define and differentiate between ordinary and commercial subscribers for provision of TV signals. The views/opinions of the stakeholders who responded during the consultation process are summarized below.

Stakeholder comments

21. All broadcasters and their association have brought out that it is essential to define and differentiate between ordinary and commercial subscribers for provision of TV signals.

22. Most of the DPOs have stated that there is no need to define and differentiate between the ordinary and commercial subscribers. Some of the reasons put forward to justify their view are as follows:

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(a) In an addressable regime, each STB is a subscriber and is thereby fully accounted for.
(b) There is no difference in the TV service that is provided to an ordinary or a commercial subscriber.

23. Some DPOs also suggested that the only exception when such a differentiation must actually be made is when a commercial establishment charges separately for the TV services provided to his clients thereby exploiting the TV signals for commercial gains.

24. Almost all hotels and their associations have submitted that no differentiation is required between the ordinary and commercial subscribers. Some of the reasons put forth in support of their argument are as follows:

(a) Television service in hotels is a necessity by virtue of the Ministry of Tourism guidelines issued vide letter no 8-TH-I93)/2013 dated 16.12.2014.
(b) TV service is an essential service to be provided to the guests as per the decision of the Ld. TDSAT dated 27 February 2007.
(c) Hotels and restaurants do not recover the cost of TV subscription from their guests.
(d) Commercial subscribers have no better bargaining power than residential

subscribers especially vis-à-vis the broadcasters.

25. Individuals including an industry observer and an industry association have opined that there is no need for differentiation between ordinary and commercial subscribers. However, one individual has suggested that there should be a categorization of the subscribers as ordinary and commercial and the commercial subscribers can be further categorized based on the scale and type of commercial activity that is carried out at such a subscriber's location.

Analysis

26. The penetration of TV services in the country in the last few decades has been on the rise exponentially and most of the households and other establishments in urban and semi-urban areas now have access to pay TV services. There has been paradigm shift from the way TV was looked at in 2006 when initially TRAI gave separate classification for commercial subscribers. Viewing Pay TV channels in Hotels in 2006 was considered a luxury and many a time separate rates for similar rooms with TV and without TV were quoted. Now pay TV has become ubiquitous and classifying hotels as commercial TV subscribers merely on the basis that they provide TV signal viewing facility in hotel rooms does not holds ground. Now a days, it is not only the hotels and restaurants but various other public places such as Airports, Malls, Shopping complexes, Hospitals, Doctors' Clinics etc., where one can have access to viewing of TV channels. Most of the individual visiting these establishments would have in the normal case already paid for domestic access to the TV content. Viewing of TV programs, if at all, at such places is not novelty and in no way adds to special experience. It can safely be presumed that an individual visiting these establishments cannot be doing so solely for the purpose of watching TV content. Moreover, with pervasiveness of TV services in the country and widespread availability of paid TV content, it no longer is a distinctive value proposition for these establishments to attract clientele on the basis of such TV services. In most cases, the TV services in a basic form are offered to the client akin to any other basic amenity. However, there may be instances where the establishments do charge their clients for providing premium TV content with enhanced attractiveness. In these specific cases, such establishments may be said to be exploiting the display of premium TV content to bring in additional revenues and thereby they do stand to benefit commercially by causing the TV broadcast to be heard or seen by the public on payment of charges.

27. The Authority is therefore of the view that TV services being used at these establishments, may broadly be classified in two categories - (i) where the client does not have to pay separately to use the TV services or where use of TV services is incidental to the primary

purpose; in other words, when the TV services are not being separately charged and (ii) where the client does pays separately for use of the TV services and the establishments earn revenues from provision of such TV services. Hence, depending upon the type of the usage of TV services, there is a need to differentiate and define 'ordinary subscriber' and a 'commercial subscriber' separately.

Basis or criterion for the classification of subscribers of TV services

28. The issue raised in the consultation paper was that in case a classification of subscribers of TV services is necessary, then what should be the basis or criterion for such a classification. Consultation paper flagged various possibilities of such classification based on place of viewing TV signal, type of usage criteria for TV signals, method of provisioning of TV signals, type of content of TV signal, perceived value of TV services and also sought suggestions from the stakeholders for any other criteria which they may like to suggest. The views/opinions of the stakeholders who responded during the consultation process are summarized below.

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Stakeholder comments

29. Most of the broadcasters and their association have opined that it is essential to differentiate between ordinary and commercial subscribers for provision of TV signals. Further, differentiation based on 'type of usage' and the 'place of usage' has been suggested by them as the most appropriate criteria. Broadcasters have also suggested that the commercial establishments should further be classified into the following:–

a) Hotel rooms.
b) All commercial outlets that include restaurants, shops, factories and offices with exemption however being granted to the following:-
(i) Those with less than twenty employees.

(ii)Premises of area less than 2500 sq. ft. within city limits and 5000 sq. ft. outside city limits.

* with a caveat that exemptions under (i) and (ii) above must not apply in metropolitan cities, state capitals and class A/B cities.

(iii)Micro-enterprises under the MSME Act 2006.

c) Public viewing areas including airport lounges, banquet and party halls, hotel lobbies, theatres and auditoriums etc.

30. One of the broadcasters has suggested that the classification of TV subscribers can also be done on the basis of the fact that whether the service availed by the establishment is "incidental" or "essential" to the core area of its business. In the event that they choose to use an incidental service such as TV to enhance their businesses in any way, this will be for commercial gains. Service providers (broadcasters) of such services should have the right to charge separately as it is used for a clear commercial gain.

31. DPOs and their associations have stated that there is no need to differentiate between ordinary household subscriber and commercial establishments such as Hotels, Restaurants, Airports, Malls, Shopping complexes, Hospitals, Doctors' Clinics, where one can have access to viewing of TV channels without being charged separately. They also mentioned that since satellite footprint is available across India, hence, possibility of shifting DTH receiver from one location to other location by subscribers can not be ruled out. Hence, any differentiation between commercial subscribers and ordinary household subscriber based on location of uses of TV signals is difficult to be implemented on ground.

32. Some of them have further suggested that the only exception when such a differentiation must actually be made is when a commercial subscriber charges his customers separately for the TV service provided to his clients thereby exploiting the TV service for commercial gains.

33. Almost all hotels and their associations have submitted that there is no differentiation required between the ordinary and commercial subscribers except in case of those subscribers who commercially exploit the TV signals by charging separate fee/entry fee.

34. An individual has opined that there is no need for any differentiation between ordinary and commercial subscribers. An industry association has however suggested that small and medium shop owners should not be considered as commercial subscribers while all organizations providing 1-5 star services should be treated as commercial subscribers.

Analysis

35. Majority of Comments/ suggestions of various stakeholders indicate that there is no need for classification of subscribers while suggesting that the only exception that needs to be made is when clients are charged separately for the provision of TV services. Broadcasters are of the view that 'type of usage' of the TV services as well as the 'place of usage' of the TV services should be the criteria for classification of subscribers. The Authority, having come to the conclusion that while there is a need to define and differentiate subscribers of TV services into ordinary and commercial subscriber categories, is of the opinion that the classification must be simple, unambiguous, and practically implementable across the entire value chain whilst interest of every stakeholder is adequately protected.

36. The Authority has noted that in 2006, the commercial subscribers were defined by relying on "place of usage" of TV signal especially in Hotels irrespective of the type of usage, which has been contested time and again by the Hotel Industry. Broadcasters have now asked that commercial subscribers to be defined based on both "place of usage" and "type of usage". Other stakeholders are persistently demanding that no distinction should be made either based on place of usage or on type of usage or any other criteria. They are of the view that Authority must consider only those entities for defining commercial subscribers who explicitly exploit the TV signals for commercial gains.

37. In view of above, the Authority has carefully considered various options for classification suggested by the stakeholders. It is noted that in most of the cases, the TV signal in commercial establishments is used only for the infotainment purpose without separately charging for viewing of TV signals. Pay TV channel viewing has become ubiquitous and in most of the places where such commercial establishment exists, almost every household has access to pay TV programs. Therefore, provision of TV services in such establishment does not make any value proposition for the clients visiting such establishment. Further, viewing of TV programs in such establishments is not novelty and most of the clients would have already subscribed for such content. It may not be out of place to mention here that from such viewing of TV channels Broadcasters also get advantage by way of more advertisements due to increased viewership. Further, Ministry of Tourism has mandated provision of TV services in rooms for 3 star hotels and above and in lobby for other hotels in Dec 2014. As such, considering the scenario where content is monopolistic in nature and hotels are mandated to provide such content, the regulatory framework must balance the interest of stakeholders in the value chain.

38. The Authority has noted that there may be instances where TV signals are commercially

exploited by separately charging for exhibiting the TV programs. Therefore the distinguishing criteria can be the 'type of usage of TV signals' i.e., where the signals are commercially exploited by charging separately for its exhibition for earning revenues out of it.

39. Moreover, the Hon'ble Supreme Court in its judgment dated 24.11.2006 in appeal (Civil) 2061 of 2006 Hotel and Restaurants Association and Anr Vs Star India Pvt Ltd. and Ors has, amongst others, observed as under:

"….The owners of the hotels take TV signals for their customers/ guests. While doing so, they inter alia provide services to their customers. An owner of a hotel provides various amenities to its customers such as beds, meals, fans, television, etc. Making a provision for extending such facilities or amenities to the boarders would not constitute a sale by an owner to a guest. The owners of the hotels take TV signals from the broadcasters in the same manner as they take supply of electrical energy from the licensees. A guest may use an electrical appliance. The same would not constitute the sale of electricity by the hotel to him. For the said purpose, the 'consumer' and 'subscriber' would continue to be the hotel and its management. Similarly, if a television set is provided in all the rooms, as part of the services rendered by the management by way of an amenity, wherefor the guests are not charged separately, the same would not convert the guests staying in a hotel into consumers or subscribers….."

40. The said judgment further quotes another judgment of the Hon'ble Supreme Court (in The State of Punjab v. M/s. Associated Hotels of India Ltd. [(1972) 1 SCC 472)]) on similar issue, which is reproduced as under:

"…. When a traveller, by plane or by steam-ship, purchases his passage-ticket, the transaction is one for his passage from one place to another. If, in the course of carrying out that transaction, the traveller is supplied with drinks or meals or cigarettes, no one would think that the transaction involves separate sales each time any of those things is supplied. The transaction is essentially one of carrying the passenger to his destination and if in performance of the contract of carriage something is supplied to him, such supply is only incidental to that services, not changing either the pattern or the nature of the contract. Similarly, when clothes are given for washing to a laundry, there is a transaction which essentially involves work or service, and if the laundryman stitches a button to a garment which has fallen off, there is no sale of the button or the thread. A number of such cases involving incidental uses of materials can be cited, none of which can be said to involve a sale as part of the main transaction. …."

41. From the observations of the Hon'ble Supreme Court, cited above, it is clear that provision of TV services in a commercial establishment is only incidental to the service that the commercial establishment is providing to its clients. Thus, it has also been settled by the said judgment that any service rendered to a guest by way of an amenity, wherefore the guests are not charged separately, the same would not constitute as sale of the said service to the guest.

42. In view of above deliberations, the Authority is of the view that the basic criteria for classification of subscribers should be whether the TV services, irrespective of its place of provisioning, are being commercially exploited, by the subscriber to earn revenues by charging separately for such services. In other words, the criteria for classification of subscribers should be the 'type of usage' of TV signals by the subscriber and not the subscriber's 'place of usage of signals'. In view of the discussions in paragraphs above, the Authority has decided that the subscribers who charge their clients separately to use the TV services, amounting to commercial exploitation of TV services to earn revenues out of it from their clients, shall be classified as 'commercial subscribers'. And all other subscribers shall be classified as 'ordinary subscribers'. Accordingly, 'ordinary subscriber' and 'commercial subscriber' have been defined in this amendment to the interconnection regulations.

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TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY,

PART III, SECTION 4

TELECOM REGULATORY AUTHORITY OF INDIA

NOTIFICATION

New Delhi the 7th January, 2016

THE TELECOMMUNICATION (BROADCASTING AND CABLE SERVICES) INTERCONNECTION (DIGITAL ADDRESSABLE CABLE TELEVISION SYSTEMS) (SIXTH AMENDMENT) REGULATIONS, 2016

(No. 1 of 2016)

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No. 3-106/2015-B&CS -------In exercise of the powers conferred by section 36, read with sub-clauses (ii), (iii), (iv) and (v) 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 Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 (9 of 2012), namely:-

1. (1) These regulations may be called the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems)(Sixth Amendment) Regulations, 2016 (1 of 2016).
(2) They shall come into force from the 1st day of April 2016.

2. In regulation 5 of the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 (9 of 2012), (hereinafter referred to as the principal regulations),---

(a) after sub-regulation (6), the following explanation shall be inserted,----
Explanation: It shall be mandatory for the broadcaster to enter into written interconnection agreement with the multi system operator for retransmission of its pay channels including those pay channels for which no subscription fee is to be paid by the multi system operator to the broadcaster.

(b) for sub-regulation (16), the following sub-regulation shall be substituted, namely:----

" (16) Every service provider shall enter into a new interconnection agreement before the expiry of the existing interconnection agreement:

Provided that the broadcaster or the multi system operator, as the case may be, shall, at least sixty days prior to the date of expiry of the existing interconnection agreement, give notice to the multi system operator or the linked local cable operator, as the case may be, to enter into new agreement:

Provided further that in case, the service providers fail to enter into new interconnection agreement before the expiry of the existing interconnection agreement, the broadcaster or the multi system operator, as the case may be, shall not make available the signals of TV channels to the multi system operator or the local cable operator, as the case may be, on expiry of the existing interconnection agreement:

Provided also that the multi system operator shall, fifteen days prior to the date of expiry of its existing interconnection agreement, inform the consumer.----

(a) the date of expiry of its existing interconnection agreement; and

(b) disconnection of signals of TV channels from the said date in the event of its failure to enter into new interconnection agreement."

(Sudhir Gupta)
Secretary, TRAI

Note.1-----The principal regulations were published in the Gazette of India, Extraordinary, Part III, Section 4, vide its notification No. 3- 24/2012- B&CS dated the 30th April 2012 and subsequently amended vide notifications No. 3- 24/2012- B&CS dated the 14th May 2012, No. 3-24/2012-B&CS dated the 20th September 2013, No. 3-24/2012- B&CS dated the 10th February, 2014 and No. 6-33/2014-B&CS dated the 18th July, 2014 and 6-29/2015-B&CS dated: 14th September 2015.

Note.2-----The Explanatory Memorandum explains the objects and reasons of the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) (Sixth Amendment) Regulations, 2016 (1 of 2016).

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Explanatory Memorandum

Background

1. The responsibility of regulating broadcasting and cable TV services was entrusted to the Telecom Regulatory Authority of India (hereinafter referred to as the TRAI) in 2004 by the central government. Since then, TRAI has taken a number of initiatives for regulating the sector in exercise of both its recommendatory and regulatory powers vested with it by the TRAI Act, 1997. TRAI has been issuing Regulations, Tariff Orders, Directions and Orders from time to time for orderly growth of broadcasting sector.

2. The operation of cable TV networks is governed by the Cable Television Networks (Regulation) Act 1995, as amended from time to time (CTV Act). The Government of India made an amendment, to the CTV Act and Rules made there under, to pave a way for implementation of Digital Addressable Cable TV Systems (DAS). TRAI has notified a comprehensive regulatory framework for DAS encompassing inter-alia interconnection regulations, QoS regulations, tariff orders and consumer complaint redressal regulations.

3. The Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 (9 of 2012) dated 30th April, 2012 provides a framework for interconnection between Broadcasters & MSOs and MSOs & LCOs. Based on this framework, the service providers are required to enter into a written agreement before providing signals of TV channels for re-transmission to consumers.

4. The TRAI Act, 1997, mandates the Authority to maintain the register of interconnect agreements between service providers. In pursuance of the same, the Authority had notified "The Register of Interconnect Agreements (Broadcasting and Cable Services) Regulation 2004" which inter-alia, mandates annual filing of details of interconnection agreements by service providers for retransmission of signals of TV channels.

5. While examining the details of interconnections submitted by the Broadcasters of pay channel(s) and Multi System Operators (MSOs), it has come to the notice of the Authority that in many cases the signals of TV channels are being provided by the broadcasters to MSOs and MSOs to Local Cable Operators (LCOs) even in the absence of valid interconnection agreement in writing. It has also been observed that in several cases, agreements between service providers are delayed on the pretext of continued mutual negotiations, but, they continue the retransmission of TV signals beyond the date of expiry which often results into disputes and sometimes sudden disconnection that affects quality of service to consumers. In the context of various petitions filed by broadcasters and

MSOs, the Hon'ble TDSAT has also made certain observations for strengthening the existing regulatory provisions.

6. Therefore, strong need is felt to make it clear in the regulations that re-transmission of TV signals should not take place between service providers without a valid written interconnection agreement and new agreement is entered between them well before the expiry of the existing interconnection agreement.

7. Accordingly, Draft Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems)(Sixth Amendment) Regulations, 2015 was released on 3rd November, 2015 seeking comments and counter comments from all stakeholders. Subsequently, the comments and counter comments received in TRAI were uploaded on TRAI website. Further, an Open House Discussion (OHD) was held on 11th December, 2015. In the OHD, on request of few stakeholders, Authority granted further time for providing written inputs till 16th December, 2015. After considering all inputs of stakeholders, the Authority has finalized the amendment.

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Analysis of stakeholders' comments:

8. Most of the stakeholders have agreed to the proposed amendment. Some broadcasters have suggested that publication of notices in newspaper mandated under the regulation 6 in case of disconnection of TV signal, may be reviewed. Their contention was that the publications of such notices not only involves expenditure but are less noticed by the general public. They have suggested that purpose of such notices can also be achieved by running scroll on the channels which consumers consciously notice while viewing a particular channel/program. On the contrary, in the OHD, one of the MSOs pointed out that such scrolls on number of channels will give inconvenience to consumer, especially when the notice of disconnection is an issue between two business entities i.e broadcaster and MSO. They contended that viewing experience of customer will be impacted by such scrolls. The Authority has noted the suggestions of the stakeholders and felt that this issue need detail deliberation among stakeholders particularly the enforcement and verification mechanism of informing through such scrolls. However, this requirement may be taken up while reviewing interconnection regulations as a whole, in future, when such need arise.

9. One stakeholder suggested that instead of incorporating an explanation, the definition of pay channel may be reviewed so as to consider pay channels as a channel even if a nil subscription fee is charged by the Broadcaster. In this regard it is mentioned that the definition of pay channel given in the regulation is in line with the Cable TV rules. Moreover, the words 'to be paid' already cover the scenario when nil subscription amount

is paid. As such the purpose of incorporating the explanation is to inform the stakeholders in simple words so that the provision of the sub-regulation (6) is understood in its true spirit.

10. Few stakeholders expressed their concern stating that timeline of sixty days for starting of negotiation will bring practical difficulties and inconvenience at the ground level in view of large number of service providers across the country. This concern has been addressed by adding the word "at least" before 60 days in the amendment thereby they can start negotiations any time prior to 60 days. Moreover, several broadcasters and MSOs do their mutual agreements for all its operating areas or pan-India basis simultaneously.

11. Few stakeholders have suggested that similar provision may be made in the regulations for Non-DAS areas and also in other platforms such as DTH. In this context it is mentioned that the delay in renewal of interconnection agreements is predominantly observed between broadcasters and MSOs in areas where Digital Addressable Cable System has been implemented. However, stakeholders request may be taken up while reviewing interconnection regulations as a whole, in future, when such need arise.

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12. In view of the above, the present amendment has incorporated mainly the following:
    a. For more clarity and to understand the spirit of the sub-regulation (6) of regulation-5 it is explained that it shall be mandatory for the broadcaster of pay channel to enter into written interconnection agreement with the multi system operator for retransmission of its pay channels including those pay channels for which no subscription fee is to be paid by the multi system operator to the broadcaster as per their mutual agreement. It will ensure that the broadcaster signs an interconnection agreement for TV channels, declared as pay TV channels by the broadcaster to the Authority under the requirement specified in the relevant tariff order, are distributed by the broadcaster to the MSOs only after signing of written interconnection agreement even if nil amount is paid by the MSO to the broadcaster of pay channel.
    b. The sub-regulation (16) of regulation 5 has been amended so that :
        i. Every service provider should enter into new written interconnection agreement before expiry of existing interconnection agreement;
        ii. To have sufficient time to reach mutual agreement between service providers, for Business to Business relations, the broadcaster of pay channel to MSO and MSO to LCO to give notice at least sixty days prior to the expiry of existing interconnection agreement. Such notice will initiate mutual discussion and also act as notice for disconnection to the other party, in case of failure to enter into new agreement.

iii. In case service providers are not able to enter into new agreement fifteen days before expiry of existing interconnection agreement, the MSO, in the interest of consumer, shall inform the consumer the date of expiry of its existing interconnection agreement and disconnection of signals of TV channels in the event of its failure to enter into new interconnection agreement from the said date. This will enable the consumer to take informed decision in respect of his/her choice.

13. In order to ensure interruption free services to the end consumer and continuity of business as usual among the service providers, it is expected that new written interconnection agreement should be signed in all cases before 15 days from the date of expiry of the existing interconnection agreements. Though the regulation does not bar to sign new interconnection agreement in the last 15 days before the date of expiry of existing interconnection agreement, it is expected that new agreements would be signed much before that and it would be rarest where the agreements between service providers could not be signed before 15 days of expiry of existing interconnection agreement.

14. It is expected that, with this amendment, the service providers will reach at mutual agreement in time to minimize uncertainties in the value chain and inconvenience to consumer.

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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 15th March, 2016

THE TELECOMMUNICATION (BROADCASTING AND CABLE SERVICES) INTERCONNECTION (DIGITAL ADDRESSABLE CABLE TELEVISION SYSTEMS) (SEVENTH AMENDMENT) REGULATIONS, 2016 (No. 3 of 2016)

No. 26-01/2015-B&CS -------In exercise of the powers conferred by section 36, read with sub clauses (ii), (iii), (iv) and (v) 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 Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 (9 of 2012), namely:-

1. (1) These regulations may be called the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) (Seventh Amendment) Regulations, 2016 (3 of 2016).

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

2. For sub-regulation 14 of regulation 3 of the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012

(9 of 2012), (hereinafter referred to as the principal regulations), the following sub-regulation shall be substituted, namely:---

"(14) Every multi system operator or its authorized agent shall provide the signals of TV channels to a local cable operator, in accordance with the regulation 5, within sixty days from the date of receipt of the written request and in case the request for providing signals of TV channels is not agreed to, the reasons for such refusal to provide signals shall be conveyed to the local cable operator making a request within sixty days from the date of request."

3. The sub-regulations 15 and 16 of regulation 3 of the principal regulations shall be deleted.

4. For sub-regulation 13 of regulation 5 of the principal regulations, the following sub-regulation shall be substituted, namely:----

"(13) The multi system operator shall enter into a written interconnection agreement with the local cable operator for providing signals of TV channels to the local cable operator, on lines of the model interconnection agreement as set out in the Schedule IV of these regulations, by mutually agreeing on the clauses 10, 11 and 12 of the said agreement:

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Provided that the multi system operator and the local cable operator, without altering or deleting any clause of model interconnection agreement, may add, through mutual agreement, clauses to the model interconnection agreement, provided that no such addition shall have the effect of diluting any of the clauses as laid down in the model interconnection agreement:

Provided further that in case the multi system operator and the local cable operator fail to enter into interconnection agreement as provided above in this sub-regulation, the multi system operator and the local cable operator shall enter into standard interconnection agreement as specified in Schedule-V of these regulations.

Explanation: for removal of doubts it is clarified that in the event of any conflict between the terms and conditions of the prescribed model interconnection agreement and new terms and conditions added through mutual agreement by the parties, the terms and conditions of the prescribed model interconnection agreement shall prevail."

5. After sub-regulation 13 of regulation 5 of the principal regulations, the following sub-regulations shall be inserted, namely:----

"(13A) Every multi-system operator shall, within thirty days from the date of commencement of the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) (Seventh Amendment) Regulations, 2016, give a written option to all linked local cable operators to modify their existing agreements in accordance with the model interconnection agreement or standard interconnection agreement, as the case may be, and it shall be open to the linked local cable operator to modify their existing agreement within thirty days from the date of receipt of such option or continue with the existing agreement till its expiry and enter into the model interconnection agreement or standard interconnection agreement, as the case may be, thereafter.

(13B) Every multi-system operator shall, within a period of thirty days from the date of receipt of request from the local cable operator to provide the signals of TV channels, enter into an interconnection agreement in accordance with the terms and conditions of the model interconnection agreement or standard interconnection agreement, as the case may be."

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6. In the principal regulations, after Schedule III, the following Schedules shall be inserted, namely:-

"**Schedule IV**

(Refer sub-regulation 13 of the regulation 5)

MODEL INTERCONNECTION AGREEMENT BETWEEN MULTI SYSTEM OPERATOR AND LOCAL CABLE OPERATOR FOR PROVISIONING OF CABLE TV SERVICES THROUGH DIGITAL ADDRESSABLE SYSTEMS (DAS).

[1. Each page of this Agreement shall be signed by the authorised signatory of Multi System Operator and Local Cable Operator;

2. The numbers allotted to the clauses in this format shall not be altered and additions (if any) may either be carried out at the end of relevant clause or after the last clause of this format].

This Technical and Commercial Interconnection Agreement along with its Schedules and Annexures is executed on this _____ day of _____ 201_ by and between:

_____, having its office at _____, through its Authorised Signatory, hereinafter referred to as the "**MSO**" which expression shall unless repugnant to the context or meaning thereof, be deemed to include its successors, assignees, legal heirs and executors of the **ONE PART**.

MSO's Status: Individual/Firm/Company/Association of Persons/Body of Individuals *(strike out whichever is not applicable or modify suitably in case of Association of Persons or Body of Individuals)*

AND

_____, having its office at _____

_____, through its Authorised Signatory, hereinafter referred to as the "**LCO**" which expression shall unless repugnant to the context or meaning thereof, be deemed to include its successors, assignees, legal heirs and executors, of the **OTHER PART**

LCO's Status: Individual/Firm/Company/Association of Persons/Body of Individuals *(strike out whichever is not applicable or modify suitably in case of Association of Persons or Body of Individuals)*

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The **MSO** and the **LCO** are hereinafter individually referred to as 'Party' and collectively referred to as "**Parties**".

WHEREAS,

A. The MSO is a cable operator, who has been granted registration No. _____ dated _____ under the Cable Television Networks Rules, 1994, by the Ministry of Information and Broadcasting, for providing cable TV services through digital addressable systems in the areas of _____notified by the Central Government under Section 4A of the Cable Television Networks (Regulation) Act, 1995.

B. The LCO is a cable operator, who has been granted registration under the Cable Television Networks Rules, 1994, having postal registration No. _____ dated _____, in the head post office _____, [Name of the head post office] for providing Cable TV Services in _____ [Mention the area].

C. The LCO has requested the MSO vide its letter No._____ dated_____for making available signals of TV channels and the MSO has agreed vide its letter No._____ dated_____to provide signals of TV channels to such LCO.

D. TERRITORY: Territory, in the context of this Agreement is _____ *[mention the name of area(s)/ city(ies)/ district(s)/ state(s) for which this agreement is being signed.]*

E. The Parties have mutually agreed to execute this Agreement - on principal to principal and non-exclusive basis - between them to govern the roles, responsibilities, rights, obligations, technical and commercial arrangement in regard to the distribution of TV channels in the Territory.

F. The Parties also mutually agree that each and every transaction including transaction of any properties/ assets between the Parties shall be carried out in writing or in any other verifiable means.

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

1. DEFINITIONS

The words and expressions used in this Agreement shall have meanings as assigned to them in the Schedule to this Agreement**.** All other words and expressions used in this Agreement, but not defined, and defined in the Act and rules and regulations made there under or the Cable Television Networks (Regulation) Act, 1995 (7 of 1995) shall have the meanings respectively assigned to them in those Acts or the rules or regulations, as the case may be.

2. TERM OF THE AGREEMENT

2.1 The Agreement shall commence on_____[dd/mm/yyyy] and remain in force till_____ [dd/mm/yyyy] or the date of expiry of registration of the MSO or the LCO, as the case may be, whichever is earlier, unless terminated by either Party as per the terms and conditions of this Agreement.

2.2 The duration of the Agreement may be extended on terms and conditions to be mutually agreed between the Parties and recorded in writing provided that the extended term

does not go beyond the last date of validity of registration of the MSO or the LCO, whichever is earlier.

3. TERMINATION OF THE AGREEMENT

3.1 Either Party has a right to terminate the Agreement by serving an advance notice of 21 days in writing to the other Party in the event of:-

(i) material breach of the Agreement by the other Party which has not been cured within 15 days of being required in writing to do so; or

(ii) the bankruptcy, insolvency or appointment of receiver over the assets of other Party; or

(iii) the other Party indulging in, or allowing or inducing any person to indulge in piracy or carrying programming service provided on the channel which is in violation of the Programme & Advertising Codes prescribed in the Cable Television Network Rules, 1994, as amended from time to time.

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3.2 The LCO has a right to terminate the Agreement in the event of the MSO discontinuing the business of retransmission of signals of TV channels in the Territory.

3.3 The MSO has a right to terminate the agreement in the event of the LCO discontinuing its cable TV business in the Territory.

3.4 If the MSO decides to discontinue the business of retransmission of signals of TV channels in the Territory for any reason, it shall give a notice in writing, specifying the reasons for such decision, to the LCO at least 90 days prior to such discontinuation.

3.5 If the LCO decides to discontinue its business of providing signals of TV channels to the subscriber in the territory, it shall give a notice in writing, specifying the reasons for such decision, to the MSO at least 90 days prior to such discontinuation.

4. EFFECT OF TERMINATION AND EXPIRY

4.1 In the event of termination or expiry of the term of the Agreement, as the case may be, at the instance of either Party, each Party shall pay all amounts due and payable up to the date of termination or expiry to the other Party.

4.2 The LCO shall, within 15 days of the termination or expiry of the term of this Agreement, as the case may be, in terms of the provisions mentioned herein, hand over to the MSO all properties and assets belonging to the MSO, which are in the custody of the LCO**.** The LCO shall also be liable to make good all the losses or damages, if any, caused to such properties and assets belonging to the MSO, in custody of the LCO, within 30 days from the receipt of notice to this effect from the MSO and in the event of inability of LCO to repair such properties/assets, the LCO shall pay to the MSO the depreciated value of such properties/ assets.

4.3 The MSO shall, within 15 days of the termination or expiry of the term of this Agreement, as the case may be, in terms of the provisions mentioned herein, hand over to the LCO all properties and assets belonging to the LCO, which are in the custody of the MSO**.** The MSO shall also be liable to make good all the losses or damages, if any, caused to such properties and assets belonging to the LCO, in custody of the MSO, within 30 days from the receipt of notice to this effect from the LCO and in the event of inability of MSO to repair such properties/assets, the MSO shall pay to the LCO the depreciated value of such properties/ assets.

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Explanation:- The clause 4.2 and 4.3 above shall not have any application in respect of Hardware or any other equipment belonging to the MSO or the LCO, as the case may be, which are installed at the premises of the subscribers.

4.4 If the LCO or the MSO, as the case may be, fails to hand over the assets or make good losses or damages caused to such properties and assets within the above stipulated period, the defaulting Party shall be liable to make payment for the depreciated value of the same together with simple interest calculated at the rate 2% over and above the base rate of interest of the State Bank of India.

5. PROVISIONING OF SERVICES

5.1 The MSO shall make available signals of TV channels to the LCO, on non-exclusive basis, in order to re-transmit the same to the subscribers in the Territory, in terms of this agreement and as per prevailing norms, policies, the applicable laws and rules, regulations, directions and orders of the concerned authorities.

5.2 The LCO shall carry signals of TV channels received from the MSO, on non-exclusive basis, for distribution to the subscribers in the Territory.

5.3 The Parties shall compulsorily transmit, re-transmit or otherwise carry any channel, content or programme only in encrypted mode through a digital addressable system strictly in terms of and in accordance with the applicable laws and regulations.

5.4 The roles and responsibilities of the Parties to the Agreement for provisioning of services are contained in **clause 10** of this Agreement.

5.5 In consideration of the roles and responsibilities mentioned in **clause 10** of the Agreement, the revenue settlement between the LCO and the MSO have been mentioned in the **clause 12** of the Agreement.

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6. RIGHTS OF THE MSO

6.1 The MSO shall continue to have a right of ownership of its network used to deliver the cable TV services under this agreement and it may expand/ upgrade/ change/ replace/ re-design any part or entire network subject to the condition that any such activity does not interrupt or degrade the Quality of Service provided to the subscribers.

6.2 The MSO shall sign the interconnection agreement with broadcasters for re-transmission of signals of TV Channels as per prevailing norms, policies, the applicable laws and rules, regulations, directions and orders of the concerned authorities.

6.3 The MSO shall have the right to finalise the maximum retail price of each channel, as payable by the subscriber in compliance with the provisions of applicable laws and rules, regulations and tariff orders.

6.4 The MSO shall have the right to package the channels/ services offered on the network, as per its business plan and as per prevailing norms, policies, the applicable laws and rules, regulations and tariff orders.

6.5 The MSO shall have the right to finalise the rate of Basic Service Tier (BST) in compliance with the provisions of the applicable tariff orders and regulations notified by the Authority from time to time.

6.6 The MSO shall have the right to finalise the rates of bouquets of channels, if offered by the MSO, in compliance with the provisions of the applicable tariff orders and regulations notified by the Authority.

6.7 The MSO shall have the right to get all requisite information from the LCO for the purpose of fulfilling its responsibilities under the Agreement, and the applicable orders and regulations.

7. RIGHTS OF THE LCO

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7.1 The LCO shall continue to have its right of ownership of its network used to deliver the cable TV services under this agreement and it can expand/ upgrade/ change/ replace/ re-design any part or entire network subject to the condition that any such activity does not interrupt or degrade the Quality of Service offered to the subscriber on its network.

7.2 The LCO shall have right to get all the requisite information from the MSO for the purpose of fulfilling its responsibilities under the Agreement, and the applicable orders and regulations.

8. OBLIGATIONS OF THE MSO

8.1 MSO shall set up and operationalise the Head-end, Conditional Access System (CAS) and Subscriber Management System (SMS) for ensuring efficient and error-free services to the subscribers by recording and providing individualized preferences for channels, billing cycles or refunds.

8.2 The MSO shall make available to the LCO, the necessary and sufficient information relating to the details of channels, bouquets of channels, and services offered to the subscribers including their prices.

8.3 The MSO shall provide web based grievance redressal mechanism for addressing the complaints of LCOs in relation to the provision of services, roles and responsibilities, revenue settlements, quality of services etc.

8.4 The MSO shall not issue pre-activated STBs and the STBs shall be activated only after the details of the Customer Application Form (CAF) have been entered into the SMS.

8.5 The MSO shall generate bills for subscribers on regular basis, for charges due and payable for each month or as per the billing cycle applicable for that subscriber, within 3 days from the end of the billing cycle.

8.6 The MSO shall provide access to the relevant part of the SMS under its control to the LCO for the purpose of fulfilling responsibilities by the Parties under the Agreement, and the applicable orders and regulations.

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8.7 The MSO shall not indulge in any piracy or other activities, which has the effect of, or which shall result into, infringement and violation of trade mark and copyrights of the LCO or person associated with such transmission.

8.8 The MSO shall comply with all the applicable statutes or laws for the time being in force, or any rules, codes, regulations, notifications, circulars, guidelines, orders, directions etc. issued, published or circulated under any law for the time being in force.

8.9 The MSO shall not do any act or thing as a result of which, any right or interest of the LCO in respect of cable TV signals under this Agreement or any property of the LCO may be infringed or prejudiced.

8.10 The MSO shall be responsible for encryption of the complete signal, up to the STB installed at the premises of the subscriber.

8.11 The MSO shall not disconnect the signals of TV Channels, without giving three weeks' advance notice to the LCO clearly specifying the reasons for the proposed disconnection as envisaged in the Interconnection Regulation.

8.12. The MSO shall make available online payment gateway, prepaid system for subscribers and facility for electronic acknowledgment to the subscriber on the receipt of payment from the subscriber.

8.13 The MSO shall provide to the LCO at least 2% of the total STBs active in the network of the LCO with an upper cap of 30 STBs as maintenance spare, which are not pre-activated, to ensure speedy restoration of services affected due to any fault in STB. This quantity of maintenance spare STBs shall be maintained during the term of the agreement.

8.14 The MSO shall intimate to the LCO, at least 15 days in advance, in respect of any proposed changes in the package composition or the retail tariff being offered to the subscriber.

8.15 The MSO shall have no right, without the prior written intimation to the LCO, to assign or transfer any of its rights or obligations under this Agreement.

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9. OBLIGATIONS OF THE LCO

9.1 The LCO shall handover a copy of CAF received from subscribers within 15 days to the MSO;

9.2 The LCO shall be responsible for entering the details of the bill amount paid by the individual subscriber to the LCO for the Cable TV services in the SMS.

9.3 The LCO shall not indulge in any piracy or other activities, which has the effect of, or which shall result into, infringement and violation of trade mark and copyrights of the MSO, or any other person associated with such retransmission.

9.4 The LCO shall have no right, without the prior written intimation to the MSO, to assign or transfer any of its rights or obligations under this Agreement.

9.5 The LCO shall not replace the STBs of the MSO with the STBs of any other MSO without receiving the requests from the subscribers through application forms for returning

the STB of the existing connections and for providing new connections through Customer Application Form. The new Set Top Box shall be activated only after entry of the details, as provided in new Customer Application Form, into the Subscriber Management System of the new MSO.

9.6 The LCO shall –

(i) not transmit or retransmit, interpolate or mix any signals which are not transmitted or generated by the MSO without the prior written consent of the MSO;

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

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

(iv) not alter or tamper the Hardware including the seal (seal to prevent opening of set top box), misuse, replace, remove and shift the Smart card or STB without the written consent of MSO from their respective original addresses;

(v) not use, either before or after the installation of STB, of any decoding, receiving, recording equipment(s), counterfeit set top box(es), smart card(s) other than the STB(s), Smart cards and any other equipments supplied/ approved by the MSO, and to take actions as directed by the MSO against such subscribers.

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

9.7 The LCO shall not provide connection to any entity for further retransmission of the Cable TV signals.

9.8 The LCO shall not record and then retransmit Cable TV signals or otherwise to block or add or substitute or otherwise tamper with the signal being transmitted by the MSO or with the trunk line nor shall allow any other person to do so.

9.9 The LCO shall not do any act or thing as a result of which, any right or interest of the MSO in respect of the Cable TV signals under this Agreement or any property of the MSO may be infringed or prejudiced.

9.10 The LCO shall permit access to the systems under its control to the MSO, on non-exclusive basis, for the purpose of fulfilling responsibilities by the Parties under the Agreement, and the applicable orders and regulations.

9.11 The LCO shall not disconnect the signals of TV Channels, without giving three weeks' notice to the MSO clearly specifying the reasons for the proposed disconnection as envisaged in the Interconnection Regulation.

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10. ROLES AND RESPONSIBILITIES OF THE MSO AND THE LCO:

Sl. No.	**Role**	***Responsibility of the MSO or the LCO as mutually agreed by the Parties - fill the cell accordingly***	**Remarks**
(1)	**(2)**	**(3)**	**(4)**
1	Publicizing schemes for obtaining and returning the Set Top Boxes (STBs) by the subscriber and the warranty/ repairing policy applicable thereof.		
2	Devising formats of application as specified in the schedule-I of the QoS regulations for seeking connection, disconnection, reconnection, transfer, and shifting of Cable TV services;		
3	Publication of Manual of Practice (MoP)		
4	Publication of Consumer Charter.		
5	Setting up of Website containing information pertaining to services, details of complaint centre, complaint redressal system, complaint monitoring system, citizen charter, nodal officer etc.		

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6	a. Establishment of Complaint centre for (i) addressing service requests of subscribers, (ii) redressal of complaints of subscribers. b. Establishment of web based Complaint Monitoring system. c. Providing Toll free Consumer Care Number and its publicity. d. Maintenance of records of all complaints filed by the consumer as provided in the Complaint Redressal Regulations.		In case this responsibility is given to the MSO then the MSO shall communicate to the LCO the details of complaint centre for onward communication to subscribers.
7	Specification of a system of discount or rebate to the subscriber due to interruptions in service and creating awareness about such scheme.		

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8	a. Providing information to the subscriber about the schemes for obtaining and returning the STB and the warranty/ repairing policy applicable thereof. b. Providing of the application form along with the MOP to the applicants/ subscribers and c. Receiving of application form from applicants/ subscribers for (i) connection**,** reconnection, transfer, and shifting of Cable TV services; (ii) obtaining and returning of STB. d. Returning of the duplicate copy of the application form to the applicant/ subscriber as an acknowledgment of receipt of application. e. Communication of shortcomings or deficiency, in the application form, in writing to the applicant, within 2 days of receipt of the application. f. Communication of technical or operational non-feasibility to the applicant, in case it is technically or operationally non-feasible to provide connection, reconnection, shifting of service or supply of STB at the location, where the services are requested by the applicant, within 2 days of receipt of the application.		The Party who has been assigned this responsibility shall update the information in the Subscriber Management System (SMS) in each case within 24 hours from the receipt of the application.

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9	Issue of Unique Identification Number (UIN) for the applicant.		The UIN shall be generated from the SMS. In case the responsibility is assigned to the LCO then the relevant access of the SMS should be provided by the MSO to the LCO.
10	Installation of STB at the premises of the subscriber and activation through SMS.		In case the responsibility is assigned to the LCO then the MSO should provide relevant access to SMS for STB activation.
11	Providing rebate to the subscriber for delay in installation and activation of STB.		
12	Issuance of advance notice of 15 days regarding discontinuing or disconnection of cable service to the subscriber, indicating the reasons for such discontinuation or disconnection.		
13	Receipt of request from the subscriber for disconnection or suspension of service and its execution through SMS.		
14	Receipt of request for change in subscription package from the subscribers and its execution through SMS.		
15	Notice to the Subscribers regarding disruption of signals for preventive maintenance.		

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16	Response to the consumer complaints as per norms of the QoS regulations.		The complaints received by the Party shall be immediately updated in the web based complaint monitoring system so that the necessary corrective action can be taken by the Parties in time and the same can be monitored by the complainant.
17	Redressal of consumer complaints as per the norms of the QoS regulations:- (i) relating to 'No signal'; (ii) relating to STB; (iii) relating to subscriber's billing and receipts; (iv) any other complaint.		The complaints redressed by the Party shall be immediately updated in the web based complaint monitoring system.
18	Designation of nodal officer as per the provisions of the consumer complaint redressal regulation.		
19	Communication to subscriber about redressal of the complaint received from the Authority.		
20	Printing and delivery of system generated itemized bills to subscribers.		
21	Delivery of payment receipts to subscribers.		
22	Electronic acknowledgement to subscriber.		

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23	Providing information relating to itemised usage showing actual usage of service in case of prepaid bills for any period within 6 months.		The requests received by the LCO shall be immediately updated in the SMS so that the MSO can provide the requisite details to the subscriber in time.
24	Payment of taxes to the Government.	**MSO and/ or LCO**	The specific details of tax payment responsibilities need to be filled in the adjoining cells at the time of signing of the agreement as per the rules and regulations of the respective Tax authorities.

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Note:- The responsibilities for various roles mentioned in the column (2) above can be mutually agreed by the Parties and accordingly the cells of the column (3) to be filled.

11. BILLING

11.1 The billing for subscriber shall be in the name of _____. However, each Party shall ensure that the applicable laws, rules and regulations relating to taxes are complied with.

11.2 The Party, in whose name the billing for subscribers have been agreed in the clause 11.1 above, shall receive the payment of the subscription fee paid by the subscribers. The revenue share as per clause 12.1 of this Agreement shall be paid by this Party to the other Party on receipt of the invoice from the other Party.

12. REVENUE SETTLEMENT BETWEEN THE LCO AND THE MSO AND RELATED RIGHTS AND OBLIGATIONS

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12.1 The revenue settlement between the LCO and the MSO shall be in the following manner:-

(a) the charges collected from the subscription of channels of Basic Service Tier, free to air channel and bouquet of free to air channels shall be shared in the ratio of _____:_____ between the MSO and the LCO respectively; and

(b) the charges collected from the subscription of channels or bouquet of channels or channels and bouquet of channels other than those specified under clause (a) shall be shared in the ratio of _____:_____ between the MSO and the LCO respectively.

Note:-

For mutual agreement cases where the roles and responsibilities of the MSO and the LCO have been agreed as per column (3) of clause (10), this clause can be suitably amended based on mutual agreement.

12.2*

(When the billing for subscribers is in the name of the LCO and the LCO receives the payment of subscription fee paid by the subscribers)

The MSO shall issue monthly invoice to the LCO towards dues payable by the LCO for revenue settlement and such invoice shall clearly specify the current payment dues and

arrears, if any, along with the due date of payment which shall not be less than seven days. Any demand of arrears shall be accompanied by the proof of service of invoices for the period for which the arrears pertain. The amounts raised in the invoice shall be payable on or before the due date as mentioned therein.

OR

12.2*

(When the billing for subscribers is in the name of the MSO and the MSO receive the payment of subscription fee paid by the subscribers)

The MSO shall share the complete information relating to the subscribers billing and receipt of the payments with the LCO. The LCO shall issue monthly invoice to the MSO towards dues payable by the MSO for revenue settlement and such invoice shall clearly specify the current payment dues and arrears, if any, along with the due date of payment which shall not be less than seven days. Any demand of arrears shall be accompanied by the proof of service of invoices for the period for which the arrears pertain. The amounts raised in the invoice shall be payable on or before the due dates as mentioned therein.

(*Strike out whichever is not applicable at the time of signing individual agreement)

12.3 The Party shall update the details of the subscription amount realised from the subscriber, in the SMS within 7 days from the due date.

13. DEFAULTS

13.1 Without prejudice to such rights and remedies that the Parties may have in law or under the provisions of this Agreement, in the event of any delay or failure by the MSO or the LCO, as the case may be, to make payments of dues on or before the respective due dates, the LCO or the MSO, as the case may be, shall have the right:-

(i) to disconnect the services subject to the compliance of the applicable rules, regulations, directions or orders of the Authority;

(ii) to terminate this Agreement, subject to compliance of the applicable laws in force;

(iii) to charge a simple interest at the rate 2% over and above of the base rate of interest of the State Bank of India from the date such amounts became due until those are fully and finally paid;

13.2 In cases where any of the Parties has failed to make payment on or before due date for three consecutive months in the past, the other Party shall have right to demand the interest free security deposit which shall not exceed average of immediately preceding 6 months billing amounts and the same shall be maintained for the remaining term of the agreement.

13.3 Upon disconnection of the service as mentioned in clause 13.1 above, whether accompanied by termination of this Agreement or not, the defaulting Party shall be liable to deposit forthwith all sums payable by it. In the case of termination, accounts shall be settled within thirty days and for delayed payments, either Party shall be liable to pay simple interest at the rate 2% over and above of the base rate of interest of the State Bank of India.

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14. UNDERTAKINGS

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

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

14.3 It is expressly understood by the Parties that "_____" logo(s) is a Registered Trade Mark of the MSO, and the LCO shall use the said logo only during the currency of this Agreement for the benefit of the cable television networking business of the MSO. Consent of the MSO is hereby given to the LCO to use the said logo, to the extent of or in connection with the business of the MSO.

14.4 It is expressly understood by the Parties that "_____" logo(s) is a Registered Trade Mark of the LCO, and the MSO shall use the said logo only during the currency of this Agreement for the benefit of the cable television networking business of the LCO. Consent of the LCO is hereby given to the MSO to use the said logo, to the extent of or in connection with the business of the LCO.

14.5 It is clearly understood and accepted by each Party that it shall have no right to use any intellectual property of the other on its Cable TV service or otherwise on or after the withdrawal by the other Party of its consent for such uses.

14.6 In case the LCO or the MSO, as the case may be, decides to transfer its interest in respect of its business of providing Cable TV Service to any other party / person (third party), in whole or in part, the LCO or the MSO, as the case may be, shall give prior notice to the MSO or the LCO. One Party shall not have any objection to such transfer if the other Party has complied with its obligations under this contract and has paid all its dues.

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Provided, however, that such third party shall sign and execute a deed of adherence to the terms & conditions of this Agreement and other undertaking/ bonds to the satisfaction of the MSO or the LCO, as the case may be, in order to give effect to the provisions of this Agreement.

14.7 The LCO shall maintain and continue to maintain its Postal Registration Certificate renewed from time to time in accordance with the Cable TV Networks (Regulation) Act, 1995 and comply with the terms and conditions of the registration certificate issued by the Postal Authority.

14.8 The MSO shall maintain and continue to maintain its Registration Certificate renewed from time to time in accordance with the Cable TV Networks (Regulation) Act, 1995 and comply with the terms and conditions of the registration.

14.9 Both the Parties shall comply with the Programme Codes and Advertising Codes prescribed in the Cable Television Network Rules, 1994, as amended from time to time.

14.10 Both the Parties shall comply with the laws for the time being in force in India, as applicable to them.

15. PREVENTION OF PIRACY

15.1 The Parties shall not indulge or allow any person to indulge in Piracy or in reverse engineering any technology used in the Hardware or any component thereof nor shall they use the Hardware to be connected to any equipment for setting up a mini head-end for retransmission of the signals generated from the same.

15.2 Signal to any subscriber shall be disconnected by the MSO or the LCO, as the case may be, after giving due notice as required under applicable regulations, if found to be indulged in or abetting any Piracy.

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16. DISCLAIMER AND INDEMNITY

16.1 In no event, the MSO shall be liable to the LCO for any indirect, special, incidental or consequential damage arising out of or in connection with the disruption, interruption or discontinuance of the Service or for any inconvenience, disappointment or due to deprival of any programme or information or for any indirect or consequential loss or damage, which is not attributable to any act of the MSO.

16.2 In no event, the LCO shall be liable to the MSO for any indirect, special, incidental or consequential damage arising out of or in connection with the disruption, interruption or discontinuance of the Service or for any inconvenience, disappointment or due to deprival of any programme or information or for any indirect or consequential loss or damage, which is not attributable to any act of the LCO.

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

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

17. GOVERNING LAW AND DISPUTE RESOLUTION

17.1 As mandated by the Telecom Regulatory Authority of India Act, 1997, the Parties shall not institute any suit or seek injection or interim orders in any court or judicial tribunal/ authority in India with respect to any claims, dispute or differences between the Parties arising out of this Agreement save and except before the Telecom Disputes Settlement and Appellate Tribunal, New Delhi **("TDSAT").** The Parties agree that all disputes between the Parties shall be resolved solely through proceedings instituted before the TDSAT.

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18. FORCE MAJEURE

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

Agreement shall be terminated upon notice of either Party to the other, on expiry of one month from the date of such notice.

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

19. NOTICES

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

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20. RESTRICTION ON TRANSFER

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

21. CONFIDENTIALITY

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

21.2 The Parties shall also bind their employees, officers, advisors, associates, contractors, agents, authorized persons and other similar persons to whom the above mentioned information may be disclosed, to the obligations of confidentiality.

21.3 The Parties hereby agrees that the confidential information can be disclosed to the statutory authority on demand by such authorities.

22. MODIFICATIONS

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

23. BINDING EFFECT

23.1 This Agreement modifies all prior understanding of the Parties as to the subject matter thereof and shall not be amended except in writing by both the Parties. Any other understanding between the Parties (if any) with regard to any other matter or any accrued rights and obligation of the Parties not covered under this agreement, if any, shall continue to be in full force and effect.

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

Signed on behalf of the MSO

(_____)

In the presence of

1. ……..

2. ……..

Signed on behalf of the LCO

(_____)

In the presence of

1. ……..

2. ……..

Note: The self attested copies of power of attorney/authorization letter, whereby the signatories of this agreement have been authorised to sign and execute this agreement by the Parties, shall be attached with this agreement.

Schedule

DEFINITIONS AND INTERPRETATIONS

A. DEFINITIONS

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

(a) **"Act"** means the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), as amended from time to time;

(b) **"Addressable System"** shall have the same meaning as assigned to it in the Cable Television Networks (Regulation) Act, 1995 (7 of 1995), as amended from time to time;

(c) **"Authority"** means the Telecom Regulatory Authority of India established under subsection (1) of section 3 of the Telecom Regulatory Authority of India Act, 1997;

(d) **"Basic Service Tier"** shall have the same meaning as assigned to it in the Tariff Order.

(e) **"Bouquet" or "bouquet of channels"** means an assortment of distinct channels, offered together as a group or as a bundle;

(f) **"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;

(g) **"Cable service or cable TV service"** means the transmission by cables of programmes including retransmission by cables of any broadcast television signals;

(h) **"Cable television network or cable TV 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;

(i) **"Channel or TV channel"** means a channel, which has been registered under -----

(i) the guidelines for uplinking from India, issued vide No.1501/2/2002-TV(I)(Pt.) dated the 2nd December, 2005; or

(ii) policy guidelines for downlinking of televisions channels, issued vide No.

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as amended from time to time, or such other guidelines for uplinking or downlinking of television channels, as may be issued from time to time by Government of India (Ministry of Information and Broadcasting) and reference to the term 'channel' shall be construed as a reference to "channel or TV channel";

(j) **"Complaint Centre"** means a facility established by the multi-system operator or his linked local cable operators, as the case may be, under Consumer Complaint Redressal Regulation;

(k) **"Consumer Complaint Redressal Regulation"** means the Consumers Complaint Redressal (Digital Addressable Cable TV Systems) Regulations, 2012 (13 of 2012), dated 14th May 2012, as amended from time to time;

(l) **"CTN Act"** means the Cable Television Networks (Regulation) Act, 1995 (7 of 1995), as amended from time to time.

(m) **"Encryption or encrypted"** in respect of a signal of cable television network, means the changing of such signal in a systematic way so that the signal would be unintelligible without use of an addressable system and the expression "unencrypted" shall be construed accordingly;

(n) **"Free To Air channel"** shall have the same meaning as assigned to it in the Tariff Order.

(o) **"Hardware"** means a multi-system operator approved set top box to enable the decryption of signals of Channels transmitted in encrypted form, the remote and other associated components and accessories.

(p) **"Headend"** means a facility that contains satellite receivers, modulator, compression equipment, multiplexes, and conditional access facilities, other transmission equipments and has antennas which receive signals from Satellite and/or from local studio for retransmission to subscribers directly or through linked LCOs;

(q) **"Interconnection Regulation"** means the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 (9 of 2012), dated 30th April, 2012, as amended from time to time.

(r) **"Manual of Practice (MoP)"** means the Manual of Practice referred in the QoS Regulation;

(s) **"Nodal Officer"** means the officer appointed or designated by the multi-system operator or his linked local cable operator, as the case may be, under the Consumer Complaint Redressal Regulation;

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(t) **"Pay Channel"** shall have the same meaning as assigned to it in the Tariff Order;

(u) **"Piracy"** means unauthorized reception, retransmission or redistribution of Cable TV Signal by any person by any means and modes including but not limited to any alteration, tampering of the seal or any component or accessory thereof or misuse, replacement, removal and/or shifting of Hardware or any use, either before or after the set top box, any decoding, receiving, recording equipment(s), counterfeit or unauthorized devices or any activity, which has the effect of, or which may result into, infringement and violation of trade mark and copyright of the MSO or the LCO as the case may be;

(v) "**Programme**" means any television broadcast and includes;

(i) exhibition of films, features, dramas, advertisements and serials;

(ii) any audio or visual or audio-visual live performance or presentation and----

the expression "programming service" shall be construed accordingly;

(w) **"QoS Regulation"** means the Standards of Quality of Service (Digital Addressable Cable TV Systems) Regulations, 2012 (12 of 2012), dated 14th May, 2012, as amended from time to time.

(x) **"Set top box or STB "** means a device, which is connected to, or is part of a television and which allows a subscriber to receive in unencrypted and descrambled form subscribed channels through an addressable system;

(y) **"Smart Card"** means the card duly approved by the multi-system operator as part of the Hardware, which enables the subscriber to gain access to the Cable TV signals of Channels.

(z) **"Subscriber"** means a person who receives broadcasting services or cable services from a multi-system operator or cable operator at a place indicated by him to the multi-system operator or cable operator, as the case may be, without further transmitting it to any person and includes ordinary subscribers and commercial subscribers, unless specifically excluded;

"For removal of doubts, it is clarified that each set top box installed at the premises would constitute a subscriber."

(za) **"Subscriber management system or SMS"** means a system or device which stores the subscriber records and details with respect to name, address and other information regarding the hardware being utilized by the subscriber, channels or bouquets of channels subscribed to by the subscriber, price of such channels or bouquets of channels as defined in the system, the activation or deactivation dates and time for

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any channel or bouquets of channels, a log of all actions performed on a subscriber's record, invoices raised on each subscriber and the amounts paid or discount allowed to the subscriber for each billing period;

(zb) **"Tariff Order"** means the Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff Order, 2010 (1 of 2010), dated 21st July 2010, as amended from time to time;

(zc) **"Trunk Line"** means the coaxial/optic fiber cable network and other allied equipment such as receiver nodes, amplifiers, splitters etc. owned and installed by the multi-system operator or its associate companies for the purpose of transmitting Cable TV Signal to various LCOs till the receiving end of various LCOs, including the LCO, to enable them to re-transmit the Cable TV Signal to respective subscribers;

All other words and expressions used in this interconnection agreement but not defined, and defined in the Act and rules and regulations made thereunder or the CTN Act and the rules and regulations made thereunder, shall have the meanings respectively assigned to them in those Acts or the rules or regulations, as the case may be.

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B. INTERPRETATION

In this Agreement, unless the context otherwise requires:

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

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

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

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

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

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

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Schedule V

(Refer second proviso of sub-regulation (13) of regulation 5)

STANDRAD INTERCONNECTION AGREEMENT BETWEEN MULTI SYSTEM OPERATOR AND LOCAL CABLE OPERATOR FOR PROVISIONING OF CABLE TV SERVICES THROUGH DIGITAL ADDRESSABLE SYSTEMS (DAS).

[Each page of the Agreement shall be signed by the authorised signatory of the Multi System Operator and the Local Cable Operator]

This Technical and Commercial Interconnection Agreement along with its Schedules and Annexures is executed on this _____ day of _____ 201_ by and between:

_____, having its office at _____, through its Authorised Signatory, hereinafter referred to as the "**MSO**" which expression shall unless repugnant to the context or meaning thereof, be deemed to include its successors, assignees, legal heirs and executors of the **ONE PART**.

MSO's Status: Individual/Firm/Company/Association of Persons/Body of Individuals *(strike out whichever is not applicable or modify suitably in case of Association of Persons or Body of Individuals)*

AND

_____, having its office at _____, through its Authorised Signatory, hereinafter referred to as the "**LCO**" which expression shall unless repugnant to the context or meaning thereof, be deemed to include its successors, assignees, legal heirs and executors, of the **OTHER PART**

LCO's Status: Individual/Firm/Company/Association of Persons/Body of Individuals *(strike out whichever is not applicable or modify suitably in case of Association of Persons or Body of Individuals)*

The **MSO** and the **LCO** are hereinafter individually referred to as 'Party' and collectively referred to as "**Parties**".

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WHEREAS,

A. The MSO is a cable operator, who has been granted registration No. _____ dated _____ under the Cable Television Networks Rules, 1994, by the Ministry of Information and Broadcasting, for providing cable TV services through digital addressable systems in the areas of _____notified by the Central Government under Section 4A of the Cable Television Networks (Regulation) Act, 1995.

B. The LCO is a cable operator, who has been granted registration under the Cable Television Networks Rules, 1994, having postal registration No. _____ dated _____, in the head post office _____, [Name of the head post office] for providing Cable TV Services in _____ [Mention the area].

C. The LCO has requested the MSO vide its letter No._____ dated_____for making available signals of TV channels and the MSO has agreed vide its letter No._____ dated_____to provide signals of TV channels to such LCO.

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D. TERRITORY: Territory, in the context of this Agreement is _____ *[mention the name of area(s)/ city(ies)/ district(s)/ state(s) for which this agreement is being signed.]*

E. The Parties have mutually agreed to execute this Agreement - on principal to principal and non-exclusive basis - between them to govern the roles, responsibilities, rights, obligations, technical and commercial arrangement in regard to the distribution of TV channels in the Territory.

F. The Parties also mutually agree that each and every transaction including transaction of any properties/ assets between the Parties shall be carried out in writing or in any other verifiable means.

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

1. DEFINITIONS

The words and expressions used in this Agreement shall have meanings as assigned to them in the Schedule to this Agreement**.** All other words and expressions used in this Agreement, but not defined, and defined in the Act and rules and regulations made there under or the Cable Television Networks (Regulation) Act, 1995 (7 of 1995) shall have the meanings respectively assigned to them in those Acts or the rules or regulations, as the case may be.

2. TERM OF THE AGREEMENT

2.1 The Agreement shall commence on_____[dd/mm/yyyy] and remain in force till_____ [dd/mm/yyyy] or the date of expiry of registration of the MSO or the LCO, as the case may be, whichever is earlier, unless terminated by either Party as per the terms and conditions of this Agreement.

2.2 The duration of the Agreement may be extended on terms and conditions to be mutually agreed between the Parties and recorded in writing provided that the extended term does not go beyond the last date of validity of registration of the MSO or the LCO, whichever is earlier.

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3. TERMINATION OF THE AGREEMENT

3.1 Either Party has a right to terminate the Agreement by serving an advance notice of 21 days in writing to the other Party in the event of:-

(iv) material breach of the Agreement by the other Party which has not been cured within 15 days of being required in writing to do so; or

(v) the bankruptcy, insolvency or appointment of receiver over the assets of other Party; or

(vi) the other Party indulging in, or allowing or inducing any person to indulge in piracy or carrying programming service provided on the channel which is in violation of the Programme & Advertising Codes prescribed in the Cable Television Network Rules, 1994, as amended from time to time.

3.2 The LCO has a right to terminate the Agreement in the event of the MSO discontinuing the business of retransmission of signals of TV channels in the Territory.

3.3 The MSO has a right to terminate the agreement in the event of the LCO discontinuing its cable TV business in the Territory.

3.4 If the MSO decides to discontinue the business of retransmission of signals of TV channels in the Territory for any reason, it shall give a notice in writing, specifying the reasons for such decision, to the LCO at least 90 days prior to such discontinuation.

3.5 If the LCO decides to discontinue its business of providing signals of TV channels to the subscriber in the territory, it shall give a notice in writing, specifying the reasons for such decision, to the MSO at least 90 days prior to such discontinuation.

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4. EFFECT OF TERMINATION AND EXPIRY

4.1 In the event of termination or expiry of the term of the Agreement, as the case may be, at the instance of either Party, each Party shall pay all amounts due and payable up to the date of termination or expiry to the other Party.

4.2 The LCO shall, within 15 days of the termination or expiry of the term of this Agreement, as the case may be, in terms of the provisions mentioned herein, hand over to the MSO all properties and assets belonging to the MSO, which are in the custody of the LCO**.** The LCO shall also be liable to make good all the losses or damages, if any, caused to such properties and assets belonging to the MSO, in custody of the LCO, within 30 days from the receipt of notice to this effect from the MSO and in the event of inability of LCO to repair such properties/assets, the LCO shall pay to the MSO the depreciated value of such properties/ assets.

4.3 The MSO shall, within 15 days of the termination or expiry of the term of this Agreement, as the case may be, in terms of the provisions mentioned herein, hand over to the LCO all properties and assets belonging to the LCO, which are in the custody of the MSO**.** The MSO shall also be liable to make good all the losses or damages, if any, caused to such properties and assets belonging to the LCO, in custody of the MSO, within 30 days from the receipt of notice to this effect from the LCO and in the event of inability of MSO to repair

such properties/assets, the MSO shall pay to the LCO the depreciated value of such properties/ assets.

Explanation:- The clause 4.2 and 4.3 above shall not have any application in respect of Hardware or any other equipment belonging to the MSO or the LCO, as the case may be, which are installed at the premises of the subscribers.

4.4 If the LCO or the MSO, as the case may be, fails to hand over the assets or make good losses or damages caused to such properties and assets within the above stipulated period, the defaulting Party shall be liable to make payment for the depreciated value of the same together with simple interest calculated at the rate 2% over and above the base rate of interest of the State Bank of India.

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5. PROVISIONING OF SERVICES

5.1 The MSO shall make available signals of TV channels to the LCO, on non-exclusive basis, in order to re-transmit the same to the subscribers in the Territory, in terms of this agreement and as per prevailing norms, policies, the applicable laws and rules, regulations, directions and orders of the concerned authorities.

5.2 The LCO shall carry signals of TV channels received from the MSO, on non-exclusive basis, for distribution to the subscribers in the Territory.

5.3 The Parties shall compulsorily transmit, re-transmit or otherwise carry any channel, content or programme only in encrypted mode through a digital addressable system strictly in terms of and in accordance with the applicable laws and regulations.

5.4 The roles and responsibilities of the Parties to the Agreement for provisioning of services are contained in **clause 10** of this Agreement.

5.5 In consideration of the roles and responsibilities mentioned in **clause 10** of the Agreement, the revenue settlement between the LCO and the MSO have been mentioned in the **clause 12** of the Agreement.

6. RIGHTS OF THE MSO

6.1 The MSO shall continue to have a right of ownership of its network used to deliver the cable TV services under this agreement and it may expand/ upgrade/ change/ replace/ re-design any part or entire network subject to the condition that any such activity does not interrupt or degrade the Quality of Service provided to the subscribers.

6.2 The MSO shall sign the interconnection agreement with broadcasters for re-transmission of signals of TV Channels as per prevailing norms, policies, the applicable laws and rules, regulations, directions and orders of the concerned authorities.

6.3 The MSO shall have the right to finalise the maximum retail price of each channel, as payable by the subscriber in compliance with the provisions of applicable laws and rules, regulations and tariff orders.

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6.4 The MSO shall have the right to package the channels/ services offered on the network, as per its business plan and as per prevailing norms, policies, the applicable laws and rules, regulations and tariff orders.

6.5 The MSO shall have the right to finalise the rate of Basic Service Tier (BST) in compliance with the provisions of the applicable tariff orders and regulations notified by the Authority from time to time.

6.6 The MSO shall have the right to finalise the rates of bouquets of channels, if offered by the MSO, in compliance with the provisions of the applicable tariff orders and regulations notified by the Authority.

6.7 The MSO shall have the right to get all requisite information from the LCO for the purpose of fulfilling its responsibilities under the Agreement, and the applicable orders and regulations.

7. RIGHTS OF THE LCO

7.1 The LCO shall continue to have its right of ownership of its network used to deliver the cable TV services under this agreement and it can expand/ upgrade/ change/ replace/ re-

design any part or entire network subject to the condition that any such activity does not interrupt or degrade the Quality of Service offered to the subscriber on its network.

7.2 The LCO shall have right to get all the requisite information from the MSO for the purpose of fulfilling its responsibilities under the Agreement, and the applicable orders and regulations.

8. OBLIGATIONS OF THE MSO

8.1 MSO shall set up and operationalise the Head-end, Conditional Access System (CAS) and Subscriber Management System (SMS) for ensuring efficient and error-free services to the subscribers by recording and providing individualized preferences for channels, billing cycles or refunds.

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8.2 The MSO shall make available to the LCO, the necessary and sufficient information relating to the details of channels, bouquets of channels, and services offered to the subscribers including their prices.

8.3 The MSO shall provide web based grievance redressal mechanism for addressing the complaints of LCOs in relation to the provision of services, roles and responsibilities, revenue settlements, quality of services etc.

8.4 The MSO shall not issue pre-activated STBs and the STBs shall be activated only after the details of the Customer Application Form (CAF) have been entered into the SMS.

8.5 The MSO shall generate bills for subscribers on regular basis, for charges due and payable for each month or as per the billing cycle applicable for that subscriber, within 3 days from the end of the billing cycle.

8.6 The MSO shall provide access to the relevant part of the SMS under its control to the LCO for the purpose of fulfilling responsibilities by the Parties under the Agreement, and the applicable orders and regulations.

8.7 The MSO shall not indulge in any piracy or other activities, which has the effect of, or which shall result into, infringement and violation of trade mark and copyrights of the LCO or person associated with such transmission.

8.8 The MSO shall comply with all the applicable statutes or laws for the time being in force, or any rules, codes, regulations, notifications, circulars, guidelines, orders, directions etc. issued, published or circulated under any law for the time being in force.

8.9 The MSO shall not do any act or thing as a result of which, any right or interest of the LCO in respect of cable TV signals under this Agreement or any property of the LCO may be infringed or prejudiced.

8.10 The MSO shall be responsible for encryption of the complete signal, up to the STB installed at the premises of the subscriber.

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8.11 The MSO shall not disconnect the signals of TV Channels, without giving three weeks' advance notice to the LCO clearly specifying the reasons for the proposed disconnection as envisaged in the Interconnection Regulation.

8.12. The MSO shall make available online payment gateway, prepaid system for subscribers and facility for electronic acknowledgment to the subscriber on the receipt of payment from the subscriber.

8.13 The MSO shall provide to the LCO at least 2% of the total STBs active in the network of the LCO with an upper cap of 30 STBs as maintenance spare, which are not pre-activated, to ensure speedy restoration of services affected due to any fault in STB. This quantity of maintenance spare STBs shall be maintained during the term of the agreement.

8.14 The MSO shall intimate to the LCO, at least 15 days in advance, in respect of any proposed changes in the package composition or the retail tariff being offered to the subscriber.

8.15 The MSO shall have no right, without the prior written intimation to the LCO, to assign or transfer any of its rights or obligations under this Agreement.

9. OBLIGATIONS OF THE LCO

9.1 The LCO shall handover a copy of CAF received from subscribers within 15 days to the MSO;

9.2 The LCO shall be responsible for entering the details of the bill amount paid by the individual subscriber to the LCO for the Cable TV services in the SMS.

9.3 The LCO shall not indulge in any piracy or other activities, which has the effect of, or which shall result into, infringement and violation of trade mark and copyrights of the MSO, or any other person associated with such retransmission.

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9.4 The LCO shall have no right, without the prior written intimation to the MSO, to assign or transfer any of its rights or obligations under this Agreement.

9.5 The LCO shall not replace the STBs of the MSO with the STBs of any other MSO without receiving the requests from the subscribers through application forms for returning the STB of the existing connections and for providing new connections through Customer Application Form. The new Set Top Box shall be activated only after entry of the details, as provided in new Customer Application Form, into the Subscriber Management System of the new MSO.

9.6 The LCO shall –

(i) not transmit or retransmit, interpolate or mix any signals which are not transmitted or generated by the MSO without the prior written consent of the MSO;

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

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

(iv) not alter or tamper the Hardware including the seal (seal to prevent opening of set top box), misuse, replace, remove and shift the Smart card or STB without the written consent of MSO from their respective original addresses;

(v) not use, either before or after the installation of STB, of any decoding, receiving, recording equipment(s), counterfeit set top box(es), smart card(s) other than the STB(s), Smart cards and any other equipments supplied/ approved by the MSO, and to take actions as directed by the MSO against such subscribers.

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

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9.7 The LCO shall not provide connection to any entity for further retransmission of the Cable TV signals.

9.8 The LCO shall not record and then retransmit Cable TV signals or otherwise to block or add or substitute or otherwise tamper with the signal being transmitted by the MSO or with the trunk line nor shall allow any other person to do so.

9.9 The LCO shall not do any act or thing as a result of which, any right or interest of the MSO in respect of the Cable TV signals under this Agreement or any property of the MSO may be infringed or prejudiced.

9.10 The LCO shall permit access to the systems under its control to the MSO, on non-exclusive basis, for the purpose of fulfilling responsibilities by the Parties under the Agreement, and the applicable orders and regulations.

9.11 The LCO shall not disconnect the signals of TV Channels, without giving three weeks' notice to the MSO clearly specifying the reasons for the proposed disconnection as envisaged in the Interconnection Regulation.

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10. ROLES AND RESPONSIBILITIES OF THE MSO AND THE LCO:

Sl. No.	Role	Responsibility in the event of agreement signed under the proviso to the clause 5 of the Tariff Order.	Remarks
(1)	(2)	(3)	(4)
1	Publicizing schemes for obtaining and returning the Set Top Boxes (STBs) by the subscriber and the warranty/ repairing policy applicable thereof.	**MSO**	• The MSO shall finalize the schemes for provisioning/ returning STBs, warrantee/ repairing policy applicable thereof. However the MSO shall share such details with the LCO. • The MSO shall finalize the packaging and pricing of channels/ services and such details shall be shared with the LCO. • The MSO shall finalize the contents of MOP and consumer charter. Copies of such MoP and Consumer Charter documents shall be shared with the LCO.
2	Devising formats of application as specified in the schedule-I of the QoS regulations for seeking connection, disconnection, reconnection, transfer, and shifting of Cable TV services;		
3	Publication of Manual of Practice (MoP)		
4	Publication of Consumer Charter.		

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5	Setting up of Website containing information pertaining to services, details of complaint centre, complaint redressal system, complaint monitoring system, citizen charter, nodal officer etc.	**MSO**	
6	e. Establishment of Complaint centre for (iii)addressing service requests of subscribers, (iv)redressal of complaints of subscribers. f. Establishment of web based Complaint Monitoring system. g. Providing Toll free Consumer Care Number and its publicity. h. Maintenance of records of all complaints filed by the consumer as provided in the Complaint Redressal Regulations.	**MSO**	The MSO shall communicate to the LCO the details of complaint centre for onward communication to subscribers.
7	Specification of a system of discount or rebate to the subscriber due to interruptions in service and creating awareness about such scheme.	**MSO**	The MSO shall communicate to the LCO, the details of such scheme for onward communication to subscribers.

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8	g. Providing information to the subscriber about the schemes for obtaining and returning the STB and the warranty/ repairing policy applicable thereof. h. Providing of the application form along with the MOP to the applicants/ subscribers and i. Receiving of application form from applicants/ subscribers for (iii) connection**,** reconnection, transfer, and shifting of Cable TV services; (iv) obtaining and returning of STB. j. Returning of the duplicate copy of the application form to the applicant/ subscriber as an acknowledgment of receipt of application. k. Communication of shortcomings or deficiency, in the application form, in writing to the applicant, within 2 days of receipt of the application. l. Communication of technical or operational non-feasibility to the applicant, in case it is technically or operationally non-feasible to provide connection, reconnection, shifting of service or supply of STB at the location, where the services are requested by the applicant, within 2 days of receipt of the application.	**LCO**	The LCO shall update the information in the Subscriber Management System (SMS) in each case within 24 hours from the receipt of the application.

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9	Issue of Unique Identification Number (UIN) for the applicant.	**LCO**	The UIN shall be generated from the SMS. The relevant access of the SMS should be provided by the MSO to the LCO.
10	Installation of STB at the premises of the subscriber and activation through SMS.	**LCO**	MSO should provide relevant access to SMS for STB activation.
11	Providing rebate to the subscriber for delay in installation and activation of STB.	**MSO**	In cases where the delay can be attributed to the LCO, for such cases the MSO may recover the rebate amount from the LCO.
12	Issuance of advance notice of 15 days regarding discontinuing or disconnection of cable service to the subscriber, indicating the reasons for such discontinuation or disconnection.	**MSO**	The MSO shall intimate the LCO in writing before issuing such advance notice to the subscriber.
13	Receipt of request from the subscriber for disconnection or suspension of service and its execution through SMS.	**LCO**	The LCO shall update the information in the SMS immediately.
14	Receipt of request for change in subscription package from the subscribers and its execution through SMS.	**LCO**	The LCO shall update the information in the SMS immediately.
15	Notice to the Subscribers regarding disruption of signals for preventive maintenance.	**MSO**	If the preventive maintenance is to be carried out by the LCO then he shall inform the MSO to enable him to give notice to the subscribers.

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16	Response to the consumer complaints as per norms of the QoS regulations.	**MSO**	The complaints received by the Party shall be immediately updated in the web based complaint monitoring system so that the necessary corrective action can be taken by the Parties in time and the same can be monitored by the complainant.
17	Redressal of consumer complaints as per the norms of the QoS regulations:- (v) relating to 'No signal'; (vi) relating to STB; (vii) relating to subscriber's billing and receipts; (viii) any other complaint.	**Overall responsibility of MSO, faults in the network of the LCO shall be rectified by the LCO.**	The complaints redressed by the Party shall be immediately updated in the web based complaint monitoring system.
18	Designation of nodal officer as per the provisions of the consumer complaint redressal regulation.	**MSO**	
19	Communication to subscriber about redressal of the complaint received from the Authority.	**MSO**	
20	Printing and delivery of system generated itemized bills to subscribers.	**MSO**	In cases where the payment is collected by the LCO from the subscriber, then in such cases details of payment received by LCO shall be
21	Delivery of payment receipts to subscribers.	**MSO**	

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22	Electronic acknowledgement to subscriber.	**MSO**	updated in the SMS immediately so that electronic acknowledgement to the subscriber is generated automatically.
23	Providing information relating to itemised usage showing actual usage of service in case of prepaid bills for any period within 6 months.	**MSO**	The requests received by the LCO shall be immediately updated in the SMS so that the MSO can provide the requisite details to the subscriber in time.
24	Payment of taxes to the Government.	**MSO and/ or LCO**	The specific details of tax payment responsibilities need to be filled in the adjoining cells at the time of signing of the agreement as per the rules and regulations of the respective Tax authorities.

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11. BILLING

11.1 The billing for subscribers shall be in the name of the MSO. However, each party shall ensure that the applicable laws, rules and regulations relating to taxes are complied with.

11.2 The MSO shall receive the payment of the subscription fee paid by the subscribers. The revenue share as per clause 12.1 of this Agreement shall be paid by the MSO to the LCO on receipt of the invoice from the LCO.

12. REVENUE SETTLEMENT BETWEEN THE MSO AND THE LCO AND RELATED RIGHTS AND OBLIGATIONS

12.1 The revenue settlement between the MSO and the LCO shall be in the following manner:-

(c) the charges collected from the subscription of channels of Basic Service Tier, free to air channel and bouquet of free to air channels shall be shared in the ratio of 55:45 between the MSO and the LCO respectively; and

(d) the charges collected from the subscription of channels or bouquet of channels or channels and bouquet of channels other than those specified under clause (a) shall be shared in the ratio of 65:35 between the MSO and the LCO respectively.

12.2 The MSO shall share the complete information relating to the subscribers billing and receipt of the payments with the LCO. The LCO shall issue monthly invoice to the MSO towards dues payable by the MSO for revenue settlement and such invoice shall clearly specify the current payment dues and arrears, if any, along with the due date of payment which shall not be less than seven days. Any demand of arrears shall be accompanied by the proof of service of invoices for the period for which the arrears pertain. The amounts raised in the invoice shall be payable on or before the due dates as mentioned therein.

12.3 The Party shall update the details of the subscription amount realised from the subscriber, in the SMS within 7 days from the due date.

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13. DEFAULTS

13.1 Without prejudice to such rights and remedies that the Parties may have in law or under the provisions of this Agreement, in the event of any delay or failure by the MSO or the LCO, as the case may be, to make payments of dues on or before the respective due dates, the LCO or the MSO, as the case may be, shall have the right:-

(i) to disconnect the services subject to the compliance of the applicable rules, regulations, directions or orders of the Authority;

(ii) to terminate this Agreement, subject to compliance of the applicable laws in force;

(iii) to charge a simple interest at the rate 2% over and above of the base rate of interest of the State Bank of India from the date such amounts became due until those are fully and finally paid;

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13.2 In cases where any of the Parties has failed to make payment on or before due date for three consecutive months in the past, the other Party shall have right to demand the interest free security deposit which shall not exceed average of immediately preceding 6 months billing amounts and the same shall be maintained for the remaining term of the agreement.

13.3 Upon disconnection of the service as mentioned in clause 13.1 above, whether accompanied by termination of this Agreement or not, the defaulting Party shall be liable to deposit forthwith all sums payable by it. In the case of termination, accounts shall be settled within thirty days and for delayed payments, either Party shall be liable to pay simple interest at the rate 2% over and above of the base rate of interest of the State Bank of India.

14. UNDERTAKINGS

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

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

14.3 It is expressly understood by the Parties that "_____" logo(s) is a Registered Trade Mark of the MSO, and the LCO shall use the said logo only during the currency of this Agreement for the benefit of the cable television networking business of the MSO. Consent of the MSO is hereby given to the LCO to use the said logo, to the extent of or in connection with the business of the MSO.

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14.4 It is expressly understood by the Parties that "_____" logo(s) is a Registered Trade Mark of the LCO, and the MSO shall use the said logo only during the currency of this Agreement for the benefit of the cable television networking business of the LCO. Consent of the LCO is hereby given to the MSO to use the said logo, to the extent of or in connection with the business of the LCO.

14.5 It is clearly understood and accepted by each Party that it shall have no right to use any intellectual property of the other on its Cable TV service or otherwise on or after the withdrawal by the other Party of its consent for such uses.

14.6 In case the LCO or the MSO, as the case may be, decides to transfer its interest in respect of its business of providing Cable TV Service to any other party / person (third party), in whole or in part, the LCO or the MSO, as the case may be, shall give prior notice to the MSO or the LCO. One Party shall not have any objection to such transfer if the other Party has complied with its obligations under this contract and has paid all its dues.

Provided, however, that such third party shall sign and execute a deed of adherence to the terms & conditions of this Agreement and other undertaking/ bonds to the satisfaction of the MSO or the LCO, as the case may be, in order to give effect to the provisions of this Agreement.

14.7 The LCO shall maintain and continue to maintain its Postal Registration Certificate renewed from time to time in accordance with the Cable TV Networks (Regulation) Act, 1995 and comply with the terms and conditions of the registration certificate issued by the Postal Authority.

14.8 The MSO shall maintain and continue to maintain its Registration Certificate renewed from time to time in accordance with the Cable TV Networks (Regulation) Act, 1995 and comply with the terms and conditions of the registration.

14.9 Both the Parties shall comply with the Programme Codes and Advertising Codes prescribed in the Cable Television Network Rules, 1994, as amended from time to time.

14.10 Both the Parties shall comply with the laws for the time being in force in India, as applicable to them.

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15. PREVENTION OF PIRACY

15.1 The Parties shall not indulge or allow any person to indulge in Piracy or in reverse engineering any technology used in the Hardware or any component thereof nor shall they use the Hardware to be connected to any equipment for setting up a mini head-end for retransmission of the signals generated from the same.

15.2 Signal to any subscriber shall be disconnected by the MSO or the LCO, as the case may be, after giving due notice as required under applicable regulations, if found to be indulged in or abetting any Piracy.

16. DISCLAIMER AND INDEMNITY

16.1 In no event, the MSO shall be liable to the LCO for any indirect, special, incidental or consequential damage arising out of or in connection with the disruption, interruption or discontinuance of the Service or for any inconvenience, disappointment or due to deprival of any programme or information or for any indirect or consequential loss or damage, which is not attributable to any act of the MSO.

16.2 In no event, the LCO shall be liable to the MSO for any indirect, special, incidental or consequential damage arising out of or in connection with the disruption, interruption or discontinuance of the Service or for any inconvenience, disappointment or due to deprival of any programme or information or for any indirect or consequential loss or damage, which is not attributable to any act of the LCO.

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

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

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17. GOVERNING LAW AND DISPUTE RESOLUTION

17.1 As mandated by the Telecom Regulatory Authority of India Act, 1997, the Parties shall not institute any suit or seek injection or interim orders in any court or judicial tribunal/ authority in India with respect to any claims, dispute or differences between the Parties arising out of this Agreement save and except before the Telecom Disputes Settlement and Appellate Tribunal, New Delhi **("TDSAT").** The Parties agree that all disputes between the Parties shall be resolved solely through proceedings instituted before the TDSAT.

18. FORCE MAJEURE

18.1 Failure on the part of the MSO or the LCO to perform any of its obligations, shall not entitle either Party to raise any claim against the other or constitute a breach of this Agreement to the extent that such failure arises from an event of Force Majeure. If through Force Majeure the fulfilment by either Party of any obligation set forth in this Agreement is delayed, the period of such delay shall not be taken into account in computing periods prescribed by this Agreement. Force Majeure will include act of god, earthquake, tides, storm, flood, lightening, explosion, fire, sabotage, quarantine, epidemic, arson, civil

disturbance, terrorist attack, war like situation, or enactment of any law or rules and regulation made by the Authorities or revocation of registration of the Parties any circumstances beyond the reasonable control of the Parties herein that directly or indirectly hinders or prevents either of the Parties from commencing or proceeding with the consummation of the transactions contemplated hereby. The Party affected by such Force Majeure event shall promptly notify the other Party of the occurrence of such event. It is agreed between the Parties that lack of funds shall not in any event constitute or be considered an event of Force Majeure. If the conditions of Force Majeure to continue for a period exceeding one month, the Parties shall meet to decide upon the future performance of the Agreement. If the Parties are unable to agree upon a plan for future performance, then the Agreement shall be terminated upon notice of either Party to the other, on expiry of one month from the date of such notice.

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

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19. NOTICES

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

20. RESTRICTION ON TRANSFER

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

21. CONFIDENTIALITY

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

21.2 The Parties shall also bind their employees, officers, advisors, associates, contractors, agents, authorized persons and other similar persons to whom the above mentioned information may be disclosed, to the obligations of confidentiality.

21.3 The Parties hereby agrees that the confidential information can be disclosed to the statutory authority on demand by such authorities.

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22. MODIFICATIONS

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

23. BINDING EFFECT

23.1 This Agreement modifies all prior understanding of the Parties as to the subject matter thereof and shall not be amended except in writing by both the Parties. Any other understanding between the Parties (if any) with regard to any other matter or any accrued rights and obligation of the Parties not covered under this agreement, if any, shall continue to be in full force and effect.

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

Signed on behalf of the MSO

(_____)

In the presence of

1. ……..

2. ……..

Signed on behalf of the LCO

(_____)

In the presence of

1. ……..

2. ……..

Note: The self attested copies of power of attorney/authorization letter, whereby the signatories of this agreement have been authorised to sign and execute this agreement by the Parties, shall be attached with this agreement.

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Schedule

DEFINITIONS AND INTERPRETATIONS

A. DEFINITIONS

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

(a) **"Act"** means the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), as amended from time to time;

(b) **"Addressable System"** shall have the same meaning as assigned to it in the Cable Television Networks (Regulation) Act, 1995 (7 of 1995), as amended from time to time;

(c) **"Authority"** means the Telecom Regulatory Authority of India established under subsection (1) of section 3 of the Telecom Regulatory Authority of India Act, 1997;

(d) **"Basic Service Tier"** shall have the same meaning as assigned to it in the Tariff Order.

(e) **"Bouquet" or "bouquet of channels"** means an assortment of distinct channels, offered together as a group or as a bundle;

(f) **"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;

(g) **"Cable service or cable TV service"** means the transmission by cables of programmes including retransmission by cables of any broadcast television signals;

(h) **"Cable television network or cable TV 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;

(i) **"Channel or TV channel"** means a channel, which has been registered under -----

(i) the guidelines for uplinking from India, issued vide No.1501/2/2002-TV(I)(Pt.) dated the 2nd December, 2005; or

(ii) policy guidelines for downlinking of televisions channels, issued vide No.

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as amended from time to time, or such other guidelines for uplinking or downlinking of television channels, as may be issued from time to time by Government of India (Ministry of Information and Broadcasting) and reference to the term 'channel' shall be construed as a reference to "channel or TV channel";

(j) **"Complaint Centre"** means a facility established by the multi-system operator or his linked local cable operators, as the case may be, under Consumer Complaint Redressal Regulation;

(k) **"Consumer Complaint Redressal Regulation"** means the Consumers Complaint Redressal (Digital Addressable Cable TV Systems) Regulations, 2012 (13 of 2012), dated 14th May 2012, as amended from time to time;

(l) **"CTN Act"** means the Cable Television Networks (Regulation) Act, 1995 (7 of 1995), as amended from time to time.

(m) **"Encryption or encrypted"** in respect of a signal of cable television network, means the changing of such signal in a systematic way so that the signal would be unintelligible without use of an addressable system and the expression "unencrypted" shall be construed accordingly;

(n) **"Free To Air channel"** shall have the same meaning as assigned to it in the Tariff Order.

(o) **"Hardware"** means a multi-system operator approved set top box to enable the decryption of signals of Channels transmitted in encrypted form, the remote and other associated components and accessories.

(p) **"Headend"** means a facility that contains satellite receivers, modulator, compression equipment, multiplexes, and conditional access facilities, other transmission equipments and has antennas which receive signals from Satellite and/or from local studio for retransmission to subscribers directly or through linked LCOs;

(q) **"Interconnection Regulation"** means the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 (9 of 2012), dated 30th April, 2012, as amended from time to time.

(r) **"Manual of Practice (MoP)"** means the Manual of Practice referred in the QoS Regulation;

(s) **"Nodal Officer"** means the officer appointed or designated by the multi-system operator or his linked local cable operator, as the case may be, under the Consumer Complaint Redressal Regulation;

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(t) **"Pay Channel"** shall have the same meaning as assigned to it in the Tariff Order;

(u) **"Piracy"** means unauthorized reception, retransmission or redistribution of Cable TV Signal by any person by any means and modes including but not limited to any alteration, tampering of the seal or any component or accessory thereof or misuse, replacement, removal and/or shifting of Hardware or any use, either before or after the set top box, any decoding, receiving, recording equipment(s), counterfeit or unauthorized devices or any activity, which has the effect of, or which may result into, infringement and violation of trade mark and copyright of the MSO or the LCO as the case may be;

(v) "**Programme**" means any television broadcast and includes;

(i) exhibition of films, features, dramas, advertisements and serials;

(ii) any audio or visual or audio-visual live performance or presentation and----

the expression "programming service" shall be construed accordingly;

(w) **"QoS Regulation"** means the Standards of Quality of Service (Digital Addressable Cable TV Systems) Regulations, 2012 (12 of 2012), dated 14th May, 2012, as amended from time to time.

(x) **"Set top box or STB "** means a device, which is connected to, or is part of a television and which allows a subscriber to receive in unencrypted and descrambled form subscribed channels through an addressable system;

(y) **"Smart Card"** means the card duly approved by the multi-system operator as part of the Hardware, which enables the subscriber to gain access to the Cable TV signals of Channels.

(z) **"Subscriber"** means a person who receives broadcasting services or cable services from a multi-system operator or cable operator at a place indicated by him to the multi-system operator or cable operator, as the case may be, without further transmitting it to any person and includes ordinary subscribers and commercial subscribers, unless specifically excluded;

"For removal of doubts, it is clarified that each set top box installed at the premises would constitute a subscriber."

(za) **"Subscriber management system or SMS"** means a system or device which stores the subscriber records and details with respect to name, address and other information regarding the hardware being utilized by the subscriber, channels or bouquets of channels subscribed to by the subscriber, price of such channels or bouquets of channels as defined in the system, the activation or deactivation dates and time for

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any channel or bouquets of channels, a log of all actions performed on a subscriber's record, invoices raised on each subscriber and the amounts paid or discount allowed to the subscriber for each billing period;

(zb) **"Tariff Order"** means the Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff Order, 2010 (1 of 2010), dated 21st July 2010, as amended from time to time;

(zc) **"Trunk Line"** means the coaxial/optic fiber cable network and other allied equipment such as receiver nodes, amplifiers, splitters etc. owned and installed by the multi-system operator or its associate companies for the purpose of transmitting Cable TV Signal to various LCOs till the receiving end of various LCOs, including the LCO, to enable them to re-transmit the Cable TV Signal to respective subscribers;

All other words and expressions used in this interconnection agreement but not defined, and defined in the Act and rules and regulations made thereunder or the CTN Act and the rules and regulations made thereunder, shall have the meanings respectively assigned to them in those Acts or the rules or regulations, as the case may be.

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B. INTERPRETATION

In this Agreement, unless the context otherwise requires:

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

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

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

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

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

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

(S. K. Gupta)
Pr. Advisor (B&CS)

Note.1-----The principal regulations were published in the Gazette of India, Extraordinary, Part III, Section 4, vide its notification No. 3- 24/2012- B&CS dated the 30th April 2012 and subsequently amended vide notifications No. 3- 24/2012- B&CS dated the 14th May 2012, No. 3-24/2012-B&CS dated the 20th September 2013, No. 3-24/2012- B&CS dated the 10th February, 2014, No. 6-33/2014-B&CS dated the 18th July, 2014, 6-29/2015-B&CS dated: 14th September 2015 and. No. 3-106/2015-B&CS dated 7th January 2016.

Note.2-----The Explanatory Memorandum explains the objects and reasons of the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) (Seventh Amendment) Regulations, 2016 (___ of 2016).

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Explanatory Memorandum

1. The Telecom Regulatory Authority of India (TRAI) has notified a comprehensive regulatory framework for Digital Addressable Cable TV Systems (DAS) encompassing the interconnection regulations, the quality of service regulations, the tariff orders and the consumer complaint redressal regulations. The Interconnection Regulation applicable for DAS, namely the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012, dated 30th April 2012, as amended from time to time [herein after referred to as 'the Interconnection Regulations 2012'], inter alia, provides a framework for interconnection between Multi System Operators (MSOs) and Local Cable Operators (LCOs). Based on this framework, the MSOs and LCOs (collectively herein after referred to as 'the Parties') are required to enter into written interconnection agreement before providing cable services to subscribers.

2. In terms of the Interconnection Regulations 2012, the Parties, through mutual agreement, are required to decide upon the responsibility for each role as envisaged in the quality of service regulations namely the Standards of Quality of Service (Broadcasting and Cable Services) Regulations 2012, dated 14th May 2012, as amended from time to time [herein after referred to as 'the QoS Regulations 2012']. The tariff order applicable for addressable systems namely the Telecommunication (Broadcasting and Cable Services) (Fourth) (Addressable Systems) Tariff Order, 2010 (1 of 2010), dated 21st July 2010, as amended from time to time [herein after referred to as 'the Tariff Order'], provides that the revenue settlement between the MSO and the LCO shall be determined by mutual agreement between the Parties. In case, the Parties fail to arrive at a mutual agreement the charges collected from the subscribers shall be shared in a manner prescribed in the Tariff Order.

3. As there could be various ways in which the responsibility for each role are divided between the MSOs and the LCOs, the Authority while notifying the comprehensive regulatory framework for DAS, in the year 2012, detailing each and every aspects of interconnection, did not prescribe any specific terms and conditions for interconnection agreement and left it open to market conditions. It was then envisaged that this will provide enough flexibility to the Parties for smooth transitioning from non-addressable systems to digital addressable systems.

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4. TRAI received a large number of complaints regarding various issues in signing of the interconnection agreement between the Parties. On one end, the LCOs represented that the terms and conditions of draft agreements offered by MSOs are one sided and do not provide a level playing field. On the other end, the MSOs indicated that the LCOs are not willing to follow the terms and conditions of interconnection agreement already executed between the Parties. Often the roles and responsibilities of the Parties, for meeting the quality of service norms as prescribed in the QoS Regulations 2012, are not clearly defined in the interconnection agreement signed by the Parties and due to which, in the event of dispute between the Parties, the quality of service delivered to the consumers is adversely affected.

5. To get an insight into the various issues relating to signing of the interconnection agreement between the Parties and implementation of DAS, TRAI held interactions with the Parties in various parts of the country. The Parties, in general, were of the opinion that it would be in the best interest of the sector if TRAI prescribes the terms and conditions of an interconnection agreement which can be entered into by the Parties. This would help in reducing disputes between the Parties and consequently help in improving the quality of service delivered to consumers.

6. After considering representations from the stakeholders, the Authority decided to intervene. The Authority contemplated to prescribe the terms and conditions for interconnection agreement in such a way that it addresses the various concerns of the Parties as well as it provide enough flexibility for accommodating various plausible business models between the Parties. Moreover, the Cable Television Network Rules, 1994, as amended from time to time, provides that the Authority may notify a standard interconnection agreement to be used for entering into commercial agreements for distribution in the notified areas, of pay or free-to-air channels among MSOs and LCOs.

7. To prescribe such interconnection agreement, the Authority formulated a draft Model and Standard Interconnection Agreements (MSIA). The draft MSIA consisted of a draft Model Interconnection Agreement (MIA) and a draft Standard Interconnection agreement (SIA) in a single document. The draft MSIA contained necessary terms and conditions, in line with the existing regulatory framework, inter alia, defining rights, obligations, roles and responsibilities of the Parties with an aim to provide a level playing field to them. It was envisaged in the draft MSIA that in cases where the Parties can mutually agree upon

the responsibility corresponding to each role and the revenue settlement, MIA part of the MSIA would be applicable. In cases where the Parties are not able to arrive at a mutual agreement on sharing of the responsibilities or the revenue, SIA part of MSIA would be applicable wherein the Authority had prescribed the responsibility of the Parties corresponding to each role listed in the draft MSIA. In such cases the revenue settlement would be based on the ratios prescribed in the Tariff Order.

8. The Authority, accordingly, decided to initiate a consultation process with the stakeholders before prescription of the MIA or the SIA between the Parties, as the case may be, offering cable services through DAS. The draft MSIA along with a consultation note was uploaded on TRAI website www.trai.gov.in on 9th December 2015, inviting comments and counter comments from stakeholders.

9. The last date for submission of comments & counter-comments was 31st December 2015 and 7th January 2016, respectively. In response, a total of 18 comments & 3 counter-comments were received from stakeholders, including some from individuals. Subsequently, an Open House Discussion (OHD) was held on 28th January 2016 in Delhi, which was attended by a large number of stakeholders. Post OHD, the stakeholders were given a further opportunity to provide their views/ comments in writing on the issue by 01st February 2016. Three additional comments were received by the due date. The comments and counter comments were uploaded on TRAI website www.trai.gov.in.

10. The following paragraphs provide gist of the comments/ views of the stakeholders received on the issue, analysis of these comments and objects & reasons of this amendment to the Interconnection Regulations 2012. Some of the comments received from the stakeholders do not relate directly to the issue under consultation but are in the nature of suggestions for amendments in the present regulatory framework. These suggestions may be considered for consultation by the Authority separately at appropriate time.

Analysis of the comments of stakeholders

Nomenclature of the Parties (MSOs and LCOs) and territory of operation

11. Some cable operator associations opined that MSOs may be referred to as Head-end Service Provider (HSP) in the agreement as MSO is only a mediator or a wholesaler of 'pay' TV broadcasters and aggregator of FTA channels. Similarly, they stated that the

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LCOs should be referred as Last Mile Owners (LMO) as it builds, operates, maintains and upgrades the networks connecting all consumers. An individual was of the view that in the Cable TV Act there is no term like the LCO or the LMO and it is the 'cable operator' who is responsible for management and operation of cable TV network. He suggested that Head-end Service Provider (HSP) is the better term for the MSO. If MSO provides cable service directly to the subscribers only then it should be treated as cable operator otherwise it should be treated as HSP.

12. On the aspect of the territory of the operation of the LCO, one cable operators association suggested that the map of the area of operation should be attached with the agreement.

13. The Cable TV Networks (Regulation) Act 1995 and the Cable TV Rules made there under defines the MSO which reads as under:-

"Multi System Operator" means a cable operator who has been granted registration under rule 11C and who receives a programming service from a broadcaster or its authorised agencies 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*** *and includes his authorised distribution agencies, by whatever name called."*

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14. Similarly, as per the Cable TV Networks (Regulation) Act 1995 and the Cable TV Rules made there under, the LCO is registered in the head post office of the areas of its operations for providing cable services. Since the MSO and the LCO terminologies are used in the Cable TV Networks (Regulation) Act 1995, the Authority is of the view that the names of these entities need not be changed. On the aspect of mandating the map of the territory, the Authority observed that names of the territory are already part of the MIA and SIA. Further in DAS, the subscriber's details along with names and addresses are transparently reflected in the Subscriber Management System (SMS) and the same is sufficient to resolve the territory related disputes, if any. Therefore attachment of the map with the interconnection agreement may not serve any useful purpose except to increase the cost to the Parties. However, the map of the area can be attached with mutual consent with the model interconnection agreement.

Term of agreement

15. On the aspect of term of agreement, a distribution agent of broadcasters commented that the duration of the agreement may be extended, provided that the extended term does not go beyond the date of expiry of registration of the MSO or the LCO.

16. The Authority accepted the suggestion and accordingly the relevant clause in the MIA and the SIA has been suitably modified.

Termination of the agreement

17. On the aspect of termination of the agreement, most of the MSOs and their association proposed that the curing period of 30 days should include 21 days notice period for termination. Another MSO suggested that 21 days notice should be sufficient in case of material breach. As per them, for continued breach the default should not be allowed to continue after 30 days and therefore additional 21 days notice is not required. Whereas a broadcaster's association commented that the notice period for curing the breach may be reduced from 30 days to 14 days**.** An individual suggested that the time to cure material breaches/ deficiencies should be reduced to 15 days. Whereas a cable operator association commented that the time provided in the draft MSIA is appropriate.

18. On the aspect of termination of the agreement, in the event of MSO discontinuing the business, a cable operator association commented that period of disconnection and reason thereof should be given and discontinuation should effect after prior notice of at least 30 days. Another association expressed that in cases where only one MSO is having operations in a particular area and it plans to discontinue or wants to sell/ merge with another Party, a simple notice of 90 days may not be adequate for LCO to install his own head-end or wait for another MSO to get connected.

19. The Authority noted that the curing period of 30 days and notice period of 21 days may result in breach continuing for 51 days and which may give undue advantage to the defaulting Party. Therefore the Authority is of the view that the curing period should be reduced to 15 days and in case of continued breach the notice period of 21 days should start thereafter. Accordingly, the relevant clause has been modified.

20. On the aspect of disconnection due to a Party exiting the business, the Authority is of the view that the time of 90 days is sufficient for the purpose and notice in writing specifying

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the reasons for such decision shall be given to the other Party. Accordingly, the relevant clause has been modified.

Effect of Termination and Expiry.

21. In the draft agreements for consultation, comments of stakeholders were drawn on the possible clauses for mitigating the situation in the event of termination or expiry of the agreement. Some LCO associations commented that the list of hardware or any other property/asset including STBs belonging to MSO and installed in the network of the LCO for delivery of services should be attached with the agreement and MSO should be responsible for daily upkeep and maintenance of equipment meant to provide services to the LCO. LCO will compensate only such damage that has been caused due to his negligence/ willful damage and not otherwise. Another LCO association commented that definition of properties and assets should be defined irrespective of MSO and LCO.

22. Most of the MSOs suggested that in cases where the STB provided to the customer is the property of MSO then the STB should be returned back to the MSO by the LCO. An LCO association opined that handing over the properties shall be subject to the scheme chosen by the subscriber in terms of TRAI Regulations.

23. On the aspects of levy of interest in case of default in handing over the asset or make good losses or damages, an MSO suggested the interest @ 4% plus base rate of State Bank of India (SBI) should be applied. Whereas an individual counter-commented that since the base rate of SBI is already very high at around 9% per annum, the rate should be fixed at SBI's base rate only. Whereas another cable operator association opined that the financial amount should be decided mutually in writing by both the Parties.

24. On the aspect of enclosing the list of properties/assets belonging to a Party in the network of the other Party, the Authority observed that the Parties may require to install properties/ assets in the network of the other Party, not only at the time of interconnection but during the currency of interconnection agreement. Therefore the Authority is of the view that any transaction of properties/ assets between the Parties shall be carried out in writing or any other verifiable means indicating the cost of such properties/ assets. This would help the Parties to settle their dues in the event of termination of the agreement. Accordingly the suitable clause provision has been added in the MIA and the SIA.

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25. The Authority observed that, the provisioning of Set Top Box at the premises of the subscriber is governed by the conditions prescribed in the Customer Application Form (CAF) for the option chosen by the subscriber. Further, based on the option chosen by the subscriber, if the STB belongs to the MSO, then LCO cannot be made responsible for returning the same in the event of discontinuation of cable services by the subscriber and subscriber has not returned the STB to the LCO. Therefore, the Set Top Box cannot be included in the list of hardware which is required to be handed over due to effect of termination/ expiry of the interconnection agreement.

26. The amount of interest levied on defaulting Party should work as effective deterrent to avoid further defaults. Keeping in view the market practices and comments-counter comments of the stakeholders, the Authority is of the view that rate of interest on default in payment should be retained as 2% plus the base rate of State Bank of India (SBI).

Provisioning of Services

27. The conditions of provision of service are an important part of the agreement wherein the Parties broadly specifies the principles such as non-exclusivity, applicable laws under which the service is provide. Some associations commented that the MSO should grant non-exclusive right to the LCO to retransmit the signals of TV channels on the basis of the representation, warranties and undertakings given by the LCO, and shall be subject to LCO complying with all the terms and conditions as set out in the Agreement, and LCO accepts such grant of rights and agrees and acknowledges them.

28. A cable operator association opined that minimum technical quality of service parameters should be specified/ mentioned clearly in the Agreement. Financial disincentives, penalties etc against faults, delays etc. should also be clearly specified.

29. One of the fundamental principles of the interconnection regulations is non exclusivity and therefore, the Authority is of the view that the interconnection agreement shall be entered into by the Parties on non-exclusive basis. Accordingly, the relevant clause has been suitably modified. As far as the specification of minimum quality of service in terms of technical parameters is concerned, the QoS Regulations 2012 already cover the aspect of technical parameters and both the Parties are required to adhere to the norms prescribed in the QoS Regulations 2012 or as modified from time to time. Therefore the Authority has decided not to include QoS parameters in the MIA or the SIA.

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Rights of the MSO

30. An LCO Association opined that all package/ channel rates, discount schemes, STB hiring schemes for subscribers & all business plans are made by the MSO. It was suggested that wherever LCO network is being used, it should be decided by the MSO in consultation with the LCOs. LCO's area of operation and choice of consumers of that area is very important in making business plans.

31. In DAS, it is the MSO who receives a programming service from broadcasters and perform technical functions of a head-end (turn-around, encoding, encryption, multiplexing, modulation, combining and subscriber management) and therefore, the responsibility of packaging and pricing of channels/ services remains with the MSOs. It is not practically feasible to formulate the composition of services as per the individual requirement of each LCO. Therefore the Authority is of the view that the right of packaging and pricing of the service offerings shall remain with the MSOs.

Rights of the LCO

32. Some associations stated that the right of ownership to LCOs should be clearly defined with respect to their own network only. A cable operator association suggested that it should be specified that the network which comprises of fiber, coaxial and distribution devices including the customers belongs to LCO and MSO distribution network is limited up to LCO point only. Whereas, another LCO association commented that the network from the MSO to the end users should be defined as the network of LCO.

33. The cable TV distribution network generally comprises of optical fiber network and last mile co-axial cable network. The Authority is of the view that the ownership of the individual Party is limited to the portion which the individual Party owns. If the MSO has laid the network till the LCO end then it belongs to the MSO and the responsibility of maintenance and upkeep remains with the MSO. Similarly, if the LCO owns last mile connectivity then the maintenance and upkeep of the same remains with the LCO. No Party can claim an ownership over the other Party network which it does not own. Accordingly suitable clause has been included in the MIA and the SIA.

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Obligations of the MSO

34. On the aspect of providing web-based LCO grievance redressal system, one MSO suggested that, MSOs should be required to provide web based grievance redressal facility only to the consumers, and not to LCOs, as MSOs are already entertaining the complaints of the LCOs through emails and other mode of communication. An LCO commented that provision for redressal of grievances of LCOs should be present along with a provision of designating local statutory authority for grievance redressal.

35. On aspect of bill generation, an LCO association suggested that the MSOs shall generate bills within 10 days from the end of the billing cycle and deliver to LCO in printed format and not on CD Drive, Pen Drive or any other format. Another LCO association commented that billing should be done through LCO/LMO whether online or offline, as LCO/LMO gives service to the consumers and collects the subscription amount. MSO's Association were of the view that the period of 3 days for bill generation from the end of the billing cycle is less and needs to be extended to 7 days as the details from LCOs take time to be entered into the SMS.

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36. An LCO stated that there should be a provision in the MIA and SIA to allow LCOs some small percent (2% of total STBs) of demo type active Set Top Box without monthly charges.

37. An LCO association commented that package upgrading & downgrading facility should be operated by LCO.

38. A HITS operator suggested that pre-activated STB's along with only FTA channels should be allowed for 7 days. If, during this period, all mandatory details are not entered, then STB should be deactivated.

39. On the aspect of setting up of web based grievance redressal system, the Authority noted that depending upon sharing of the roles and responsibilities between the Parties, the Parties may need to communicate frequently to fulfill the obligations and address the concerns of each other as per the agreement. Web based grievance redressal system is one of the most efficient and cost effective way of managing such requirements. It encourages healthy and transparent practices. The trail of issues and their solutions recorded in the system can also be used to resolve the disputes between the Parties. Accordingly, for

effective implementation of the provisions of this agreement, web-based grievance redressal system is necessary for LCOs also.

40. The QoS Regulations 2012 puts an obligation on the MSO that the bills for the services availed by the subscriber must be generated from the SMS automatically at the end of billing cycle. Therefore, the obligation of bill generation cannot be assigned to the LCO. On the aspect of the time period for generation bill from the end of the billing cycle, the Authority is of the view that the period of 3 days is sufficient as the bills are automatically generated in the SMS. This would also give sufficient time for delivery of bills to the subscribers which would increase the time period between the receiving of the bills by the subscriber and the due date for payment. Accordingly relevant clause has been provided in the MIA and the SIA.

41. On the aspect of provisioning of spare STBs in possession of LCOs for undertaking speedy repair/maintenance of STBs in the event of fault in STBs, the Authority noted that the QoS Regulation 2012 mandates the service providers to replace/repair the STBs within 24 hours. The provisioning of few STBs as a spare which can be used in place faulty STBs, installed at premises of subscribers, would help in the speedy restoration of services. This would also help in compliance of the QoS Regulations 2012. Accordingly, the MIA and the SIA puts an obligation on the part of MSO to provide to the LCO, at least 2% of the total STBs active in the network of LCO with an upper cap of 30 STBs as maintenance spare, which are not pre-activated, to ensure speedy restoration of service affected due to any fault in STBs. Accordingly suitable clause has been added in the MIA and the SIA.

42. The MSO has a right to decide the composition and pricing of channels/ package subject to the applicable Regulations/ Tariff orders. However to ensure transparency in the business among the Parties, the Authority has included a clause in the MIA and SIA where MSO has been asked to intimate to the LCO at least 15 days in advance in respect of any proposed changes in the package composition or the retail tariff being offered to the subscriber. As far as the responsibility of communicating this to the subscriber is concerned, that still lies with the MSO only as per the relevant regulations.

43. To accrue the full benefit of DAS, it is important that the relevant details of the customer and its choice of channels/ services are entered into the SMS so that the subscriber gets error free services. Therefore, it is essential that the STB of the subscriber is activated

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only after the details are entered into the SMS and therefore the stakeholders request regarding pre-activated STBs cannot be acceded to.

Obligations of the LCO

44. MSO associations commented that the LCO should not be allowed to migrate to any other distributor of signals without following proper process. They further stated that additional clause should be added that the LCO should not replace the STBs of MSO with STBs of any other service provider without following the process of law.

45. On the aspect of customer application form handling, an individual suggested that instead of handing over a copy of customer application form, the original customer application form should be given to the MSO. An MSO opined that, if authorized by MSO, LCO shall keep customer application form in his custody, provide its stamped copy to the subscriber and shall produce the copies/ information of customer application form and other documents if demanded by MSO/any other Statutory Authority.

46. On the aspect to assign or transfer rights and obligation in respect of agreement, an LCO association opined that the LCO is an independent business entity offering its network to the MSO to pass through its services to the consumers. Its liability to the MSO is limited to only the services provided jointly. The LCO does not require any permission to do its business.

47. On the aspect of migration of an LCO from one MSO to the other MSO, the Authority noted that the regulatory framework provides that the LCO can seek interconnection with one or more MSOs and the interconnection between them is on non-exclusive basis. However, LCO exiting the interconnection from the MSO must provide proper notice for disconnection and reasons thereof in the terms of the Interconnection Regulations 2012 or as applicable from time to time. Any LCO can migrate to the other MSOs provided that it follows the provision laid down in the Interconnection Regulations. In view of the above, the Authority is of the view that there is no need for introducing specific clause in this regard.

48. On the aspect of replacing one MSO's STB with the other's STBs, The Authority noted that the regulatory framework mandates that the service used by a subscriber cannot be changed without written request from the subscriber. However the Party receiving the request of disconnection from the subscriber shall update the information in the SMS

within 24 hours. Therefore, the Authority is of the view that the LCO shall not replace the STBs of one MSO with the STBs of any other MSO without receiving the request from subscriber through disconnection application form. Accordingly, suitable clause has been added in the MIA and SIA.

49. The regulatory framework for DAS provides that a customer may submit an application for connection or shifting of connection in the specified format, in duplicate, duly signed and complete in all respect, to the MSO or its linked LCO who shall return the duplicate copy of the application to the applicant as an acknowledgment of receipt of application. However, the Parties can mutually decide about the storage of original filled application form. Accordingly, the clause may be added by mutual agreement in the MIA. However the copy of customer application form shall be sent to the MSO within 15 days of receipt from subscriber, the provision for which has already been provided in the MIA and the SIA.

50. On the aspect of transfer of rights and obligation in respect of agreement, the Authority recognizes both the Parties as independent business entities and each Party's right of freedom of business. Therefore, the Authority is of the view that the Parties are is free to assign or transfer any of its rights or obligation, however while doing so the Party shall give prior intimation to the other Party about the same so that the other Party can take necessary action for protection of its interests. Accordingly, relevant clause has been suitably modified in the MIA and the SIA.

Roles and Responsibility

51. In the draft agreements for consultation, comments of stakeholders were sought on various aspects of roles and responsibilities between the MSO and the LCO. On the aspect of devising format for application and publication of MOP, a cable operators association suggested that the liberty to devise the application forms, MOP should be provided to both MSOs & LCOs. On the aspect of complaint monitoring systems, some MSO associations opined that the responsibility of establishment of complaint monitoring system shall also be of LCO along with MSO as the LCOs directly deal with the subscribers and are aware of the technical issues at their network. On the specification of system of discounts due to interruption, an MSO association commented that the responsibility to specify such scheme should be left upon on both MSO & LCO in accordance with the QoS regulations, instead of only an MSO.

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52. On issue of Unique Identification Number (UIN), an MSO association & an MSO opined that this should be the responsibility of the MSO as the SMS belongs to the MSO. However LCO shall provide the same to consumer. An individual suggested that LCO cannot perform this role as UIN is generated in the application server whose access is restricted.

53. A cable operator association commented that the MSO's responsibility on STB sale / hire plans, service supports / stand by inventory / Service Level Agreement/ Annual Maintenance Contract should also be specified. An individual commented that STB procurement is the sole responsibility of the MSO and STBs should be a supplied to the consumers via LCOs, giving proper documents i.e. invoice warranty or hire purchase agreement etc. LCO should not be held responsible by MSO if a subscriber's STB does not function properly or becomes faulty requiring replacement/repair.

54. On advance notice of 15 days regarding discontinuing or disconnection of cable services to the subscriber, an LCO association commented that this responsibility of providing notice of 15 days regarding discontinuing or disconnection of cable service to the subscriber should be of MSO. On receipt of request from subscribers for disconnection of service, an individual commented that cable Operator cannot do it since they do not have access to Application Server.

55. The Authority noted that the regulatory framework applicable for DAS provides enough flexibility and ample freedom to the Parties to carry out their business. Simultaneously the Authority observed that, in the relationship between the MSO and the LCO, the LCO generally interacts with the subscribers for providing service to the subscribers whereas the MSOs carryout functions which are dependent on the SMS and other associated systems. To provide the flexibility to the Parties and at the same time to ensure that the quality of service to the consumer is not compromised, the Authority is of the view that that the Parties may enter into an interconnection agreement for provision of cable service to the subscribers by mutually agreeing on the clauses of responsibilities listed under the clause 10 of the MIA. The Parties, without altering or deleting any clause of MIA, may add through mutual agreement additional clause to the MIA for stipulating any additional conditions provided that no such conditions shall have the effect of diluting or nullifying any of the conditions as laid down in the MIA. However, the Authority has demarcated the responsibilities of each role in the SIA. In the SIA, LCOs have been given the

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consumer centric responsibilities whereas the MSOs have been given the responsibilities which are directly linked with the SMS including billing for the subscribers.

56. On the aspect of devising format of the application form, the Authority observed that the Head end along with the Conditional Access System (CAS) and SMS are installed and maintained by the MSOs and also it is the MSO which enters into an interconnection agreement for retransmission of TV channels of the broadcasters and therefore the pricing of channels/packages and deciding the composition of packages remain with the MSOs. The MSOs and the LCOs are free to devise formats of application for subscribers for connection, disconnection, reconnection, transfer and shifting of cable TV connection and for obtaining and returning of STBs. However, while devising such formats the information relating to the pricing channels/packages, as decided by the MSO, are to be included in Customer Application Form (CAF). In terms of MIA, the Parties can share the responsibility of publicizing schemes for obtaining and returning of STB, warranty/repairing policy, connection, disconnection, transfer and shifting of cable TV services through mutual negotiation. In terms of SIA, the responsibility has been given to the MSO. However, it has been provided that the MSO shall supply copies of such published schemes to the LCOs for their information. Accordingly, relevant provisions have been suitably modified in the MIA and SIA.

57. On the aspect of establishment of web based complaint monitoring system, the Authority observed that in terms of the QOS Regulations 2012, overall responsibility of QoS norms lies with the MSO. In terms of the QoS Regulation 2012, this responsibility can be shared by the Parties in the interconnection agreements. Accordingly, the Authority is of the view that the Parties can share the responsibility of setting up of complaint monitoring system in terms of MIA. However in the SIA, this responsibility has been given to the MSO.

58. On the aspect of specifying discount or rebate to the subscribers due to interruptions in service, the Authority observed that since the responsibility of generation of bills for the subscribers lies with the MSO and hence the MSO shall communicate to the LCO the details of such schemes for communication to the subscribers. In SIA this responsibility has been assigned to MSO. However the Parties can share this responsibility in the terms of MIA.

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59. On the aspect of providing UIN to the applicant, the Authority observed that the UIN can be generated automatically from the SMS. In the cases where the responsibility of issuing UIN has been given to LCO, the MSO should ensure that the relevant access to the SMS is provided to the LCO for carrying out its responsibility under the agreement. Where the responsibility rests with MSO, the MSO shall provide the reading access to the LCO. Accordingly, the relevant clauses have been suitably modified.

60. On the aspect of issuing of advance notice of 15 days regarding discontinuing or disconnection of cable services to the subscriber, the Authority observed that in DAS, it the MSO who can provide the information to the subscribers through scrolls about the disconnection of cable TV services due to some reason or the other. The Authority is of the view that the MSO shall intimate the LCO in writing before issuing such advance notices to the subscribers. On the aspect of notice to the subscribers regarding disruption of signals for preventive maintenance by the Parties, the Authority is of the view that if the preventive maintenance is to be carried out by the LCO then the LCO shall inform the MSO to enable it to give notice to the subscribers. This will ensure better quality of service to the subscribers. Accordingly, suitable modification has been incorporated in the MIA and the SIA.

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Billing

61. A cable operator association commented that the MSO should generate bills in joint name with respective LCO (reading as XXX Network powered by YYY MSO). The MSO shall raise invoice on LCO on the basis of interconnection agreement terms along with corresponding customer base consumption details every month. Another cable operator association opined that the consolidated subscriber ID wise Billing should be given by the MSO to LCO for making individual bills and no prepaid payments should be permitted. An MSO association & some MSOs commented that the LCO should issue the bills and receive subscription payments. A HITS operator stated that transfer pricing (where MSO will raise the invoice to subscriber and handover it to the LCO and MSO will also raise invoice/statement of account to LCO towards his share in the total amount so that LCO will pay MSO on actual basis) should be implemented. A broadcaster has commented that the MSOs should communicate the billing for the period to subscribers and also set up terminals either with themselves or with LCOs for enabling recharge by subscribers or the LCOs as this will facilitate prompt collection and also encourage prepaid billing.

62. On payment of taxes, an MSO association & an MSO have stated that 'as per applicable rules and regulations of the respective tax authorities' should be added. And it should be responsibility of either MSO or LCO as jointly both of them cannot be held liable at the same time. An LCO association opined that the specific details of tax payment responsibilities need to be filled in the adjoining cells at the time of signing of the agreement as per the rules and regulations of the respective tax authorities. Whereas another LCO association commented that entity that generates the bill should pay the taxes.

63. From the above mentioned comments of the stakeholders, one thing is very clear that the billing of subscribers can be done in different methods and different parties have different expectations/ requirements. What is common is that every stakeholder is interested in proper identification of billing responsibility assigned to each Party. Keeping in view the response of the stakeholders associated with the issue and the QoS Regulations 2012, the adequate flexibility has been provided in the MIA. It is up to the Parties to decide about the name of the Party(ies) to be printed on the bills. In the MIA, the Parties can add further clauses as per their requirement. However, it should be noted that even in case where the name of the LCO appears on the bill, the service tax registration number and entertainment tax registration number of MSO must be printed on the bill as mandated by the QoS Regulations 2012 and applicable rules and regulations of the respective tax authorities must be complied with. In SIA, the bills shall be issued in the name of the MSO.

64. The QoS Regulation 2012 provides that every MSO shall be responsible for generation of bills for the subscribers and this responsibility cannot be shared with the LCO. The overall responsibility of delivery of bills and receipts to the subscribers lies with the MSO. However, in cases of mutual agreement, the Parties can share the responsibility of delivery of bills and receipts to the subscribers. The Parties can also share the responsibility of receiving and collecting subscription amount from the subscribers and in such cases the concerned Party (LCO or MSO as the case may be) shall update the information in the SMS in accordance with the regulations/ directions issued by the Authority from time to time. In case of Parties entering into interconnection agreement through SIA, the responsibility of the providing of bills and receipts and entry of details of payments in to SMS lies with the MSO.

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65. In terms of the QoS Regulation, 2012 the bill should contain the details of subscription amount, applicable taxes, such as service tax, entertainment tax etc., along with the rate of taxes levied. The Authority observed that obligation of the tax compliance differs from state to state with respect to entertainment tax. Therefore, the Authority is of the view that because of the reasons mentioned above it is not possible to fix the responsibility of tax compliance on a particular Party. Therefore, the Authority has kept it open to the Parties to decide the tax payment responsibilities in accordance with their applicable tax laws and regulations in their respective states. The specific details of tax payment responsibilities need to be filled in clause 10 under the 'roles and responsibilities' at the time of signing of the agreement as per the rules and regulations of the respective tax authorities.

66. In order to maintain the accounting records, the Authority is of the view that the Party, in whose name the billing for subscribers have been agreed, should receive the payment of the subscription fee paid by the subscribers and invoice should be raised by the other Party for getting its revenue share. Accordingly, suitable provision has been incorporated in the MIA.

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Revenue Settlement

67. An LCO association commented the term revenue share should be defined in detail and should be shared by all stake holders as broadcasters generate revenue from subscription from MSOs and advertisements, MSOs generate revenue from carriage fee, placement fee, advertisement fee and revenue from LCOs but LCOs generate revenue only from subscription. Another LCO association suggested that the revenue definition (including customer billing, placement fee and advertising income) may be mutually decided by MSO and LCO.

68. An LCO association opined that the revenue share should be like CAS Model and MRP of Pay channels should be declared for the consumers as done for CAS regime where FTA revenue was given 100% to the LCO as his basic service charges. Another LCO association commented that the subscription revenue sharing should be mutually decided between MSO & LCO.

69. Each stakeholder in the value chain can have multiple sources of revenue. Even LCOs can generate additional revenue by using the same network for providing broadband services either independently or in association with MSO/ Internet Service Providers

(ISP), other emerging value added services like home surveillance etc. Combining all sources of revenues for settlement purpose is possible only in the case of integrated entities and not among the independent entities, as is the case under consideration. The MIA and SIA are to be signed on principal to principal basis. Each entity should be able to compete in the market on standalone basis. And therefore it is important that the parties should mutually decide on specific amounts either in absolute terms or in percentage terms or a combination of the two, independent of sources of revenue, keeping in view the sharing of responsibilities and market conditions. Therefore the request of the stakeholders regarding definition of the term 'revenue' cannot be acceded to.

70. The regulatory frame work already provides that the revenue settlement is to be decided through mutual agreement. The Tariff order prescribes the manner in which the revenue share will be done on failure of mutual agreement between the Parties. Therefore, the Authority is of the view that the Parties should mutually decide the revenue settlement and its modalities depending upon the responsibilities shared between them. All the activities to be carried out by the Parties are to be clearly defined in the interconnection agreement entered between them and the revenue share and modalities of revenue settlement between the Parties are also be clearly defined in the terms of MIA. In terms of SIA, the MSO shall share the complete information relating to the subscribers billing and receipt of the payments with the LCO. The LCO shall issue monthly invoice to the MSO towards dues payable by the MSO for revenue settlement.

Defaults

71. On the aspect of default in payment by Parties, a cable operators association and an MSO suggested that the simple rate of interest shall be the base rate of interest of SBI plus 4%. Another cable operator association opined that a penal clause should be included against the MSO or the broadcaster if they fail to prove the default in payment. An MSO association commented that in case of two consecutive defaults by the LCO on revenue settlement, MSO may ask the LCO to deposit an advance.

72. The Authority is of the view that reasonable disincentives should be levied to discourage the delay/ default in the payment. The Authority decided the interest rate of 2% over and above the base rate of SBI is reasonable and accordingly the provision has been made in the MIA and SIA.

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73. The Authority observed that the issue of default in payment is one of the main reasons which lead to the dispute between the Parties. To address this problem, the Authority is of the view that in cases where any of the Parties has failed to make payment on or before due date for three consecutive months in the past, the other Party shall have right to demand the interest free security deposit which shall not exceed average of immediately preceding 6 months billing amounts and the same shall be maintained for the remaining term of the agreement. Accordingly, suitable clauses have been added in the MIA and the SIA.

Undertaking

74. An MSO association, some MSOs and an individual commented that LCO should be referred as a franchise of MSO for the use of logo.

75. The Authority observed that the MSO and the LCO are independent registered entities and any LCO can carry signals of one or more MSOs through its network. And therefore, the Authority is of the view that there is no requirement of referring one Party as franchise of the other Party. The roles and responsibilities of each Party must be defined in the agreement.

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Prevention of Piracy

76. Controlling the piracy is one of the prime concerns of the sector. An MSO urged that a harsh penalty should be levied**.** A broadcaster and a broadcasting foundation have suggested that the disconnection should be allowed instantly, if piracy is found out, given that the MSOs should submit appropriate proofs of piracy.

77. The Authority noted that sufficient protection has been provided to the both the Parties in the model and standard interconnection agreement framework as well as in the Cable TV Networks (Regulation) Act, 1995. Therefore the Authority is of the view that there is no requirement of such clause in the MIA and the SIA.

Disclaimer, Indemnity & Dispute Resolution

78. An LCO association commented that since TDSAT is situated only in Delhi and LCOs are present in far flung areas, it is not possible to approach TDSAT in time. LCOs must be permitted to approach local courts for a remedy. The TRAI Act must be amended accordingly so that LCOs in far off areas can get immediate relief in their respective

states. An individual commented that an arbitration clause should be incorporated in the Agreement.

79. On the aspect of jurisdiction of local court and setting up of the TDSAT benches, the Authority is of the view that the issue raised by the stakeholder is not a subject matter of consultation. As far as the arbitration clause is concerned, the TRAI Act envisages handling of disputes between the service providers by Hon'ble TDSAT. The Authority is of the view that no separate arbitrator is required in case of dispute between the service providers.

Force Majeure & Notices

80. An MSO association & some MSOs commented that provision should be provided that notice can also be served on mails or through courier and first class couriers.

81. The Authority noted the suggestion and the relevant clause have been suitably modified to include speed post as one method of sending notice.

82. The Authority observed that in case of revocation of registration of any Party, the other Party shall have right to terminate the interconnection agreement. Therefore, the force majeure clause should also include this situation in the MIA and SIA. Accordingly, suitable amendment has been made in the SIA and the MIA under force majeure clause.

Restriction on Transfer

83. An LCO association opined that it should be restricted to the extent where the network facilities of each other are being shared and used.

84. Both the LCO and MSO are independent entities registered for providing cable TV services and they are the owner of their networks / systems and this clause is in line of the same.

General Comments

85. An LCO association commented that the MSO should provide at least 2 to 3 spare frequencies to LCO for local programs and DD Channels in case of failure of transmission provided by MSO. The association also commented that prior to any change by MSO in channel packaging, the LCO should be informed.

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86. An LCO Association stated that the language of agreement must be in English as well as Hindi or local language.

87. An LCO Association opined that the another sub-clause 'Co-operation And Co-ordination Between MSO & LCO' should be added in the interconnection agreement which binds the Parties to achieve success in the business in the Digitization mode and shared unity of purpose to deliver best service and content to the Cable TV Subscribers to uphold digitization.

88. On the aspect of sparing of 2 to 3 frequencies to the LCO for transmission of FTA channels and Doordarshan channels are concerned, the Authority noted that in DAS, it is the MSO who can downlink and re-transmit the signals of TV channels in encrypted form. Regarding the insertion of channels by LCOs in DAS area, the Authority is of the view that the Parties may work out any appropriate and technologically feasible arrangement to ensure the transmission of such channels in a digitally addressable encrypted format in line with existing regulatory provisions. The Parties through mutual agreement may include additional terms without prejudice to the existing provisions of the Cable TV Act 1995 and Rules or as amended from time to time.

89. On the aspect of language of the Agreement, the Authority is of the view that both the Parties may agree to sign a bilingual agreement in which one language must be English. In the event of dispute on the interpretation of the clause, the English version of the agreement shall prevail.

90. The Authority observed that through the interconnection agreement, the Parties decide upon their rights, obligation, roles and responsibilities with an aim to provide the services to the subscribers in terms of the intent of the regulations. The Authority is of the view that the interconnecting Parties are independent entities and therefore inclusion of a clause on "Co-operation and Co-ordination" in the MIA and SIA is not required.

91. The Authority has observed in the past that on many occasions the business transaction between MSOs and LCOs are not carried out in writing and mostly they are done on oral basis which results in frequent disputes between them. Therefore, the Authority is of the view that the Parties must agree that each and every transaction including movable and immovable properties/assets between the Parties shall be carried out in writing or any

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other verifiable means. Accordingly, suitable clause has been added in the MIA and the SIA.

Rationale for amendment in the Regulation to incorporate the provisions for MIA and the SIA

92. The Authority observed that the Interconnection Regulation, 2012 requires amendment for incorporating the provisions of the MIA and the SIA.

93. In terms of the Cable Television Networks (Regulation) Act, 1995 and the Cable TV Rules made thereunder, the MSO can provide the signals of TV channels directly to the subscriber or through one or more linked LCOs. The LCO is the registered entity for providing cable TV services to the subscribers. In the Interconnection Regulation 2012, the LCOs have been given right to receive signals of TV channels from the MSO. However, the LCO is required to make a written request to the MSO for getting the signal. The MSO must provide signals of TV channels after execution of written interconnection agreement. In this amendment, the Authority has mandated that the interconnection agreement shall be entered into by the Parties in terms of MIA or the SIA, as the case may be, within 30 days from the date of receipt of written request from the LCO and, in line with the existing provisions, the signals of TV channels shall be provided to the LCO within 60 days from the date of receipt of written request. Accordingly, amendments have been made in the regulations.

94. The Interconnection Regulation, 2012 provides that the MSOs and LCOs shall enter into the interconnection agreement before provision of cable TV services to the subscribers. The Parties may enter into an interconnection agreement on lines of the MIA or by signing the agreement strictly in terms of SIA. The MIA is primarily a format of interconnection agreement that enables the Parties to have a mutual agreement in a structured manner in line with the regulatory framework. As per the industry practice normally the Parties negotiate their commercial terms in terms of (i) sharing of responsibilities, (ii) billing and/or (iii) revenue settlement. The amendment provides full flexibility on these aspects as the Parties can enter into written interconnection agreement by modifying clauses 10 (roles and responsibilities), 11 (billing) and/or 12 (revenue settlement) of the MIA. They also have a freedom to add additional clauses through mutual agreement to the MIA for stipulating any additional conditions. However it has been mandated that the Parties shall ensure that no such addition shall have the effect of

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diluting any of the conditions laid down in the MIA. In this manner, the freedom of contract within the regulatory framework has still been continued. This will help the Parties to assert its rights and obligations provided to them by the regulatory framework and avoid disputes. If the Parties fail to mutually agree on MIA, then they can enter into interconnection agreement on the terms of SIA, where no addition, alteration and deletion of the clauses provided therein is allowed. Accordingly sub-regulation 14 of regulation 3 and sub-regulation 13 of regulation 5 have been amended incorporating schedules IV and V providing Model Interconnection Agreement and Standard Interconnection Agreement.

95. The sub-regulation 15 and 16 of the regulation 3 of the Interconnection Regulations, 2012 prescribes modalities of revenue settlement. It provides that MSO shall raise an invoice to the LCO clearly specifying the current payment dues and arrears if any. The responsibility of raising the invoice by one Party to the other Party depends upon the nature of commercial arrangement between the Parties. Since the terms of revenue settlement in MIA has been left to the Parties for mutual negotiations, the responsibility of raising invoice would vary depending upon the mutually agreed arrangement by the Parties. In view of this, the Authority has decided to delete these sub-regulations. Therefore, with this amendment, the Parties can either mutually decide this responsibility as per MIA or enter into SIA wherein this responsibility is assigned to MSO in the revenue settlement clause.

96. In this amendment the Authority has prescribed a time period of 30 days for the MSO to give an option to its existing linked LCOs to modify their existing interconnection agreements as per SIA or MIA. It is open to the LCO to modify their existing agreement in terms of MIA or the SIA or continue with the existing agreement till its expiry. All new agreements shall be done based on prescribed MIA or SIA as the case may be. Pursuant to the option, where the written request for modification of existing agreement is received from the LCO, the MSO shall modify the existing interconnection agreement is accordance with the MIA or SIA within 30 days.

97. The Authority is of the view that the prescription of the MIA and the SIA will pave the way for growth of the sector, help in reduction of disputes between the MSOs and LCOs, provide level playing field to the Parties and increase healthy competition in the sector which ultimately will help in better quality of service to the subscribers.

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