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

NOTIFICATION

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

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

1. Short title, extent and commencement:

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

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

(iii) This regulation shall come into force with effect from the date of its publication in the Official Gazette.

2. Definitions:

In this regulation, unless the context otherwise requires:

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

(b) "**agent or intermediary**" means any person including an individual, group of persons, public or body corporate, firm or any organization or body authorised by a broadcaster/multi system operator to make available TV channel(s), to a distributor of TV channels;

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

(d) **"authorized officer"** has the same meaning as given in the sub-section (a) of the Section 2 of the Cable Television Networks (Regulation) Act, 1995, as amended;

(e) **"broadcaster"** means any person including an individual, group of persons, public or body corporate, firm or any organization or body who/which is providing broadcasting service and includes his/her authorised distribution agencies;

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

(g) "**cable operator**" means any person who provides cable service through a cable television network or otherwise controls or is responsible for the management and operation of a cable television network;

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

(i) "**cable television network**" means any system consisting of a set of closed transmission paths and associated signal generation, control and distribution equipment designed to provide cable service for reception by multiple subscribers;

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

(k) "**direct to home operator**" means an operator licensed by the central government to distribute multi channel TV programmes in KU band by using a satellite system directly to subscriber's premises without passing through intermediary such as cable operator or any other distributor of TV channels;

(l) "**head ends in the sky operator**" means any person permitted by the central government to distribute multi channels TV programmes in C band by using a satellite system to the intermediaries like cable operators and not directly to subscribers;

(m) "**multi system operator**" means any person who receives a broadcasting service from a broadcaster and/or their authorized agencies and re-transmits the same to consumers and/or re-transmits the same to one or more cable operators and includes his/her authorised distribution agencies.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Disconnection of TV channel signals

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

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

Explanation

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

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

5. Explanatory Memorandum

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

(Rakesh Kacker)
Advisor (B&CS)

Annex A

Explanatory Memorandum

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

2. The vertical integration may improve efficiency as it reduces the transaction between upstream and downstream operations but at the same time vertically integrated companies may be able to use the vertical integration in certain circumstances to reduce competition. The anti-competitive behaviour could take the following forms:

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

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

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

Non Discriminatory Access

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

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

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

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

6 Exclusivity had not been a feature of India's fragmented cable television market. However the rollout of DTH platform has brought the question of exclusivity and whether it is anti competitive to the forefront. Star India Ltd and SET Discovery Ltd do not have commercial agreements to share their contents with ASC Enterprises on its DTH platform and at present are exclusively available on the Cable TV platform. ASC Enterprises claims that the future growth will remain impacted by the denial of these popular contents. Space TV a joint venture of Tatas and Star, is also planning to launch its digital DTH platform. It has applied for license to the government for the same. The DTH services have to compete with Cable TV. If a popular content is available on Cable TV and not on the DTH platform, then it would not be able to effectively give competition to the cable networks.

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

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

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

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

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

'Must Provide' through whom

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

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

Quality of TV Channel Signals

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

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

Safeguards for Broadcasters

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

Volume Discounting Schemes

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

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

Discrimination in providing TV Channel signals

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

Disconnection of Signals

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

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

Annex A

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Consultation on draft Regulation

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

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

1. Short title, extent and commencement:

Stake-holders comments

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

TRAI's response

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

2. Definitions

Stake-holders comments

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

ii) Broadcaster should also include his/her agent or intermediary.

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

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

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

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

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

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

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

TRAI's response

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

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

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

(iv) This change is not required; the definition of cable operator is as defined in the Cable Act and does include one who provides such services indirectly.

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

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

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

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

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

(x) **In addition the definitions of "agent or intermediary" have been changed replacing the word "entity" by the words "any person ,including an individual, group of persons, public or body corporate, firm or any organization or body" to bring it in line with the definition of broadcaster.**

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

Stake-holders comments

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

(ii) Even under the MRTP Act exclusivity is permitted if this is not prejudicial to the interests of consumers. Exclusivity should be dealt with under the provisions of the MRTP Act.

(iii) Transition clause is required for change over to the new system or a provision should be made providing that the regulation is not applicable to old contracts. If time is being given for transition then for this purpose time may be given upto January 1, 2006.

(iv) The regulation should be applicable only to non addressable systems.

(v) The proposed regulation is violative of the freedom of speech guaranteed in the Indian Constitution and the rights of broadcasters in the TRIPS agreement and the Berne convention.

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

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

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

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

(x) The provisions will hurt rural consumers who cannot afford terms offered by urban consumers. It may also not be administratively/economically viable to provide services to small operators.

TRAI's response

(i) This issue has already been discussed in the Recommendations sent on 1.10.2004. It is the Authority's view that given the present stage of the market it is necessary to provide non discriminatory access across different distributors and correspondingly not provide for exclusivity.

(ii) As has already been explained in the recommendations exclusivity at this stage will only harm the consumers. The provisions of MRTP apply to all consumers and industries. In the case of the TV programme market the Authority has already come to the conclusion that exclusivity at this stage would be harmful after examining the issues in great detail. The Authority has a mandate to provide effective interconnection, promote competition and protect the interests of the consumers. This it has to do under the powers given to it. Non-discrimination is a well known regulatory principle and similarly not allowing exclusivity is also a practice followed in some countries to foster competition.

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

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

(v) It is not correct that the Regulation is in violation of the Constitution. TRAI is under obligation under the TRAI Act to ensure effective interconnection and protect the interests of consumers. This regulation will help in promoting competition and providing more areas to cable services. Further there is no infringement of the right to get equitable compensation in these regulations. The restriction on prices is through the tariff order which has not been challenged on these grounds. There is also no question of the TRIPS Agreement or the Berne Convention being violated by these regulations as it is a well established principle of our law that international law has to be translated into domestic law before it becomes enforceable. No violation of the domestic law protecting the broadcaster has been made out. Thus if the rights of the broadcasters have been impacted under the relevant international law the remedy will be to get the offending domestic law changed. Till then TRAI would have to fulfill the mandate given to it under the TRAI Act read with the relevant domestic laws.

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

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

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

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

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

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

3.1

Stake-holders comments

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

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

TRAI's response

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

3.2

Stake-holders comments

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

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

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

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

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

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

vii) Pricing should be uniform irrespective of technology

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

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

TRAI's response

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

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

(iii) The clause does not require all channels to be re- transmitted. All that is required is that the MSO should not discriminate between cable operators. The clause applies only to requests from distributors of TV channels and not from broadcasters. The issue of "must carry" is being separately looked at by the Authority.

(iv) This is not necessary as by definition a cable operator cannot retransmit.

(v) The time taken to respond will vary from platform to platform depending on the technology and other factors. **Rather than prescribe different periods for different types of requests/problems clauses 3.4 and 3.6 are being amended to say that the request/complaint must be responded to in a reasonable time period but not exceeding thirty days (clauses 3.4 and 3.6 have been amended accordingly)**

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

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

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

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

3.3

Stake-holders comments

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

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

iii) This clause should not be used by broadcasters to defeat the Tariff Order of October 1, 2004.

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

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

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

TRAI's response

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

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

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

(iv) This has been partially addressed in 3(ii) above. Whether a distributor should be entitled to receive the signals through cable or directly from the satellite is a matter to be negotiated between the service providers. If a distributor of TV channels finds that he would be discriminated against and the

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

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

(vi) As in 3.2 (i).

3.4

Stake-holders comments

i) If the agent denies content, the broadcaster must respond to his complaint within two days of the receipt of the complaint and the agent/broadcaster should be made liable to pay compensation for the loss caused by any wrongful delay in providing services.

ii) An agent who has defaulted in payment to MSO should not be allowed to take signals directly from a broadcaster.

iii) Distributor should be entitled for compensation for any losses incurred by them because of them acts of omission/refusal on the part of a broadcaster, MSO or their agent/intermediary.

iv) It should be stipulated that the broadcaster must provide the signals within 15 days of the request having been made provided that there are no pending dues to the broadcaster/ respond within 30 days.

v) After the word "broadcaster" the word "MSO" should be added.

vi) The broadcaster/MSO should ensure that signals are provided to the applicant within 7/30 days.

vii) This clause should apply even if the broadcaster is not located in India as long as the broadcasting services are marketed in India

viii) Imposition of terms that are unreasonable will be deemed to be a denial of the request.

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

TRAI's response

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

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

(v) **This has been done (clause 3.4 amended accordingly).**

(vii) This is already provided in the law – there is no need to make a separate provision for this.

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

3.5

Stake-holders comments

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

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

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

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

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

vi) The quantum of discount needs to be specified to prevent exploitation of this provision.

TRAI's response

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

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

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

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

3.6

Stake-holders comments

i) There should be safeguards in place to prevent this clause being used to harass the distributor.

ii) The "appropriate forum" should be spelt out.

iii) It should be clarified that the aggrieved party can approach the appropriate forum for various reliefs such as injunction, restoration of signals, damages, etc.

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

TRAI's response

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

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

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

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

Disconnection of TV channel signals

4.1

Stake-holders comments

(i) Disconnection period for unauthorized distribution should be 7 days since two days is too short to obtain relief in cases of unjustified disconnection. The words "authorisation" and "commercial interest" should be defined.

(ii) A one month notice is too long and would provide a distributor an opportunity to earn money from the consumers without paying the broadcaster.

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

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

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

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

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

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

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

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

TRAI's response

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

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

(iii) The onus of making the decision known must lie with the person making the decision. The regulation does not bar the recovery of costs/damages from the person who is found to be at fault later. Such recovery has to made under the contractual terms between the parties and TRAI cannot provide for such recovery. **However it is being provided that if the broadcaster/MSO does give a notice to be carried as a scroll on the concerned channel then the distributor must carry the notice as a scroll in the concerned channel(s).(necessary amendment carried out in Clause 4.2)**

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

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

(vi) This suggestion has been examined. It would be better to use the words in the draft with the clarification for the word authorised as in (i) above.

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

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

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

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

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

4.2

Stake-holders comments

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

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

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

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

TRAI's response

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

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

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

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