TELECOM REGULATORY AUTHORITY OF INDIA

NOTIFICATION

New Delhi, the 4th September, 2006

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

1. Short title and commencement:

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

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

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

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

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

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

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

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

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

3. In clause 3 of the Principal Regulation –

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

"Explanation

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

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

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

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

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

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

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

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

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

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

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

For the removal of doubts, it is further clarified that the distributors of TV channels using addressable systems including DTH, IPTV and such like

cannot be said to be similarly based vis-à-vis distributors of TV channels using non addressable systems. ”

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

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

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

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

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

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

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

Explanation

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

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

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

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

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

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

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

8. Time Period for Renewal of existing agreements

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

Provided that if the negotiations for renewal of the interconnection agreement continue beyond the due date of expiry of the existing agreement then the terms and conditions of the existing agreement shall continue to apply till a new agreement is reached or for the next three months from the date of expiry of the original agreement, whichever is earlier. However, once the parties reach an agreement, the new commercial terms shall become applicable from the date of expiry of the original agreement.

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

9. Finalising Subscriber Base at the time of first agreement

First agreement between Multi System Operator and Cable Operator

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

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

First agreement between Multi System Operator and Broadcaster

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

10. Variation of Subscriber Base during validity of agreement

Between Multi System Operator and Cable Operator

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

Between Multi System Operator and Broadcaster

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

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

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

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

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

Between Multi System Operator and Cable Operator

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

Between Multi System Operator and Broadcaster

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

12. Monthly Subscriber Base Statement

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

13. Reference Interconnect Offer

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

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

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

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

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

By Order

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Advisor (B&CS - I)

Annex A

Explanatory Memorandum

1. The distribution of cable TV in India was unregulated since its inception in early 1990s. This was sought to be regulated by TRAI by issue of the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004 (13 of 2004). This Regulation was issued on 10.12.2004, i.e. more than one and a half years ago. Some new issues have cropped up during this period. The experience of this period has shown that some issues relating to the Interconnect Regulations require clarification. Some disputes and litigation have also arisen on account of implementation of Interconnect Regulations. Thus a need was felt to clarify as well as expand the scope of Interconnect Regulations so as to minimize the doubts and disputes/ litigation.

Disconnection of TV channel signals

2. The two notice periods prescribed in the regulation led to a number of disputes regarding the notice period applicable in specific cases. By having a single notice period, these disputes can be avoided. Moreover, there would be no advantage by way of a shorter notice period, in suppressing the true reasons for issue of notice to disconnect signals and the consumers would get to know the real issues in the dispute. The notice period should be sufficient for the affected parties to be able to approach the appropriate forum to plead for intervention and to give the consumers an opportunity to approach the necessary forum to ensure that their interests do not suffer on account of the dispute. At the same time, no notice need be provided in the cases of theft of signals as is already the case.

3. Moreover, the interests of consumers as well as the broadcaster/ multi system operator also get adversely affected if the distributor of TV channels decides to switch off signals of a particular channel due to some dispute with the broadcaster/ multi system operator. Accordingly, to protect their interests it is necessary that they get similar advance notice regarding discontinuation of TV channel signals. Therefore, the requirement of giving advance notice to disconnect signals has been extended to the distributors of TV channels also.

4. The purpose of having a public notice is to give the consumers an opportunity to approach the necessary forum to ensure that their interests do not suffer on account of a dispute to which they have not contributed in any way. However, the very purpose gets defeated if the public notice is not issued at the time of giving notice to the service provider and is issued much later leaving very little time for consumers to agitate the matter at appropriate forum. Accordingly, it is necessary that the consumers get the notice before the notice period begins. Considering the fact that cable TV has reached even remote parts of the country, the notice period should be sufficient to enable the affected parties to approach the appropriate forum.

5. The reach of vernacular language newspapers in the country is more than the reach of English language newspapers. To have the maximum coverage, it is necessary that the public notice should be published in the local language in a local language newspaper also.

6. The notice to the service provider concerned should clearly inform the service provider about the reasons for proposed disconnection. The notice should specify the terms & conditions of the agreement which have been allegedly violated and the details of such violation rather than cryptically mentioning violation of the agreement as the reason for issue of the notice. This is necessary so as to pin point the issues of dispute, so that the affected service provider can take steps either for rectifying the violation or to approach appropriate forum for redressal. Similarly, the public notice should also have the reasons for proposed disconnection in brief.

Access to content

7. The purpose of laying down a time limit for responding to a request for signals gets defeated if the distributor of TV channels making a request for signals is referred by the broadcaster/ multi system operator to its agent/ intermediary or vice versa just before the expiry of the time limit and the time limit starts afresh. Moreover, it is easy for a service provider to respond to the request before the expiry of the time limit by asking for some details and then prolong the process by asking for supplementary details. Hence, it is necessary to lay down a time limit wherein either the signals are provided to the distributor of TV channels or the specific terms & conditions are informed on fulfillment of which the signals are to be provided.

Multi System Operator as an agent of the broadcaster

8. The TDSAT judgment in the case of Sea TV Network Ltd. has been challenged before the Hon'ble Supreme Court of India. Therefore, it would not be appropriate for the Authority to make any regulation in this regard. Thus, whether the Regulations should specifically prohibit appointment of an MSO, directly or indirectly, as an agent of a broadcaster and related issues will be covered by the eventual decision of the Hon'ble Supreme Court in the matter. Therefore, the Authority has decided not to proceed further in this regard and to wait for the judgment of the Hon'ble Supreme Court in the matter, which shall be binding on all concerned.

Default in payments

9. Sometimes LCOs switch from their affiliated MSO when they are either unable or unwilling to pay their outstanding dues to their affiliated MSO. This results in bad debts for their affiliated MSOs leading to the latter's inability to pay broadcasters for the LCOs portion of dues. Broadcasters are also unable to recover these dues from the MSO to whom such defaulting LCO gets affiliated. On the other hand, in the absence of regular issue of invoices, the LCOs are suddenly confronted with huge arrears, which they have

no means of paying. The problem can be tackled by ensuring that the LCOs are issued invoices on a monthly basis clearly showing the arrears as well as the current dues. In such a situation, if an LCO wants to switch to a new MSO, then the latest invoice would clearly show the level of arrears outstanding against the LCO. At the same time this will protect the LCO from unexpected and unforeseen arrears being suddenly thrust upon him.

Area of operation and Subscriber base

10. The term subscriber base is rather vague in the absence of addressability, as it is impossible to know the real number of subscribers being served by a service provider in non-CAS areas. Thus, it is not possible to have agreements based on the actual subscriber base. Hence, the negotiations for fixation of subscriber base for an interconnect agreement depend crucially on area proposed to be served by the distributor of TV channels. However, the actual number of subscribers is reflected by the Subscriber Management System (SMS) wherever addressable systems are deployed. Thus, the subscriber base in such a situation is accurately reflected by the SMS.

As mentioned in para 8 above, the TDSAT judgment in the case of Sea TV Network Ltd. has been challenged before the Supreme Court of India and the matter regarding determination of subscriber base of cable operators and MSOs has been raised in the appeal before the Supreme Court. However, the Supreme Court vide its interim order dated 2.3.2006 had specifically permitted the Authority to proceed with its exercise on devising a system for ascertaining the subscriber base of distributors of TV channels. The Supreme Court had observed that:-

> *"… Further, pendency of these matters shall not stand on the way of the Central Government if it so chooses, to implement the CAS or of the TRAI in devising any system to identify and arrive at the correct number of subscribers of each distributor of TV channels…. "*

In view of this observation of the Hon'ble Supreme Court the Authority has proceeded to lay down a system to identify and arrive at the correct number of subscribers of each distributor of TV channels.

The Authority had recognized in its recommendations on issues relating to Broadcasting and Distribution of TV channels dated 1.10.2004 that a gradual transition to addressability is a must and that it cannot be done immediately throughout the country. In these recommendations, the Authority had recommended mandating a register of subscribers to be maintained by the cable operators and multi system operators. The Authority had recommended that:-

> *"…All cable operators and multi system operators shall maintain a register of subscribers containing the names of the subscriber, address, monthly fee charged and number of channels received. The register shall be furnished for inspection to*

the Authorised Officer whenever he considers it expedient to inspect such register to find out if there has been a violation of any regulation…"

In the absence of addressability and register of subscribers, it is very difficult to ascertain the number of subscribers of a distributor of TV channels. In spite of this limitation, the Authority has provided a methodology to arrive at the subscriber base of each distributor of TV channels.

11. The primary reason for disputes arising on account of expansion of area is that without addressability, it is impossible to know the actual subscriber base and area is the basis on which a subscriber base is arrived at. Any change in area of operation has direct bearing on the negotiations with respect to subscriber base. However, the expansion of area by a multi system operator on account of giving feed to a cable operator operating outside the existing area of operation of the multi system operator can be taken care of by negotiations based on the Subscriber Line Report (SLR). Similarly, the expansion of area of operation by a cable operator will also get reflected through the Subscriber Line Report (SLR).

Multi System Operator

12. The disputes regarding insistence of distributors of TV channels with very small subscriber base on getting signals directly from the broadcasters can be reduced by laying down a minimum subscriber base on the basis of area of operation of the distributor of TV channels, below which an operator will not be able to get signals directly from the broadcasters. However, this figure can be notified only after detailed analysis of city-wise data for different broadcasters regarding number of subscribers being served by the multi system operators with the smallest subscriber base in different parts of the country. For the present, laying down such a figure has not been found feasible by the Authority. The same may be laid down at a later date, if found feasible, by the Authority after analysis of relevant data.

Renewal of agreements

13. Renewal of agreements is smooth in most of the cases, but the problems arise when the negotiations for renewal extend beyond the date of expiry of the original agreement. To govern the terms and conditions for continuation of signals beyond the expiry date of the original agreement, the original agreement can be extended till an agreement is reached regarding the terms and conditions for renewal. However, it must be recognized that the new commercial terms will apply retrospectively from the date of expiry of the original agreement. If however, no agreement is reached, then either party can disconnect the signals after giving the statutory notice as provided in Regulation 4 of these regulations. The terms and conditions of original agreement would govern the relationship between the two parties till the date of disconnection of signals. It is believed that the parties should be able to reach a new agreement within three months of expiry of the old agreement (after five months of negotiations). However, in case negotiations carry

on beyond this period, then some new interim arrangement regarding terms and conditions should be worked out between the parties and terms and conditions of the old agreement would not get automatically extended beyond this period.

Conversion to Pay/ Free To Air

14. The nature of any channel, i.e., Free To Air or Pay should not change very frequently and should normally remain the same for a period of one year. The broadcasters intending to convert their Free To Air Channels into Pay channels and vice versa should give advance notice to the Authority as well as to the general public. This would be important in the context of CAS areas as the multi system operators will have to make necessary changes in their Subscriber Management Systems. In the context of non-CAS areas it would inform the consumers about likely changes in their payout for cable services and possible non-availability of the channel.

Reference Interconnect Offer

15. There have been demands from different quarters regarding introduction of a regulation on Reference Interconnect Offer on the lines of "The Telecommunication Interconnection (Reference Interconnect Offer) Regulation dated 12th July 2002." This gives the flexibility to the broadcasters to draft the Reference Interconnect Offer in such a way so as to take care of their concerns. The provision for possible intervention by the Authority will ensure that the Reference Interconnect Offer does not contravene any statute. This will lead to a reduction in litigation about the way the standard agreements are drafted by the broadcasters. Service providers can by mutual agreement deviate from the provisions of such an RIO. This is intended to give flexibility to the service providers to take into account the special commercial circumstances that may exist in a particular area or agreement. It is also desirable to have similar RIOs for MSOs. However given the large number of such MSOs, it is not practically feasible for the Authority to undertake this exercise.

Monopoly in the last mile

16. The issue of monopoly in the last mile is likely to be addressed to a certain extent by increased competition due to new platforms such as DTH and IPTV. Two DTH service providers are already providing their services, and the roll out of IPTV services in the country is also expected in the near future. Therefore, for the present, the Authority has decided to watch the progress of competition from the new platforms and intervene at a later stage, if found necessary.

Carriage fee regulation

17. Regulation of carriage fees has been opposed by all the multi system operators as well as the Cable Operators Federation of India. It has been suggested that such regulation would lead to multiplicity of disputes. Regulation of carriage fee in the present circumstances is very difficult as it also implies regulation of positioning. In different parts of the country, there are different viewership patterns. The capacities of cable

networks also vary a great deal. Thus, the levels of carriage fee are different in different parts of the country depending upon demand and supply gap.

Presently, there are more than 6000 multi system operators, which follow different systems of accounting. Payment of carriage fee is very often done in cash or in kind. Thus, it is not possible to find out the actual payments being made towards carriage fees. The carriage fee is a temporary phenomenon and is likely to disappear with the advent of digital cable systems.

The issue of carriage fee was also examined by the Authority in its recommendations on issues relating to Broadcasting and Distribution of TV channels on 1.10.2004. The Authority had observed that:-

> *"6.5 On the issue of 'Must Carry of TV Channels' the existing scenario of capacity constraint in carrying signals in analogue mode and its consequences of competition for space on the Cable Spectrum has been kept in view. Since digitalisation is a long-term goal, no fresh regulation on 'Must Carry Obligations' is proposed apart from the ones already there in the Cable Act and Rules. As and when capacity is augmented the 'must carry' regulation will be introduced. For the present therefore there will be no regulation on carriage charges."*

In its recommendations on Digitalisation of Cable Television dated September 14, 2005, the Authority had recommended that licencing should be introduced for offering of digital services after a cut-off date. It was also recommended that the licences for digital service should have only a provision for non-discriminatory carriage of channels on the basis of the existing DTH licence conditions which require that the licensee shall provide access to various content providers/channels on a non discriminatory basis.

Consultation on draft Regulation

18. The Authority began its process of examination of the relevant issues by issuing a Consultation Note on 21.3.2006 so as to have the necessary document for discussing them. Thereafter a Consultation Paper was formulated after taking into account the comments and other inputs provided by the stakeholders on the consultation note dated 21.3.2006. Issues relating to the Register of Interconnect Agreements (Broadcasting and Cable Services) Regulation 2004, dated 31.12.2004 were also included. This consultation paper was released on May 11, 2006. A number of comments have been received and these have been carefully analysed. Since the number of comments is very large, the gist of the comments have been briefly summarized, section by section in the Annexe to this Explanatory Memorandum. Open House Discussions were also held in Mumbai on June 16, 2006 and in Delhi on June 19, 2006. All these comments as well as the comments made during the course of the Open House Discussions have been carefully considered before coming to the conclusions as reflected in the amendments to the Regulations.

Annexe to Explanatory Memorandum on "The Telecommunication (Broadcasting and Cable Services) Interconnection (Third Amendment) Regulation, 2006".

Gist of comments received on the consultation paper on interconnection issues relating to broadcasting and cable services.

INDEX OF STAKEHOLDERS FURNISHING COMMENTS

Sl.No.	Name	From where
1	Col V C Khare (Retd) - Cable TV Industry Observer	Mumbai
2	Star India Pvt. Ltd. (Star)	New Delhi
3	US India Business Council (USIBC)	Washington, USA
4	Motion Picture Association (MPA)	Singapore
5	ESPN Software India Pvt. Ltd. (ESPN)	Gurgaon, Haryana
6	Ortel Communications Ltd. (Ortel)	Orissa
7	Shri Alok Sahal, B.N.B. Cables (B.N.B. Cables)	Kolkata
8	ASC Enterprises Ltd (ASC)	Noida
9	Siti Cable Network Limited (Siti Cable)	New Delhi
10	Indusind Media & Communications Ltd. (IMCL)	Mumbai
11	Hathway Cable & Datacom Pvt. Ltd. (Hathway)	Mumbai
12	Cable Operators Federation of India (COFI)	New Delhi

Issue for Consultation

Amendment of Existing Regulations

Two Notice Periods

- **Whether there should be only one notice period for the notice to be given to a distributor of TV channels prior to disconnection of signals?**
- **If yes, what should be the notice period and whether this should apply to unauthorized retransmission/ piracy cases also?**
- **If not, what changes should be made in the regulation to avoid disputes as to which notice period is applicable? In particular, how should unauthorized distribution be defined?**

Comments Received

1. Notice period should be only one and such notices should be scrolled on news channels of the broadcasters, besides the Distributors scrolling on their networks. Unauthorized retransmission/piracy, if detected should be litigated under IPC because it can never be with consent of authorized distributor. If there be only one notice period, disputes will not arise. If signal is detected in networks not belonging to network of distributor, the distribution shall be deemed to be un-authorized. (Col V C Khare (Retd) - Cable TV Industry Observer)

2. There should be one notice period only for authorized distributor of TV channels. The notice period for disconnection of signals of authorized distributor of TV channels (including on account of payment defaults) should be one week. The unauthorized distributor of TV channels should not be given any prior notice for disconnection and their signals should be disconnected forthwith without any notice. It is suggested that 'unauthorized distributor of TV channels' be defined and Clause 4.1 of the Regulation be amended as "unauthorized distributor of TV channels" means any distributor of TV channels, which has failed to renew agreement, as per TRAI regulations, and/or undertakes/abets any of the following such as extend beyond area of operation provided in the agreement; connect new operators (other than the operators specified in the agreement) without prior written authorization; block, modify or tamper with the signals or add an overlay on the feed; tape and/or reproduce content without prior written consent; and remove IRDs from the installation address without prior written consent. Clause 4.1 of the Regulations be amended as "No broadcaster or multi system operator shall disconnect the TV channel signals to a distributor of TV channels without giving **one week's** notice indicating brief reasons for the proposed action. Provided that unauthorized distributor of TV channels may be disconnected forthwith without notice". Assuming the TRAI is not keen to change the notice periods, it is suggested that the definition of 'unauthorized distributor of TV channels' (as above) be incorporated and Clause 4.1 of the Regulations be amended as "No broadcaster or multi system operator shall disconnect the TV channel signals to a distributor of TV channels without giving

one month notice indicating brief reasons for the proposed action. Provided that in case of unauthorized distributor of TV channels, the notice period shall be two working days giving reasons to the unauthorized distributor of TV channels for such action". (Star)

3. Any discussion of notice periods for disconnection of signals should be applicable only with regard to authorized distributors of TV channels. TRAI should further clarify its definition of 'unauthorized distributor of TV Channels' to capture the various ways in which signals are obtained and put to use without authorization. For authorized distributors of TV Channels for which termination of the distribution agreement is sought, the notice period should be a contractual matter between the broadcaster and the operator. Consistent with the norms in other markets around the word, TRAI should consider a less intrusive regulatory path. (USIBC)

4**.** The present scheme envisages a 30-day notice period. However broadcasters create content at a cost, broadcast their signals at further costs and provide the signal to the cable operator. The Cable operator's payment obligation starts 30 days after they begin to receive the signals on the 1st of the month. Thus they already have a 30 - day notice as part of the existing contractual arrangement. Given this, the notice period needs to be reviewed. There should be a different notice period in proposed CAS Areas and for non-CAS areas as the environments are addressable and non-addressable respectively. (MPA)

5. The changes required to be made in the regulation to avoid disputes can be; (a) any oral agreements between the parties should be discouraged; (b) No notice should be required to be served to the cable operators/ MSOs promoting unauthorized retransmission and (c) For any other dispute, there should be only one notice period which should be defined clearly. (ESPN)

6. Only one notice period should be given prior to the disconnection of signals to the distributor of TV channels. The notice period should be minimum of 30 days and should apply to Unauthorized Retransmission/piracy cases also since the customers would suffer without any fault of theirs if the notice period is of few days as is the case now. (B.N.B. Cables)

7. There needs to be different notice periods for different reasons. Reasons can be attributed to 1) Commercial consideration: Non Payment, out standings etc, distributing the signals in the area or the place they are not intended to like for Public Viewing with an intention to earn entry fee. (in case of a major sporting event) in which case 30 days notice should apply; 2) Piracy of the signals; Redistribution on cable networks, using an unauthorized decoders and 3) Misuse of the equipment provided for decryption of the signals: Use of the card splitters to access more services then the authorized services. The present regulations prescribe a period of one month for disconnection of signals due to commercial reasons while it is 2 days for piracy. The same is appropriate as criminal acts involving piracy cannot be permitted to be going for a month which will lead to high revenue losses as well as undermining of competitive networks such as DTH. An example can be given of using a DTH/IPTV decoder on a cable network. The ease of

mobility in the case of the DTH will make it more susceptible to such cases and DTH service providers can act fast by switching off the decoder over the air within minutes of the piracy being reported. The common technique is the finger printing mechanism. The definition of unauthorized distribution should inter-alia include the use of any cross service devices (such as IPTV or DTH Boxes on a cable Plant); use of any card splitters whereby one decoder is tampered with to deliver multiple channels; connection of signals to any networks outside of the contracted ones without prior confirmation and transport of decoders to any address, area or location other than where they are authorized to operate from. (ASC)

8. The present provisions of giving two Notice periods – one for alleged default in payment and another for piracy should continue. However, 2 days notice as prescribed at present in case of piracy is too short. The notice period in case of alleged piracy should be increased from present two days to minimum 7 days to enable the distributors of channels to seek relief from TDSAT in case of motivated and frivolous notices. The piracy can be defined as: where a distributor of channels is distributing signals from a decoder which is unauthorized i.e. distributor of channels does not have any arrangement with the broadcasters and is not taking the feed from an authorized distributors of channels (MSO/operator) and where a distributor of channels has been switched off by a broadcaster because of some dispute and that distributor of channels continues to distribute signals in his service areas without entering into any arrangement with the broadcaster/ any other MSO. Only in these cases the notice of 7 days should be applicable and in all other cases the notice of 30 days must be given by the broadcasters. Alternatively it should be provided that the notice of piracy should provide clear-cut 2 working days to enable the aggrieved party to seek redressal from TDSAT. The working days in this context should be defined to mean the days on which TDSAT and TRAI function and Saturday, Sunday & public holiday should be specifically excluded. (Siti Cable)

9. There should be only one notice period of 30 days and this should apply to all cases (it should not be confused with ‘unauthorized distribution’ as no notice is required for such cases). The person/party who has signed an agreement or has made payment to the broadcasters cannot be accused of unauthorized distribution since he is a licensee /authorized distributor of a broadcaster and distribution outside area is a commercial dispute arising out of the agreement for which Dispute Settlement Tribunal (TDSAT) is the final authority. Broadcasters are using commercial disputes on subscriber numbers to get more revenue from MSOs. For such disputes the judgment of Telecom Tribunal should be sought for instead of one sided arbitrary decision taken by broadcasters. Unauthorized distribution should be defined in two parts: (i) if an MSO has been switched off by a broadcaster for his authorized IRDs but he is still transmitting signals of that particular broadcaster through some other MSO/ICO without signing any agreement with either of them and (ii) a person who is distributing signals of broadcasters without having any arrangement either directly from the broadcaster or through any MSO/cable operator.(IMCL)

10. Current regime of two notice periods is fair as there are numerous judgments emanating out of the Interconnection Regulation dated 10th December, 2004. Consistency in any regulation and regime should be maintained to avoid any confusion. Clarification needs to be brought by the Authority on two day's notice period for un–authorised distribution of TV channels. Notice should be two working days excluding the date of publication in the print / scroll on the TV channels and excluding date which happens to be public holiday / Saturday / Sunday as if any person / entity affected by the act of disconnection / alleged piracy should have a time to defend his position before the Authority / Tribunal. (Hathway)

11. There should be only one notice period of 30 days and this should apply to all cases. For 'unauthorized distribution', no notice should be required if there is no previous business relationship with the party. The person/party who has signed an agreement or has made payment to the broadcasters cannot be accused of unauthorized distribution since he is a licensee/authorized distributor of a broadcaster and distribution outside area is a commercial dispute arising out of the agreement for which Dispute Settlement Tribunal (TDSAT) is the final authority. Commercial disputes on subscriber numbers, asking for arbitrarily enhanced payments and disputes regarding area of operation to get more revenue from the existing affiliate MSOs/Cable Operators by the broadcasters should not be treated as unauthorised distribution. For such disputes the judgment of Telecom Tribunal should be sought for instead of one sided arbitrary decision taken by broadcasters. Unauthorized distribution should be defined in two parts: i) if an MSO has been switched off by a broadcaster for his authorized IRDs but he is still transmitting signals of that particular broadcaster through some other MSO/Cable Operators without signing any agreement with either of them and (ii) a person who is distributing signals of broadcasters without having any arrangement either directly from the broadcaster or through any MSO/cable operator. (COFI)

Issue for Consultation

Notice to disconnect

- **Whether the notice period should be counted from the day of issue of public notice?**
- **Whether the option available to broadcasters/ MSOs to give public notice by running a scroll on the channels should be done away with?**
- **In cases where the Broadcasters have not switched off their channels whether the MSOs and the Cable Operators should be required to give notice to the consumers before switch off of any channel?**

Comments Received

1. Notice should first be served, in writing, upon the distributor, acknowledged and then publicized. In such a case, notice period shall reckon from the date of public notice. The public notice could state the date already acknowledged by the distributor. The option available to broadcasters/MSOs to give public notice by running a scroll on the

channels should not be done away with. Warning to viewers on the network, hooked to Headend, must be issued by the Headend operators i.e. MSO/Distributor. [Col V C Khare (Retd) - Cable TV Industry Observer].

2. The notice period should be counted from the day of issue of public notice. The scroll on the channels is an effective way of communicating to the viewing consumer of the intent of the broadcaster. Therefore, it should definitely not be done away with. In fact, it is suggested that the TRAI permit the broadcasters to use the same scroll to provide notice to distributor of TV channels as well as viewing consumers. The notice period should be applicable not only for broadcasters and/or MSOs, but all entities involved in the distribution of channels to the end consumers, including last mile operators. MSOs and Cable Operators should not be allowed to arbitrarily disconnect signals. In view thereof, it is recommended that the TRAI incorporate a Clause 4.1A of the Regulations as "No distributor of TV channels shall disconnect the TV channel signals from a broadcaster or multi system operator without giving one week notice to the broadcaster and consumers indicating brief reasons for the proposed action." The notice period for switch-off of signals of any channel by the distributor of TV channels should be the same as applicable to the broadcasters/MSOs. Clause 4.2 of the Regulations be amended as "Broadcaster/distributor of TV channels shall inform the consumers about the dispute to enable them to protect their interests. Accordingly, the notice to discontinue signal shall also be given in two local newspapers in case the distributor of TV channels is operating in local area and in two national papers in case the distributor of TV channels is providing services in a wide area. Alternatively, consumers can be informed through scroll on the concerned channel(s). The distributor of TV channels must carry the scroll in the concerned channel(s)". Further, such MSOs and cable operators should then not be entitled to the benefits of the 'Must Provide' regulations, since they are in breach of the regulations issued by the TRAI. (Star)

3. The notice period should simply be counted from the day of issuance of the public notice. Furthermore, there is already a de facto 30 day period built in due to the time lag between the receipt of the signal and the regularly timed payment. Broadcasters should be allowed to continue the practice of offering a scroll. If the cessation of service is not due to criminal responsibility, but rather a business decision to stop delivering a particular channel, such decisions are typically made well in advance of the cancellation of such service, providing for time to notify consumers of a pending change in service. MSOs and cable operators currently disconnect the signals of broadcasters with no notice to either consumers or the broadcasters. Notice periods between broadcasters and operators are best left to contractual agreement, but parity requires that TRAI's regulations be made reciprocal. With regard to a regulated notice period between cable operators and subscribers, there is some justification for regulatory intervention given that the consumer lacks leverage with his last mile service provider to negotiate in this regard. Therefore the requirement that consumers receive notification from MSOs and cable operators prior to the switching off of signals should be there. (USIBC)

4. For all declaration related disputes for the first one month after CAS is introduced in an area the notice period can be 30 days After the first month, all piracy related

disconnection can take effect immediately to prevent further piracy. In case of disconnection for causes not related to piracy, the notice period could be 7 days during which the scroll may be inserted into the signal to warn the consumers of the impending disconnection. The scope of "Unauthorized exhibition" should be well-defined in the contract that a broadcaster enters in to with the MSO/LCO. (MPA)

5. The notice period should be counted from the day of issue of public notice. Notifying the consumers by means of Newspapers (National /Daily) turns out to be an expensive affair and hence, the option available to the broadcasters/MSOs to give public notice by running a scroll on the channels should not be done away with. Rather there should be a period prescribed during which the scrolls can be run on the channel(s). The cable operator/ MSO should not have the right to switch off the channels if the broadcaster is providing the same. This action of the operator/ MSO will hold the consumer at ransom and should be discouraged at all costs. Also, if the there is a "must provide" regulation the there should be a "must carry" regulation for the cable operators/ MSOs also. (ESPN)

6. Yes the notice period should be counted from the day of public notice. The option of running a scroll should be done away with. The consumers should be informed of any kind of switch off be it from the Broadcasters or the MSOs or the cable operators since this act is formulated with a view to protect the interests of the consumers. (B.N.B. Cables)

7. Ideally speaking the notice period should start from the day service provider in writing informs the user, and the public notice should be mandated to be brought in within seven days of the issuance of the notice to the user. Running of scrolls on channels is an avoidable nuisance. The decoders used should have a forced messaging capability with addressability so that only a particular operator is warned of the impending disconnection. Even inexpensive decoders now support such addressable messaging and it is strongly recommended to the Authority to do away with stock tickers and making forced messaging which is displayed on the screens in a particular area a mandatory feature. In case the MSO or the Cable operator or any service provider wishes to switch off any service on his own, he should give the notice to the subscribers before switching off. It is fair to the Broadcaster or the Service provider that he is aware that his services will not be available to a particular section of the consumers in an area and it can make alternative arrangement for the delivery of the services in the area either through a different platform or by different technology. (ASC)

8. Notice period should be counted from the date of the issuance of the public notice in the newspapers. The broadcaster should not have the option to give public notice by running scroll on the channel and it should be mandated that the notice for proposed disconnection should be given through newspaper only. It is not possible for the MSO and the Cable Operators to give advance notice to consumers before switching off any channel because with more than 100 channels being delivered by most of the operators now and with increasing pressure on the capacity of the networks with launch of new channels there is bound to be some shuffling of channels or else no new channels will

ever get distributed. Also an MSO might be forced to shut off a channel for technical reasons as well such as bad audio or video quality etc. (Siti Cable)

9. Notice period from the date it appears in papers or received by MSO/service provider. It is alright to give public notices by running scroll on channels as otherwise broadcasters use some obscure newspaper to advertise which not many subscribers read in the network (though on the other side once such advertisements are placed, it is defamatory for the MSO/cable operator and subscriber creates a problem while paying their dues). MSOs and cable operators are required to inform the consumers before they switch off any of channels and this can be a part of an agreement between the stakeholders i.e. the notice period and information. In other words, if a consumer needs to be informed then MSOs can put a scroll on the network informing in advance of change before 3 days and if any MSO wants to switch off any broadcaster forever then 30 days. If broadcaster gives notice to any MSO of 30 days, invariably in most of the cases, whether the intervention of TDSAT is sought or the matter is settled between the parties, in that case giving such notices on scroll or in papers becomes meaningless. The viewer should be informed of any broadcaster going off on any network if the above remedies have been exhausted for i.e. there is no relief from TDSAT and the talks have failed between the parties. (IMCL)

10. The notice period should exclude the date of issue of public notice and should also exclude likely date of disconnection / deactivation of signals. The option available to broadcasters/ MSOs to give public notice by running a scroll on the channels should not be done away with. MSOs and the Cable Operators should not be required to give notice to the consumers before switching off of any channel. Some times the Broadcasters give notice as a threat only and there is no intention on the part of them to disconnect / deactivate signals, so as to make the MSO's/ LCO's submit to them. (Hathway)

11. Notice period should be counted from the date it appears in papers or received by MSO/Cable Operator. Giving public notice by running scroll on channel should not be done away with as otherwise broadcasters use some obscure newspaper to advertise which not many subscribers read in the network. However, it is felt that such advertisements can be defamatory for the MSO/cable operator as they may give a wrong impression in the minds of the subscribers of that network that their cable operator is not giving his dues to the broadcaster. Whereas in reality it may be a superficial dispute between broadcaster and the cable operator to get more revenues as it happens every day. MSOs and cable operators are required to inform the consumers before they switch off any of channels and this can be a part of an agreement between the stakeholders i.e. the notice period and information. In other words, if a consumer needs to be informed then MSOs can put a scroll on the network informing in advance of change before 7 days and if any MSO wants to switch off any broadcaster forever then 30 days. Generally in such disputes, parties approach TDSAT for redressal before the 30 days period is over so that there is no disruption in the signals. Viewer should be informed of any broadcaster going off on any network if the above remedies have been exhausted for i.e. there is no relief from TDSAT and the talks have failed between the parties. (COFI)

Issue for Consultation

Access to content

- **Whether a time limit should be laid down for the agent or any other intermediary of a broadcaster/multi system operator to either provide signals to any distributor of TV channels once a request is made or to decline the request giving reasons for the same so as to enable the distributor of TV channels to agitate the matter at the appropriate forum without loss of time?**
- **Whether the time limit should also include time taken by the broadcaster to refer the distributor of TV channels who has made a request for signals to its agent or intermediary?**
- **Whether the provisions for mandatory access and the non exclusivity requirement in the Interconnect Regulation be removed so that there is no mandatory requirement for channels that are provided to only a digital platform/ service to be made available to any other digital platform / service or on the cable platform?**
- **Alternatively should these requirements be applied only to channels that have entered the market before a particular date?**

Comments Received

1. This situation is fallout of non-existence of Broadcasting Law and the precedence of hitheretofore uplinks of offshore satellite content. A procedure to curb anti-competitive practices has to be evolved, wherein reasons for not complying with the request must be communicated in writing, within a stipulated time, so that the applicant may agitate the matter to the appropriate forum. In the present state of speedy telecommunications (telephony, E-mail, FAX and so on) time limit fixed should include the time for the agent of the broadcaster to communicate with their principal. One possible solution could be use of a standard form for such request, scrutiny at customer service desk for completeness of the form, issue of an acknowledgement that the application is complete in all respects and then apply the time limit from the date of acceptance of such complete applications. In written intimation of reasons for denial, the fact that the principal has been appraised can also be mentioned. The provisions for mandatory access and non-exclusivity requirement in the Interconnect Regulation should not be removed. The requirements should be applicable to all channels irrespective of the date of their entry into the Indian cable TV market. [Col V C Khare (Retd) - Cable TV Industry Observer]

2. The process to address the applicant's request is generally quite lengthy and the time taken varies from case to case as many formalities such as complete documentation, site visit etc. are needed to be undertaken. In view thereof, the imposition of an outer time limit for the agent/intermediary to react would be unfair and impractical. Entering into a

long standing business relationship with a new entity requires due diligence and establishment of complex commercial relationships. These processes are generally lengthy. In view thereof, Star India is of the strong opinion that there should not be any time limit to address the applicant's request. In the present environment, there is a need to review the overly broad "Must Provide" and "Non-Exclusivity" provisions of the Regulation for the reasons, among others, that there are presently over 240 channels available to consumers on the C&S platform. C&S is the preferred platform for broadcasters given its reach of approximately 61 million consumer homes. Non-discriminatory access of all channels to all distributors of TV channels should not be mandated by the Regulation. Star India believe that the regulatory mechanism should adopt a balanced approach to consumer interest and competition. Star India believe that date should not be the basis for application of these requirements. (Star)

3. The process, upon request for the provision of signals, varies depending on a variety of factors such as the provision of the requisite technical information, consideration of financial viability, a site inspection, and negotiation of the terms of supply and distribution. In practice, the process is often extended by delays on the part of the distributor. It is impractical to set a limited period for a commercial negotiation. The mandatory access provisions should be removed. Mandatory access, along with the price freeze, comprises some of the most market-distorting television regulatory regimes currently in place anywhere in the world. Mandatory access should be ended for all channels, irrespective of the channel's date of commencement in India. (USIBC)

4. There should be a transparent mechanism in place, which allows broadcasters or their agents to evaluate the creditworthiness and business reputation of a cable operator before they are required to licence their signal to the cable operator for further re-distribution. This mechanism could establish a minimum threshold of accountability for cable operators. If any cable operator is found to have links with undesirable persons, the broadcaster should be able to refuse signals to that operator. As an analogy, a new VAT registration today requires a trader to provide a surety to the Government up to Rs. 100,000. However, the surety can also be reduced by Rs. 50,000, should the trader have the following: a fixed line telephone, a passport, a Permanent Account Number. A similar mechanism should be put in place whereby at least an Income tax PAN number or VAT registration is required before the broadcaster is obliged to provide signals. The Telecommunications Regulations 2004 in spirit should offer signals on a non-discriminatory basis but also on minimum financial viability threshold terms, which are transparent and reasonable. The "must provide" obligation in the Interconnect Regulations has been conveniently misinterpreted by some MSOs and their affiliate LCOs to mean that they have unfettered rights to expand their business without accountability to broadcasters. It is suggested that a request for signals to television channels by a distributor should be either under (a) for re-transmission of signals to the ultimate customer who has the ability to pay and is located in a specific geographic area as per existing terms between the broadcaster and the distributor, or (b) for re-transmission of signals to designated LCOs based on their current area of operation. Further, all MSOs should declare their list of sub-operators, link operators and LCOs and be able to provide details of their paid subscriber base. The provisions for mandatory

access and non-exclusivity should be done away with. The prevailing market conditions include availability of several access modes for consumers to receive signals. Thus market forces should be allowed to dictate availability of channels and there should be no discrimination between availability of digital and analog channels. (MPA)

5. There is no requirement of Mandatory access to content and market forces should be allowed to determine these aspects. This will benefit the subscribers also. Also, as far as the pay channels are concerned and especially in the case of sports channels there must be a provision of must carry as Sports Channels also play an important role in developing sports and talent for the country. Restricting a Sports Channels growth would be restricting the growth of the sports itself. (ESPN)

6. The very purpose of this act to do away with discrimination is still to be achieved since the Broadcasters are not providing their signals to those who were already being discriminated but the new entrants are also denied the signals. The onus of providing the signals should be put on the Broadcasters by making this clause more stringent. The time frame set should be strictly adhered to and it should be seen that signal is provided within a period not exceeding thirty days. A criterion should be fixed for those requesting for the signal rather than Broadcasters coming up with their new criteria ever day. If the time frame is not followed strictly the very purpose of this act is defeated and the ground reality remains as it is. The time limit should also include the time taken for referral to its agent or intermediary. There are instances where the Broadcasters and Agent/ intermediaries do not bother responding to the request for providing their signals for more than 30 days. In these cases penalty should be imposed and the signal should be provided forthwith and formalities completed then. The mandatory access and non-exclusivity requirement should not be done away with as this may result in extra benefit for one platform over another which may affect lots of Networks. (B.N.B. Cables)

7. Yes there should be a time frame of 30 days for closing the request of the service provider who is asking for the content. The process needs to be defined as - once a request is made to the agent of the broadcaster it should be taken as the final request there would be no onus on the party making the request to contact any other agency in India or overseas; the Agent must provide an acknowledgement of the request; the agent must provide access to content at non-discriminatory rates as mandated under the interconnect regulation within one month of such request; all interconnect rates must be filed with the Regulator; the broadcaster through its agent must fulfill all conditions such as provision of decoder, or decryption equipment to the applicant party at the rates filed with the regulator; in case access is not provided by the Agent by the due date the Regulator should intervene and pass an order which is final and binding for provisioning of the content; any other remaining commercial formalities should, if necessary be completed through any agency designated by the regulator and in case of a default the action under the downlinking norms also need to be initiated. The request for the content can be in standard format with standard terms in the agreement. If these issues can be addressed, it will save lot of litigation and suffering to the consumers. The mandatory provision of the channels can be acceptable if we say that any platform where the subscriber can be digitally addressed directly by an enabling device will have the benefit of the must

provide regulation. In order to tackle the problem of capacity constraints in the cable networks, any new pay channel launched after a notified date should mandatory be delivered in digital mode. The Time limit should be only one - which is made to the notified agent of the broadcaster. No other time or allowances should be given. (ASC)

8. As per clause 3.4 of the Interconnect Regulation any agent or any other intermediary of a broadcaster / MSO must respond to the request for providing signals of a TV channel in a reasonable time period but not exceeding 30 days of the request. This must be strictly adhered to even if the agent seeks certain details from the distributor. The agent should say either yes or no within the aforesaid time limit of 30 days to enable the distributor of channels to approach either broadcaster or appropriate forum for redressal of its grievance. The overall time limit of 30 days should also include time taken by the broadcaster to refer the request for signals to its agent or intermediary. Non-exclusivity requirement in the Interconnect Regulation should be continued to ensure effective competition between cable distribution platform and digital platforms such as DTH, IPTV etc. The requirement should apply to all channels irrespective of their date of launch. There should not be any exclusivity either amongst the digital platforms and /or in digital platforms vis-à-vis cable platforms. (Siti Cable)

9. A time limit of 30 days from the date of request received by an Agent/MSO/broadcaster should be laid down. This time limit should include the time taken by the broadcaster to refer the distributor of TV channels, who has made a request for signals, to its agent or intermediary. It is emphatically stated that under no circumstances should exclusive content be allowed whether on analogue or digital format and on any one particular technology vis-a-vis another. This is required in the consumer interest and in an era of vertical monopoly (80% market share in metros is in the hands of vertical integrated networks). These requirements be applied to all such channels who wish to downlink in India if the new channels are excluded, there is a likelihood that broadcasters will switch their popular content/programme to new channels to avoid must sharing of content if new channels are exempted from 'must provide.' Further non exclusivity should be retained with no limit to the number of registered cable operators in a given area. (IMCL)

10. The existing system of "not exceeding 30 days time frame" to respond under clause 3.4 and 3.6 is currently working fine. The time limit should not include time taken by the broadcaster to refer the distributor of TV channels who has made a request for signals to its agent or intermediary. The provisions for mandatory access and the non–exclusivity requirement in the Interconnect Regulation should not be removed. Cable TV industry will vehemently oppose to any such attempt to create niche content only for one platform like DTH, IPTV, leaving Analog Cable / Digital Cable TV Platform in the lurch as it is ex-facie discriminatory and arbitrary. These requirements should not be applied only to channels that have entered the market before a particular date. (Hathway)

11. Since process of providing signals by broadcasters through their decoder is completely automated, it can be activated in just 2 hours, a maximum period of 7 days from the date of request received by an Agent/MSO/broadcaster should be provided for

acceptance or refusal. The 7 days time limit should also include time taken by the broadcaster to refer the distributor of TV channels who has made a request for signals to its agent or intermediary. Under no circumstances should exclusive content be allowed whether on analogue or digital format and on any one particular technology vis a vis another. This is required in consumer interest and in an era of vertical monopoly. These requirements may be applied to all such channels who wish to downlink in India. Further non exclusivity should be retained with no limit to the number of registered cable operators in a given area. (COFI)

Issue for Consultation

Area of operation

- **Whether the obligation of the broadcaster to provide access to content to all distributors should be valid only as long as the MSO/ LCO operations are restricted to the area as defined in the commercial agreement?**

Comments Received

1. Access is provided at the Headend through issue of IRDs. The IRD should, under the interconnect agreement, be specifically allocated to the address of the Headend location in the agreement. Only then the feed from a particular IRD can be deemed to be restricted to the area covered by a particular Headend and its radius of operation. [Col V C Khare (Retd) - Cable TV Industry Observer]

2. The provision of service by the MSO or LCO, subsequent to execution of the subscription agreement, to paying subscribers outside the demarcated area (i) is not authorized by the broadcaster; (ii) is not paid for by the MSO/LCO; and (iii) potentially infringes on the retransmission licence of another MSO/LCO. The "Must Provide" obligations in the Regulations have been misinterpreted by some MSOs and their affiliated LCOs to require unfettered rights to expand their networks. Therefore, Star India believe that the Regulations should be appropriately amended to recognize that the "Must Provide" obligations on broadcasters and their authorized distributors/agents applies with regard to demarcated areas of operation and that there is an obligation for the licensee and his affiliates/sub-licensees to restrict themselves within the area of operation. The TRAI should also incorporate a regulation that obligates the MSOs and LCOs to provide the details (including names and address) of declared subscribers. In the absence of such provision, the MSOs and their affiliated LCOs are misusing the 'Must Provide' obligation of the broadcasters. (Star)

3. TRAI's 'must provide' obligations continue to be misinterpreted by some MSOs and cable operators as affording them the right to expand their networks without regard to the geographical boundaries stipulated in the channel supply agreements. It is imperative that the TRAI clarify that its existing 'must provide' obligations on broadcasters is not

meant to empower the MSOs and cable operators to expand service with impunity beyond the demarcated area commercially agreed. (USIBC)

4. Each MSO/LCO should have a specific geographic area of distribution within which they can expand their number of subscribers. TRAI could examine the feasibility of a scheme, which allows the MSO's to put in the cable infrastructure and gives the right to collect fees and maintain the infrastructure only to the existing 1-2 cable operators who are currently operating in the area and have control of the ground. This franchise/ license could be granted against payment for some fees or upon giving a guarantee. No new entrants would be granted licenses except for new licensees deemed necessary to service rapid market expansion. In such cases they need to inform the broadcasters and existing contracts would have to be reviewed and amended suitably. (MPA)

5. The area of operation of the cable operators should be clearly defined in the commercial agreement and the obligation of the broadcaster to provide access to content to all cable operators should be valid till the time the cable operators are restricted to these areas. Otherwise, unauthorized expansion of area of operation by the cable operators may result in a situation of chaos. (ESPN)

6. The agreements can be drafted to either have an area of operation as predefined or the agreement can have a time linked increase in the area of provision as well as growth of customers within the given area. Most MSO and operators such as DTH operators operate in an environment where services are provided in large geographically dispersed areas and such provisions can be covered by agreements. (ASC)

7. If the distributor of a channel has a valid registration to operate in a particular area the same cannot be curtailed by placing artificial restrictions by the broadcasters as it would act as a impediment to the growth as well as competition. The only issue in this regard is the payment of additional subscription fee for the extended area (s) of operation, which can be settled between broadcasters and distributors of channels on a "negotiated subscriber base" for the additional area. The extension of area by a distributor of channels in which he is authorized to operate by virtue of having valid registration for that area, cannot be termed as piracy or unauthorized distribution entitling a broadcasting to switch off its channels by giving a notice of 2 days. In such an event a period of 30 days is to be given to arrive at the negotiated settlement of subscription fee for the additional/ extended area of operation failing which the distributor of channels is entitled to approach Hon'ble TDSAT for settlement of the disputes in accordance with law. (Siti Cable)

8. In IMCL's view, if IMCL wishes to serve consumers in a city, it be allowed to do so without hassles and the broadcasters then cannot impose conditions which restrict the MSO within the area of that city. Broadcasters need to share information regarding the number of MSOs/LCOs operating in an area and paying them for the number of connections for receiving their services and should put this information in public domain so that they can not discriminate when new MSOs seek service and there is transfer of

connectivity between the competing MSOs in today's environment in a transparent manner. (IMCL)

9. No. This will tantamount to the restrictive trade practice and will lead to unfair business practices. It is ultimately subject to revision in subscription fees either on the higher side if there is growth or lower side if there is loss of operational / billable area / size. (Hathway)

10. Any MSO/Cable Operator who wishes to serve consumers in a city, be allowed to do so without hassles and the broadcasters then can not impose conditions which restrict the MSO/Cable Operator within the area of that city. Broadcasters need to share information regarding the number of MSOs/LCOs operating in an area and paying them for the number of connections for receiving their services and should put this information in public domain so that they cannot discriminate when new MSOs seek service and there is transfer of connectivity between the competing MSOs in today's environment in a transparent manner. This will also help subscribers to know from the website of the broadcasters as to availability of their signals from MSO/Cable Operator of a particular area. Any area demarcation has to be done as a part of license by the regulator/licensing authority. Since there is no licensing as of now, no area restriction can be made by a broadcaster. If different broadcasters resort to different areas, there will be a chaos on the ground. (COFI)

Issue for Consultation

MSO as an agent of Broadcaster

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

Comments Received

1. Yes. [Col V C Khare (Retd) - Cable TV Industry Observer]

2. Principally there are two factors which determine the choice exercised by broadcasters; (i) the financial analysis of capital cost of providing IRDs vs. the subscription revenue expectation; and (ii) the potential impact of unfettered territorial expansion. In either case, the service providers would have to provide non-discriminatory terms and the commercial offer to the applicant-distributor would be the same. It follows that the agent/intermediary providing signal feed could be an MSO operating within the area of operations applied for. Where the existing MSO refuses to provide signal feed, the broadcasters would give signals directly on non-discriminatory terms. (Star)

3. The market should be allowed to operate in its own course. Should a broadcaster choose to appoint an MSO as its agent, it would only do so with the interest of expanding their share of the market. Given the huge costs involved in setting up a distribution network, it is likely that the agents appointed by a broadcaster would be from the cable trade. If the MSO cannot be appointed as an agent, it would mean that all cable operators would be entitled to take direct signals from the broadcaster, which is not financially viable, nor commercially manageable on the ground. With over 240 channels now available in India, no channel can be determined "irreplaceable" should any agent limit a channel's distribution. (USIBC)

4. The Regulations should clearly specify that an MSO cannot be appointed as an agent of a broadcaster. (ESPN)

5. MSO should not act directly or indirectly as an agent as it gives them unhealthy edge over their rival MSOs. (B.N.B. Cables)

6. The appointment of MSO as an agent of Broadcaster is inherently anti-competitive.(ASC)

7. The TDSAT has already adjudicated this matter in Sea TV's case and an appeal against this judgment is pending in the Supreme Court. The main issue in this regard is that there is an apparent conflict between the obligations of MSO as an agent of the broadcaster and his business as MSO, which is to provide signals to as many cable operators as possible. The broadcasters are appointing MSOs as exclusive agents at ground level on Minimum Guarantee basis, which is creating lot of distortions and disturbances in the market. Accordingly various cable operators are not able to get the signals of the broadcasters, as in order to perpetuate their monopoly these MSO agents are refusing the signals to rival cable operators on one pretext or the other. The appointment of MSO as an agent is totally prejudicial to the competition and is creating monopoly at ground. Matter may be put beyond doubt by adding one more proviso to Regulation 3.3 which should read as "Provided that a multi system operator cannot directly or indirectly be the designated agent of broadcaster or his/her authorized distribution agency." (Siti Cable)

8. As this matter is sub judice in the Supreme Court in the Sea TV Civil Appeal in which IMCL are interveners, IMCL do not wish to make any direct comment except to state that the Interconnect Regulations need to be interpreted along with the explanatory memorandum and replies to stake holder queries issued by TRAI. (IMCL)

9. MSOs have even otherwise been reduced to act as a collection arm of the broadcasters. Since the matter is sub judice before the Hon'ble Supreme Court in Sea Network matter, Hathway are of the view that outcome of the judgment be awaited and they would abide by the same. (Hathway)

10. The Interconnect Regulations need to be interpreted along with the explanatory memorandum and replies to stake holder queries issued by TRAI. The agent should not be a service provider if a genuine competitive market has to be developed. (COFI)

Issue for Consultation

Payment defaulters

- **Whether the Regulations should make it obligatory that the applicant-distributors shall produce along with their request for services, a "No Pending Dues" certificate from the presently-affiliated MSO in respect of LCOs intending to get signal feed through such distributor or directly from broadcasters?**

Comments Received

1. Yes. [Col V C Khare (Retd) - Cable TV Industry Observer]

2. The provision of excluding payment defaulters from the "Must Provide" obligation should be expanded to include the cases such as where an MSO seeks to expand its area of operations to provide signals to an LCO who has defaulted in payment to his currently affiliated MSO, or to the Broadcaster; where an LCO or group of LCOs any of whom have defaulted in payment seek to establish their own head-end and obtain signals directly from broadcasters; and where any of the promoters of a distributor of TV channels are promoters of any other distributor of TV channels which has defaulted in payment. Further, it is operationally impossible for broadcasters to verify whether an applicant-distributor is a payment defaulter prior to provision of service in accordance with the Regulations. Therefore, Star India recommend that the Regulations should include an obligation that the applicant-distributors include, along with their request for services, a "No Pending Dues" certificate from the presently-affiliated MSO in respect of LCOs intending to get signal feed through such distributor or directly from broadcasters. The Regulations should also provide that if any MSO provides signals to a new LCO, who was previously affiliated to a Broadcaster, without obtaining a copy of the "No Pending Dues" certificate from such Broadcaster, the Broadcaster shall have the right to disconnect such MSO. (Star)

3. This regulation makes sense. It is a relatively simple way to ensure that chronically defaulting operators will not be tolerated. (USIBC)

4. All the payment defaulters are required to be dealt with strictly, in furtherance of which, the Regulations should make it mandatory for all the applicant-distributors to produce, along with their request for services, a "No Pending Dues" certificate from the presently- affiliated MSO in respect of LCOs intending to get signal feed through such distributor or directly from broadcasters.(ESPN)

5. Yes it should be made obligatory that the applicant distributors produce No Pending Dues certificate from the presently affiliated MSO in respect of LCOs intending to get signal feed through such distributor or directly from Broadcasters. (B.N.B. Cables)

6. The issuance of the NOC is not a practical solution, it will bring in more litigations as the outgoing Service provider will delay NOC on various pretexts which can be litigated and thus may deprive the end consumer the service completely or partially. In case the input cost of the MSO are equal then the ultimate price to the LCO also will be the same and it will be the service which will be the determining factor and let the field decide for it. (ASC)

7. The provision for applicant – distributors to produce "No Pending Dues" from the presently affiliated MSO, is not a practical suggestion and would lead to all kinds of complications and litigations because the existing MSO would not want to lose any affiliated LCO and therefore is likely to put up false & frivolous demands of outstanding to prevent the LCO from shifting. In such a scenario in the absence of "No pending dues" certificate from the LCO, the other MSOs will not be able to provide feed to the LCO, thus forcing the LCO to stay with the existing MSO. Such a regulation would be detrimental to the progress of the industry and would amount to promoting de-facto monopolies. (Siti Cable)

8. The requirement of No Pending Dues certificate may create a problem because there may be a genuine dispute between the parties and the shifting applicant may not be able to procure and produce the certificate thus affecting his right to do business with others. (IMCL)

9. It is welcome step on the part of the Authority for the proposed amendment in the Interconnect Regulation. This dynamic and pragmatic view will resolve the evil in the system. (Hathway)

10. The requirement of No Pending Dues certificate may create a problem because there may be a genuine dispute between the parties and the shifting applicant may not be able to procure and produce the certificate thus affecting his right to do business with others. (COFI)

Issue for Consultation

Expansion of Existing Regulations

Subscriber Base

- **Whether the subscriber base should remain fixed during the term of validity of subscription agreement?**
- **If not, what should be the methodology for periodic revision of subscriber base?**

- **Whether it should be made mandatory to provide a list of the LCOs (with Subscriber base/ lump sum payments)/households to the broadcasters/MSOs at the time of signing of the agreement?**
- **How should the subscriber base be determined for new entrants?**

Comments Received

1. The subscriber base should remain fixed during the term of validity of subscription agreement unless provision exists in the agreement to revise the same along with reasons and justification. The methodology for periodic revision of subscriber base should be by physical door count verification in LCOs area by Broadcaster's agents along with the LCO. Ideally it should be made mandatory to provide a list of the LCOs (with subscriber base/lump sum payments)/households to broadcasters/MSOs at the time of signing of the agreement. The subscriber base for the new entrants be determined by encouraging CAS implementation, providing for acquisition of STB on softer terms, as a technological compulsion, like TV over IP and DTH, and assigning zero value to FTA content in the SMS (Subscriber Management System). [Col V C Khare (Retd) - Cable TV Industry Observer]

2. The subscriber base may typically change during the course of a subsisting contract and the subscription fee should be modified accordingly. Any increase or decrease in paid subscriber base on account of LCO churn can be given effect to only when all MSOs are required to give a break-up of their paid subscriber numbers by affiliate LCO as part of the subscription agreement. As MSOs do not provide a list of their affiliated LCOs and their paid subscriber base, broadcasters take the more conservative view of opposing any reduction in the paid subscriber base. The Regulations should mandate that the LCOs provide to the MSOs details of their declared subscribers (along with names and addresses) and the MSOs to provide such list to the broadcasters. This would facilitate the broadcasters to increase/decrease the subscription fee of the MSOs on account of LCOs churn. Given that there are instances of disputes on subscriber numbers between the Broadcaster and the MSO/cable operators, the TRAI may come up, on an immediate basis, with a mechanism to deal with this issue. Star India suggest that the TRAI appoint an independent reputable third party agency (such as AC Nielsen) to deal with subscriber related disputes (by conducting surveys in the event of dispute). In the event of any dispute, the MSO/cable operator would be required to provide to the third party agency a true and accurate list of its affiliated cable operators, and their respective connected subscribers (along with their complete contact details). The independent reputable third party agency could then conduct a survey in the specified area within a specified time. The reports of the survey should be final and binding on both the parties. The costs for the survey should be paid by the losing party. In the case of new entrants, the area of operation may be defined in terms of demarcated geographical territory or in terms of the list of LCOs which the MSO proposes to connect over the term of the agreement. Accordingly, the broadcaster may make a non-discriminatory offer based on the area demarcation or based on current subscription revenue of the affiliated LCOs within the area of operation. Star India feel that since the number of new entrants is not as much, no regulation is required specifically for new entrants. (Star)

3. Subscriber base should not remain fixed. India's cable television subscriber base is growing at a fast rate, and there are still entire regions that are not currently serviced by cable television. To freeze the subscriber base during the course of an existing subscription agreement is neither necessary nor fair. The Ministry of Information and Broadcasting or TRAI must be empowered to press service providers to provide their subscriber base. The Ministry or TRAI should be urged to set up a special cell to begin "snap audits" of a few dozen service providers every year to review conformity of reporting rules, and to get a clearer picture on the amount of under-reporting existent in the market. Underreporting of subscriber number is a violation of copyright laws and distorts the value of the market. The regulation to provide a list of the LCOs (with Subscriber base/ lump sum payments)/households to the broadcasters/MSOs at the time of signing of the agreement makes sense. It is a relatively simple way to add an important layer of regulation in an industry, cable distribution, which is lightly regulated. Furthermore, both the distributors and the MSOs should be obligated to provide an accurate count as to the number of subscribers they are serving. It would seem to make sense to base it on estimates drawn from the population in the operator's operation of area, with provision of a complete list of the operator's cable affiliates and subscribers. There should be a survey of cable penetration of the area, with due allowance for the offering and appeal of the new entrant's product. (USIBC)

4. MSO/LCOs should be able to prospect new consumers on an ongoing basis and likewise consumers should be able to choose from an array of MSOs/LCOs. MSOs should provide broadcasters a list of their subscribers on a quarterly basis. This list should be geographically sorted with household addresses, names of subscribers and contact details. This will allow broadcasters – if they so desire – to spot check service quality. Also, this level of data mining will allow all the parties – Broadcasters, MSOs and LCOs to design special promotional offers. On a quarterly basis, new additions to the lists and deletions from the list may be flagged. It should be made mandatory to provide a list of the LCOs with their Subscriber base to the broadcasters/MSOs on a monthly basis and at the time of signing of the agreement. Approximately 50-60% of this should constitute the minimum guarantee in terms of payment obligation. For new entrants, the subscriber base may be determined based on the existing level of penetration of cable services in the area. (MPA)

5. The subscriber base should be specified in the agreement. Any increase/ decrease in the same should be dealt with in the manner such as; (a) it should be made mandatory for all MSOs/ Cable Operators to file with the broadcaster, a list of their subscriber base, on a monthly basis.; (b) a similar list for LCOs should also be filed; (c) this data should also be made available on TRAI's website so as to encourage transparency. In case of new channels / entrants, the subscriber base should be subject to negotiation between the two parties to the agreement. (ESPN)

6. The subscriber base should remain fixed during the term of validity of subscription agreement as the broadcasters specially event driven ones resort to strong arms tactics before important events and try and increase the subscriber base. The

obligation for provision of list of subscribers should not be made mandatory at the time of signing of agreement. A minimum amount of subscriber base should be fixed in a way so that it does not hurt any of the parties involved. (B.N.B. Cables)

7. The subscriber base during the tenure of the agreement in case of non addressable environment should remain fixed, in case of the addressable environment it should be based on the actual no of subs. It is important that during the tenure of the price freeze the total outgo from a network is also kept fixed. The periodic revision in case of the non addressable environment can be done on the basis of any new constructions coming in which may increase the number of households in the area. At the time of signing of the agreement the LCO list with sub base is difficult, however, it can be mandated that within three months of signing the agreement the list can be provided containing the names of the LCO connected to the system. The subscriber base of the new entrant can be fixed as a minimum entry level by the service provider. (ASC)

8. It is duly recognized by TRAI in earlier Consultation Note and papers that in non-CAS areas the Interconnect agreements are on the basis of 'negotiated subscriber base'. Since the negotiated subscriber number is supposed to take care of distribution margin and also the inbuilt subsidy to the subscribers, it should remain fixed through out the term of validity of the subscription agreement. Since the settlement between the broadcaster and distributor of TV channels has been arrived at on the basis of negotiated subscriber base, there is no relevance and need to provide the list of LCOs etc as the broadcasters tend to misuse the said list to harass the distributor of TV channels by alleging that the LCOs figuring in the said list have much higher subscriber base than what is declared in the list at the time of signing the agreement and thus demand more subscription. In the alternative, when Interconnect agreement is entered into with the broadcasters for non-CAS areas, a particular declaration of the number of subscriber by the distributor of channels (LCO to MSO) should form a basis for the finally negotiated number. Therefore, if there is any increase in declared subscriber base on account of new LCOs joining the MSOs either in the same area or in new area when the MSO expands his operation, the same should be added to the subscriber base. Similarly when an LCO leaves the MSOs, the declared subscriber base should accordingly be reduced. Thus a proper reconciliation should be carried out whenever migration takes place both on account of increase in the declared subscriber base as also in respect of decrease in the declared subscriber base and the declared subscriber base should be revised both upwards & downwards as the case may be through a reconciliation exercise at periodic intervals and adjustments be carried out accordingly. For a new entrant the only methodology is negotiated settlement with the pay broadcasters for a particular period of time, which can be reviewed after the expiry of said period based on actual performance of the distributor of channels at the ground level. (Siti Cable)

9. There is no need to provide the lists of LCOs together with their list of declarations to broadcasters. The real reason why MSOs like IMCL cannot provide details of LCOs actual subscriber base is because LCOs also negotiate with MSOs on their notional subscriber base and pay a pre determined sum of monthly subscription fee. In fact no MSO is aware of the true and genuine subscriber base of a LCO. Alternatively

if such a subscriber base was considered vital and necessary to provide in the Regulation then in absence of addressability the only viable method is to use Service Tax/ Entertainment Tax declaration or self declaration by LCO (as relied upon by IMCL unless proved contrary otherwise on a case to case basis). The subscriber base for new entrants should be a minimum of 300 connections for MSO and a minimum of 50 connections for LCO. (IMCL)

10. Dynamics of any business never remain static. However, in order to maintain stability and reasonability during the terms of the agreement, it is the agreed and negotiated subscriber base that should be allowed to remain static and fixed. If it is allowed to remain fluctuating on monthly basis or in short span of time / tenure, this would lead to more conflicts and disputes. Further, the negotiated subscriber base is a function of demand of a particular channel or bouquet of channels or a channel within the bouquet / non–moving channels with one or two channels in demand. CAS is the only solution. If the Authority in any case takes any view based on the present consultation paper under consideration then the *a–la–carte* as well as issues arising out of the Distribution Margin to the Dealers like the MSOs / LCOs needs to be addressed simultaneously without any further delay. The objective of the Authority to minimize the disputes through the present consultation paper would get vitiated if there are periodic revisions. If there is a negotiated subscriber base (as recognized in the 01st October 2004 Recommendation of TRAI) then there is no sanctity left in providing with the list of subscribers of LCOs and households. Further, MSOs receive only the lump–sum negotiated fees from its value chain, like the pay broadcasters receive from the MSOs. Further the situation has reached to such an extent that MSOs are paying more subscription fees for the negotiated subscribers to popular pay broadcasters, than the amount they are collecting from the paying subscribers / LCOs declaration. The subscriber base for new entrants be determined on the basis of negotiated and / or agreed subscribers. (Hathway)

11. Subscriber base should remain fixed during the term of validity of subscription agreement limited to one year. Subscriber base should be revised every year at the time of renewal of agreement or after completion of one year of the agreement. There is no need to provide the lists of LCOs together with their list of declarations to broadcasters. The real reason why MSOs cannot provide details of LCOs actual subscriber base is because LCOs also negotiate with MSOs on their notional subscriber base and pay a pre determined sum of monthly subscription fee. In fact no MSO is aware of the true and genuine subscriber base of an LCO. Alternatively if such a subscriber base was considered vital and necessary to provide in the Regulation then in absence of addressability the only viable method is to use a self declaration by LCO. The subscriber base for new entrants be determined on the basis of a minimum of 300 connections for MSO's business and a minimum of 50 connections for LCO. It has been a practice of broadcaster to give boxes under rural scheme for minimum number of subscriber on 300 and in urban markets on 500, the same can be allowed. (COFI)

Issue for Consultation

Multi System Operator

- **Whether any minimum threshold of the number of subscribers and other parameters should be specified for a Cable Operator to be defined as a "Multi System Operator" and for being entitled to receive signals directly from broadcasters?**

Comments Received

1. No. [Col V C Khare (Retd) - Cable TV Industry Observer]

2. The number of subscribers under an MSO varies depending on various factors (including size, geographical location, etc.). Therefore, it is very difficult to define a MSO based on number of subscribers. Therefore, the broadcasters should continue to define MSOs on a non-discriminatory basis. (Star)

3. There should be a uniform licensing procedure for all distributors and MSOs (subscriber thresholds, technical standards, financial requirements), but beyond that it should be a purely commercial decision as to whether to provide their signals directly. (USIBC)

4. The definition of "MSO" as contained in the Act should define a minimum threshold of the number of subscribers and other parameters for a Cable operator to be defined as a "Multi System operator" and for being entitled to receive signals directly from broadcasters. (ESPN)

5. No minimum number of subscribers should be fixed as this will block the advent of new entrants in this sector and also restrict the aspirations of existing cable operators from becoming a MSO thus directly making the existing even more powerful and assertive thus creating a monopolistic market environment which can hurt the consumers. (B.N.B. Cables)

6. Due to the diverse demographics of India it is difficult to specify the threshold number for the cable operator to be defined as MSO, the need of this definition is purely theoretical as MSO in present day also do the agreements to a great extent based on the head ends reach and then consolidate the same in one agreement. This may be left to the broadcaster.(ASC)

7. The correct technical definition of an MSO is any company /entity which operates multiple headends in different areas or across state or country. In addition there are large independent cable operators also who operate single headend (Control room), provide direct services to the subscribes as well as give their feeds to other LCOs who in turn provide signals to the consumers. In order to be eligible or entitled to receive signals

directly from the broadcasters the MSO /independent LCO should have at least 25 cable operators connected to its network with a minimum aggregate subscriber base of 3000 connections. (Siti Cable)

8. Broadcasters have been charging a minimum of 500 connections in urban areas and 300 for rural areas for MSOs; since they have adopted this business model the same be allowed to continue. (IMCL)

9. It is welcome step on the part of the Authority for the proposed amendment in the Interconnect Regulation as even one person / LCO claims to be the MSO and attempts to destabilize the existing system. The role of the MSO is critical and serious business as it otherwise affect to the quality of service. It is therefore proposed that there should be a minimum 50 LCOs and at least 5,000 subscribers base as a threshold limit to be qualified as MSO. (Hathway)

10. Broadcasters have been charging a minimum of 500 connections in urban areas and 300 for rural area for MSOs, since they have adopted this business model the same be allowed to continue. (COFI)

Issue for Consultation

Renewal of Agreements

- **Whether any time limit should be laid down for renewal of agreements prior to expiry of existing contract, so that in case the agreement can not be renewed, the subscribers get sufficient advance notice regarding discontinuation of those channels after expiry of existing contract?**
- **What arrangements should be made for extension of the contract during negotiations after the validity of a contract has expired?**

Comments Received

1. Yes**.** This should be approximately four weeks more than the period of notice for discontinuation. The situation, of extending the contract during negotiations after the validity of a contract has expired, can arise only when the service has not been interrupted even after expiry of the validity period of the agreement. A logical approach should be to continue the service and levy new negotiated rates retrospectively from date of expiry of previous agreement. Wherever the service has been interrupted, new rates should take effect from the date of restoration of a service. [Col V C Khare (Retd) - Cable TV Industry Observer]

2. The MSOs/cable operators who intend to renew their agreement should send a written request at least two months prior to the expiry of their existing agreement. Along with the written request the MSOs/cable operators must, inter alia, send the various information/documents, including (i) post office license, (ii) photograph of authorized signatory, (iii) address proof, (iv) photo identity, (v) charter documents, (vi) letter of

authority, (vii) no-dues certificate, and (viii) such other documents as may be desired by the broadcasters. The regulation should mandate these requirements, failing which the broadcaster must have the right to disconnect the MSO/Cable operators after the expiry of the agreement. Extension of contract without execution of a separate agreement should be strictly discouraged. If such extensions are permitted, that would in effect validate provision of signals by the broadcasters to unauthorized MSOs/cable operators. (Star)

3. No, TRAI should not set a time frame for renewing existing agreements. This is a business-to-business process that need not be regulated. In addition, setting a time frame for renewing agreements would necessarily entail introducing enforcement measures; such measures could be abused by one party or the other through stalling the renewal process. An arrangement for extension of contract during negotiations after contract expires can be determined either in the original contract or on an ad-hoc basis when a contract expires. A regulation, forcing particular conditions, would not be useful as such a regulation would have to be written in such a manner as to make provisions for a mandatory extension of the terms. Such a regulation would inevitably favor one side or the other after the expiration of a contract. (USIBC)

4. The Act / Rules should lay down a time limit for renewal of agreements prior to expiry of existing contract(s), so that in case the agreement cannot be renewed, the subscribers should get sufficient advance notice regarding discontinuation of those channels after expiry of the existing contract. After the expiry of the contract three months time for negotiations should be given and in this time the operator (MSO / LCO) should be made to pay on the then prevailing rate of the channel for the period during which they receive the services from the broadcaster at the last agreed subscriber base, until the contract is either renewed or services discontinued. (ESPN)

5. Yes a time frame for renewal of agreements prior to expiry of old contract should be laid down so that the subscribers do not suffer and get enough advance intimation in case of continuation of any channels. (B.N.B. Cables)

6. The renewal of the agreement should be done at least a month prior to the expiry of the previous agreement. In case the agreement is not closed with in the validity of the previous agreement and their has been no new habitation of the household in the area defined then the previous agreement should be kept valid and in the next thirty days if the same can not be concluded then the regulator should pass the order based on the facts presented with in the next thirty days, in this interim period the broadcaster or its distributor should not take any step to discontinue the services. (ASC)

7. Ideally, the agreement should be for a period of 3 years and the commercial terms can be renegotiated after expiry of 12 months period. The negotiations for settlement of commercial terms should start at least 30 days before the expiry of the 12 months period and an attempt should be made to settle the same before the expiry of said 12 months. If the broadcasters stipulate certain unreasonable terms, the distributor of channels can approach TDSAT immediately after the expiry of 12 months period and seek redressal. If TRAI prescribes a standard agreement then most of such disputes can be eliminated

and renewals can take place in a speedier manner. If the negotiations in a good faith continue even after the expiry of 12 months period / agreement as mentioned above, the same can be continued till the fresh commercial terms are settled for the new period and no disconnection be resorted to. Once the new commercial terms are settled they would automatically apply with effect from the date of start of new period.(Siti Cable)

8. Time limit of an agreement and their renewals should not be less than 1 year and extendable mutually thereafter. There is no legal provision that agreements end after one year and cannot even be renewed as this is a violation of must provide interconnect regulation. Ideally once the licensee has signed an interconnect agreement it should be for the period of license and any disconnection should be exception and not the rule and be allowed only if all other methods to resolve the dispute fail. If these contracts are not long term contracts then this business will be uncertain and investment in this business will never be safe and not only service providers but the consumers will have to suffer if they have to change their service provider every year. It is evident from many Court cases that whenever there is a renewal of an agreement, broadcasters send notices for enhancing the revenue on the threat of denial of services or deny to renew the contract. It is also a restrictive trade practice on account of broadcasters since they insists on signing of agreement on a fixed number of subscriber base for a year and for any change in the number of subscribers. They insist on signing new agreements. If there is an agreement then it should be for licensing or authorized distribution and the payment should be on the basis of declared subscriber base from time to time and not on annual contracts. For extension of contract, ideally, negotiations should start before 60 days so that 30 days are given for negotiations and 30 days to approach TDSAT if the parties fail to reach the agreement. (IMCL)

9. Till the time old agreement or oral arrangements are in place the continuity should be maintained. If there is a complete break down of negotiation then and in that case alone a notice of one month needs to be given by the broadcasters / MSOs to the MSOs / LCOs as the case may be and if the affected party rights are prejudiced then the affected party may approach the appropriate forum for adjudication. Till such time the parties to the Interconnect regime should be encouraged to enter into an agreement through dialogue. The Authority should give a clarification that the Oral arrangement / Oral Agreement should form part of the understanding in determining the inter-se relationship between the value chains in the system. The Agreement shall have a continuity at least for a period of 3 years and it is only the commercials like the function of the rate and number of subscribers or the negotiated lump–sum periodical subscription fees or number of channels as the case may be needs to be reworked at suitable interval of say 12 / 18 months. (Hathway)

10. Time limit of an agreement and their renewals should not be less than 1 year extendable mutually thereafter. There is no legal provision that agreements end after one year and cannot even be renewed as this is a violation of must provide interconnect regulation. Ideally once the licensee has signed an inter connect agreement it should be for the period of license and any disconnection should be exception and not rule and be allowed only if all other methods to resolve the dispute fail. If these contracts are not long

term contracts then this business will be uncertain and investment in this business will never be safe and not only service providers but the consumers will have to suffer if they have to change their service provider every year. It is evident from many Court cases that whenever there is a renewal of an agreement, broadcasters send notices for enhancing the revenue on the threat of denial of services or deny to renew the contract. It is also a restrictive trade practice on account of broadcasters since they insists on signing of agreement on a fixed number of subscriber base for a year and for any change in numbers of subscribers. They insist on signing new agreements. It is felt that if there is an agreement then it should be for licensing or authorized distribution and the payment should be on the basis of declared subscriber base. For extension of contract, ideally negotiations should start before 60 days so that 30 days are given for negotiations and 30 days to approach TDSAT if the party's fail to reach the agreement.(COFI)

Issue for Consultation

Conversion of FTA channels into Pay channels

- **Whether any advance notice should be stipulated for FTA channels turning into Pay channels, so that in case the service providers are unable to reach an agreement, the subscribers get sufficient advance notice regarding discontinuation of those channels from the date of their conversion into Pay channels?**

Comments Received

1. Yes, at least 3 months. [Col V C Khare (Retd) - Cable TV Industry Observer]

2. The FTA channels are converted into Pay channel to enable the broadcasters to collect subscription revenue from the MSOs/Cable Operators. Therefore, it would become imperative for the broadcasters to enter into discussions with the MSOs/Cable Operators prior to such conversion. If the broadcasters and the MSOs/Cable Operators are unable to reach an agreement, it should give a one week's notice to the broadcaster and the consumers in terms of Clause 4.1A of the Regulations. (Star)

3. It is safe to assume that the broadcasters and MSOs / cable operators will enter commercial negotiations well in advance of the conversion date from free to pay. However, should the parties be unable to reach agreement for the conversion, they should be left to negotiate the fate of the free channel at the expiration of their existing agreement. If TRAI is determined to set a notice period, then 7 days is reasonable. (MPA)

4. The Act should stipulate a time period of 2 months for giving advance notice for FTA channels turning into Pay channels, so that in case the service providers are unable to reach an agreement, the subscribers get sufficient notice regarding discontinuation of those channels from the date of their conversion into pay channels. (ESPN)

5. The FTA channels getting converted to pay should be transmitted through CAS on STBs in order to avoid any increase in Tariff of the Basic Services. Since this cannot be done in retrospect, it should be done to avoid/stop the growing number of pay channels in the basic tier in the future especially due to the non availability of the pay tier. This will also reduce the growing burden on the lower income group customers who are at present subsidizing the upper income groups since the cost of every new pay channel is being distributed equally to all the subscribers including to the ones that do not even watch them. For this purpose and for ensuring uninterrupted services to the customers an advance notice of minimum six months should be fixed. The said period is the minimum one during which customers will be able to exercise their option and the service provider will be able to assess the no. of boxes/investment required to roll out the pay tier service to roll out the STBs. This will truly help TRAI to keep the existing so called (distorted) basic tier cost in control while the pay tier pricing will be determined by the market forces helping the operators to gradually enter the CAS regime without being rushed thus achieving the voluntary CAS objective. (Ortel)

6. Yes at least 2 months notice should be stipulated for FTA channels turning Pay channels so that sufficient time is there to get in an agreement and in case of failure to do so subscribers get sufficient notice regarding discontinuation of those channels. (B.N.B. Cables)

7. Normally channels going from FTA to pay mode do so well in advance however they should communicate to the public at large at least six months in advance at monthly intervals that they are going pay. This will help the consumer also to understand that if the service is to be availed then he may have to start paying more. Channels should file their rates with the regulators with the MRP and the distribution margins in the same. (ASC)

8. At least 3 months advance notice should be given by an existing FTA channel which wants to convert into a pay channel so that the distributors of channels can negotiate the agreement with such channel and the consumers also become aware that they need to pay for a particular channel resulting in monthly increase in their cable bills. Simultaneously a tariff declaration also needs to be filed with TRAI which should be displayed by TRAI on its web site. (Siti Cable)

9. Six months advance notice. (IMCL)

10. Yes once in every quarter only and i.e. 01st April, 01st July, 01st September and 01st January every year with an advance notice of three months in order for the system to know well in advance and the information should be passed on to the value chain in the system. (Hathway)

11. Six months advance notice.(COFI)

Issue for Consultation

Reference Interconnect Offer

- **Whether an RIO should be issued by TRAI for approving the terms and conditions of model subscription agreements of dominant players and to regulate their activities in the broadcasting and cable TV services? If so, what should be the elements of such a model subscription agreement?**

Comments Received

1. Yes. Some suggested elements could be such as detailed lists of channels/programs pertaining to agreement, subscriber base as on date of agreement, negotiated rates for each channel to mention MRP to the end viewer and wholesale rate to be charged from the distributor, narration of circumstances causing interruptions, if any, resolution of disputes and obligations in case of interruptions, safeguards against unauthorized distribution/piracy and actions to be taken on their detection, provision for arbitration and demise of agreement, accountability of Broadcaster, and Indemnity to Distributor, in any case of violation of content and advertising codes, refunds to subscribers in case of interruptions in service by the broadcasters, bank guarantees by Broadcasters to guard against unjustified interruptions and provisions for cancellation of down linking registration in case regulations are flouted by broadcasters. It is very difficult to visualize a scenario where broadcaster/distributor relations will be un-disputed. Therefore, consideration is merited on 'Who should store these agreements'? Present staffing of TRAI does not meet the work load as such. Hence there may be a case for opening up a Cable TV Regulation wing with TRAI, or establishing CRAI (Cable TV Regulatory Authority of India) under the Ministry of I&B with adequate number of regional offices. [Col V C Khare (Retd) - Cable TV Industry Observer]

2. Broadcasters should be free to enter into commercial arrangement with MSO and cable operators which protect their interests. Such interests as the TRAI has already notified may be recorded orally, or reduced to writing in the form of subscription agreement. The RIO for telecom operators was issued by the TRAI given the incumbent monopoly of the state owned service provider. We would like to state that in the case of broadcasting this is not the case, and therefore, there is no need for an RIO to be issued. If however, the TRAI is of the view that it is imperative it could look at providing broad overview of what must be discussed between the parties before concluding a subscription agreement. (Star)

3. TRAI should not have an approval role for subscription agreements. This is tantamount to the government introducing a full regulatory regime for the sector, and would open the process to a level of regulatory involvement in the C&S sector seen in few if any countries. For the market to develop naturally, and for investors to understand the true value of any given market, there should not be any government intervention into commercial agreements. (USIBC)

4. The agreements are commercial agreements and the terms of the Agreement should be left to the freewill of the parties. No entity should have the right or power to force agreements. (ESPN)

5. This is the most important aspect of this Act and onus to end monopoly should be put on the broadcasters and the MSOs to appoint more than one operator in an area so that the consumers are not at the mercy of a single operator. (B.N.B. Cables)

6. There should be a Reference Interconnect Agreement as applicable and made effective in the area of Telecom. The defined principles should be such as: Declaration of Interconnect rates by the Broadcasters / MSOs and their publication on the TRAI website; Non Discriminatory application of such rates; Principles for provision of content within one month beyond any recourse on signing of agreement; Making Anti piracy measure of fingerprinting mandatory in the decoders which are provided; Making forced addressable Messaging mandatory to the particular operator and doing away with running of scrolls etc; Making web access for payments, accounting and authorizations mandatory for all the broadcasters and MSOs; Filing of monthly and yearly return by all Broadcasters and MSOs in the same pattern as prescribed by the FCC and Placement of all such data on the Web for access by all stake holders. (ASC)

6. The Hon'ble TDSAT in Petition No. 41C/2004 titled Star India Vs. IndusInd Media has mandated the execution of written agreements between the broadcasters and MSOs/cable operators as a mandatory requirement under the Interconnect Regulations. It is suggested that the TRAI should initiate a process for drafting and notifying the Standard Agreement for non-CAS areas which can be adopted by all the stakeholders as a model agreement and who can then either design/ align their agreements in accordance with the said model agreement stipulated by TRAI. The agreement should cover all the aspects of interconnection such as areas, subscriber base, mode of distribution, unauthorised distribution, content responsibility etc. Detailed inputs in this regard can be provided once TRAI initiates the process of formulating Standard Agreement. Siti Cable are of the view that Standard agreement should be formulated not only for Cable distribution but also for other distribution platforms. (Siti Cable)

7. RIO should be issued to regulate dominant players and the RIO should contain the elements such as the Authorization status/power; Area as asked for; Rate; Payment period; No of years; Transparency and Encourage competition and better services to the consumers. Till an RIO is finalized and also for the purpose of drafting an RIO, the issues need to be kept in mind are : MSO's cannot be made responsible for acts of cable operators / franchisee; there should not be a Minimum Guarantee provision; in case of negotiated subscriber base there should not be any need for provision of subscriber details / lists etc. and there should also not be any need for increase in subscriber base during the fixed term of the Agreement; in cases of Agreements on actual Subscriber base, a say 3 monthly revision (up or down) may be prescribed with a ceiling of say 5% both ways; industrial township should not be excluded from the Agreement; there should not be any restriction on expansion within the Service Area; Definition of Service Area should include both existing and new households within the demarcated service area; the

Agreement should be technologically neutral; situations for disconnection may be prescribed; uniform 30 days Notice Period may be prescribed in all cases except in case of piracy where notice period should be of seven days; it should be clarified that expansion within Service Area is not piracy; there should not be any requirement of provision of Maps; broadcasters should not be allowed to see MSO's Account Books/ Records; MSO's contractual relationship with other parties should not be the concern of the Broadcaster; Licensing etc. for content should be Broadcasters responsibility; it should clearly be provided in the "Must Provide Clause" that the channels / connectivity will be provided to the seeker thereof within a period of 30 days which period should include the period for all negotiations, communications including with the agents of the broadcaster or the MSO as the case may be and A La carte bouquet should be made available in all categories. (IMCL)

8. Yes. Only cover with the basic principles of the Indian Contract Act with rights and obligations for entering into the agreement, keeping the utmost interest of the consumers / end subscribers in mind. (Hathway)

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Issue for Consultation

Monopoly in the last mile

- **What steps need to be taken to ensure that the monopoly at the last mile is removed so that consumers can get choice?**
- **Should a regulatory framework be laid down wherein the areas of operation and the number of operators are clearly defined?**

Comments Received

1. It is incorrect to say that LCOs have monopoly. There is no prohibition against any one wanting to register for running a cable network. In near future, alternatives such as DTH and TV over IP will be available to viewers on Cable TV networks to choose between Cable TV, IP TV and DTH. Unless areas are auctioned like telecom circles, with investors also of that financial capability, the regulatory framework for laying down the areas of operation and the number of operators may not be feasible. In the system of registration with the post offices, area of operation of the applicant could be described with a representative sketch forming a part of the registration certificate. The registration authority could issue a consolidated map/sketch showing area of operation of each registrant and more than registrant in the same area, if any. [Col V C Khare (Retd) - Cable TV Industry Observer]

2. While this issue may be partially addressed with the advent of other distribution platforms, the monopoly in the last mile can only be addressed with the laying down of a clear cut licensing regime. The TRAI should immediately consider implementing a regulatory framework which will involve licensing of cable operators in territories across India, in a manner similar to that of telecom. The TRAI can lay down the frame-work for appointing licensees for cable for either all of India, or for particular parts of India. These areas could be demarcated state-wise, city wise, etc. The TRAI could then, as is the case with Teleco, permit one or more cable operators for each area of operation. The license fees to be paid by the cable operators would ensure that only serious players willing to invest for the long term would operate in this market. (Star)

3. The "last mile" monopoly is already being removed through the growth of DTH satellite TV service. TRAI should quickly move to develop a licensing framework for cable operators in India, forcing operators to report their subscriber base and area of operation. The status quo, an absence of a licensing framework, is a root cause of many of the issues raised by TRAI in this consultation. In addition, much needed investment and consolidation in the last mile is slowed as investors shy away from the fragmented, opaque market. (USIBC)

4. DTH satellite television service is in fact already providing effective competition to "last mile" cable operators, serving as much as 15% of the overall pay TV subscribes in some areas and adding subscribers at impressive growth rates. TRAI should consider the level of competition more closely via a consultation on this specific issue. (MPA)

5. There should be a licensing regime for this purpose like in the telecom sector. It must be ensured that there are two to three licenses for each area. This is the best possible way to ensure competition at the LCO level. For the purpose of convenience, a regulatory framework may be laid down. (ESPN)

6. No regulation is recommended to regulate the carriage or its terms. (ASC)

7. With the launch of DTH, Broadband and HITS, the so-called existing de-facto monopoly of the last mile operator would no longer exist. In such a scenario any regulation in this regard is unnecessary. It is pertinent to mention that multiple operators in an area of operations encourage competition and ultimately consumers would be benefited. Limiting or restricting the number of operators in an area would be detrimental to such competition, would be counter productive and should not be resorted to at all. (Siti Cable)

8. It is too late for the regulator to define the area of operation and the number of operators since this would be very complicated on all India basis as there are no marked areas of operation or the number of operators. The situation is different from area to area and city to city. For instance in South Delhi there are 5-7 MSOs and independent operators, competing with each other with no monopoly in any area. There are also places like Faridabad where a vertical integrated company has a virtual monopoly in every area including the last mile and so far no MSO has been able to make an entry. Till the time the content is made available fairly and freely to new entrants last mile monopoly will remain. In fact it is IMCL's contention that there is no monopoly as such as there are thousands of operators. On the other hand there can be a potential monopoly of three to four DTH platform providers who would like to provide exclusive content to the detriment of thousands of cable operators if there was no Interconnect Regulation (IMCL)

9. Choice comes only by way of the alternative platform like DTH, IPTV etc. and the so called monopoly in the last mile is a myth as there is enough competition in place. Defining areas of operation and the number of operators may be termed as anti competition and will lead to restrictive trade practice. Further it will be contrary to the Central legislation i.e. Cable TV Act, which provides license to operate in a particular Post Office jurisdiction / area. As long as he has the requisite Post Office license and Entertainment Tax Registration / Service Tax Registration and affiliation to any of the local MSOs is in place and he should give his true - full declaration and having valid Permanent Account Number under Income Tax Act (New Saral), the regulation can not have any conflicting view with the Central Government legislation and he should be entitled to provide signals to his total declared subscriber base.(Hathway)

10. There is no need for the regulator to define area of operation and number of operators since this should have been a part of licensing. In reality there is no monopoly in the last mile as any number of cable operators can register with post office to start a cable TV network. Monopoly is created only at the level of MSO/Broadcaster where

there are compromises and alliances working. Till the time the content is made available fairly and freely to new entrants last mile monopoly will remain. (COFI)

Issue for Consultation

Carriage fee regulation

- **Whether carriage fees on cable networks should be regulated? If so, on what basis should this be done and how should carriage charges be calculated?**
- **What should be the mechanism for ensuring that the ceiling for carriage charge is not exceeded?**

Comments Received

1. Carriage fee on Cable Network should not be regulated. Carriage fee should be restricted to the maximum of revenue charged from the distributor for PAY TV. Perhaps carriage fee for FTA could be capped at 25% of the maximum chargeable for PAY TV. This should best be left to Network owners because this is also related to quality of headend equipment and, network hardware and degree of conformity to IS 13420. [Col V C Khare (Retd) - Cable TV Industry Observer]

2. The relationship between channel supplier and MSO should be left to market forces with no justification for price regulation of either channel supply or carriage. Star India's view, however, is that regulatory parity requires that while the price freeze on channel supply and subscription fees exists, a ceiling and freeze should be placed on carriage/placement fees. Such ceiling may be specified in terms of Rupees per subscriber reached, as declared by the MSOs. This is required to remove the incongruity that while revenues of broadcasters remain frozen, the broadcasters' costs (in terms of carriage fees) can increase in any proportion and at any frequency. The MSOs should be required to file copies of their carriage agreements with the TRAI so as to enable verification of payment within ceiling limits. The TRAI may consider withdrawal of such ceiling on carriage fees at the same time as withdrawal of price freeze over channel supply and subscription rates. The carriage fees may be paid by the broadcaster to the large MSOs on per declared subscriber basis. This mechanism would ensure that the ceiling for carriage charge is not exceeded. (Star)

3. The relationship between channel supplier and MSO should be left to market forces. Hence, there is no justification for price regulation on other side of the exchange i.e. both channel supply or carriage rates are best left to commercial negotiations between the parties. (USIBC)

4. The relationship between channel supplier and MSO/cable operator is safely left to market forces given the degree of competition in the supply of programming. There is, therefore, no rationale for TRAI to impose price regulation on either channel or carriage rates. (MPA)

5. Application of carriage fees on cable networks must be regulated in the manner such as: (a) the stipulation of the amount of carriage fee should be rationalized, so that new entrants may not be discouraged, (b) the amount of carriage fee must be fixed at a reasonable amount for the initial months of launch of a channel, preferably a maximum cap be stipulated and (c) the new entrants should not be charged after a period of 2-3 years subsequent to their launch. (ESPN)

6. Regulation of Carriage fees is an undesirable phenomenon which has come into existence by the cable operators owing to the limited capacity of the cable plant. This is expected to give way to addressable systems. At present ASC do not recommend any regulations to regulate the carriage or its terms. (ASC)

7. It would be totally unreasonable if an attempt is made to regulate the carriage /placement fee so as to ensure the advertisement revenue of the channel. There is no regulation / restriction on the advertisement appearing on a TV channel or the rates thereof. These are governed by the market forces of demand and supply and also on the popularity and reach of the channel. The popularity and reach on the other hand depend upon the visibility of the channel. In order to ensure the said visibility, the placement fee is being paid by the broadcasters to the cable networks. There cannot be any regulation on such carriage /placement fee and in fact creation of more capacity on the cable networks by encouraging digitalization is the most viable and practical way instead of any attempt to regulate the same through some Regulation. Thus the carriage fee should be left to the mutually negotiated settlement between broadcasters and distributors of channels and no interference is called for from the Authority. (Siti Cable)

8. Carriage fee on cable networks cannot be regulated since it is a historical fact that carriage has come into this business for TRPs. Content carriers / broadcasters have agreed to pay placement fee so that they get good TRPs which in turn will get them better advertisement pie. They are paying placement fee from their share of advertisement pie to the cable operators and if there is no curb on advertisements on channels the same should apply to the sharing of that. If there is a control on advertisements to be carried on pay channels or carrying an advertisement on free to air channels, they will not pay carriage to the MSOs or cable operators since they will have no reason to pay placement fees. If broadcasters get more advertisements on their networks by virtue of being available on good frequencies on the cable networks, cable operators have every right to seek a part from that revenue. In today's situation cable operators are allowing broadcasters to use their network without getting anything in return (i.e. the margin on MRP, MSO bill, collect and pay on MRP). (IMCL)

9. No. Any regulation on carriage fees would lead to the multiplicity of disputes. Carriage Fees would be subject matter of negotiation and the same should be left with the market forces otherwise it leads to the lack of transparency/ encouraging bad/ malpractices. (Hathway)

10. Carriage fee on cable networks cannot be regulated since it is a historical fact that carriage has come into this business for TRPs. Content carriers / broadcasters have agreed to pay placement fee so that they get good TRPs which in turn will get them better the advertisement pie. They are paying placement fee from their share of advertisement pie to cable operators and if there is no curb on advertisements on channels the same should apply to the sharing of that. If there is a control on advertisements to be carried on pay channels or carrying an advertisement on free to air channels, they will not pay carriage to the MSOs or cable operators since they will have no reason to pay placement fees. If broadcasters get more advertisements on their networks by virtue of being available on good frequencies on the cable networks, cable operators have every right to seek a part from that revenue. In today's situation cable operators are allowing broadcasters to use their network without getting anything in return (i.e. the margin on MRP, LCOs bill, collect and pay on MRP). (COFI)