ANNEXURE I

ANALYSIS OF DRAFT TARIFF ORDER FOR NON ADDRESSABLE CABLE TV SYSTEMS.

IMCL is thankful to TRAI for the opportunity given in the release of the draft Tariff Order for the non addressable cable TV systems. It may be noted that along with TRAI, IMCL had also filed Civil Appeal against TDSAT order of 15.1.2009 which is still pending for hearing in Petition no. CA 1166-1169/2009. Without prejudice to rights and contentions of IMCL in the said appeals, para-wise response to the draft Tariff Order and the relevant paragraphs of the explanatory memorandum are given below:

NEED FOR WHOLESALE TARIFF:

The draft tariff order stipulates in clause 5, that Broadcasters will specify wholesale tariff rates and shall cause or offer to be caused all its pay channels on a la carte basis to distributors of TV channels using non-addressable systems and specify the a la carte rate for each pay channel. Further in case a Broadcaster provides pay channels as part of a bouquet consisting only of pay channels or both pay and FTA channels then such Broadcaster shall specify the rate for each such bouquet of channels offered by it. In the explanatory note in paras 18 to 28, the Authority has given detailed justification in favour of incorporating provisions of wholesale tariff and concluded that ***"given the lack of visibility on subscriber numbers in the market and subscribers lack of choice in the present analog system, if the pricing is left unchecked, there is a possibility that this could lead to higher prices for consumer."***

It is gratifying to note that the Authority recognizes in para 26 that the market dynamics as on date (December 2014) are more or less the same as that prevailed at that time the consultation process was carried out. The Authority notes that the Government has notified a time frame for digitization of cable TV sector by December 2016.

In view of these findings by the Authority, IMCL fully supports the incorporation of mandated wholesale tariff but hastens to point out that while the Authority has fairly noted certain regulatory interventions, resulting from tariff order amendment of 10.02.2014, it has not with respect noticed fully the impact of TDSAT judgement in the case of Star Sports India Limited versus Hathway Cable & Datacom Limited in Petition No.47 (C)/2014 and other linked cases.

In these judgements, the Hon'ble Tribunal indicated towards the end of its detailed judgement that the reference interconnect offer provides a common and transparent basis for all agreements for provision of interconnect services subject to regulation. The Hon'ble Tribunal further observed that the RIO may be said to define the parameters of negotiations for arriving at an agreement on mutually acceptable terms. Tribunal further noted that it may be argued that the RIO must contain the details and rates relating to the entire basis on which the maker of the RIO intends to enter into a negotiated agreement. But the Hon'ble Tribunal gave a significant finding as under:

"RIOs mostly give only a la carte rates and even those rates are fixed with reference to the maximum permissible under the tariff orders. But in reality the maker of the reference would be giving signal to most parties or at least its favoured ones at rates far lower than those stated in the RIO. In other words, the RIO rates are completely diverse from the market rates. The vast difference between the realistic market prices and the rate in the RIO gives the provider a free hand to quote a price much higher than the market price to a new seeker or one in this favour, a price that would be commercially unviable and force the seeker either to accept that price or accept the RIO".

While analyzing the DAS regulations, the Tribunal has stated that it is "constrained to observe that TRAI has failed to examine the rates quoted in the RIO submitted to it from the point of view indicated above".

In view of the observations, IMCL requests that as and when the tariff order is implemented, it must be made incumbent on Broadcasters to simultaneously notify both a la carte and bouquet rates and also simultaneously notify the list of pay channels and FTA channels as made available with effect from the date the new tariff order comes into force. Further, TRAI has, it is submitted, and sufficiently sweeping powers under 11(2) of the TRAI Act to not only examine the rates but where considered necessary issue directions to lower such rates where it considers it necessary, in larger public interest.

A LA CARTE OFFERING:

Clause 5 of the draft tariff order clearly specifies that every Broadcaster shall offer or cause to offer all its pay channels on a la carte basis to distributors of TV channels using non addressable systems and specify a la carte rate for each pay channel. IMCL fully welcomes this directive. It is stated in para 29 that while the draft tariff order annexed to the S.C. status report of July 21, 2010, had a provision to keep a la carte optional for Broadcasters, in the intervening period, the a la carte offering of channels by broadcasters has been mandatory with no specific major issues. The Authority has noted in para 29, in addition to a la carte offering, the broadcasters may offer bouquet of channels.

IMCL strongly urges that the draft tariff order be amended to state that where pay channels are offered as part of bouquet, a clear breakup be given of the bouquet price too. This is because in just one example where as particular broadcaster was offering his entire bouquet for Rs.35/-. The same broadcaster today offers the same bouquet at a total price of Rs.210/- whereby the MSO will not be able to adhere to the retail cap placed later in the same draft tariff order.

If the main objective of mandating a wholesale tariff is to ensure that as stated by the Authority in para 25, a completely new tariff regime will require renegotiation of contracts and determination of connectivity numbers afresh. In the light of this, while the mandate for a la carte offering is welcome, the bouquet rate should also be specified, so that where necessary TRAI can exercise its power u/s 11(2).

RETAIL TARIFF:

Discussion on national retail cap is done exhaustively between paras 30 to 49 of the explanatory note. Mention is made in para 39 of the development of the affordability linked retail price cap, developed through analysis of state-wise urban household consumption expenditure data as per NSSO survey. Further a national cap is found feasible in para 48 as it is easy to enforce and communicate to the consumer. On the face of it, this is perhaps the best solution as the country moves towards DAS.

However, if the approach taken by one Broadcaster to increase the wholesale rate from Rs.35/- to Rs.210/- for his package is adopted by other broadcasters too, the MSOs will unable to purchase the packages on wholesale basis at Rs.1800/- to Rs.2000/- for the entire lot of pay channels and will be unable to then adhere to the proposed retail caps as laid out in the draft tariff order. While there are no easy solutions, in view of the manifold increase in the wholesale price, one approach could be to increase the overall retail cap to at least Rs.350/-.

Also many a times in a bouquet offering Broadcasters mix their FTAs and total bouquet is a pay bouquet. To avoid this anomaly, Regulation should insist ala carte price for all channels, including FTA channels, if encrypted, should be informed of ala carte price, which is zero. This will enable to understand in a bouquet how the price is being arrived with limited number of pay channels.

REVENUE SHARE BETWEEN MSO & CABLE OPERATOR:

In para 50, the Authority has expressed the view that mutually negotiated arrangements should be continued between MSOs and Cable Operators to determine the charges paid by the Cable Operator to the MSO. IMCL is in broad agreement with this view.

BILLING:

On the issue of billing, the Authority has stated in para 51 that provisions have been made in the draft tariff order for issue of itemized bill to subscribers as well as acknowledgement made for payment by subscribers. This will have to be adhered to fully by the last mile operators and only partially by the MSOs only in respect of their direct points. It is urged that appropriate amendments be made in the Quality of Service regulations to permit electronic bills and receipts and also to allow both prepaid and post paid payments through any banking or mobile channel.

VOLUNTARY DAS:

On the issue of voluntary DAS, IMCL fully supports the Authority's directives that where a service provider is in a position to provide digital addressable services before the analog sunset date and has a digital license from the Ministry of Information & Broadcasting that the benefits of DAS tariff / interconnection and Quality of Service should be made available by Broadcaster. However, this may require amendment to section 4A of the Cable Television Act as in the past Broadcasters have been unwilling to allow voluntary addressability without a parliamentary mandate.

REPORTING REQUIREMENTS:

The reporting requirements for Broadcasters have been prescribed and explanatory note 54 expands the requirements. It is however requested that the Authority may consider updating its own website from time to time (say every quarter) for the full list of pay channels and FTA channels with their a la carte rates and bouquet rates on a regular basis so that the vast number of cable service providers and millions of consumers have a transparent information up to date base of the pay TV scenario in India.

****