RESPONSE of STAR DEN MEDIA SERVICES PRIVATE LIMITED ON THE CONSULTATION PAPER NO 151/2008 DATED DECEMBER 15,2008 ON INTERCONNECTION ISSUES RELATING TO BROADCASTING AND CABLE SERVICES.

Preamble

STAR DEN Media Services Private Limited ("**STAR DEN**") welcomes the initiatives of the Telecom Regulatory Authority of India ("Regulator")for providing an opportunity to the stakeholders to provide their views on the issues raised in the consultation paper no. 151/2008 dated December 15, 2008 on Interconnection Issues relating to Broadcasting and cable Services ("**Consultation Paper**").

The broadcasters' submissions have always been that the Regulator should leave price fixation, revenue sharing and related issues to market forces, more so now, with effective competition through Cable, DTH, IPTV and other new technologies becoming a reality. In fact, there have been significant developments in the sector in the last few years. The sector has grown tremendously across all delivery platforms. The market has matured swiftly with effective competition at all levels of the distribution chain. Today, there is intense competition amongst broadcasters as well, in terms of manifold increase in the number of channels. Pay channels not only compete with each other but also compete with FTA channels. Competition at all levels has thrown open a whole lot of choice to the consumers in terms of channels as well as delivery platforms.

These developments clearly calls for deregulation of the sector and pave the way for free market forces to take over the sector. We respectfully submit that continued over regulation will undo the growth that has ensued over the years.

In fact, if one were to analyze the growth that has taken place in the market, it will emerge that the addressable platforms have grown without any regulatory intervention as against the over regulated analog and CAS markets. This is even borne out in the Consultation Paper where the Regulator has observed
Quote

"Voluntary CAS in non –cas areas is already being rolled out in different pockets across the country because of competition from DTH. There are some industry estimates that nearly one million Set Top Boxes have been deployed in non-cas areas of the country, as against 0.7 million in CAS areas"

Unquote

This clearly establishes that competition is driving digitalization and addressability without any regulatory intervention.

In this context, it is pertinent to compare the growth of digitalization in the market driven non cas areas, with the over regulated CAS areas. We respectfully submit that despite over regulation and controls penetration of boxes in CAS areas have been dismal. As can be seen above, it is much lower than the boxes seeded in non cas areas. There is utter chaos in the CAS areas with rampant piracy, huge payment defaults and system failures. Most of the MSOs who were issued permission by the government are not ready even today to roll out CAS. Even those MSOs who have rolled out the system have not been able to successfully implement CAS resulting in complete failure of CAS in the notified areas.

In the light of the above, we recommend that the Regulator must work towards a gradual phase out the current regulatory controls and focus on creation of a robust system which encourages stakeholders to embrace a self regulatory regime.

We further submit that TRAI should bear in mind that any decision to rely on market forces to control prices and interconnection in the sector does not completely exclude regulatory influence. The threat of re-regulation/regulatory intervention will always place a very significant restraint on industry players. It is difficult to envisage players "whimsically" increasing prices to unjustifiable levels after removal of tariff regulation as it would be counter-productive to their preference for pricing flexibility to risk re-regulation/intervention. Of course prices may go up or down, but that is an essential feature of any market, to follow costs.

Against this background we are furnishing herewith our response to the issues raised in the Consultation Paper.

Issues for Consultation

6.2 Interconnection for Addressable Platforms

6.2.1 Whether the Interconnection Regulation should make it mandatory for the broadcasters to publish Reference Interconnect Offers (RIOs) for all addressable systems, and whether such RIOs should be same for all addressable systems or whether a broadcaster should be permitted to offer different RIOs for different platforms?

- At the outset, we submit that the very objective of addressability, as also observed by the Regulator in the Consultation Paper, is to bring in digitalization and offer choice to consumers. The Regulator would agree that in order to receive quality digital services coupled with addressability, the subscribers/consumers have to carve out additional spend towards subscription charges. Today the consumer has 350 channels to choose from (with more on the pipeline) as against 90 channels in 2004. It would be unrealistic to regulate the sector on the premise that customers should be provided all the additional channels through digital mode at the same charge as in the analog market. Enhanced quality and additional services cannot come free of cost. As the Regulator is aware, in the analog market the cable charges to the end consumer is a factor of under declaration and cross subsidies that are prevalent in the market. It would be impractical to regulate interconnection issues for addressable system basis these highly distorted factors. Interconnection issues for addressable system should be dealt with independently on the basis of the factors and characteristics that are typical to these systems. In any event addressability will enable consumers to exercise choice of channels basis their needs which fits in their means/income. It would be unrealistic to assume that consumers should be provided a Mercedes at the cost of a santro car.

- Another aspect which is highly relevant and needs the attention of the Regulator for voluntary CAS is the continued monopoly at the last mile. Even while there are approximately 10 major MSOs and 25000 LCOs on ground, the consumer has no choice at the LCO level. For example if the consumer today is not satisfied with the LCO, he has to either move to alternate delivery platform like DTH or shift his residence in search of the best LCO. It is therefore imperative that the Regulator focus on this area to promote competition at the last mile level to ensure that the benefits of the regulation actually flows down to the end consumer. Over regulation at the wholesale level without any efforts to promote competition at the last mile level will not yield the desired results.

- We submit that in order to enable a robust system, the Regulator must bring about regulations which are uniform, well balanced and serves the purposes of all stakeholders. If the Regulator were to do a detailed survey of the impact of regulations in the CAS areas and the analog markets it will emerge that these have been ineffective in serving its objective and in fact counter productive in some cases.

- In the light of the above, we submit that in order to facilitate a smooth transition to total addressability across the country, we support the Regulator's suggestion of RIO concept for all addressable platforms. The RIO will serve as a framework for commercial negotiations amongst stakeholders and will also bring in transparency and fair dealing amongst them.

- We further submit that since all addressable platforms work on similar models, the RIOs should be uniform for all addressable systems with respect to the commercial terms in order to create a level paying field. However, with respect to technical/operational specification the RIO may differ so as to incorporate sections/clause typical to the concerned platform.

- Even while the HITS Operators and the voluntary cas operators argue that since their systems involve an additional stake holder i.e the Local Cable Operators ("LCOs"), hence a different RIO for them, we submit that the LCO's are nothing but dealers of the MSO's which is prevalent in DTH/IPTV platform as well. The function of an LCO's is to seed boxes of the Multi System operators ("MSOs") and collect monies from consumer homes which is what a dealer does typically in the DTH/ITV platform. We therefore see no reason for the broadcasters contribute to the distribution cost of the MSOs and HITS operators.

6.2.2 Is there any other methodology which will ensure availability of content to all addressable platforms on non-discriminatory basis?

- We respectfully submit that the complaints of a sole HITS Operator and the IPTV Operator cited by the Authority in the Consultation Paper, that they are facing difficulties in

acquiring content from broadcasters is unfounded. Broadcasters have always been keen make their content available across all delivery platforms to ensure maximum reach for their channels. In this context, it is important to note that until recently till the government notified the IPTV guidelines, the IPTV Operators were not even authorized to commercially launch their IPTV systems. In fact, in the case of HITS, the government is yet to notify the regulatory framework.

- In the light of the above, we submit that the RIO model as above, is highly adequate to ensure availability of content to all addressable platforms on non-discriminatory basis. The Regulator must refrain from over regulation on the basis of complaints received from few operators. Over regulation acts as a deterrent to commercial negotiations.

6.2.3 What should be the minimum specifications/ conditions that any TV channel distribution system must satisfy to be able to get signals on terms at par with other addressable platforms? Are the specifications indicated in the Annexure adequate in this regard?

- We recommend pre certification from a reputed approved agency, certifying that the concerned channel distribution system is fully compliant of the specifications stipulated under law/contracts.

- In this context, it is pertinent to draw the attention of the Regulator to conditional access systems in the CAS areas. Even while, broadcasters were mandated to execute Standard Interconnection Agreements with all Multi System Operators ("MSOs") who have been issued permission by the Ministry of Information and Broadcasting ("MIB"), its been observed that barring a few, majority of the MSO's continue to have inadequate systems. The systems of the MSO's are not ready to even send the mandated subscriber reports. In the absence of Subscriber Reports the broadcasters are unable to even raise invoices for payments resulting in huge loss of revenues. Even the subscriber reports which are being furnished are incomplete and inadequate. Piracy is rampant with signals spilling over to non cas areas and in some cases signals are not even encrypted. Despite these inadequacies, the broadcasters are compelled to provide

content to these distribution systems at the cost of exposing their intellectual property rights to copyright infringements and revenue losses.

- We submit that the Regulator must ensure that distributor of TV channels having incompetent systems must not be entitled to signals on a "Must Provide" basis. The Regulator must mandate pre certification of readiness and competence of systems by approved agency as a pre requisite for seeking signals from the broadcasters.

- While standard specifications as contained in the Annexure can be set as minimum standards for addressable systems, in the current dynamic technical environment where innovation is a continuous process, broadcasters should be allowed to incorporate additional specifications in order to protect their intellectual property rights and ensure transparency in subscriber numbers.

- Currently in both CAS and DTH, the Subscriber Reports provided by the operators are highly inadequate and incomplete. There is no reverse integration between CAS and SMS which exposes the systems to manipulation of subscriber numbers. Despite being addressable systems the broadcasters are not being paid for the actual number of subscribers who subscribe for their channels. The Regulator would appreciate that from the broadcasters perspective, addressability paves the way to broadcasters receiving their fair share of subscription revenue, basis the actual number of subscribers as against the rampant under declaration prevalent in analog markets. In this context it is relevant to mention that in both CAS and DTH systems subscriber numbers for which broadcasters are paid dose not reflect the actual subscriber numbers reported by these platforms to the other agencies. This frustrates the very purpose and essence of addressable systems.

- In the light of the above, we recommend that that the Regulator mandate the specifications stipulated in the Annexure as minimum specifications with the following addition to the specifications to CAS and SMS Requirements:

"The SMS and CA should have capabilities of reverse integration so that all subscriber entries that are made through the CAS should reflect in the SMS of the operators."

6.2.4 What should be the methodology to ensure and verify that any distribution network seeking to get signals on terms at par with other addressable platforms satisfies the minimum specified conditions for addressable systems?

- We recommend rating of the system by the approved agency appointed for pre certification of systems.
- Any distribution network which does not have a minimum stipulated rating of the approved agency, must be disqualified from acquiring content from the broadcasters on "must Provide" basis.

6.2.5 What should be the treatment of hybrid cable networks in non-CAS areas which provide both types of service, i.e., analogue (without encryption) and digital (with encryption) services?

- Currently, the hybrid cable networks in non –cas areas which provide both analog and digital services, use separate Integrated Receiver Decoders ("IRDs") of broadcasters to retransmit channels analog and digital homes. However, the digital signals that go to consumers/subscribers through the Set Top Boxes (STBs) are not encrypted. They are merely digital signals and STBs are used just as a tool to receive more channels. Strictly speaking this is not voluntary –cas for the reason that in the absence of encryption the STB's of one MSO can be used to receive signals of another MSO. This can again lead to manipulation of subscriber numbers.

- In the light of the above, we recommend that the Regulator mandate that these hybrid networks must provide only encrypted digital signals to its subscribers. Unless encryption is mandated and implemented, the very purpose of voluntary cas is defeated.

- Broadcasters and MSOs must execute separate agreements with distinct terms and conditions for analogue and digital services with separate consideration.

- MSOs must be prohibited from using the IRDs provided to retransmit signals to analog subscribers for providing signals to digital subscribers and vice versa.

6.2.6 Whether there is a need to define "Commercial Subscribers", and what should be that definition?

- For addressable platforms the Regulator must do away with the two classes of Commercial Subscribers that has been created in the analog cable.

- The current DTH Regulations does not impose any tariff restrictions at both wholesale and retail levels. In line with the same, Regulator must allow complete forbearance with respect to pricing of all types of Commercial Subscribers. Broadcasters must be allowed to devise a rate card for different categories of Commercial Subscribers. Commercial Subscribers derive greater value from the channel services, since the services are availed by them not for their self use but for the purpose of its clients, customers. The television channels or programmes may not be sold as a stand alone service by commercial establishments, but as a means of entertainment to do possess the potential to give an enhanced value to their packages services. Commercial establishments avail the services of the channels in order to attract clients, customers to enhance his gain. Therefore they do not need any tariff protection. In this context, it is pertinent to note that the Hon'ble Bombay High Court in the case of Bombay Hospital Trust and others vs State Of Maharashtra, upheld the demand for entertainment duty in respect of the cable television network in the premises of the Hospital.

- We recommend the following definition for Commercial Subscribers.

  "Commercial Subscribers" means any subscriber including an individual, group of persons, public or body corporate, firm or any organization or body, who receives a programming service at a place indicated by him to a service provider and uses such signals for the benefit of his clients, customers , members or any other class or group of persons. The person may include, but is not limited to Hotels including Public Viewing Areas, Restaurants, Bars, Coffee

shops, banks, hospitals and other commercial establishments.

6.2.7 Whether the Broadcasters may be mandated to publish RIOs for all addressable platforms for Commercial Subscribers as distinct from broadcasters' RIOs for non-Commercial Subscribers?

- Subject to free pricing as explained above, we are agreeable to publishing distinct RIOs with distinct rate for Commercial Subscribers of all addressable platforms.

6.2.8 Whether the regulation should mandate publishing of Reference Interconnect Agreements (RIAs) for addressable systems instead of Reference Interconnect Offers (RIOs)?

- We do not support the concept of publishing Reference Interconnect Agreements (RIAs). The existing regime of RIOs provides a framework and basis for commercial negotiations between stakeholders which finally culminates into a mutually negotiated contracts.

- The very essence of an agreement is free flow of negotiations. A contract per se is a consensual act and the parties are free to settle any terms as they please. Mutual negotiations between the parties before entering into contracts form an essential part of the contracting procedure. The freedom of parties to contract cannot be taken away or done with. If regulatory authorities were to regulate agreements it will frustrate the essential element/pre-requisite of any contractual relationship. In the absence of freedom in making of the contract, the relationship cannot be described as a contract at all.

- In fact even the TRAI Act, recognizes the importance of freedom to contract for the Act does not empower the Regulator to mandate RIAs. In exceptional circumstances if any distributor of television channels has any issues/disputes with respect to any clause imposed by the broadcasters in the agreements, the TRAI Act provides for an appellate mechanism for resolution of such disputes.

- We therefore respectfully submit that the Regulator must not foster RIAs on the basis of complaints of few operators and must take a holistic approach. In this context it is

necessary to mention that the Regulator must not overlook the fact that the proportion of operators who have not been able to acquire content is negligible and almost nil. The Regulator would agree that disputes are bound to emanate in this dynamic economic environment. Mandating RIAs will not bring about an ideal state of perfect harmony in the sector. On the contrary it will lead to more disputes and will result in wiping out the very system of commercial negotiations which is the core of the free trade. This aspect has been upheld by several courts including the Hon'ble TDSAT.

6.2.9 Whether the time period of 45 days prescribed for signing of Interconnection Agreements should be reduced if RIOs are replaced by RIAs as suggested above?

- In the light of our comments above on the concept of RIAs, we do not recommend any reduction in the time period of 45 days.

6.2.10 Whether the regulation should specifically prohibit the broadcasters from imposing any kind of restrictions on packaging of channels on an addressable platform?

- As Star Den, we submit that our DTH RIO does not impose any kind of restrictions on packaging of channels by DTH Operators.

- While the DTH RIO provides the framework for negotiations, it also allows mutually negotiated deals.

- If the parties mutually agree to certain terms including packaging, there cannot be a prohibition of the same in law. For instance, if a broadcaster agrees to offer certain discounts to DTH operators on the rate with a corresponding offer from the DTH operators for higher subscriber numbers through packaging, law cannot prohibit the same.

- The distributors of addressable systems cannot take a position that, while on one hand they want discount on the RIO rates and on the other hand they also want freedom in packaging. We submit that the subscription revenue is a factor of rate and subscriber numbers and packaging of channels by the DTH operator have direct bearing on the

subscriber numbers and hence the overall revenue. The whole process is a cycle and the DTH Operators cannot demand huge discounts in rates without corresponding subscriber numbers. We respectfully submit that the Regulators intention can never be to allow distributors of addressable systems to indulge in "cherry picking" by choosing terms of the RIO which suits them and discard terms which do not benefit them. It has to be either the concerned distributor adopts the terms of RIO in totality or discharges his obligations under a mutually negotiated contract.

- Further, we wish to submit that the principle of "non discrimination" has to be applied through the entire distribution chain. The intention of the Regulator can never be selective application of the principle. Its been noted that some DTH operators often resort to discriminatory packaging of channels to its DTH subscribers by incorporating some of the channels in preferential basic tiers and incorporate directly competing channels in expanded basis tiers. This practice, we respectfully submit is highly unfair and only encourages discrimination by the distributors against the broadcasters for commercial gain.

- In the light of the above, we submit that the regulation should not prohibit the broadcasters from imposing any kind of restrictions on packaging of channels on an addressable platform.

6.2.11 Whether the regulation should specifically prohibit the broadcasters from imposing any kind of restrictions on pricing of channels on an addressable platform?

- We submit that in any event resale price maintenance is a restrictive trade practice and is void under the Indian competition laws. Hence, the broadcasters cannot impose any restrictions on pricing of channels on an addressable platforms.

- Having said this, we submit that the Regulator must not resort to controlling prices only for the broadcasters at the wholesale level and leave the retail pricing to market forces for this will amount to inequity with no benefits to end consumer.

- Currently, as explained above, there is sufficient competition at both wholesale and retail level. Hence both broadcasters and addressable platforms cannot afford to over price their services which clearly justifies the case for no intervention in pricing at both all levels of the distribution chain.

6.3 Interconnection for non-addressable platforms

6.3.1 Whether the terms & conditions and details to be specifically included in the RIO for non-addressable systems should be specified by the Regulation as has been done for DTH?

6.3.2 What terms & conditions and details should be specified for inclusion in the RIO for non-addressable systems?

- We respectfully submit that in the light of the order of the Hon'ble TDSAT dated 15th January 2008, setting aside the Tariff Order dated 4th October 2007, these issues are no more relevant.

6.4 General Interconnection Issues

6.4.1 Whether it should be made mandatory that before a service provider becomes eligible to enjoy the benefits/ protections accorded under interconnect regulations, he must first establish that he fulfills all the requirements under quality of service regulations as applicable?

- Yes. Fulfillment of quality of service (QOS) regulations must be mandated to be a pre requisite to seek protection/benefits of the interconnection regulations. In fact, no service provider of addressable systems must approach the broadcasters unless they can through a certificate from approved agency establish that they are in compliance of the quality of service regulations. In the event the concerned service provider is in breach of the quality of service regulation, the appropriate statutory authorities must revoke the license/permission issued to the service providers who are in violation of the quality of service obligation. This should be made applicable to the existing addressable platforms as well.

- It is imperative to make QOS obligation as part of the license/permission conditions. Similarly, the down linking

guidelines must not allow broadcasters to provide signals to service providers who are in breach of QOS regulations.

- In order to ensure orderly and uniform growth, it is important for the Regulator to effectively implement regulations across the distribution chain. No legislation can achieve its purpose unless it is implemented in greater zeal.

6.4.2 **Whether applicability of clause 3.2 of the Interconnect Regulation should be restricted so that a distributor of TV channels is barred from seeking signals in terms of clause 3.2 of the Interconnect Regulation from a broadcaster for those channels in respect of which carriage fee is being demanded by the distributor of TV channels from the broadcaster?**

- Yes. The applicability of clause 3.2 of the Interconnect Regulation should be restricted so that a distributor of TV channels is barred from seeking signals in terms of clause 3.2 of the Interconnect Regulations from a broadcaster for those channels in respect of which carriage fee is being demanded by the distributor of TV channels from the broadcaster.

6.4.3 Whether there is a need to regulate certain features of carriage fee, such as stability, transparency, predictability and periodicity, as well as the relationship between TAM/TRP ratings and carriage fee.

- We submit that carriage and placement fee have shot through the roof in the last three years with launch of numerous new channels and continuing band with constraint in the analog market. Huge monies are being spent by the broadcasters for not just carriage of channels but also placement of the carried channel at a preferred frequency.

- The carriage and placement market today is approximately worth 1400 crores.

- While carriage fee is a worldwide phenomenon, unlike India, subscription fee is not regulated in other countries. Hence there is a free market play for both subscription as well as carriage fee. In India since the pay channel rates

are highly regulated in the analog market, this creates a certain amount of anomaly on ground.

- In the light of the complexities involved, while we believe that there needs to be some amount of regulation on carriage fee, we recommend that the Regulator must achieve this purpose through a separate consultation process and through a process of constitution of a core consultative committee comprising all stakeholders to come up with a workable balanced mechanism.

6.4.4 If so, then what should the manner of such regulation be.

- In the light of our response to 6.4.3, no comments provided.

6.4.5 Whether the standard interconnect agreement between broadcasters and MSOs should be amended to enable the MSOs, which have been duly approved by the Government for providing services in CAS areas, to utilize the infrastructure of a HITS operator for carriage of signals to the MSO's affiliate cable operators in CAS areas?

- At the outset, we submit that the regulatory framework with respect to HITS Platform is yet to be notified by the Government on the basis of the recommendations of the Regulator dated 17th October 2007.

- The current license conditions clearly prohibits the HITS operators from either directly or indirectly assigning or transferring its rights in any manner to any other party or sub-licence/ partnership relating to any subject matter under the licence. Under the current system of HITS, HITS operator contracts with different broadcasters for buying content, aggregates the same at an earth station and then uplinks with his own encryption to a satellite hired by him in the sky. The uplinked channels are then permitted to be downlinked by the cable operators using large dish antenna for onward distribution through last mile cable network to the TV homes. In this case the HITS operators works like a conventional MSO.

- Unlike in the CAS areas, in the current method of HITS system, there is no privity of contract between the MSOs' and broadcasters. The broadcasters execute agreements

with the HITS licensor for content and not the MSO's. The HITS operator in turn executes contracts with the MSO's/cable operators. **Hence, it would incorrect and beyond the scope of existing legal/regulatory framework to amend the standard interconnect agreement for CAS areas between broadcasters and MSO's to utilize the infrastructure of a HITS operator for carriage of signals to the MSO's affiliate cable operators in CAS areas.**

- Moreover, it is unclear as to whether the permission of the government permitting MSO's to operate in the CAS areas , allows MSO's to retransmit signals in the CAS areas through the satellite based HITS system.

- In the absence of clear regulatory framework, we recommend that the Regulator must refrain from making any changes to the standard interconnection agreement for CAS areas.

6.4.6 Whether the standard interconnect agreement between broadcasters and HITS operators need to be prescribed by the Authority, and whether these should be broadly the same as prescribed between broadcasters and MSOs in CAS notified areas?

- No. We do not recommend prescription of standard interconnection agreement ("SIA") between the broadcasters and HITS operators by the Authority for the reasons enumerated in 6.2.8. The Authority must uphold the principles of freedom to contract and refrain from prescribing standard agreements which vitiates the objectives of commercial negotiations.

- It is submitted that the SIA was notified for CAS areas by the Regulator as a special case in order to implement CAS as per the order of the Hon'ble Delhi Court. The Regulator have in several forums including tribunals and courts represented that the SIA prescribing revenue share margins amongst stakeholders and the MRP of Rs 5/- for CAS areas is for a limited period for limited areas. Hence, to extend the same methodology to HITS platform would in our respectful submissions amount to over regulation and would make HITS a non starter like CAS.

- Moreover, HITS is an alternate form of satellite based addressable system. Hence, the uniform RIO system should be adequate for HITS platform as well.

6.4.7 What further regulatory measures need to be taken to ensure that DTH operators are able to provide six month protection for subscribers as provided by Sub clause (1) of Clause 9 of the Direct to Home Broadcasting Services (Standards of Quality of Service and Redressal of Grievances) Regulations, 2007?

- We submit that the agreements between broadcasters and DTH operators are very limited in number. On the contrary number of agreements between the DTH operators and their subscribers are unlimited and run into millions. It is not feasible to match the few agreements between broadcasters and DTH operators with the unlimited subscriber contracts.

- We further submit that any regulatory measures in this regard should specifically protect broadcasters rights to disconnect signals of channels to DTH operators for breach of contractual obligations lest the DTH operators will use it to their advantage. In fact the DTH Operator must be required to disclose this in its agreement with the DTH subscribers.

6.4.8 Towards this objective, should it be made mandatory for broadcasters to continue to provide signals to DTH operators for a period of six months after the date of expiry of interconnection

- In the case of expiry of interconnection agreement between broadcasters and DTH operators, broadcasters may continue to provide signals to DTH operators subject to the broadcasters discharging its obligations under the erstwhile expired agreement during these six months period. Subsequently, when the new agreement is executed, the terms of the same should be made applicable from the date of expiry of the erstwhile agreement and not from the date of execution of the renewal.

6.5 Registration of Interconnection Agreements

6.5.1 Whether it should be made mandatory for all interconnect agreements to be reduced to writing?

In order to ensure transparency and promote organized growth of the sector, we recommend that the Regulator mandate that all interconnect agreements be reduced in writing.

6.5.2 Whether it should be made mandatory for the Broadcasters/ MSOs to provide signals to any distributor of TV channels only after duly executing a written interconnection agreement?

- Yes. It should be mandatory for the broadcasters/MSOs to provide signals to any distributor of TV channels only after duly executing a written interconnection agreement. Similarly, the regulations should mandate that all amendments/modifications to agreement should be reduced in writing and shall not take effect unless it is executed in writing. This will lead reduce the numerous disputes between stakeholders inter alia on issues with respect to area violation/encroachment, subscriber base disputes.

6.5.3 Whether no regulatory protection should be made available to distributors of TV channels who have not executed Interconnect Agreements in writing?

- No regulatory protection should be made available to distributors of TV channels who have not executed interconnect agreements in writing. This will to a great extent help broadcasters contain/eliminate piracy/unauthorized cable casting of their channels by distributors of TV channels in unauthorized areas and to unauthorized operators.

6.5.4 How can it be ensured that a copy of signed interconnection agreement is given to the distributor of TV channels?

- Yes. Copy of signed interconnection agreement must be given to the distributor of TV channels.

6.5.5 Whether it should be the responsibility of the Broadcaster to hand over a copy of signed Interconnect Agreement to MSO

or LCO as the case may be, and obtain an acknowledgement in this regard? Whether similar responsibility should also be cast on MSOs when they are executing interconnection agreements with their affiliate LCOs?

- In case of deals with addressable platforms like DTH where the players are currently limited to a few in numbers, the practice has always been to execute agreements in two sets for either parties.

- In the case of analog markets where the number of agreements run in thousands and a standard pre printed format is signed at the several dealer points of the broadcasters spread across the country, it is not practicable to hand over agreements to distributor of TV channels immediately on execution. However, the distributor of TV channels maybe handed over a Xerox copy of the agreement executed by them with acknowledgment. Subsequently, once these agreements are executed by the authorized signatories of the broadcasters, the broadcasters can dispatch copy to the distributor of TV channels by registered post. The Distributor must acknowledge receipt of signed copy within 7 days from the date of receipt of the executed agreement. In the event the distributor does not acknowledge receipt, it will be deemed to have received the agreement.

- A time limit of say 45 days may be stipulated to complete the process.

6.5.6 Whether the broadcasters should be required to furnish a certificate to the effect that a signed copy of the interconnect agreement has been handed over to all the distributors of television channels and an acknowledgement has been received from them in this regard while filing the details of interconnect agreements in compliance with the Regulation?

- Certification by broadcasters is a cumbersome process at the time of filing the details of interconnect agreements is a cumbersome process. We recommend that in the event, any distributor of TV channels makes a specific complaint, compliance of aforesaid process may be established in such cases.

6.5.7 Whether the periodicity of filing of Interconnect agreements be revised?

- We recommend that the periodicity of filing of interconnect agreements be revised from the current quarterly to half yearly.

6.5.8 What should be the due date for filing of information in case the periodicity is revised?

- It may be filed by on the basis of financial year say 30th of April each and 31st October.

6.5.9 What should be a reasonable notice period to be given to the Broadcaster/ DTH operator as the case may be, by the Authority while asking for any specific interconnect agreements, signed subsequent to periodic filing of details of interconnect agreements?

- We recommend notice period of one month.

6.5.10 What should be the retention period of filings made in compliance of the Regulation?

- We recommend retention period of one year from the date of filing or expiry of the agreement whichever is earlier.

6.5.11 Whether the broadcasters and DTH operators should be required to file the data in scanned form in CDs/ DVDs?

- This is not practical and is highly cumbersome. Further this is not cost effective as the agreements are valid only for one year and they are in standard formats.

6.5.12 Whether the interconnection filings should be placed in public domain?

- We do not recommend placing of agreements in public domain for the same will amount to breach of confidentiality obligations stipulated in the agreement.

- The principles of commercial confidentiality is envisaged in the TRAI Regulations, the Right to Information Act and also followed by all statutory authorities like the designated

authorities of anti dumping. Allowing placing of sensitive commercial interconnection filings in public domain will result in stakeholders misusing the same for commercial gain.

- The Regulations already empowers the Regulator to dissemination of confidential information if in its opinion the disclosure of the information is in public interest.

- In any event, the TRAI Act provides for an appellate tribunal i.e TDSAT which can in the right case call for agreements when discrimination is alleged by any distributor of TV channels.