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Ref.: Consultation Paper on the Draft Telecommunication (Broadcasting and Cable Services) Interconnection (Addressable Systems) Regulations, 2016 ("**Consultation Paper**").

Dear Sirs,

We, TV18 Broadcast Limited, appreciate the opportunity afforded by the TRAI to stakeholders to participate in the consultation process with respect to the Consultation Paper dated October 14, 2016.

Set out below are our preliminary response and views taking into consideration the immediate interest of the subscribers, of which TRAI is the custodian.

In the above context, and due to paucity of time (in view of TRAI's deadline to file responses to the Consultation Paper), we attach herewith at **Annexure A**, below, our preliminary responses to the Consultation Paper on behalf of TV18 Broadcast Limited and its subsidiaries, Viacom 18 Media

Private Limited, AETN18 Media Private Limited, Panorama Television Private Limited and IBN Lokmat News Private Limited for TRAI's kind consideration.

For any further clarification you may write to us or contact us.

By way of abundant caution we state that the present response is not, and is not intended to be, a complete statement of the facts or law as they may pertain to this matter or of our position, rights or remedies, legal or equitable, all of which are specifically reserved by us.

Yours Sincerely,
For **TV18 Broadcast Limited**

Authorized Signatory

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ANNEXURE A

PRELIMINARY RSPONSES ON BEHALF OF TV18 BROADCAST LIMITED AND ITS SUBSIDIARIES, VIACOM 18 MEDIA PRIVATE LIMITED, AETN18 MEDIA PRIVATE LIMITED, PANORAMA TELEVISION PRIVATE LIMITED AND IBN LOKMAT NEWS PRIVATE LIMITED TO THE DRAFT TELECOMMUNICATION (BROADCASTING AND CABLE SERVICES) INTERCONNECTION (ADDRESSABLE SYSTEMS) REGULATIONS, 2016 DATED OCTOBER 14, 2016

TRAI had had issued the Consultation Paper on interconnection framework for broadcasting TV services through addressable systems on May 4, 2016, and sough comments from all the stakeholders on a number of issues related to interconnection between different service providers and the terms and conditions related to interconnectivity. Our agent, IndiaCast Distribution Private Limited had submitted its response on June 10, 2016, and had given its perspective along with detailed reasoning on each of the issues.

In furtherance of the responses received by TRAI from the stakeholders, TRAI has issued the present Draft Telecommunication (Broadcasting And Cable Services) Interconnection (Addressable Systems) Regulations, 2016 ("**Draft Interconnection Regulations**") on October 14, 2016 and has invited further comments on the Draft Interconnection Regulations, which sets out various provisions pertaining to interconnection, manner of offering of the channels, provisions relating to Reference Interconnection Offer and general agreements, territory of interconnection agreements, subscription reports, license fee, etc.

TRAI has issued the present Draft Interconnection Regulations to achieve the below objectives:

(i) A common interconnection framework for all addressable systems namely DTH, HITS, DAS and IPTV.

(ii) Provisions relating to "Must carry" for all addressable systems, on first come first serve basis.

(iii) Regulation of the carriage fee to be paid by a broadcaster;

(iv) Execution of interconnection agreements in accordance with the Reference Interconnection Offer (RIO).

(v) Offering of distribution fee to the distributors by the broadcaster on the maximum retail price of its pay channel(s) or bouquet(s) of pay channels, and further discounts on the MRP.

(vi) Standard format of application for distributor of TV channels for obtaining signals of television channel(s) from broadcaster and standard format of application for a broadcaster to access a distributor's network for re-transmission of television channel(s).

(vii) Format of subscription report to be provided by a distributor of TV channels to a broadcaster including for free to air channels.

(viii) Updation in the technical specification for addressable systems.

(ix) The framework for subscription audit & technical audits.

(x) Extension of Model Interconnection Agreement (MIA) and Standard Interconnection Agreement (SIA) framework applicable for MSOs to HITS and IPTV operators.

However, TRAI, while framing the Draft Interconnection Regulations has not addressed all concerns raised by various stakeholders, which were pointed out while responding to the consultation paper dated May 04, 2016.

It is respectfully submitted that implementation of the draft tariff order and/or Draft Interconnection Regulations should be conditional upon the verifiable implementation of QoS regulations by TRAI. It is also submitted that unless TRAI ensures existence of proper infrastructure and compliance of draft QoS regulations at the end of distributors of TV channels, any attempt to implement the draft tariff order and/or Draft Interconnection Regulations will have an adverse and cascading effecting on all stakeholders. In this regard, it is submitted that TRAI does not seem to have undertaken any exercise on a pan-India level to ascertain whether or not distributors of TV channels are in a position to implement the draft QoS regulations, or for that matter to evaluate if distributor of TV channels are even following the provisions mandated by the existing QoS regulations framed by TRAI.

Our comments to the Draft Interconnection Regulations are without prejudice to our rights and contentions, including in any ongoing or future litigations, and we reserve our rights to modify, change and/or submit further comments or counter comments to clarify our position on the issues under the Draft Interconnection Regulations. Further, our comments to the Draft Interconnection Regulations are in addition to and not in derogation of the submissions made by our agent, IndiaCast Distribution Private Limited in its response dated June 10, 2016 to TRAI's consultation paper titled 'Consultation Paper on Interconnection framework for Broadcasting TV Services distributed through

Addressable Systems' dated May 04, 2016. By way of abundant caution, we state that submissions made in the said response are reiterated and may be deemed to be forming part of the present comments, and that they are not being repeated herein for the sake of brevity.

Without prejudice to our rights and contentions that TRAI ought to implement the Draft QoS Regulations first before proceeding to make changes as sought to be made by TRAI, in the alternative, we are submitting our response to the points suggested by TRAI in the present Draft Interconnection Regulations. The same is being done with an aim to bring it to TRAI's attention that even the Draft Interconnection Regulations has inherent shortcomings, which need to be addressed else, it will have adverse impact on all stakeholders.

I. De-classification of Commercial Subscribers and Ordinary Subscribers

TRAI has defined the term "subscriber" to mean a person who receives television broadcasting services, provided by a service provider, at a place indicated by such person without further transmitting it to any other person and each set top box located at such place, for receiving the subscribed television broadcasting services from the service provider, shall constitute one subscriber. TRAI has erroneously ignored and has not considered the distinction between the 'commercial subscriber' and the 'ordinary subscriber' despite itself being a party to the adjudication which is pending before Hon'ble TDSAT on the said issue. Further, TRAI has not given any explanation whatsoever for deviating from its past understanding that there is a need to classify commercial subscribers separately from ordinary subscribers. Proper procedure has also not been followed for bringing in a new structure, de-hors the historic position adopted by TRAI nor has TRAI given any explanation as to why is it departing from the established regime which is pending adjudication.

Besides the above, there is no discussion or explanation given under the explanatory memorandum appended to the Draft Interconnection Regulation for the said declassification of the ordinary subscribers and commercial subscribers and for providing a generic definition of subscribers, thereby including within its ambit a distinct and separate class of subscribers.

It is submitted that definition of subscriber needs to be revisited by TRAI since, it has unilaterally done away with distinction between two different and distinct classes of subscribers namely, ordinary subscribers and commercial subscribers, which is currently in existence. It is submitted that this action of TRAI of unilaterally doing away with distinction between two different classes of subscribers namely, ordinary subscribers and commercial subscribers, is impermissible, *inter alia*, since TRAI in its consultation paper dated January 29, 2016 on issues relating to television services, had not raised any issue relating to commercial subscribers. It is submitted that instead of making the said change, TRAI should consider all aspects relating to commercial subscribers. In this regard, it is submitted that our agent, IndiaCast Distribution Private Limited had suggested in its response to the said consultation paper that TRAI should consider revisiting the definition of commercial subscribers/establishment. However, it is now seen that TRAI has not considered the said suggestion. It is pertinent to mention here that TRAI, at this stage, cannot deviate from its own past understanding and shy away from dealing with one of the major issues that govern the tariff dynamics in the broadcasting industry.

Further, TRAI has failed to even acknowledge, let alone consider, the impact of the definition of the term "subscribers" as provided under the Draft Interconnection Regulations on the exercise of the exclusive statutory copyright owned by the broadcasters. It is submitted that this omission is material inasmuch as a statutory right is granted by an act of the Parliament in favour of the broadcasters, which is being withheld, not by legislation but by way of a Regulation, by placing in itself the power to legislate, which power is not available to TRAI in law. Such encroachment upon the statutory right of broadcasters is constitutionally unsustainable and bad in law. In light of the above, we are of the view that TRAI should reconsider the definition of "subscriber" and "active subscriber", and take into due consideration the comments of all the stakeholders to draw a distinction between two distinct classes of subscribers, i.e. 'ordinary subscribers' and 'commercial subscribers'.

(1) <u>TITLE, EXTENT AND COMMENCEMENT</u>

(a) In Clause 1(3) of the Draft Interconnection Regulation - TRAI is aware that DAS Phase IV is also due for implementation by December 31, 2016. TRAI is aware from its past experiences of DAS implementation that the transition into DAS in itself is a lengthy process where due to Courts' intervention the

entire process gets withheld not only for a particular network but for multiple States and at times across India. Hence, TRAI should wait for the complete implementation of DAS Phase IV before finalizing the effective date of implementation of the Draft Interconnection Regulation.

(b) TRAI is aware that it is not only the implementation of DAS Phase IV which is crucial to the implementation of the Draft Interconnection Regulation, but the development of infrastructure at distributor of TV channels level and implementation of Draft QoS (with proposed amendments) is also vital for successful implementation of the Draft Interconnection Regulation. Implementation of DAS Phase IV, development of infrastructure at distributor of TV channels level and implementation of Draft QoS (with proposed amendments) requires a substantial amount of time that is not less that twelve to fifteen months. Hence, the date of implementation of the Draft Interconnection Regulation, as is currently prescribed by TRAI, is premature.

(2) <u>DEFINITIONS</u>

(a) In Clause 2(l) of the Draft Interconnection Regulation – While the definition of "carriage fee" seems to be comprehensive, it aims at restricting the rights of the broadcasters to execute agreements with the distributors in terms of placement of a broadcaster's channel. TRAI while having the opportunity to revisit the earlier definition, has chosen to encroach upon the right of the broadcasters to execute agreements. The detailed analysis of the issues relating to carriage fee has been dealt with in subsequent paras.

(b) Clause 2(1)(mm) of the Draft Interconnection Regulation - In so far as TRAI's action is concerned whereby it has done away with the distinction between two different classes of subscribers (ordinary and commercial) which existed since 2004, we reiterate our submissions made above. We also wish to highlight that while there is no provision relating to commercial subscribers in the Draft Interconnection Regulation, the Explanatory Memorandum has

also failed to give any explanation of any sort as to why the issue of commercial subscribers/establishments has not been discussed in the Draft Interconnection Regulation.

(3) GENERAL PROVISIONS RELATING TO INTERCONNECTION

(i) **Common regulatory framework for interconnection of all types of platforms**

(a) **Mandating Common regulatory framework is not a practical approach –** In the present Draft Interconnection Regulation, TRAI has recommended one common regulatory framework for all types of addressable systems delivering TV broadcasting services to the consumers in the country. The understanding of TRAI on this aspect can be seen in the Explanatory Memorandum in the below terms:-

"12. For broadcasters, the cost of the pay TV channels is independent of the type of distribution network used for delivering TV broadcasting services to consumers. Therefore permitting any kind of variations in the pricing of pay TV channels based on type of addressable systems used for delivering TV broadcasting services to consumers may lead to favouring of a type of operators over others by the broadcasters. This may affect the level playing field at distribution level.

13. For DPOs delivering TV broadcasting services through addressable systems, the primary input cost comprises of pay TV channels and re-transmission of signals. Every type of distribution network has different capabilities and unique advantages. The DPOs would be able to compete with each other based on their own strengths if the signals of TV channels are provided to them on equal terms. The difference on account of the licensing framework cannot be the basis for

different interconnection arrangement between service providers. Similarly, utilizing services of the LCOs in case of the cable TV, HITS and IPTV platforms cannot be the reason for differentiation as utilizing the services of LCOs is an option and not compulsion for these types of operators. They may choose to deliver TV broadcasting services directly to the consumers after establishing their own access networks. Further, in all types of addressable systems, the commercial parameters of interconnection are transparent and directly linked with the number of subscribers subscribing to channels/ bouquets of channels.

14. Since the cost of the pay TV channels is independent of the type of distribution network used for delivering TV broadcasting services to consumers and the basis, i.e. the number of subscribers subscribing to channels/ bouquets, for calculating subscription fee is common across all types of addressable systems, the Authority is of the view that common regulatory framework for interconnection of all types of addressable systems will ensure a level playing field among different service providers. Further, it would foster competition, promote orderly growth and result in better quality of services at affordable prices to the subscribers. This is expected to promote innovation and investment in cost efficient addressable distribution networks.

15. Accordingly, these regulations cover all types of addressable systems delivering TV broadcasting services to consumers in the country. The Authority also acknowledges the presence of LCOs in Cable TV, IPTV & HITS networks and therefore specific provisions to the regulations, wherever required, for Cable TV/HITS/IPTV i.e. where LCOs are present in the value chain, have been provided. Similarly, wherever

required, specific provisions have been made on the basis of technical characteristics of different type of distribution networks."

However, TRAI, while recognising the fact that every type of distribution network has different capabilities, has equated all the addressable systems only on the basis that the cost of pay TV channels is independent of the type of distribution network used for delivering TV broadcasting services to the consumers. Given that the various distribution platforms use different network topologies and technologies and that there is a differential cost of delivery of services through these platforms, it is imperative to have separate interconnection regulations. These licensing conditions imposed also vary from platform to platform. Differences between addressable platform types include presence of intermediaries, cost of operations, business model (pre-paid or post-paid), infrastructure requirements (e.g., Transponder requirements, technology (e.g., presence of return path in IPTV), etc. The ecosystem in which each addressable platform operates is sufficiently different from the other. Hence, a specific regulatory framework for interconnection may be required to be introduced separately for each type of addressable platforms. This kind of an arrangement will ensure that each platform can customize its own agreements as per their specific requirements. The scenario wherein different platforms are put under the same umbrella of covenants may lead to inefficiency, conflict and confusion for both the broadcasters and the service providers.

Further, it has also been the understanding of TRAI itself that there are different characteristics associated with different addressable platforms. Therefore, a common interconnection regulatory framework should not be mandated for all types of addressable systems.

(ii) Clause 3(4) of the Draft Interconnection Regulation – It is recommended that the clause be amended as follows:

> *"No service provider shall, directly or indirectly, prohibit any other service provider from providing its services to any subscriber <u>which are within the terms of the agreement executed between the parties</u>.*

This is required to ensure that parties are complying with the provisions of Clause 9 of the Draft Interconnection Regulation before transmitting / retransmitting signals of channels.

(iii) Clause 3(5) of the Draft Interconnection Regulation – The provisions pertaining to the mandatory offering of channels to all the distributors are existing in the current regime as well, and are being enforced by the appropriate authorities from time to time. TRAI, in addition to continuing with the earlier existing provisions, has made attempts at bringing in some sort of clarity. The proviso to the 'must provide' clause reads as-

> "*Provided further that this sub-regulation shall not apply in case of a distributor of television channels, who seeks signals of a particular television channel from a broadcaster while at the same time demands carriage fee for re-transmission of that television channel or who is in default of payment to* ***that*** *broadcaster and continues to be in such default.*" (Emphasis Supplied).

In the current existing regime, the signals could be denied to any distributor who has defaulted in payment. The current existing regime does not mention specifically that such default should be to the same broadcaster or to any other broadcaster. TRAI has therefore, without discussion or any explanation to this effect, recommended that the signals could be denied by a broadcaster only if the distributor is in default to that particular broadcaster only. This would ultimately mean that a distributor, who has been a defaulter in terms of making payment to other broadcasters could approach a new broadcaster and that new broadcaster will have no right to

take this objection for denying signals. This would eventually dilute the right of the broadcasters to claim a 'No Dues Certificate' from the distributor, and thus the whole objective for including this provision in the interconnection framework stands defeated. Akin to the existing regulations, broadcaster should continue to have the liberty to make promotional offers for newly launched channels without any restriction on packaging and/or tariff. Such an enabling provision would also help the consumer to ascertain the varieties of new channels/content being made available and make conscious decision on subscription.

(iv) Clause 3(6) of the Draft Interconnection Regulation - TRAI, in the garb of this provision, seeks to regulate indirectly all other arrangements between the broadcasters and the distributors for the carriage of a channel. While the mandate is on the broadcaster to provide the signals to all the distributors on non-discriminatory basis, any further obligations on the broadcasters would ultimately give arbitrary powers in the hands of the distributors, who would ultimately have the choice of placing the channels of the broadcasters as per their own whims and fancies.

(v) Clause 3(9) of the Draft Interconnection Regulation - It is suggested that any change (barring spare capacity related information) in the information published under this clause shall be updated on weekly basis and not within 30 days, so as to give clear visibility to broadcasters who wish to make their channel(s) available through 'must carry'. Such weekly report/link should be provided by the distributor of TV channels via email to broadcasters. Such weekly report should also contain details of all channels disconnected in the last 7 days. With respect to the 'first-come-first-serve' rule proposed by TRAI, a real time monitoring system should also be put in place to effectively monitor the 'first-come-first-serve' rule. Currently distributor of TV channels is required to upload details of pending requests from broadcasters to its website every 30 days' period, which is unreasonably long. Further, requests from broadcasters should only be received over a website that can be monitored by the entity making the request and TRAI.

(vi) Clause 3(10) of the Draft Interconnection Regulation - It is suggested that broadcasters should also be allowed to declare and also change the target market of the channels in terms of relevant geographical areas after publishing a 30 days' notice on its website. We are of the view that the relevant geographical area prescribed by TRAI in Appendix I of the Draft Interconnection Regulation are not based on any study or data, and has been specified by TRAI on its own, without giving any opportunity to the stakeholders to comment on the same. The Draft Interconnection Regulation provides that every broadcaster shall, for the purpose of carrying the channels by a distributor, declare the target market in terms of the relevant geographical area. However, the "relevant geographical area" does not take into account the inherent differences that exists within the same State owing to the different language, preference of the subscribers in different parts of the State. We are of the view that the relevant geographical area should have been classified by taking into account the criterion of preferred language. The present classification identifying the "relevant geographical area" falls short of its mark, as it has not identified the seven of the eight metro cities of India, viz., Mumbai, Chennai, Kolkata, Hyderabad, Bangalore, Pune & Ahmedabad, separately in Appendix I of the Draft Interconnection Regulation. While the classification ought to have been to identify the relevant geographical differences, TRAI has categorized the market more or less on the basis of the number of States and Union Territories, without giving due regard to the "relevant" differences between urban and rural areas. The inclusion of these metro cities, as separate category, is a basic requisite because of the pre-dominance of the people speaking the local, regional and English languages. Moreover, these metro cities have become the melting pot of various languages & cultures, which makes them a good mix of cosmopolitan people with relatively high paying capacity. There has also been a long practice of separate interconnect agreement between broadcasters and distributor of TV channels (cable) for each metropolitan area, which has proven over time to be practical and fruitful. Thus, it would be pertinent to include these cities as a region, viz.,

Greater Metropolitan Mumbai Region, Kolkata Metropolitan Area and likewise.

(vii) Clause 3(11) and 3(12) of the Draft Interconnection Regulation - A bare perusal of these two provisions would demonstrate that by way of these provisions, unrestricted powers have been vested in the hands of the distributors, who will now have the privilege to restrict the entry, disturb the existence of the existing channel merely on the basis of the popularity of a channel. Further, the parameters are also ill defined, since the basis of attaining the prescribed benchmark is set on the total subscriber base of the distributor. No study or data whatsoever has been shared with the stakeholders, nor is there an explanation in the Explanatory Memorandum to this effect.

It is pertinent to mention here that in terms of Clause 3(10) of the DAS Interconnection Regulations, 2012, an obligation has been cast upon the MSOs to carry the channels of the broadcasters on a non-discriminatory basis.

Further, the understanding of TRAI on the aspect of "Must carry" can be ascertained from para 33, 34, 35, 36 and 37 of the Explanatory Memorandum.

Before proceeding to respond on the present provision inserted in the Draft Interconnection Regulation, we need to revisit the background relating to must carry provisions. Clause 3(5) and 3(8) of the DAS Interconnection Regulations, 2012, provides as follows:-

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

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

These two provisions were challenged before the Hon'ble TDSAT. The Hon'ble TDSAT, while addressing the concerns of the different stakeholders, set aside these two provisions. From a perusal of the said judgment, it can be noted that the principles of non-exclusivity, 'must provide' and 'must carry' are necessary for the orderly growth of the sector. In order to maintain a level playing field for all the stakeholders, and also to ensure effective competition, these principles laid down by the Hon'ble TDSAT in the said judgment play an important role and form the backbone of the broadcasting industry. The problems cited in the consultation process relating to the capacity constraint does not hold ground in the era of addressability. It has also been the understanding of TRAI that today, DTH and HITS together cater to approximately half of the digital TV subscribers. In light of the same, there cannot be a scenario where the plea of limited space for the addressable platforms can hold any ground. TRAI also needs to analyse and do a fact finding exercise to ascertain if the said transponder limitation is real or a created scarcity. TRAI must also do a consultation process on this aspect and invite comments from the various stakeholders. Further, if DTH and HITS operator are allowed to discontinue any channel including FTA channel, owing to the penetration of the said channel depending on its popularity, it would also amount to discrimination towards one channel with respect to another channel. TRAI has further neglected and done away with the earlier existing provisions relating to regional channels and now the distributors are not under any obligation to carry even the regional channels, if the penetration of the said channels is not as per the parameters prescribed in the present Draft Interconnection Regulation.

It is pertinent to note that the earlier regulation mandated all distributors of TV channels to have a minimum network carrying capacity of 500 channels. With the proposed regime, while TRAI has not only failed to prescribe any minimum standards of carrying capacity, but has also completely neglected/overlooked the direction of TDSAT in the matter of United Cable Association vs. TRAI (Appeal No.3(C) of 2012) wherein TRAI was directed to consider making provisions for distributors of TV channels to have a minimum channel carrying capacity on their network.

In the absence of TRAI's mandate to have a minimum network capacity by the distributors of TV channels, the 'first-come-first-serve' rule cannot be effectively implemented and be beneficial to the consumers. Further, it may also lead to unnecessary blocking of bandwidth / frequency by unwanted channels. Hence, it is of paramount importance that TRAI mandates distributors of TV channels to have a minimum network carrying capacity, failing which, the channels regardless of quality and innovation, will gain access to distributors of TV channels network by merely timing the request, thus denying access to deserving channels despite having superior quality content.

Once distributors of TV channels are mandated to have a minimum network carrying capacity so as to effectively carry a number of television channels (including Pay/FTA) thereafter, 'first-come-first-serve' rule proposed by TRAI should have a real time monitoring system for effective monitoring and enforcement of the said rule so as to avoid confusion and chaos in the market and most importantly violations by distributors of TV channels, which may result in litigation. Further, it would be ideal to have the requests from broadcasters received over a website that can be monitored by the entity making the request and TRAI.

Moreover, in the absence of a minimum network carrying capacity of the distributors of TV channels, the concept of 'Must Carry' in the present form

would remain a misnomer and would depend totally on the whims of the distributor of TV channels.

(viii) Clause 3(12) and 3(13) of the Draft Interconnection Regulation – We are of the view that except for GEC and Movie genres, most of the other genres including English channels, Music channels, Premium channels and niche channels, would not meet the criteria of having penetration of more than 5% of the subscriber base of any distributor of TV channels. Such a rule which imposes a restriction on majority of the channels is unreasonable and has to be done away with. Hence, it is suggested that the restriction should not be made applicable for genres other than GEC and/or Movies genre.

Moreover, the impracticability of the criteria of having penetration of more than 5% of subscriber base of any distributor of TV channels is more evident in the case of HD channels since the HD Channels do not meet the criteria of reaching more than 5% of the subscriber base of the distributor of TV channels. Hence, the calculation of penetration for a HD Channel should be basis the HD Subscriber Base of the relevant distributor of TV channels, and not on the overall subscriber base of such distributor of TV channels.

Assuming so as to effectively ensure the applicability of Clause 3(12) and Clause 3(13) towards GEC and Movies genres, we are of the view that once the distributor of TV channels drops the GEC/Movie channel of the broadcaster due to non-achievement of the prescribed 5% benchmark, it should ensure that it has also dropped channels of other broadcasters which have not achieved the prescribed 5% benchmark. Additionally, if the distributor of TV channels recommences retransmission of any such dropped channel within a period of 12 months from the date when such channel was dropped, then it shall ensure that it extends similar treatment to other dropped channels following the principals of parity and non-discrimination. TRAI should also consider reducing the prescribed period of 12 months to 6 months.

(ix) Proviso to Clause 5(2) of the Draft Interconnection Regulation – Subsidiary *(which is not holding any downlinking permission)* of a broadcaster should be permitted to distribute channels to a distributor of TV channels in its own name, i.e., on P2P basis.

(x) Clause 5(3) of the Draft Interconnection Regulation – There is no reasoning for fixing a minimum distribution fee of 20%. In terms of para 22 of the explanatory memorandum, it is "based on the practice of other sector & available data minimum discount on MRP is fixed at 20%". However, neither has TRAI published any data, nor has TRAI granted any opportunity to stakeholders to comment on the same.

(xi) Paras 19-22 r.w. Clause 5(4) – It is submitted that from TRAI's observations in para 22, it appears that TRAI is confusing 'discount' with 'margins / commission / distribution fee / handling charges' payable by broadcasters to distributor of TV channels, which are inherently different things having different purposes. Further, TRAI has committed an error by including minimum distribution fees payable by a broadcaster to a distributor of TV channels as part of discount contemplated in the Draft Interconnection Regulation since, both, discount and distribution fees are independent and mutually exclusive in nature. As such, in view of TRAI's own observations in para 21 of explanatory memorandum that maximum discount which can be offered on MRP should be limited to 35%, TRAI needs to amend clause 5(4) of the Draft Interconnection Regulation to clearly reflect that discount of 35% shall be in addition to distribution fee payable to distributor of TV channels. Notwithstanding the foregoing, we disagree with TRAI's observations in para 21 that discounts lead to perverse pricing or non-level playing field since, there is no justification to draw such conclusion especially if all discounts are offered in a uniform, transparent and non-discriminatory manner. Thus, if discounts are offered transparently and on a non-discriminatory basis then, there is no reason why discounts would lead to discriminatory practices or would be against consumer interests. We also take this opportunity to convey that we concur with TRAI's observations in

paras 19-20 of Explanatory Memorandum where it has *inter alia* stated that discounts are good and need to be offered on fair, transparent and non-discriminatory terms, and that 'each and every kind of discount' ought to be offered in RIO.

(xii) Clause 5(5), 5(6) read with Clause 5(9) of the Draft Interconnection Regulation – The process mentioned in these clauses will unnecessarily delay the finalization of RIO. The law, anyways, grants right to relevant stakeholders to challenge the RIO before the appropriate forum even after such exercises. Hence, such stipulations should be done away with.

(xiii) Clause 5(7) of the Draft Interconnection Regulation – The process involved in publication of RIO even in case of amendment will lead to further delay, duplicity of work and confusion. As per the proposed Draft Interconnection Regulation, even a small change in the RIO, viz., inclusion/deletion of channels, change of rate of channel, change in package(s), etc., will also invoke the distributor of TV channels' right to comment, which will not only delay the process of revising the RIO, but can also be misused by distributor of TV channels. The law, anyways, grants to the relevant stakeholders the right to challenge the RIO before the appropriate forum even after such exercises. It is submitted that the process suggested by TRAI in Clauses 5(5), 5(6) and 5(7) will lead to more chaos and confusion instead of simplifying the process. As such, these clauses should be done away with as they will be counter-productive.

(xiv) Clause 6(2) of the Draft Interconnection Regulation – Determination of carriage fee for SD channel to 20 paisa and HD to 40 paisa is without basis. There is no provision which ensures that there is no negative inducement, i.e., the distributor of TV channels not allowing the channel's subscriber base to increase beyond 20% benchmark for its own carriage benefit. Further, it is suggested that the distributor of TV channels should maintain parity amongst channels from which it is charging carriage fee. Our additional

comments in relation to the calculation of carriage fee are set out in Paragraph 3(xxxiii), below.

(xv) Clause 6(3) of the Draft Interconnect Regulation – Maximum discount of carriage fee not to exceed 35% is arbitrary and has no basis.

(xvi) Clause 9(6) of the Draft Interconnection Regulation – It is submitted that there should not be any restriction on broadcaster's right to conduct audit, and that a broadcaster should be allowed to conduct audit through its own audit and technical team. Only in case of dispute between the parties, BECIL or empaneled auditor may be appointed to conduct the audit in the presence of representatives of the concerned parties. TRAI has neither empaneled any auditor nor has it ensured that BECIL has the bandwidth to conduct audits as is contemplated. In any event, the stipulation that finding of BECIL's auditor shall be final is arbitrary and cannot be permitted. Further, even in case the addressable system was audited in the last 1 year by BECIL or any other agency, broadcaster should have been granted the right to conduct the audit of the distributor of TV channels' addressable system to ensure technical compliance in accordance with regulation and raise technical issues if the same is found during the audit. While in para 64 TRAI has recognized broadcaster's request to conduct field audit, and since TRAI has not made any specific prohibition thereof, it is deemed that the same is permissible. Further, in para 101, the observation of TRAI that audit rights may be misused since there are 50 pay broadcasters having 250 channels, which would lead to at least 50 subscription audits of each system is entirely misplaced and not backed by any data or analysis by TRAI of such misuse. Any restriction on audit rights *(especially to the extent contemplated by TRAI in the Draft Interconnect Regulations)*, would motivate distributor of TV channels to misuse the same.

(xvii) Clause 9(7) of the Draft Interconnection Regulation – The 60 days' timeline is impractical. TRAI has not provided any reason for bifurcations of 60 days' timeline split into two parts, i.e., 1st 30 days period from the date of receipt

of request for execution of agreement and the 2nd 30 days period for checking necessary compliances relating to interconnection. This will lead to execution of conditional agreements which may give rise to unnecessary disputes between the parties.

(xviii) Clause 9(9) of the Draft Interconnection Regulation – Unilateral execution of RIOs by distributor of TV channels cannot be permitted and the Draft Interconnection Regulation needs to be amended to such extent as well. Notwithstanding the above, in case a distributor of TV channels unilaterally executes an agreement and sends a copy for countersignature to a broadcaster, then the broadcaster should not be obligated to comply with the stipulated timeline under this clause and such scenario will be considered as a fresh request and the timeline of 60 days will be applicable for execution of agreement, subject to stipulations of the regulations. It is not clear as to how this negotiation process reduces the time period for execution of agreements or disputes between the parties. In fact, such process will lead to further disputes between the parties and delay the execution of the agreement.

(xix) Clause 9(10) of the Draft Interconnection Regulation – TRAI should consider permitting broadcasters to provide discounts *(within the prescribed discounts)* on the MRP of the channels, in case the distributor of TV channels packages channels in a particular manner.

(xx) Clause 9(12) of the Draft Interconnection Regulation – TRAI should consider extending the timeline for providing copy of agreement to distributor of TV channels to 30 days when agreements were mutually agreed between the parties.

(xxi) Clause 9(13) of the Draft Interconnection Regulation – Existing clause 8 of the Non-DAS Interconnection Regulation is working fine with the industry and should not be unnecessarily touched upon. TRAI's observation is devoid of any data.

(xxii) Clause 9(15), 9(16) and Application form (Schedule IV) of the Draft Interconnection Regulation – It is not understood why distributor of TV channels have been allowed to 'devise' application form as per Schedule IV, whereas in Clause 9(3) broadcasters have been stipulated to 'specify' their application in accordance with Schedule II. Broadcasters should also be allowed flexibility similar to the one granted to distributor of TV channels.

(xxiii) Clause 9(17) – Access to the network of a distributor of TV channels for carrying of TV channels on its network should be on first come first serve basis. Our submissions in relation to the effective implementation for the principle of 'first-come-first-serve' as detailed above in paragraph 3(vii) hereinabove are not being repeated herein for sake of brevity. Also, there is no reason as to why each subsequent interconnection agreement shall contain details of the earlier agreement in force. In para 50 of the explanatory memorandum, the only reasoning given by TRAI is that the objective of one agreement for all deals is to check discrimination in providing channels/access to the network.

(xxiv) Clause 10(2) of the Draft Interconnection Regulation – The distributor of TV channels should not be allowed to expand the areas without giving at least 60 days' prior notice *(primarily by e-mail sent to broadcaster's identified e-mail ID and scanned copy via registered post)* and that too only upon execution of a written agreement between the parties.

(xxv) Clause 13(1) of the Draft Interconnection Regulation – TRAI should prescribe that Subscriber Report for the 1st months of the 'Term' of the agreement between broadcaster and distributor of TV channels should be furnished by the distributor of TV channels to the broadcaster within the prescribed time limit of 15 days from the end of the month. In the event the distributor of TV channels fails to submit its 1st report on time, the broadcaster should be allowed to issue disconnection notice. The timeline of 3 consecutive months' default in furnishing subscriber report for issuance of disconnection notice

is devoid of logic and merit and needs to be left to stipulations in the RIO which are made applicable to all distributor of TV channels on non-discriminatory basis. Further, in the event the distributor of TV channels fails to provide the subscriber report within the period of 15 days from the end of the month the broadcaster should have the right to raise the invoice for an increased amount of 10% of the license fees payable by the distributor of TV channels for the immediate preceding month without any notice or reminder to the distributor of TV channels. It is submitted that the obligation to furnish timely report is on the distributor of TV channels and no such obligation of giving reminders should be caste upon the broadcaster as is stipulated in para 103 of the explanatory memorandum since the same is also contrary to the Draft Interconnection Regulation and the settled legal principles.

(xxvi) Clause 13(2) 2nd proviso of the Draft Interconnection Regulation – TRAI has wrongly stipulated that the broadcaster shall have no claim on any arrear amount which has not been specified by him in the immediate 3 preceding consecutive invoices issued after the due date for the invoice to which arrears pertain. By way of such stipulations in the regulations, TRAI cannot take away the legal rights of the broadcaster to recover amounts owed to it in arrears even if the same is not specified by him in the immediate next three consecutive invoices.

(xxvii) Clause 14 of the Draft Interconnection Regulation – It is submitted that the restriction proposed by TRAI on a broadcasters' right to conduct audit is misplaced, and needs to be done away with. In this regard, we reiterate the submissions made above.

(xxviii) Frequency of audit needs to be increased from once in a calendar year to 3 times in a year. It is also not clear as to why distributor of TV channels should be allowed to under-declare subscribers by 0.5% and the broadcaster is not allowed to revise the invoice amount if the discrepancies to the extent of

even 0.5% is found. In case of addressable system there is no reason why any discrepancy should be accepted or promoted.

(xxix) Clause 14(2) of the Draft Interconnection Regulation – The Distributor should be liable for payment of any differential amount which is revealed basis audit conducted by the broadcaster, and that reimbursement of cost of audit should not be linked to discrepancy of 2% variation in reported subscriber numbers. In this regard, it is submitted that no discrepancies can be permitted since, the deviations proposed by TRAI are without any basis, and in any event, the Draft Interconnection Regulation relate to addressable systems and sufficient time has been given to the distributor of TV channels to furnish their reports to the broadcasters.

(xxx) Clause 16 of the Draft Interconnection Regulation – Broadcaster should also be permitted to run scroll on the network of the distributor in the event of proposed disconnection of channel. Distributor of TV channels shall run the scroll only on its home channel *(and not on the broadcasters' channel)*/platform services/mobile apps/website, etc., and the language of the scroll should be aligned with the scroll of the relevant broadcaster.

(xxxi) Clause 17 of the Draft Interconnection Regulation – LCN numbering within the EPG of a distributor of TV channels may be allowed to be altered, subject to mutual agreement between the parties. Also, the stipulation in the Draft Interconnection Regulation which prohibits alteration of LCN for a minimum period of 1 year is unreasonable and hence should be done away with. Further, there should not be any missing LCN on the EPG of the distributor of TV channels. In our view, the reduction in classification of genres will increase the number of channels in each genre causing inconvenience to the consumers while surfing and selecting channels if such classification of genres is also followed by distributors of TV channels while creating the EPG. Hence, In order to avoid any such inconvenience to consumers, TRAI must mandate more numbers of sub-classifications in each genre at par with those being followed by BARC and ensure that a common EPG genre-wise

categorization is followed by all distributors of TV channels. It is also submitted that in addition to segregation of EPG on the basis of genre and language, EPG should also be segregated on the basis of sub-genres, e.g., (a) News should be sub-categorized as English General News, Hindi General News, English Business News and Hindi Business News; (b) Infotainment should be sub-categorized in music, lifestyle and infotainment. Further, there needs to be a separate genre for shopping channels else, shopping channels may get included randomly in news or other genres.

In addition to the above, the Platform Services / Home Channels offered by the distributor of TV Channels are completely unregulated and the same gives the distributor of TV channels an undue advantage to place and/or offer the said channels in any manner of their choice. Further, several distributors of TV channels place their respective Platform Services / Home Channels in EPG listing in priority over the satellite television channels of the broadcasters.

In view of the aforesaid and to ensure that consumer interests are protected, the Platform Services should be placed in a separate genre in the EPG listing and must not be placed within the genres/sub-categories of satellite channels of the Broadcasters. We therefore submit that the Platform Services ought to be regulated so as to ensure that there is no major constraint on network capacity resulting in reduction in the number of channels that can be carried by such distributor of TV channels.

(xxxii) Clause 21 of the Draft Interconnection Regulation – We are of the view that TRAI should allow the existing agreements between distributors of TV channels and broadcasters to continue for their respective term/duration and with respect to the rights and obligations of the parties to such agreements, the existing regulations should continue to apply.

(xxxiii) Schedule I of the Draft Interconnection Regulation – Joint reading of Schedule I and Schedule VII creates an impression that monthly carriage fee

is to be computed on the basis of the entire subscriber base of the distributor of TV Channels. This calculation for computation of the carriage fee is erroneous, misconceived and fundamentally against the principle of non-applicability of carriage fee of any channel which meets the threshold limit of 20%. As per the current reading of Schedule I read with Schedule VII, a broadcaster is liable to pay progressively decreasing carriage fee to the distributor of TV channels, but to a limit of only 20% of the **average subscriber base of the distributor of TV channel**, viz. a broadcaster is not liable to pay the carriage fee if the channel has a penetration of more than 20% of the active subscriber base of the distributor of TV channel. Given this reasonable restriction, to mandate that a broadcaster who does not meet the threshold of 20% has to pay the carriage fee for the **entire subscriber base of the distributor of TV channels** would be erroneous and misconceived. This would result in a situation where a broadcaster who does not meet the 20% threshold has to pay carriage fee for the entire subscriber base of the distributor of TV channels, even when the principle of applicability of carriage fee has been capped at 20% of the entire subscriber base of the distributor of TV channels. Further, there is no reason why carriage fees should be payable on the entire subscriber base of a distributor of TV channels when the channel has been subscribed by only few subscribers of such distributor of TV channels. In view of the aforesaid, it is important that the clause should be clarified to the extent that the broadcaster would be liable to pay the carriage fee towards the channel (which does not meet the 20% threshold) which shall be calculated on the basis of the rate of carriage fee as per the progressive decreasing slab set out in Schedule I multiplied by the **average subscriber base of such channel**. The average subscriber base of the distributor of TV channels cannot be taken into consideration for calculation of the carriage fee.

Further, the amount of Rs. 0.20 for SD channel and Rs.0.40 for HD channel is unreasonably high and without any basis. TRAI has neither conducted any study nor has published any analysis to substantiate the same.

(xxxiv) Schedule III – TRAI should consider incorporating the following:

(a) SMS and CAS vendor should provide declaration at the time of installation that their system is secure for manipulating any data at user end, i.e., distributor of TV channels.

(b) With regard to Clause A(6) of Schedule III, declaration from STB vendor / CAS vendor should be mandatory.

(c) With regard to Clause A(13)(v) of Schedule III, the SMS should be capable of generating reports, at any desired time about list of blacklisted STBs and VCs in the system.

(d) With regard to Clause A(13), new sub clause (xi) should be added for list of a-la carte channels(s) offered by distributor of TV channels.

(e) With regard to Clause A(13), new sub clause (xii) should be added and it should state that in SMS System, whenever the package is modified (channel added/deleted), the CAS system should capture the date of modification and with details of changes made in packages. Such modification log should be maintained by distributor of TV channels/CAS provider for 2 years. The system should able to generate Package logs.

(f) With regard to Clause A(15)(a), 'STB-VC Pairing / De-Pairing' should be replaced with 'STB-VC Pairing and De-Pairing'.

(g) With regard to Clause A(15)(b), 'STB Activation / De-activation' should be replaced with 'STB Activation and De-activation'.

(h) With regard to Clause A(15), new sub clause (e) should be added and it should state that in CAS System, whenever the package is modified (channel added / deleted) the CAS system should capture the date of modification and with details of changes made in packages. Such

modification log should be maintained by distributor of TV channels/CAS provider for 2 years. The system should able to generate Package logs.

(i) In Clause B(1), at the end of the clause it should be added that it should be made mandatory on distributor of TV channels to run finger Printing at 15 minutes' interval at all times on all channels.

(j) With regard to Clause C, new sub clause (11) should be added and it should state that STB should display the distributor of TV channels network watermark logo at all times to identify source of signal (antipiracy).

(xxxv) Schedule VII – Subscriber Report format should contain city wise, CAS wise, channel wise and package(s) details. Distributor of TV channels shall also need to furnish details pertaining to number of CAS, along with details of such CAS and the subscriber base on each CAS. Considering that the proposed reporting dates of 7th, 14th, 21st and 28th does not cover the subscription count for the entire month, thus, subscriber count on 1st, 10th, 20th and the last date of the month has to be provided.

(xxxvi) Para 16 of Explanatory Memorandum of the Draft Interconnection Regulation – TRAI's observations regarding discrimination and rise in number of disputes is without any basis.

(xxxvii) Para 26, 27, 28 of Explanatory Memorandum of the Draft Interconnection Regulation – We are of the view that the terms and conditions of mutual agreement need not required to be disclosed as once all kinds of deals/proposed agreements executed in the basis of RIO *(including the terms for subscription, carriage and packaging)*, then the issue under consultation relating to confidentiality will not assume much importance as the deal will be based on the details provided under RIO itself, which will be filed with TRAI in any circumstances. It is also relevant to draw the attention of TRAI to the Register of Interconnect Agreement Regulations, as amended

from time to time, which prescribes the modalities of maintenance of register and reporting requirements applicable to the industry, *inter alia*, stipulates that certain information are confidential in nature and are vital for the conduct of business for the parties. Hence, even if the information being shared in the interest of the general public, a right to make representation and /or to be heard by TRAI against such order has been prescribed. Hence, TRAI shall take decision in accordance with the relevant provisions of Telecom Regulatory Authority of India (Access to Information) Regulation, 2005 (as amended vide the Register of Interconnect Agreement) (Third Amendment) Regulations, 2005.

(xxxviii) Para 115 of Explanatory Memorandum of the Draft Interconnection Regulation pertaining to Prohibition of distributor of TV channels as agent of broadcasters - TRAI has wrongly stated that specific prohibition of appointment of distributor of TV channels as agent will not serve any useful purpose and the principals have to follow all the requirements prescribed by the regulations. However, TRAI has not considered the fact that the conflict of interest arises when the broadcaster appoints an agent who is also a distributor of TV channels. Such situation may lead to discrimination and disparity in the areas where such distributor of TV channels are competing with other distributor of TV channels.
