SONY PICTURES NETWORKS INDIA PRIVATE LIMITED
(Formerly known as Multi Screen Media Private Limited)
CIN : U92100MH1995PTC111487
Unit No. 5, 6, 7, 8, Ground Floor,
M. G. Road, Time Tower,
Gurgaon - 122 002, Haryana, India.
Tel : 0124 - 4848 777
Fax : 0124 - 4848 750

By Hand Delivery/Courier/Email

10 June 2016

Shri S.K. Singhal
Advisor (B&CS)
Telecom Regulatory Authority of India,
Mahanagar Doorsanchar Bhawan,
Jawahar lal Nehru Marg,
Old Minto Road,
New Delhi – 110 002

Subject: Comments to the Consultation paper on the Interconnection Framework Broadcasting TV Services distributed through Addressable Systems.

Dear Sir,

This is with reference to consultation paper on the Interconnection Framework Broadcasting TV Services distributed through Addressable Systems issued by TRAI on 4 May 2016.

Please find enclosed our comments on the issues arising for consultation.

The same are for your kind perusal and consideration.

Yours sincerely,

For Sony Pictures Networks India Private Limited

Sony Pictures Networks India Pvt. Ltd.

Authorized Signatory

Encl: As above

RESPONSE TO CONSULTATION PAPER ON INTERCONNECTION FRAMEWORK FOR BROADCASTING TV SERVICES DISTRIBUTED THROUGH ADDRESSABLE SYSTEMS

We, Sony Pictures Networks India Private Limited (earlier known as Multi Screen Media Private Limited) wish to thank the Telecom Regulatory Authority of India ("**Authority**") for initiating the consultation on interconnection framework for broadcasting TV services distributed through addressable systems ("**Consultation Paper**").

Please find below our responses on the issues that have been posed for consultation:

COMMON INTERCONNECTION FRAMEWORK FOR ALL TYPES OF ADDRESSABLE SYSTEMS

1. **How a level playing field among different service providers using different addressable systems can be ensured?**
2. **Should a common interconnection regulatory framework be mandated for all types of addressable systems?**

At present, the two interconnect regulations, viz. Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004 ("**Interconnection Regulations 2004**") and Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 ("**Interconnection Regulations 2012**") govern the (i) non-addressable systems and DTH, IPTV and HITS platforms and (ii) DAS platforms respectively.

The interconnection regulations promulgated by TRAI and amended from time to time, cover the basic structure of arrangement between the parties with respect to the different aspects of interconnection, revenue share between the service providers.

The understanding of TRAI itself was that there are different characteristics associated with different addressable platforms and hence, mandating one common regulatory framework may not serve the purpose and/or address the concerns of the respective addressable platforms.

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 (eg. Transponder requirements, technology (eg. 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.

Therefore, a common interconnection regulatory framework should not be mandated for all types of addressable systems.

TRANSPARENCY, NON-DISCRIMINATION AND NON-EXCLUSIVITY

3. **Is there any need to allow agreements based on mutually agreed terms, which do not form part of RIO, in digital addressable systems where calculation of fee can be based on subscription numbers? If yes, then kindly justify with probable scenarios for such a requirement.**
4. **How to ensure that the interconnection agreements entered on mutually agreed terms meet the requirement of providing a level playing field amongst service providers?**
5. **What are the ways for effectively implementing non-discrimination on ground? Why confidentiality of interconnection agreements a necessity? Kindly justify the comments with detailed reasons.**

Yes, we believe that there is still a necessity to allow agreements on mutually agreed terms, which do not form a part of RIO. The primary reason is that the mutual negotiations are a necessary marker for a free and progressive business environment. In the dynamic world of broadcasting, limiting license fee to one parameter may not do justice to any agreement. Decisions like locations and the degree of penetration in the market are subject to change as the transactions between two parties grow and evolve. It is impossible to mention each and every scheme for the platform owners who operate their platforms in varied environments. Further, in our opinion subscriber number cannot be the only basis for calculating the fee and that pricing should not be the only criteria to analyze parity. Ensuring non-discrimination cannot lead to a situation where fundamentally dissimilar operators can seek parity.

TRAI Regulation so far has allowed the parties to mutually negotiate the terms and conditions of their agreement for a distributor to commence distribution of signals of TV channels so provided by the broadcaster. TRAI has by way of different amendments, allowed the parties to mutually negotiate the terms and conditions of their respective agreements.

The need of the different addressable platforms vary from one another and the characteristics are also different, and hence the parties must be allowed to mutually negotiate the terms of the agreement on the basis of area of operation, number of subscribers catered by any operator, technological differences, etc. There are various factors that are weighed by the service providers while negotiating the commercial terms, for instance:

a) **Regional market**- While the subscriber numbers do play an important role in arriving at the subscription fees, however, we need to understand that subscription fees are also decided on the basis of market exigencies like territory where a particular DPO is operating in. For e.g., most of the broadcasters have regional channels, and they may want to provide better incentives to the operators plying in that regional market, which may not be required or necessary to be provided to another regional markets. For instance, for a broadcaster having a Bengali channel would want to provide a better incentive to a regional operator operating in West Bengal, which will have a broader number of subscribers, whereas such incentive may not necessarily be applicable or even be required for an operator who operates out of Punjab. In this case as well, irrespective of subscriber numbers, broadcasters should be allowed to enter into a mutually negotiated deal.

b) **Penetration** – Reach provided to various channels is pertinent for the broadcasters.

c) **Packaging** – Channel placement in the respective *genre*.

d) **Quality of subscribers serviced by the DPO** – As an example, while launching a new channel or promoting an existing channel of niche genre, it may be important for the broadcaster to ensure availability of the channels on the platform of certain DPOs due to the sheer reason of their catering to certain categories of subscribers. Another example, while DPO may provide the same reach to my channels, viewership on one may be higher compared to the other DPO due to differences in subscriber preferences.

e) **Engagement behavior of the DPO**: Examples- Timely payment of revenue by the DPO to the broadcaster, timely submission of authentic and proper subscriber reports by the DPO, promptness of new channel uptake by the DPO.

So long as parties entering into mutually negotiated interconnection agreements on the basis of what they deem fit, and where the agreements are not fraudulent and entered on arm's length within the channel tariff as frozen by the Authority, there should be no preemptive concern that the mutually negotiated agreement is discriminatory. However, to ensure non-discrimination, the Authority can intervene in the event of any potential non-discrimination basis subscriber agreements submitted to the Authority. Authority can also make stringent norms around cross shareholding/vertical integration to ensure healthy competition.

6. Should the terms and conditions (including rates) of mutual agreement be disclosed to other service providers to ensure the non-discrimination?

We submit that the terms and conditions of the mutual agreements should not be disclosed to other service providers as this crucial commercial information pertaining to those agreements must be duly secured. If the commercial information is brought into public domain, it may adversely affect the business interests of the stakeholders. Disclosure of terms and conditions of mutual agreements between the broadcasters and DPOs may lead to a situation of marred competitiveness. It would in turn negatively impact the business of the broadcasters and disrupt the equilibrium of the market.

Confidentiality of sensitive information is a necessity in case of mutual agreements to ensure freedom of trade and commerce. Disclosure of the said information may cause conflicts between the parties concerned and further cause delay in business transactions. All this confusion would cause nothing but damage to the parties.

The non-disclosure of crucial commercial information is a way of protecting one's interests in the harsh and competitive market. Non-disclosure of commercial terms of an agreement does not affect the fair-competition in the market as these agreements do not involve either determination of sale or purchase price or putting any limit on any market functioning.

Mutual agreement between the parties is a result of the process of brain-storming between them, after considering the view of both sides of the coin. It needs to be a laissez faire matter as confidential clauses of the agreements are a sole concern of the parties and when disclosed can create massive damage in terms of the business of the parties concerned.

Even as per the regulations, the broadcasters submit all the details (including the commercial details) to the Authority. In the event, Authority has a reason to believe that a particular broadcaster is not in compliance with the regulations, or that there is a difference in pricing without any valid justification, the Authority can issue a show cause notice to such broadcaster. The onus to prove that the broadcaster has complied with the laws shall be on the broadcaster. This will ensure that the interconnection agreements entered on mutually agreed terms meet the requirement of providing a level playing field amongst the service providers.

Further, in the event there is any complaint to the Authority or the Authority *suo motu* takes cognizance of any of the violations of the TRAI Regulations, the Authority has the requisite powers under Section 12 of the TRAI Act, 1997.

Any information (including the commercial terms) if made available to third party, will open the flood gates and the element of privacy and confidentiality will be disregarded, which is a sine qua non for any transaction, off course maintaining the basic facet of parity and non-discrimination. Any information made

available to the third party will put the confidential information to constant abuse and will take away the element of primacy between the parties.

The TRAI Regulations also recognise that the information relating to the respective agreement between the parties should be protected from the abuse. Accordingly, TRAI notified The Register of Interconnect Agreements (Broadcasting and Cable Services) Regulations, 2004 as amended from time to time. The said Regulation has also provisions with respect to the confidential portion of the register. In order to better understand the aspect as to why confidentiality of an interconnect agreement is a necessity, it is important to understand the history of the register of interconnect regulations and its subsequent amendments.
Since all the details of interconnection agreements (both mutually negotiated deals as well as RIO) entered with the DPOs are provided to TRAI on periodic basis, there is no need to disclose it to others which would lead to unwanted claims.

We would like to draw Authority's attention to statutes like the Competition Act which provides certain exemptions to the disclosure of the confidential commercial information. In fact, the Courts in various countries have recognized both the right to confidentiality as well as a right to privacy as a principal of law. The Authority can lay down the procedure of determining the information which is confidential. The Authority can take a cue from Regulation 35 of The Competition Commission of India (General) Regulations 2009 where the rights of the person providing the information have been recognized but the final decision on whether to make the information public is left to the Commission. If the Authority on the request of any party to treat any information confidential, is satisfied that there are good grounds for doings so, it may pass an order that such an information may be treated confidential. If the Authority declines the request to keep any portion of the interconnect agreement confidential, it shall record its reason for doing so and furnish a copy of its order to the party making the request. In that event, such party will have the right to make a representation and/or to be heard by the Authority against such order. Where there is any request for keeping any part of the interconnect agreement confidential, such part of the agreement shall remain confidential until the Authority decides otherwise after following due process as stated above.

7. Whether the principles of non-exclusivity, must-provide, and must-carry are necessary for orderly growth of the sector? What else needs to be done to ensure that subscribers get their choice of channels at competitive prices?

We are completely in agreement with the Authority's objectives that the principles of non-exclusivity, must provide and must carry are necessary elements for orderly growth of the broadcasting and distribution industry and the same is supported in plethora of judgements by the Honourable TDSAT.

In order to maintain level playing field for all the stakeholders, and also to ensure effective competition, these principles play an important role. If 'must provide' is included, the Authority shall ensure more robust 'must carry' provisions in the regulatory framework.

With the implementation of packages and a-la-carte offerings available to subscribers in addressable platform, there has been enhancement of choice for the subscriber. Since the retail pricing is under forbearance, the market forces will ensure rationalization of price for consumer.

8. Should the RIO contain all the terms and conditions including rates and discounts, if any, offered by provider, for each and every alternative? If no, then how to ensure non-discrimination and level playing field? Kindly provide details and justify.
9. Should RIO be the only basis for signing of agreement? If no, then how to make agreements comparable and ensure non-discrimination?
10. Whether SIA is required to be published by provider so that in cases where service providers are unable to decide on mutually agreed terms, a SIA may be signed?

We submit that it is not practical to have each and every incentive or discount available in the RIO as the incentives will be dependent on various factors. In the scenarios already provided above, there will be a need to enter into mutually negotiated agreement given the varied levels of the operators.

SIA is no longer required in the current scenario since mostly all the agreements signed will be on the basis of RIO. Since the RIO contains all the material information, the same will take care of ensuring that the non-discrimination and level playing field is maintained. Further, the Authority itself has in the explanatory memorandum of Interconnection Regulations 2012 stated "*The Authority is of the view that as the interconnection regulations already provide for the necessary regulatory framework for addressable systems, in the form of RIO, which were not there in the year 2006 when SIA was prescribed for CAS, there is no need for prescribing Standard Interconnect Agreement between the broadcaster and the MSO and also between MSO and LCO in the Digital Addressable Cable TV System. The Authority is of the view that the RIO based prescription should prevail in DAS also."*

11. Should a format be prescribed for applications seeking signals of TV channels and seeking access to platform for re-transmission of TV channels along with list of documents required to be enclosed prior to signing of SIA be prescribed? If yes, what are the minimum fields required for such application formats in each case? What could be the list of documents in each case?

As stated in response to above question, we do not require standard interconnect agreement. Hence, no format is proposed by us.

12. Should 'must carry' provision be made applicable for DTH, IPTV and HITS platforms also?
13. If yes, should there be a provision to discontinue a channel by DPO if the subscription falls below certain percentage of overall subscription of that DPO. What should be the percentage?
14. Should there be reasonable restrictions on 'must carry' provision for DTH and HITS platforms in view of limited satellite bandwidth? If yes, whether it should be similar to that provided in existing regulations for DAS or different. If different, then kindly provide the details along with justification.

'Must carry' provision must be made applicable for DTH, IPTV and HITS platforms also. IPTV platform has no constraint with respect to bandwidth. The authority also needs to analyze and do a fact finding exercise to ascertain if the said transponder limitation is real or a created scarcity.

We recommend that endeavor should be made by the Authority to remove the bandwidth constrains which restrict the transponder capacity. Such removal of impediments which restricts the bandwidth capacity of the DPO will enable implementation of "must carry" for DTH and HITS.

In case it takes time to remove the impediments in enhancing the transponder capacity, we suggest support TRAI's suggestion that the DTH and HITS operators may be given an option to discontinue carrying a channel. However, the basis of discontinuing a channel shall not be subscription to that channel in the preceding six months is less than or equal to 5% of the total active subscriber base of that operator averaged over that period. The Regulator will appreciate that the DPOs can package channels differently while providing them to their end subscribers, there is no way to ascertain that a given channel was not opted because of the lesser demand of the packaging that the DPO has made or because the DPO has priced the channel at such a rate, which makes it unlikely for the consumers to opt for. To determine a deletion of channel, the Authority shall evaluate various parameters which impact the strength of the channel and accordingly propose a regulatory framework.

Thus, the must carry provision should definitely apply to DTH, IPTV and HITS platform in order to curb practice of non-discrimination by the DPO. Allowing the DPO to escape from the provision of must carry may incentivize them to create barriers to entry which will not be in the best interests of the market.

15. In order to provide more transparency to the framework, should there be a mandate that all commercial dealings should be reflected in an interconnection agreement prohibiting separate agreements on key commercial dealing viz. subscription, carriage, placement, marketing and all its cognate expressions?

We reiterate our stand that commercial dealings/ mutual agreements must not be a part of the published interconnect agreement in order to maintain the sanctity of agreements between the parties. The Authority or the regulatory framework should only provide the broad guidelines for interconnection. The authority or the regulatory framework should not micro manage the manner in which stakeholders conduct their dealings with each other. The regulatory framework should create enabling environment where the ability of the stakeholders is not scuttled to do commercial dealings.

EXAMINATION OF RIO

16. How can it be ensured that published RIO by the providers fully complies with the regulatory framework applicable at that time? What deterrents do you suggest to reduce non-compliance?

There are sufficient checks and balances in law including the TRAI Act and the Regulator is fully able and competent to decide issues wherein there is irregularity on the part of any entity at the ground level. Any stakeholder can approach the Regulator and TDSAT wherein they can seek the intervention of the authority or tribunal to examine the provisions of the interconnection agreement. However, before initiating any actions against the service provider, the opportunity of being heard should be given to the concerned service provider.

17. Should the regulatory framework prescribe a time period during which any stakeholders may be permitted to raise objections on the terms and conditions of the draft RIO published by the provider?

18. If yes, what period should be considered as appropriate for raising objections?

The suggestion of TRAI that the provider should publish its draft RIO and invite objections/comments on it from the different stakeholders, is not feasible. It is to be noted that publication of RIO in itself is a tedious and time consuming exercise and a lot of resources are involved. If the draft has to be published, it would only amount to duplication and waste of time and money. It is also to be noted that there could be situations where different stakeholders will have different objections and all the objections have to be considered simultaneously so that there does not remain any inconsistency therein.

It is the understanding of TRAI that if any stakeholder feels that the terms and conditions of an RIO contravene the provisions of the regulatory framework then that stakeholder is at liberty to raise his objection with the provider publishing the RIO or at an appropriate forum.

Stakeholders can raise objections on the terms and conditions of the draft only if the same is not in compliance with the regulatory framework applicable at that time. Our only concern is that in the event we allow anyone to raise objections, there will be a plethora of unnecessary objections raised, and responding to the same could be a herculean task. A time period of 15 days from the date of publishing of the RIO on the website of the service provider shall be reasonable. No stakeholder should be allowed to raise concerns or objections after the expiration of 15 days period, and the RIO so published should be deemed to be compliant with the regulations.

Once all the objections have been received by the provider publishing the RIO, the provider shall take into due consideration all the objections and make amends to the RIO accordingly. In case, the provider feels that the provision with respect to which the objection has been raised, does not violate any of the conditions of the Regulation, it may not amend the said provision.

TIME LIMIT FOR PROVIDING SIGNALS OF TV CHANNELS / ACCESS TO THE PLATFORM

19. **Should the period of 60 days already prescribed to provide the signals may be further sub divided into sub-periods as discussed in consultation paper? Kindly provide your comments with details.**
20. **What measures need to be prescribed in the regulations to ensure that each service provider honour the time limits prescribed for signing of mutual agreement? Whether imposition of financial disincentives could be an effective deterrent? If yes, then what should be the basis and amount for such financial disincentive?**
21. **Should the SIA be mandated as fall back option?**
22. **Should onus of completing technical audit within the prescribed time limit lie with broadcaster? If no, then kindly suggest alternative ways to ensure timely completion of the audit so that interconnection does not get delayed.**
23. **Whether onus of fixing the responsibility for delay in individual cases may be left to an appropriate dispute resolution forum?**

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

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

This provision necessarily mandates that no seeker of signals should be discriminated against by the provider in the garb of negotiation/consideration of the request so made by the seeker of signals.

However, the Authority must understand that the delay for the provision of the signals cannot always be attributed to the broadcasters. Many a times, the DPOs requesting for the signals, do not sign the interconnect agreements within the timelines despite multiple follow ups, and are either not ready with their systems or even if their systems are ready, they defer the audit on some pretext or the other. In such cases, it becomes difficult for the broadcasters to comply with the regulations of providing the signals within the timelines provided by the Authority. Further, in the event audit is conducted and it reveals certain discrepancies in the system of the DPO, the rectification of which takes several days. In such events, where the DPO is required to rectify its systems basis the recommendations made, the broadcaster has to again follow it up with another audit, which leads to non-compliance of the timelines.

The CP divides 60 days period into the following sub-periods for provision of the signals:

a) Initial consent to provide the signals should be provided within 15 days from the receipt of the request;
b) Within the subsequent 15 days period the commercial agreement subject to verification of technical systems and parameters shall be signed;
c) Remaining 30 days for provisioning of the signals, which would include verification/audit of the system and deployment of IRDs and decoders.

The aforesaid suggestion of the authority to further sub-divide the time period, is not feasible. There are different stages before signals are provided, which cannot be clubbed. The seeker has to make a request along with all the relevant information/document, the information/document so provided have to be verified by the provider, in case of addressable system, the system has to be audited in order to check that the system is in compliance with the requirements of Schedule I of the Interconnect Regulations, 2012. The time taken in fulfilment of a particular stage may vary on case to case basis and the any prescription on the time limit for the completion of a particular stage, will only lead to hurried approach by the parties. The suggestion of the authority, that the signals may be provided within 15 days from the date of request and then other formalities may be completed, is not tenable. It is pertinent to note that the proviso to Clause 3.2 of the Regulations provide for the conditions in which the signals may be denied to the seeker of signals. Signals cannot be provided without any qualification.

There are situations where the signals are delayed, because the seeker does not furnish the necessary information/documents to the provider. In the absence of the information that are pertinent to be verified, it will be unjust to the broadcasters to provide the signals. Since there are already deterrent provisions existing in the TRAI Act, there is no need to prescribe any other deterrent provisions, including financial incentives. It is always open to the parties to approach the aggrieved parties for redressal of its grievances. As has been discussed above, mandating SIA is not required at this stage.

REASONS FOR DENIAL OF SIGNALS / ACCESS TO THE PLATFORM

24. What are the parameters that could be treated as the basis for denial of the signals/ platform?
25. Should it be made mandatory for service providers to provide an exhaustive list in the RIO which will be the basis for denial of signals of TV channels/ access of the platform to the seeker.

Currently the regulations provide only the following parameters for denial of the signals by a broadcaster to a DPO:

a) If the DPO is in default of its payment obligations;
b) If the DPO demands carriage fees at the same time of seeking the signals under "must provide" clause; and
c) Imposition of any term by the service provider, which is unreasonable.

We request the Authority to also add the below mentioned parameters in the regulations as well, where the broadcasters can deny the signals to a particular DPO:

a) If a DPO who is in default of its payment obligations, has been acquired by or merged with an MSO, the MSO so requesting for signals shall be provided with the signals of the channels only if it clears all the outstanding dues of such defaulter DPO;
b) If in broadcaster's view the MSO has acquired or has entered into a JV with a defaulter DPO, the information of which is not provided to the broadcaster;
c) If the DPO conceals or misrepresents its entire area of operation;
d) If broadcaster is of the reasonable view that a DPO seeking signals is operating under a new name and that it was a defaulter in its previous set up;
e) If the DPO is not in compliance with the technical regulatory guidelines.

The Operator should also provide copies of valid registration certificate issued by the Ministry of Information and Broadcasting, Proposed areas of operations, Seeding plan, Location of the Headend along with the particulars of CAS & SMS. Further, the authority should also take note of the fact that due to difference in technologies, there will be certain additional documents that may be required by the broadcaster in order to process the request.

In our opinion, there shouldn't be a mandatory requirement to add the exhaustive list of reasons where the signals could be denied because apart from the parameters provided above, there can be certain other grounds where the signals to a particular DPO could be declined by the broadcasters, and it may not be possible to list down each such ground in either the regulations or in the RIO. Thus, we believe, that the broadcasters should also be given the freedom to provide the reasons for the denial of the signals to the affected DPO which could be in addition to the grounds provided above.

INTERCONNECTION MANAGEMENT SYSTEM (IMS)

26. Should an IMS be developed and put in place for improving efficiencies and ease of doing business?

27. If yes, should signing of interconnection agreements through IMS be made mandatory for all service providers?

28. If yes, who should develop, operate and maintain the IMS? How that agency may be finalised and what should be the business model?

29. What functions can be performed by IMS in your view? How would it improve the functioning of the industry?

30. What should be the business model for the agency providing IMS services for being self-supporting?

The Authority is of the view that an online Interconnect Management System ("**IMS**") should be developed which could assist in: (a) publishing the RIOs at a central place, (b) placement of interconnection requests along with the requisite documents, (c) acknowledging the request and initial consent by the provider for providing the signals, (d) mutual negotiations to arrive at agreement, (e) signing of agreement, (f) maintaining prescribed data relating to interconnection terms in the database, (g) preserving copy of the executed agreement, (h) exchange of communications for various other purposes relating to interconnection, renewal or extension of agreements, (i) revenue settlement etc.

Currently, most of the service providers have their own in-house online system, designed specifically to address most of the above scenarios, which are either licensed or entirely developed internally. The service providers have incurred significant investments in developing the online system over the period of time and having to do away with the same and investing in the central IMS may not be feasible. The IMS if created needs to be a robust system which can perform all the functions provided above. Currently, the CP itself acknowledges that there are 50 pay TV broadcasters, around 700 MSOs, 6 DTH operators and 2 HITS operators and one IPTV operator. If an MIS has to perform all the functions provided above, it needs to have a capability to not only manage multiple agreements but also perform the interactive function as stated above.

The major concerns that need to be addressed before the proposal of the bringing in a technology like IMS could be enumerated below as:-

- Significant cost - The cost involved in the process will be too high and there will be complexities in cost allocation amongst various stake holders;
- Complexity in implementing the said mechanism;
- Duplication of existing resources without significant benefits;

- This does not answer the issues relating to SMS/CAS integration;
- This does not answer the concerns that it does not provide for any alternative/back-up for emergency situations;
- There are multiple levels of execution of interconnect agreements that a broadcaster has to go through and hence any prescription on managing an IMS is not feasible; and
- Maintaining confidentiality may become a challenge.

However if the Authority still feels the need of having an IMS, the same should be cost effective and should be capable of performing the functions that the Authority has contemplated, which will of course improve efficiency. However, a much larger discussion on this issue is warranted before agreeing to the same. The Authority should also understand that every transaction between the service providers are considered to be confidential, and thus, in the event, Authority still believes that there is a need to have IMS, the Authority should ensure the following:

a) Every service provider shall have their separate usernames and passwords;
b) Every account of the service providers shall be strictly separate;
c) That the security of the system of one service provider vis-à-vis other service providers shall be kept absolutely confidential; and
d) The security threats are seriously dealt with.

TERRITORY OF INTERCONNECTION AGREEMENT

31. Whether only one interconnection agreement is adequate for the complete territory of operations permitted in the registration of MSO/ IPTV operator?
32. Should MSOs be allowed to expand the territory within the area of operations as permitted in its registration issued by MIB without any advance intimation to the broadcasters?
33. If no, then should it be made mandatory for MSO to notify the broadcaster about the details of new territories where it wants to start distribution of signal a fresh in advance? What could be the period for such advance notification?

Signing of the interconnection agreement whether one per territory or one for the entire list of territories that the operator is permitted to operate in, is a business related issue, which in our opinion should be left to the discretion of service providers entering in such interconnection agreements.

The Authority's observation that the non-addressability and localized registration of cable operators resulted in territory specific agreements is not entirely factual. Even though the systems are addressable and that the subscriber numbers can be ascertained by the subscriber management system of the DPO, which will help in billing and invoicing, it is important for the broadcasters to know the territories in which the channels will be provided by a particular DPO to prevent area transgression by the operator.

In our considered opinion, it is important to define the territory in the interconnect agreements in order to enable the parties to have a check on the abuse of signals by the other party. If the territory is not defined, this will give absolute power to the distributors to extend their area of operation without having to account for the same to the broadcaster, and hence the broadcasters will not be able to prevent piracy. In the event piracy is allowed to happen, it will be a huge loss to the broadcasters and in return loss to the exchequer as well.

Territory of operation of the distributor is the major factor for the determination of the terms and conditions of the interconnect agreement between the parties. Further, the commercial considerations are also directly linked to the areas of operation of the operator.

Any unfettered right on the distributor to operate in the market, will only lead to commercial interest of the broadcasters, and such loss cannot be monetarily determined.

The right of the broadcaster over the signals are also protected and governed by the Copyright Act which provides that the broadcasters have the copyright over their signals and the right to retransmission rights can only be granted by the broadcaster, and any retransmission without due authorization, will lead to the exploitation of the signals at the cost of the broadcasters.

Further, if the operators are allowed to operate in an undefined territory, it will encourage bigger players resorting to anti-competitive measures in order to eat away the smaller players who might not have the requisite infrastructure to expand their reach. Further the area of operations should also be defined and agreed to so as to ascertain the rights and obligations of the respective parties in any disputes before an adjudicating body.

In situations where parties execute interconnect agreements for providing services pan India also in order to avoid multiplicity of execution of agreements, there must be a mandate that the DPO gives out a detailed list of the areas, and provide its services without getting the prior approval from the broadcaster and executing interconnect agreement thereof.

The period of 60 days should be provided in case operators wishes to extend his area of operation and every such request needs to be considered as a fresh request in terms of the regulation.

PERIOD OF AGREEMENTS

34. Whether a minimum term for an interconnection agreement be prescribed in the regulations? If so, what it should be and why?

Generally it is been observed that interconnection agreements are signed for a minimum term of one year and the present Regulations also provides that the RIO should be at least for one year. If the channels are provided on a must provide basis with special insistence on parity as well as non-discrimination, one of the most important parameter to gauging parity is the term agreed under the agreement. A broadcaster should not be forced to provide its channels to a DPO who has entered into an agreement for a lesser period at the same price that it will charge another DPO who has entered into an agreement for one year or more. This solves the dual problem of having an agreement atleast long enough so that it provides clarity of business to either party for foreseeable future and also reduces burden of renewing it too frequently whereas, at the same time not having a time period that is too long which may reduce flexibility and hamper innovation.

CONVERSION FROM FTA TO PAY CHANNELS

35. Whether it should be made mandatory for all the broadcasters to provide prior notice to the DPOs before converting an FTA channel to pay channel?
36. If so, what should be the period for prior notice?

The current regulations state that the channels once declared free to air channel/pay channel shall remain such for at least one year. Its further stated that in the event broadcaster intends to convert a free to air channel to a pay channel or vice versa, it should inform the Authority and give one month's notice before such conversion in two local newspapers, out of which one shall be published in the newspaper of the regional language of the area in which such conversion takes place.

We are of the view that the obligation of notification of the conversion of channels via newspapers do not serve any purpose given no DPO or subscriber routinely checks the same in the newspapers. Infact, the

broadcasters should be allowed to publish the notification of conversion of any channel on their respective websites, and the same should considered as a valid notification. Broadcaster should publish such information on its website within reasonable time prior to the conversion of any of its channel from FTA to pay. Additionally, we are also of the view that the requirement on one month prior notice for informing TRAI shall also be modified and only prior intimation shall be sent to TRAI with reasonable time.

MINIMUM SUBSCRIBERS GUARANTEE

37. **Should the number of subscribers availing a channel be the only parameter for calculation of subscription fee?**
38. **If no, what could be the other parameter for calculating subscription fee?**
39. **What kind of checks should be introduced in the regulations so that discounts and other variables cannot be used indirectly for minimum subscribers guarantee?**

In our considered opinion, subscriber base should be taken as the one of the criterion for calculation of the subscription fee. Apart from subscriber numbers, the other factors as outlined above in our response like reach of the channel, demand of the channel in the market and other factors that may become relevant with time may also be considered while prescribing the formula for the calculation of the subscription fee.

MINIMUM TECHNICAL SPECIFICATIONS

40. **Whether the technical specifications indicated in the existing regulations of 2012 adequate?**
41. **If no, then what updates/ changes should be made in the existing technical specifications mentioned in the schedule I of the Interconnection Regulations, 2012?**
42. **Should SMS and CAS also be type approved before deployment in the network? If yes, then which agency may be mandated to issue test certificates for SMS and CAS?**
43. **Whether, in case of any wrong doing by CAS or SMS vendor, action for blacklisting may be initiated by specified agency against the concerned SMS or CAS vendor.**

The regulatory framework at the present, provides for a detailed list which operators are mandatorily required to comply with. The list although being exhaustive in itself, at points, miss out on a number of technical requirements which the operator do not fulfill in order to circumvent the regulations. The Authority should ensure that the operator uses technical systems that are validated by an appropriate authority. BECIL/DoT should issue test certificates after validation as per regulation.

We note below certain technical specifications which TRAI must prescribe in order to make the Schedule I a more effective list:

- STBs should be able to run scroll from the headend in addition to On Screen Display messaging.
- Water mark logo of MSO should be available on all channels and should not be removeable. It should appear on all types of STBs used by the headend. This will help in tracing the signal in case of piracy. The logo should not cover more than 5% of the screen and should have 70% transparency.
- Fingerprint font color and background color should be changeable from head-end.
- Content should get recorded along with FP/watermarking/OSD & also should display live FP during play out.
- Recorded content should be encrypted & not play on any other devices.
- In the event a customer is deactivated by the MSO the recorded content available on the STBs should not play.
- Content should get recorded along with entitlements and play out only if current entitlement of that channel is active.

- User should not have access to install third party application/software.
- CAS should be able to generate log of all activities i.e. activation/deactivation/FP/OSD/package logs/package modification logs.
- 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.
- No activation / deactivation from direct CAS, it must be routed via SMS client only.
- CAS System should be able to maintain logs of date of activation and deactivations.

In the nutshell, following changes should be made to the existing technical specifications under Schedule 1:

A) Conditional Access System (CAS) & Subscriber Management System (SMS) : Current Regulations	Suggestion – CAS & SMS need to be bifurcated in schedule-I for both reporting & functionality. This will help attaining better clarity in understanding & during audits.
1. The current version of the conditional access system should not have any history of the hacking.	There should be a Govt Institution, preferably DTES, who can CERTIFY CAS and SMS Types (Models/Vendors) with initial check lists like, reporting, security, ECM and EMM coding methods, Logs maintaining capability etc. This will smoothen the process.
2. The fingerprinting should not get invalidated by use of any device or software.	During audit it can be checked only by switching channels using remote or switching OFF and ON STB using remote.
3. The STB & VC should be paired from head-end to ensure security.	Ok
4. The SMS and CA should be integrated for activation and deactivation process from SMS to be simultaneously done through both the systems. Further, the CA system should be independently capable of generating log of all activation and deactivations.	CAS logs need to be defined separately:- Activation / De-activation Log STB-VC Pairing / De-Pairing Log Package Creation Log Package Assignment to STB Log Package Modification Log
5. The CA company should be known to have capability of upgrading the CA in case of a known incidence of the hacking.	It cannot be checked in an audit and there should be a government agency, which should implement certification of the same and ensure strict vigilance. CAS company needs to give an undertaking for the same to the central type approval authority.
6. The SMS & CAS should be capable of individually addressing subscribers, on a channel by channel and STB by STB basis.	Should be more specific & separately defined for CAS & SMS. SMS Software provider should design and accommodate standardized broadcasters' reports for subscriber numbers and other information in their systems. These reports should be universal and should be annexed in Schedule-1 for all to adhere. Same type of reports will go to each and every broadcaster. An independent government agency should ensure this.
7. The SMS should be computerized and capable to record the vital	

information and data concerning the subscribers such as:	
a. Unique Customer Id	Ok
b. Subscription Contract number	Ok
c. Name of the subscriber	Ok
d. Billing Address	Ok
e. Installation Address	Ok
f. Landline telephone number	Ok
g. Mobile telephone number	Ok
h. Email id	Ok
i. Service/Package subscribed to	Ok
j. Unique STB Number	Ok
k. Unique VC Number	Ok
8. The SMS should be able to undertake the:	
a. Viewing and printing historical data in terms of the activations, deactivations etc	Ok
b. Location of each and every set top box VC unit	Ok
c. The SMS should be capable of giving the reporting at any desired time about:	
i. The total no subscribers authorized	Ok – Active only
ii. The total no of subscribers on the network	Ok – Active + Deactive
iii. The total no of subscribers subscribing to a particular service at any particular date.	Ok
iv. The details of channels opted by subscriber on a-la carte basis.	Ok
v. The package wise details of the channels in the package.	Ok
vi. The package wise subscriber numbers.	Ok
vii. The ageing of the subscriber on the particular channel or package	Both are required during the audits and system should be capable of storing them.
viii. The history of all the above mentioned data for the period of the last 2 years	Ok Cannot be checked for fresh systems. It's a hardware dependent feature & need to be mentioned in the schedule.
9. The SMS and CAS should be able to handle at least one million subscribers on the system.	Ok It cannot be checked in an audit & there should be a central type approval authority e.g. DTES for the certification of the same.
10. Both CA & SMS systems should be of reputed organization and should have been currently in use by other pay television services that have an	It cannot be checked in an audit & there should be a central type approval authority for the certification of the same.

aggregate of at least one million subscribers in the global pay TV market.	
11. The CAS system provider should be able to provide monthly log of the activations on a particular channel or on the particular package.	CAS logs need to be defined separately:- Activation / De-activation Log STB-VC Pairing / De-Pairing Log Package Creation Log Package Assignment to STB Log Package Modification Log
12. The SMS should be able to generate itemized billing such as content cost, rental of the equipment's, taxes etc.	Ok
13. The CA & SMS system suppliers should have the technical capability in India to be able to maintain the system on 24x7 basis throughout the year.	It cannot be checked in an audit & there should be a central type approval authority for the certification of the same.
14. CAS & SMS should have provision to tag and blacklist VC numbers and STB numbers that have been involved in piracy in the past to ensure that the VC or the STB can not be redeployed.	CAS needs to generate log for blacklisting. Usually DPO denies during audit if broadcaster wants to check this feature.
(B) Fingerprinting:	
1. The finger printing should not be removable by pressing any key on the remote.	During audit it can be checked only by switching channels using remote or switching OFF and ON STB using remote.
2. The Finger printing should be on the top most layer of the video.	Ok
3. The Finger printing should be such that it can identify the unique STB number or the unique Viewing Card (VC) number.	Ok – repeated with point 6
4. The Finger printing should appear on all the screens of the STB, such as Menu, EPG etc.	Need to Modify Menu Setting No Content Screen Game EPG Etc.
5. The location of the Finger printing should be changeable from the Headend and should be random on the viewing device.	Ok
6. The Finger printing should be able to give the numbers of characters as to identify the unique STB and/or the VC.	Ok – repeated with point 3
7. The Finger printing should be possible on global as well as on the individual STB basis.	Ok

8. The Overt finger printing and On screen display (OSD) messages of the respective broadcasters should be displayed by the MSO/LCO without any alteration with regard to the time, location, duration and frequency.	Ok
9. No common interface Customer Premises Equipment (CPE) to be used.	It cannot be checked in an audit & there should be a central type approval authority for the certification of the same.
10. The STB should have a provision that OSD is never disabled.	Ok
(C) Set Top Box (STB) :	
1. All the STBs should have embedded Conditional Access.	It cannot be checked in an audit & there should be a central type approval authority for the certification of the same.
2. The STB should be capable of decrypting the Conditional Access inserted by the Headend.	It cannot be checked in an audit & there should be a central type approval authority for the certification of the same.
3.The STB should be capable of doing Finger printing. The STB should support both Entitlement Control Message (ECM) & Entitlement Management Message (EMM) based fingerprinting.	Ok
4. The STB should be individually addressable from the Headend.	Ok
5. The STB should be able to take the messaging from the Headend.	Ok
6. The messaging character length should be minimal 120 characters.	Ok
7. There should be provision for the global messaging, group messaging and the individual STB messaging.	Ok
8. The STB should have forced messaging capability.	Ok
9. The STB must be BIS compliant.	It cannot be checked in an audit & there should be a central type approval authority for the certification of the same.
10. There should be a system in place to secure content between decryption & decompression within the STB.	It cannot be checked in an audit & there should be a central type approval authority for the certification of the same.
11. The STBs should be addressable over the air to facilitate Over The Air (OTA) software upgrade.	It cannot be checked in an audit & there should be a central type approval authority for the certification of the same. Usually DPO denies during audit if broadcaster wants to check this feature.

Following updates should be added to existing technical specifications mentioned under Schedule-I:-

S No	A) Conditional Access System (CAS) & Subscriber Management System (SMS) : New Additions
	CAS – Should be able to generate Logs for:-

1	Encryption Logs Should Be Mandatory – In the current DAS regime DPO's unencrypt channels from MUX at their own wish & show content to all subscribers. One channel is un-encrypted then CW(Control Word) is not received by CAS & same can be checked in ECM/EMM logs. Regulation should mandate to generate & store ECM/EMM table logs during the audit, so that DPO cannot misuse this feature & runaway easily. It will be impossible to implement RIO deals and invoicing if this log is not available in CAS. Because after un-encrypting the signals CAS will not be able to Capture total active STB/VC count for that particular channel.
2	Package creation with date & time stamping.
3	Package alteration / modification with date & time stamping.
4	Package wise Channels mapping
5	Package/Service wise active VC count
6	STB/VC wise service assignment list
7	Complete White list of STB
8	Complete Black List of STB
	SMS – Reporting
1	Package creation with date & time stamping.
2	Package alteration / modification with date & time stamping.
3	STB/VC wise service assignment list
4	Complete White list of STB
5	Complete Black List of STB
6	Monthly Subscriber Report in prescribed format
	(B) Fingerprinting / OSD: Should incorporate more features like:-
1	10 Background Colors
2	10 Font Color
3	5 Font Size
4	Forced FP
5	Covert FP
6	Scheduling of FP
7	FP should appear on
8	OSD Should appear on all screens:-
	A – Menu
	B – Setting
	C - No Content Screen
	D – Game
	Etc.
	(C) Set Top Box (STB) :
1	If DPO watermark is through STB then it should not invalidated by use of any device or software – Since it cannot be checked in an audit & there should be a central type approval authority for the certification of the same.
	Addition – (D) – Headend information shouldbe provided at the time of audit.
1	Headend Diagram with complete details of all the equipment's installed in headend control room.

2	Details of PIRD installed in headend
3	Details of encoders installed in headend
4	Water Mark(Logo of MSO) should be encoder feature rather than STB feature.
5	Details of MUX installed in headend
6	Details of Scrambler installed in headend
7	Details of QAM installed in headend
8	Power backup details
9	Earthing details
10	Symbol rate used
11	Frequency details
12	Compression technique used
13	Number of SD / HD / Radio Channel
14	Details of VAS(Value Added Service) offered to subscribers
15	Dish Details
	Addition – (E) – DVR Feature testing
1	Digital Video Recording should be Control Word bounded.
2	Digital Video Recording done on a STB cannot be played on other STB
3	Digital Video Recording on STB cannot be played when RF Cable is not connected to an active STB.
4	Digital Video Recording on STB cannot be played when Viewing Card is ejected fr0om an active STB.
5	Digital Video Recording on STB cannot be played when Viewing Card is unpaired from the headend.
6	Digital Video Recording on STB cannot be played when STB is de-activated from the headend.
7	Digital Video Recording on STB cannot be played when STB is blacklisted from the headend.
8	Digital Video Recording should capture Water Mark of the DPO.
9	Digital Video Recording should capture Finger Print of the DPO.
10	Digital Video Recording should capture OSD of the DPO.
11	STB should not play videos of open source which are not recorded through DVR feature.

Yes, we are of the opinion that all SMS & CAS, getting deployed in different DPO headends should be type approved by a neutral government agency. This will ensure that no sub-standard products are deployed in any of the DPO networks, and will certainly bring down deadlocks during audit. Some of the agencies, which the Authority could refer to for type approval (http://www.typeapproval.com/india#wireless-and-radio-equipment):

1. TEC (TELECOMMUNICATION ENGINEERING CENTER) - TEC issues Interface Approval against its Interface Requirements (IR) standards. IR standards are organized by functional equipment type and usually specify network interfaces. Equipment to be connected to public network services requires approval. TEC issues Type Approval against its Generic Requirements (GR) standards. Like the IR standards, GR standards are organized by functional equipment type. Approval requires in-country telecom testing and may also require environmental and EMC testing. Infrastructure Assessment of the applicant's test and repair facilities in India are also a requirement.(http://www.tec.gov.in/type-approval/)

2. WPC (Wireless Planning & Coordination Wing) - The Wireless Planning and Coordination wing of India's Department of Telecommunications issues approval of radio devices operating in unlicensed frequency bands. Generally, approval is based on review of foreign standard test reports and approval certificates. Radio devices operating in licensed frequency bands require a separate set of licenses. For radio

equipment that operates in licensed frequency bands the importers, dealers and users of the equipment must obtain licenses from WPC. The application processes for these licenses are complex and time consuming, but Compliance International can support them.(http://www.wpc.dot.gov.in/)

3. BIS (Bureau Of Indian Standards) - BIS requires registration of electronics and information technology goods in 15 categories, including audio/video equipment, IT equipment, and household and similar electrical appliances. Testing must be performed against Indian standards at a BIS recognized laboratory. Separate registration is required for each factory at which a product is manufactured. (http://www.bis.org.in/)

Yes, we agree with the Authority's opinion that CAS and SMS vendor involved in any wrong doing or malpractice should be blacklisted.

TECHNICAL AUDIT OF ADDRESSABLE SYSTEMS

44. Whether the type approved CAS and SMS be exempted from the requirement of audit before provisioning of signal?
45. Whether the systems having the same make, model, and version, that have already been audited in some other network and found to be compliant with the laid down specifications, need not be audited again before providing the signal?
46. If no, then what should be the methodology to ensure that the distribution network of a DPO satisfies the minimum specified conditions for addressable systems while ensuring provisioning of signals does not get delayed?
47. Whether the technical audit methodology prescribed in the regulations needs a review? If yes, kindly suggest alternate methodology.
48. Whether a panel of auditors on behalf of all broadcasters be mandated or enabled? What could be the mechanism?
49. Should stringent actions like suspension or revocation of DPO license/ registration, blacklisting of concerned SMS and CAS vendors etc. be specified for manipulating subscription reports? Will these be effective deterrent? What could be the other measures to curb such practices?

It is to be noted that each installation of a new head-end by the operator involves new processes and in the process of installation, the system might lose on certain requirements as have been mandated by the Regulations. Hence, exempting type approved CAS and SMS systems from further audit before provisioning of signals should not be allowed, since this would give the operators an upper hand and a reason to evade compliance to the requirements of the Regulations. Further, it is very important to establish proper integrations of CAS and SMS at each head-end. Functionality of CAS and SMS anti-piracy features depend on STB compatibility and manner of offering of channels may differ from MSO to MSO. Further, type approval of CAS & SMS will ensure only the elimination of sub-standard products from the market. Post purchase of CAS, SMS & STB by a DPO, the integration of the 3 need to be checked & validated before providing the signals, as the features adopted/purchased by each DPO will vary.

As provided above, even if two DPOs own same combination of CAS, SMS & STB, still each DPO will opt for different features as per their economic & functional dynamics, due to which integration of the three may display different results, especially with middle ware application interface where integration need to be checked for each combination of CAS & SMS. Thus, we do not believe that the systems having the same make, model, and version, that have already been audited in some other network and found to be compliant with the laid down specifications, need not be audited again before providing the signal. Therefore the only methodology to ensure that the DPO satisfies the minimum specified conditions for addressable system is that the broadcaster should visit and ensure the complete integration and compliance of the systems deployed by each DPO, before giving them signals.

The existing Regulations already prescribes the audit mechanism. Additionally we can look at having suitable upgradation of CAS and SMS system should be undertaken by the vendors on a periodic basis.

In view of various issues that the broadcasters had faced in the past with DPOs on the subscriber numbers being under declared, the audit process becomes a critical part in ensuring smooth running of the business of the broadcasters and also to ensure that there is no loss of revenue to the government because of under declaration of the subscriber numbers by the DPOs. The audit primarily is a mechanism to ensure the compliance of contractual stipulations including authentication of periodic reports by the digital MSOs/DTH service providers so as to safeguard the subscription revenue of the broadcasters. We suggest that TRAI can look at the following methodology:

i) An independent audit firm can be appointed by IBF on behalf of its member broadcasters
ii) The audit firm so appointed can be one of the big 5 CA firms
iii) Each member broadcaster would refer to IBF any disputes/issues involved in respect of DPOs and basis such reference, IBF can finalise the scope of audit and mandate the independent audit firm to carry out the audit on a particular DPO.
iv) The audit team of the CA firm can also be accompanied by representatives of IBF

Thus if one single centralized agency conducts audit of the CAS and SMS system of the DPO on behalf of the broadcasters, all the issues raised by the DPOs to TRAI in respect of the audit can be resolved. Further such exercise of audit can be allowed to a maximum of 2 times a year, and the report so generated by the independent audit firm can be provided to all the member broadcasters except for broadcaster specific numbers, which can be divulged, shared and audited by each broadcaster separately.

The broadcasters invoice the DPO on the basis of subscriber reports provided to it by the DPOs. In the event it is found that the subscriber reports so submitted to the broadcasters are manipulated, the license of the said DPO should be revoked. Further, such DPO shall be obligated to pay the differential amount along with the interest @ 18% p.a. to the broadcasters. In addition to blacklisting and revocation of the license, such DPO shall also be tried for the offence of cheating as manipulating the data clearly amounts to cheating under section 420 of Indian Penal Code.

SUBSCRIPTION DETAILS

50. Should a common format for subscription report be specified in the regulations? If yes, what should be the parameters? Kindly suggest the format also.
51. What should be the method of calculation of subscription numbers for each channel/ bouquet? Should subscription numbers for the day be captured at a given time on daily basis?
52. Whether the subscription audit methodology prescribed in the regulations needs a review?
53. Whether a common auditor on behalf of all broadcasters be mandated or enabled? What could be the mechanism?
54. What could be the compensation mechanism for delay in making available subscription figures?
55. What could the penal mechanism for difference be in audited and reported subscription figures?
56. Should a neutral third party system be evolved for generating subscription reports? Who should manage such system?
57. Should the responsibility for payment of audit fee be made dependent upon the outcome of audit results?

There have been plenty of cases where the distributor does not account to the broadcaster its true subscriber report as to how many subscribers he has catered to during a particular month. The distributors while accounting the subscriber base to the broadcasters, take into account the subscriber number at the beginning

and at the end of the month. They however, do not account for the subscriber numbers that it has catered to during the middle of the month. The hon'ble TDSAT had the occasion to determine this issue and held that DPOs must be held liable to account for the entire subscriber base.

As has been suggested by TRAI, a common standard format of the audit may be prescribed to be maintained by all the stakeholders in order to enable the parties to keep a check on the subscriber base of a particular distributor and also to verify from time to time if the technical and other requirements are met with by the DPOs. The regulation as on date mandates that the SMS, CAS, Fingerprinting STB meet the minimum requirements as enumerated in the Schedule I of the Regulations, 2012. However, at times, the basic dispute between the parties is that whether these requirements are met or not. Since these requirements are technical in nature, and sometimes the technology is so complicated that it is hard to prove that the requirements are not met with. In order to address this issue, the primary obligation that must be cast upon the DPOs is that only standard equipments, technology that is prior approved by the authority must be used. The purpose of conducting audit is to ascertain that the system so used meets with the Schedule I requirements. However, at times the situation so arises that after the audit is conducted, the DPO changes its system completely, and thereby defeating the whole purpose of conducting audit. The number of audits that is allowed to a broadcaster also gets exhausted and the broadcaster is left with no other option but to approach the Tribunal for effective adjudication of the disputes.

Given that different broadcasters have different requirements, the format of the subscriber report shall be determined by the broadcaster basis the commercial arrangement with the DPO. A common format might not be able to cover all the reporting requirements of various stakeholders.

Methodology prescribed in the existing schedule I suggests the opening & closing of each month need to average for the invoicing purpose. But this methodology displays a drawback when a subscriber is active for first 28 days & gets de-activated on 29th day of month. To overcome this drawback we suggest to take 3 count for each month on the end day of 10^{th}, 20th & last day of month (28/29/30/31) depending on respective month and leap year. This will help DPO as well as broadcaster to minimize the standard deviation in subscriber base.

Yes the subscription audit methodology prescribed needs review. Currently, Schedule I Audit methodology is as follows:

a) Number of Audits – 2 times a year
b) By – Broadcaster or its authorized agency

If found dis-satisfactory – MSO to resolve issue within 14 business days. After 14 Days – if not satisfactory result – Broadcaster may disconnect signal until MSO rectify & satisfy broadcaster. For such non-compliant audit, MSO will bear the cost of audit.

Current framework doesn't give clarity whether post 14 days can signals be switched off immediately or after serving 21 days' notice.

Maximum number of attempts should be 1st visit+2 revisits & expense of both revisits should be borne by DPO.

Audits of system should be carried by a team, created by all the broadcasters. But commercial audits should be carried separately by each broadcaster for their respective channels.

For delay in making available the subscriber reports, the operators should be liable to pay the broadcasters a penalty as may be prescribed by the Authority. This would act as a deterrent in nature for the operators

and would inculcate some discipline amongst them which in turn may ensure timely receipt of subscriber reports.

In our opinion the suggestion of the authority to appoint a neutral third party auditor is a good initiative and we have given our recommendation herein above in this regard.

DISCONNECTION OF SIGNALS OF TV CHANNELS

58. Whether there should be only one notice period for the notice to be given to a service provider prior to disconnection of signals?
59. If yes, what should be the notice period?
60. If not, what should be the time frame for disconnection of channels on account of different reasons?

The provisions with respect to the notice before disconnection and the intent and purpose behind the same is being adequately provided in Clause 4 (as amended) of the Principal Regulations, 2004.

The basic purpose of giving notice is to inform the distributor and its subscriber that services are going to be disrupted. The reason for disconnection is to be stated in the said notice only with the objective of providing an opportunity to the distributor to make good the shortcomings and thereby comply with the terms of the agreement.

No, there shouldn't be a requirement for uniform notice period to be given to a service provider prior to disconnection of signals for various reasons. The reasons for disconnection could vary from non-payment of the outstanding dues, to non-renewal of the agreement, to non-provision of subscriber reports (which is required to raise monthly invoices) to a much more serious breach of piracy. Time period of 21 days to disconnect the signals in case of breaches with respect to non-payment of outstanding dues is well accepted however, having to continuously providing signals for 21 days in the event an operator is involved in piracy and/or area transgression is not acceptable. In fact in our view, time period of 10 days provided in the regulation for switching off the channels should be dispensed with and the Broadcaster should be allowed to switch off the signals immediately in cases of piracy.

In the cases where the agreement is not renewed between the broadcaster and the DPO and that the broadcaster has given the notice to the concerned DPO in accordance with regulation 5 (16) of the Interconnection Regulations 2012, the broadcaster should have the right to terminate the agreement without the requirement of any notice period. The amended regulations do provide that it's the DPOs responsibility to intimate the consumer 15 days prior to the date of expiration of the agreement, the date of expiration of the agreement and the date of disconnection of the signals of the channels. This will ensure that the signals are not provided to the DPO in the absence of signed interconnection agreement and at the same time the consumers of the channels have enough notice around the said disconnection. Further, this would also be a safeguard mechanism where the broadcasters generally lose more than a month's revenue complying with the notification requirements. We request the Authority to not alter this amendment.

PUBLICATION OF ON SCREEN DISPLAY FOR ISSUE OF NOTICE FOR DISCONNECTION OF TV SIGNALS

61. Whether the regulation should specifically prohibit, the broadcasters and DPOs from displaying the notice of disconnection, through OSD, in full or on a partial part of the screen?
62. Whether the methodology for issuing notice for disconnection prescribed in the regulations needs a review? If yes, then should notice for disconnection to consumers be issued by distributor only?

63. Whether requirement for publication of notices for disconnection in the newspapers may be dropped?

We submit that the regulations should not prohibit the broadcasters and DPOs from displaying the notice of disconnection through OSD. The regulations should mandate the maximum size of the OSD and that while displaying the OSDs the broadcasters as well the DPOs shall be required to ensure that the OSD do not in any way hamper or obstruct the viewing of the channels.

It has been provided and debated in several forums that there is no privity of contract between a broadcaster and an end consumer. Thus, the onus to notify the consumer about a purported disconnection should be on the DPO. Further, as per the current interconnect regulations, the obligation of publishing the public notices in the newspapers is on the service provider which intends to disconnect the signals. The primary purpose for publishing the notices in the newspapers is for informing the consumers about the dispute and likelihood of disconnection of the signals and also to make alternate arrangements.

It should be noted that when most of the disputes are between the broadcasters and DPOs, the obligation for notifying each other for purported disconnection is on the party which intends to disconnect the signals, however, notifying the consumers upon either receipt/sending of such disconnection notice shall be on the DPO, which directly deals with the consumers.

The Authority may consider allowing the service providers in publishing the notices on their websites. Websites have wider approach than newspapers. Further, for accessing any information relating to the service provider, people generally tend to go to their websites and hence, probabilities of notices being seen by people are much higher than newspapers. In addition, the broadcasters should also be allowed to run scrolls on the channels in case of such purported disconnection, in accordance with the regulations to ensure that the viewing experience of the consumers is not hampered.

We further wish to bring to the notice of the Authority that publishing the public notices does not serve any purpose of notifying the consumers considering no consumer reads these notices. Alternatively, the objective of letting the consumer know of the proposed disconnection by either the DPO itself or through scrolls would be more effective. Thus, we request that the Authority removes the obligations of publishing disconnection notices in the newspapers.

PROHIBITION OF DPO AS AGENT OF BROADCASTERS

64. Whether the Regulations should specifically prohibit appointment of a MSO, directly or indirectly, as an agent of a broadcaster for distribution of signal?

65. Whether the Regulations make it mandatory for broadcasters to report their distributor agreements, through which agents are appointed, to the Authority for necessary examination of issue of conflict of interest?

The broadcasters are mandated to provide their signals on non-discriminatory terms to all the DPOs. The provisions of the regulation shall apply on the broadcasters and their authorized agents engaging in dealings on behalf of the broadcasters. Where the distributor/authorized agent of the broadcaster denies signals to any DPO, the liability will now be on the broadcaster, since the authorized agent is said to be acting in the name of the broadcaster.

Given that the arrangements between the Broadcasters and its agents are contracts simplicter which are under the purview of the Indian Contract Act, 1857. It is not in the ambit of the Regulator to question the sanctity of such lawful arrangements as long as such agreements are consistent with the applicable

regulations. Any appointment of DPO as authorized agent cannot be termed discriminatory, unless proven otherwise.

INTERCONNECTION BETWEEN HITS/IPTV OPERATOR AND LCO

66. **Whether the framework of MIA and SIA as applicable for cable TV services provided through DAS is made applicable for HITS/IPTV services also.**
67. **If yes, what are the changes, if any, that should be incorporated in the existing framework of MIA and SIA.**
68. **If no, what could be other method to ensure non-discrimination and level playing field for LCOs seeking interconnection with HITS/IPTV operators?**

These issues do not pertain to the Broadcasters and hence we do not have any comment except that it is felt that the provisions relating to SIA and MIA should also be extended to interconnection between HITS/IPTV and LCOs as well in order to ensure that level playing field at all levels of broadcasting sector.

TIME PERIOD FOR PROVIDING SIGNALS OF TV CHANNELS

69. **Whether the time periods prescribed for interconnection between MSO and LCO should be made applicable to interconnection between HITS/IPTV operator and LCO also? If no, then suggest alternate with justification.**
70. **Should the time period of 30 days for entering into interconnection agreement and 30 days for providing signals of TV channels is appropriate for HITS also? If no, what should be the maximum time period for provisioning of signal to LCOs by HITS service provider? Please provide justification for the same.**

These issues also do not pertain to the broadcasters and hence we do not wish to comment.

REVENUE SHARE BETWEEN HITS/IPTV OPERATOR AND LCO

71. **Whether the Authority should prescribe a fall back arrangement between HITS/IPTV operator and LCO similar to the framework prescribed in DAS?**
72. **Is there any alternate method to decide a revenue share between MSOs/ HITS/IPTV operators and LCOs to provide them a level playing field?**

The present issue does not relate to the broadcasters.

NO-DUES CERIFICATES

73. **Whether a service provider should provide on demand a no due certificate or details of dues within a definite time period to another service provider? If yes, then what should be the time period?**

The existing Regulations already provide for a framework for the issuance of invoices clearly indicating the arrears in order to inform the distributor about its liability. However, at times, the service provider does not mention the arrears in the invoice and this causes a problem to the distributor when it shifts to other service provider. In this light, we feel that a service provider should be mandated to provide No Dues Certificate within a period of 15 days from the date of request.

PROVIDING SIGNALS TO NEW MSOs

74. Whether it should be made mandatory for the new MSO to provide the copy of current invoice and payment receipt as a proof of having clear outstanding amount with the last affiliated MSO?

75. Whether the broadcaster should be allowed to deny the request of new MSO on the grounds of outstanding payments of the last affiliated MSO?

It should be made mandatory for the new MSO to provide the copy of current invoice and payment receipt as a proof of having cleared the outstanding amount with the last affiliated MSO and in the event the broadcaster so determines that a new MSO has not cleared the payments of the last affiliated MSO, it may at its sole discretion refuse to provide signals. We agree that the broadcaster is not privy to the contract between the new MSO and the last affiliated MSO, however, it is important for the broadcaster to be aware of the credit worthiness of the operator. The credit worthiness of the operator is based on the several factors including the history of payment made etc.

SWAPPING OF SET TOP BOX

76. Whether, it should be made mandatory for the MSOs to demand a no dues certificate from the LCOs in respect of their past affiliated MSOs?

77. Whether it should be made mandatory for the LCOs to provide copy of last invoice/ receipts from the last affiliated MSOs?

Yes, the MSOs must be aware of the past record of LCOs so that they may engage in business with them. Thus, mandatory No Dues Certificate will only help further transparency in the market thereby creating a healthier environment for all stakeholders.