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RESPONSE OF ZEE ENTERTAINMENT ENTERPRISES LIMITED

TO

TRAI'S CONSULTATION PAPER

ON

INTERCONNECTION FRAMEWORK FOR BROADCASTING TV SERVICES DISTRIBUTED THROUGH ADDRESSABLE SYSTEMS

ISSUED ON 4TH MAY 2016

ZEE ENTERTAINMENT

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1. **Introductory Comments**

Zee while welcoming the consultation paper on Interconnection framework for Broadcasting TV Services distributed through Addressable Systems looks back to the long journey from the first interconnection regulation for Broadcasting and Cable Services (B & CS) namely the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004 (13 of 2004), notified by TRAI on 10.12.2004 and from time to time expanded the scope of the Interconnection Regulations, 2004 to include addressable platforms such as Direct to Home (DTH), Head-end In The Sky (HITS), Internet Protocol Television (IPTV) etc.

The exceptional growth of the number of TV channels combined with the inherent limitations of analogue cable TV systems had posed several challenges, mainly due to capacity constraints and non-addressable nature of the network. The evolution of technology paved way for bringing about digitization with addressability in the cable TV sector. For implementation of digital addressable systems in the cable TV sector, the Central Government notified the Cable Television Networks (Amendment) Rules, 2012 on 28th April 2012. Immediately after the notification of the Cable TV Rules 2012, the Authority notified the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 (9 of 2012) on 30th April, 2012. These regulations are specifically applicable for Digital Addressable Cable TV Systems (DAS), whereas the Interconnection Regulations, 2004, are applicable for non-addressable cable TV systems and also for other addressable systems such as DTH, HITS and IPTV.

The main objective of this consultation paper inherently aims at providing a regulatory framework for interconnection which ensures a level playing field to all types of digital addressable systems and plausible ways of dealing with those issues in respect of digital addressable systems. The review of the existing regulatory framework through this consultation paper will certainly bring in light certain recommendations fostering competition, increase trust amongst service providers, ease of doing business, reduce disputes, improve transparency and efficiency, promote sustainable, orderly growth and effective choice to consumers.

It is important to point out that in order to achieve the aforesaid objectives, the Authority should also consider broader issues of

applicability of Copyright Act, Indian Contract Act and the Constitution of India to the Broadcasting sector read together with the relevant regulations.

A. There are different requirements to be complied with in so far as the broadcasters and DPOs are concerned. On the one hand, the broadcaster is mandated to obtain only one 'license' as per the provisions ordained under TRAI Act (Section 2(e), 2(ea), 2(j)) read with Indian Telegraph Act, 1885 (Section 4). On the other hand, DPOs are under legal obligations to obtain two different licenses/permissions in order to carry out the cable services, one being registration as cable operator (as per Sec. 4 of the Cable Television Network Regulation Act 1995 and Rule 11A of the Cable Television Network Rules, 1994) and the other being license/permission as required under Rule 6(3) of the Cable Television Network Rules, 1994 in relation to program in respect of which copyright subsists under the Copyright Act. Same is the position in respect of DTH networks.

B. The signals to TV Channels contain content which is protected under the provision of the Copyright Act, 1957. The owners of the content have full freedom to commercially exploit their Intellectual Property, i.e. content.

C. It is the recognition of this protection/right granted under the Copyright Act, 1957 that has led to inclusion of Rule 6(3) in the Cable Television Network Rules 1994. The aforesaid Rule 6(3) is a part of programming code and it clearly provides that no copyrighted work would be broadcasted unless the cable operator has taken license for the same under the Copyright Act from the owner of the copyright. The said programming code is applicable not only to cable operators but is also applicable to broadcasters, DTH operators and HITS operators in terms of license conditions and downlinking guidelines as applicable.

D. The object of the Copyright Act 1957 is to encourage creativity and intellectual growth of the country. Under the Copyright Act 1957, not only work itself is protected, the neighbouring rights/the underlined works in the said work are also fully protected and are subject to commercial exploitation. Chapter VIII of the Copyright Act provides for the rights of the broadcaster which is a special right. Any person, who during the continuation of the Broadcasting Reproduction Rights, distributes/retransmits without the authority of the content owner, is deemed to infringe the Broadcast Reproduction Rights. The broadcasters have also been provided right in terms of Section 39A (amended by Act 27 of 2012) qua broadcast reproduction rights while

making Sections 18, 19, 30, 30A, 33, 33A, 34, 35, 36, 53, 55, 58, 63, 64, 65, 65A, 65B and 66 applicable thereto with necessary adaptation and modifications.

E. Under the Copyright Act, there are two modes of licensing i.e. voluntary license and non-voluntary license (compulsory and/or statutory). However, in the scheme of Copyright Act, a voluntary license has primacy over non-voluntary license. Various provisions of the Copyright Act including Section 31, 31D, 32 etc. clearly provide that first an opportunity must be given for a voluntary licence on mutual terms and conditions. Each of the provisions providing for a non-voluntary license under the Copyright Act will come into effect only after an act of refusal by the copyright owner to license the work.

F. Section 19(3) provides for specifying the amount of royalty/consideration for assignment of copyright in any work and the revision thereof on such terms and conditions **as may be mutually agreed between the parties.** It is submitted that the provisions of Section 19 applicable to assignment of copyright are also applicable on licenses under Section 30 of the Copyright Act. It is submitted that even the broadcasters have to seek the content from the content owner, and in case the content owner does not wish to give its content, the aggrieved broadcaster has to approach Copyright Board only after a refusal to provide content on reasonable terms by the content owner. Similarly, Section 32(4) and the proviso to Section 32A of the Copyright Act and Section 84 of the Patents Act provides that no license is to be granted unless the applicant has proved to the satisfaction of the Board that he had approached the licensor and was denied authorisation without any reasons. Thus, the threshold in all the regimes is that applicant must approach the licensor first.

G. It is submitted that 'must provide' clause including the non-discriminatory provision must be construed within the compulsory and statutory licensing regime as provided in the Copyright Act. Hence, the current Regulation provides for mutual negotiations, which is similar to the provisions contained in the Copyright Act. It is submitted that while framing Regulations, TRAI cannot by the arbitrary exercise of its powers and in an inconsistent manner, take away the right of mutual negotiation.

H. The scheme of the TRAI Regulations also have to be read in consonance with Indian Contract Act and the Copyright Act to provide for a voluntary licensing. It is for this reason that the Regulations (including DAS Regulations) specifically provide for mutual negotiations and any

interpretation of the Regulations that curb these rights of the content owner/broadcasters will be ultra vires the Copyright Act thereby rendering Section 39A, Sec. 18, 19 etc. thereof otiose.

I. Taking away the right to freedom of contract will not only fall foul of the provisions of the Copyright Act but will also be inconsistent with the international obligations that have been provided for under various treaties to which India is a signatory.

J. Further, the broadcasting is also an issue of freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution of India – is the main strength of any democracy. India is a great democracy primarily on account of existence / availability of freedom of speech and expression. This has also become possible as this freedom guaranteed under the Constitution of India has always been zealously protected by the Hon'ble courts including the Hon'ble Apex Court in this country. The health and strength of any democracy is entirely dependent on the extent of freedom of speech and expression, which is made available to the Society in any democratic country.

K. The freedom of speech and expression even when guaranteed under Article 19(1)(a) of the Constitution of India, is not an absolute freedom. However, the Constitution framers had specifically enumerated the permissible grounds upon which the State has been permitted to regulate the freedom of speech and expression. These specific grounds which are the only permitted grounds with reference to which the freedom of speech and expression can be regulated by the State are enumerated in the provisions of Article 19(2) of the Constitution of India, set out hereunder:-

> *"19. Protection of certain rights regarding freedom of speech, etc.-*
>
> *(1) All citizens shall have the right*
>
> *(a) to freedom of speech and expression;*
>
> *(b)-(g) ……..*
>
> *(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in*

the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence……"

L. It is only on the above-mentioned specifically permitted grounds upon which the State/TRAI can regulate the freedom of speech and expression and it is neither open nor permissible for the State/TRAI to even attempt imposing any restriction on the freedom of speech and expression on any other ground which is not enumerated in Article 19(2) of the Constitution of India. The aforesaid has also been held by the Hon'ble Supreme Court in the matter of Bijoe Emmanuel Vs. State of Kerala (1986) 3 SCC 615, wherein it has been held as under:

> ***"16.*** *We have referred to Article 19(1)(a) which guarantees to all citizens freedom of speech and expression and to Article 19(2) which provides that nothing in Article 19(1)(a) shall prevent a State from making any law, insofar as such law imposes reasonable restrictions on the exercise of the right conferred by Article 19(1)(a) in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. The law is now well settled that any law which be made under clauses (2) to (6) of Article 19 to regulate the exercise of the right to the freedoms guaranteed by Article 19(1)(a) to (e) and (g) must be "a law" having statutory force and not a mere executive or departmental instruction. In Kharak Singh v. State of U.P.6 the question arose whether a police regulation which was a mere departmental instruction, having no statutory basis could be said to be a law for the purpose of Article 19(2) to (6). The Constitution Bench answered the question in the negative and said :*
>
> > *"Though learned counsel for the respondent started by attempting such a justification by invoking Section 12 of the Indian Police Act he gave*

this up and conceded that the regulations contained in Chapter XX had no such statutory basis but were merely executive or departmental instructions framed for the guidance of the police officers. They would not therefore be 'a law' which the State is entitled to make under the relevant clauses (2) to (6) of Article 19 in order to regulate or curtail fundamental rights guaranteed by the several sub-clauses of Article 19(1), nor would the same be 'a procedure established by law' within Article 21. The position therefore is that if the action of the police which is the arm of the executive of the State is found to infringe any of the freedoms guaranteed to the petitioner the petitioner would be entitled to the relief of mandamus which he seeks, to restrain the State from taking action under the regulations."

17. The two circulars on which the department has placed reliance in the present case have no statutory basis and are mere departmental instructions. They cannot, therefore, form the foundation of any action aimed at denying a citizen's fundamental right under Article 19(1)(*a*). Further it is not possible to hold that the two circulars were issued "in the interest of the sovereignty and integrity of India, the security of the State, friendly relation with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence" and if not so issued, they cannot again be invoked to deny a citizen's fundamental right under Article 19(1)(*a*). In *Kameshwar Prasad* v. *State of Bihar*[7] a Constitution Bench of the Court had to consider the validity of Rule 4-A of the Bihar Government Servants Conduct Rules which prohibited any form of demonstration even if such demonstration was innocent and incapable of causing a breach of public tranquillity. The Court said:

> *"No doubt, if the rule were so framed as to single out those types of demonstration which were likely to lead to a disturbance of public tranquillity or which would fall under the other limiting criteria specified in Article 19(2) the validity of the rule could have been sustained. The vice of the rule, in our opinion, consists in this that it lays a ban on every type of demonstration — be the same however innocent and however incapable of causing a breach of public tranquillity and does not confine itself to those forms of demonstrations which might lead to that result."*
>
> Examining the action of the Education Authorities in the light of *Kharak Singh* v. *State of U.P.*[6] and *Kameshwar Prasad* v. *State of Bihar*[7] we have no option but to hold that the expulsion of the children from the school for not joining the singing of the National Anthem though they respectfully stood up in silence when the Anthem was sung was violative of Article 19(1)(*a*)."

M. "Commercial speech" is also an integral part of freedom of speech and expression and is fully protected to enjoy freedom of speech and expression under Article 19(1)(a) of the Constitution of India. State is not permitted to curtail / restrict the commercial speech. In other words, it is a settled position in law that both in the print as well as the electronic medium, revenue generation through subscription/advertisement is the lifeline of any television channel. It is not open and permissible for the State to attempt to restrict / obstruct / cut this lifeline in any manner whatsoever, which has the impact of drying up of the revenue generation of any television channel for its survival and continuation and which may eventually result in closure of a television channel.

N. Imposition and enforcement of any such restriction on subscription/advertisement – in such an admitted scenario, is a clear violation of the Fundamental Right of Freedom of Speech and Expression guaranteed under Article 19(1)(a) of the Constitution of India. When such a restriction on the number of pages in a

newspaper and the extent of advertisement in those pages had been sought to be imposed on the print media, the Hon'ble Supreme Court – in the case of Sakal Newspapers, AIR 1962 SC 305, had held the same to be serious violation of the fundamental right under Article 19(1)(a) of the Constitution of India. The relevant observations of the Hon'ble Supreme Court in this judgement in paras 32 to 34 thereof are reproduced hereunder for ready reference : -

> "……..32. It is, however, said that it is not necessary for newspapers to raise their prices but that they could reduce their number of pages. For one thing, requiring newspapers to reduce their sizes would be compelling them to restrict the dissemination of news and views and thus directly affecting their right under Article 19(1)(a). But it is said that the object could be achieved by reducing the advertisements. That is to say, the newspapers would be able to devote the same space which they are devoting today to the publication of news and views by reducing to the necessary extent the space allotted to advertisements. It is pointed out that newspapers allot a disproportionately large space to advertisements. It is true that many newspapers do devote very large areas to advertisements. But then the Act is intended to apply also to newspapers which may carry no or very few advertisements. Again, after the commencement of the Act and the coming into force of the Order a newspaper which has a right to publish any number of pages for carrying its news and views will be restrained from doing so except upon the condition that it raises the selling price as provided in the schedule to the Order. This would be the direct and immediate effect of the Order and as such would be violative of the right of newspapers guaranteed by Article 19(1)(a).
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> 33. Again, Section 3(1) of the Act insofar as it permits the allocation of space to advertisements

also directly affects freedom of circulation. If the area for advertisements is curtailed the price of the newspaper will be forced up. If that happens, the circulation will inevitably go down. This would be no remote, but a direct consequence of curtailment of advertisements.

34. We would consider this matter in another way also. The advertisement revenue of a newspaper is proportionate to its circulation. Thus the higher the circulation of a newspaper the larger would be its advertisement revenue. So if a newspaper with a high circulation were to raise its price its circulation would go down and this in turn would bring down also the advertisement revenue. That would force the newspaper either to close down or to raise its price. Raising the price further would affect the circulation still more and thus a vicious cycle would set in which would ultimately end in the closure of the newspaper**.** If, on the other hand, the space for advertisement is reduced the earnings of a newspaper would go down and it would either have to run at a loss or close down or raise its price. The object of the Act in regulating the space for advertisements is stated to be to prevent 'unfair' competition. It is thus directed against circulation of a newspaper. When a law is intended to bring about this result there would be a direct interference with the right of freedom of speech and expression guaranteed under Article 19(1)(a)……."

O. The Hon'ble Supreme Court in the matter of Bennett Coleman & Co. v. Union of India - (1972) 2 SCC 788 has observed as under:

"*34*. Publication means dissemination and circulation. The press has to carry on its activity by keeping in view the class of readers, the conditions

of labour, price of material, availability of advertisements, size of paper and the different kinds of news comments and views and advertisements which are to be published and circulated. The law which lays excessive and prohibitive burden which would restrict the circulation of a newspaper will not be saved by Article 19(2). If the area of advertisement is restricted, price of paper goes up. If the price goes up circulation will go down. This was held in *Sakal Papers case* to be the direct consequence of curtailment of advertisement. The freedom of a newspaper to publish any number of pages or to circulate it to any number of persons has been held by this Court to be an integral part of the freedom of speech and expression. This freedom is violated by placing restraints upon it or by placing restraints upon something which is an essential part of that freedom. A restraint on the number of pages, a restraint on circulation and a restraint on advertisements would affect the fundamental rights under Article 19(1)(*a*) on the aspects of propagation, publication and circulation.

* * *

43. The various provisions of the newsprint import policy have been examined to indicate as to how the petitioners' fundamental rights have been infringed by the restrictions on page limit, prohibition against new newspapers and new editions. The effect and consequence of the impugned policy upon the newspapers is directly controlling the growth and circulation of newspapers. The direct effect is the restriction upon circulation of newspapers. The direct effect is upon growth of newspapers through pages. The direct effect is that newspapers are deprived of their area of advertisement. The direct effect is that they are exposed to financial loss. The direct effect

is that freedom of speech and expression is infringed.

* * *

45. It is indisputable that by freedom of the press is meant the right of all citizens to speak, publish and express their views. The freedom of the press embodies the right of the people to read. The freedom of the press is not antithetical to the right of the people to speak and express."

P. In Odyssey Communications (P) Ltd. v. Lokvidayan Sanghatana, (1988) 3 SCC 410 it was held by the Hon'ble Supreme Court that the right of citizens to exhibit films on Doordarshan subject to the terms and conditions to be imposed by Doordarshan is a part of the fundamental right of freedom of expression guaranteed under Article 19(1)(a) which can be curtailed only under circumstances set out under Article 19(2). The right is similar to the right of a citizen to publish his views through any other media such as newspapers, magazines, advertisement hoardings, etc. subject to the terms and conditions of the owners of the media. The freedom of expression is a preferred right which is always very zealously guarded by the Supreme Court.

Q. Further, the Hon'ble Supreme Court in the matter of Ministry of Information & Broadcasting, Govt. of India v. Cricket Assn. of Bengal, (1995) 2 SCC 161 held as under:

"43. We may now summarise the law on the freedom of speech and expression under Article 19(1)(a) as restricted by Article 19(2). The freedom of speech and expression includes right to acquire information and to disseminate it. Freedom of speech and expression is necessary, for self-expression which is an important means of free conscience and self-fulfilment. It enables people to contribute to debates on social and moral issues. It is the best way to find a truest model of anything, since it is only through it that the widest possible range of ideas can circulate. It is the only vehicle of political discourse so essential to democracy. Equally important is the role it plays in facilitating

artistic and scholarly endeavours of all sorts. The right to communicate, therefore, includes right to communicate through any media that is available whether print or electronic or audio-visual such as advertisement, movie, article, speech etc. That is why freedom of speech and expression includes freedom of the press. The freedom of the press in terms includes right to circulate and also to determine the volume of such circulation. This freedom includes the freedom to communicate or circulate one's opinion without interference to as large a population in the country, as well as abroad, as is possible to reach.

44. This **fundamental right** can be limited only by reasonable restrictions under a law made for the purposes mentioned in Article 19(2) of the Constitution. 45. The burden is on the authority to justify the restrictions. Public order is not the same thing as public safety and hence no restrictions can be placed on the right to freedom of speech and expression on the ground that public safety is endangered. Unlike in the American Constitution, limitations on fundamental rights are specifically spelt out under Article 19(2) of our Constitution. Hence no restrictions can be placed on the right to freedom of speech and expression on grounds other than those specified under Article 19(2)."

R. It is submitted that the Hon'ble Supreme Court in the matter of Hindustan Times v. State of U.P., (2003) 1 SCC 591 has held that the newspapers serve as a medium of exercise of freedom of speech. The right of its shareholders to have a free press is a fundamental right. It is not in dispute that advertisements play an important role in the matter of revenue of the newspapers. Advertisements in a newspaper have a direct nexus with its circulation. It is neither in doubt nor in dispute that for the purpose of meeting the costs of the newsprint as also for meeting other financial liabilities which would include the liability to pay wages, allowances and gratuity etc. to the working journalists as also liability to pay a reasonable profit to the shareholders vis-à-

vis making the newspapers available to the readers at a price at which they can afford to purchase it, the petitioners have no other option but to collect more funds by publishing commercial and other advertisements in the newspaper. The above-mentioned principles laid down by the Hon'ble Apex Court with regard to print media, apply with equal force to the electronic media including the 24 hours television channels.

S. Any Regulation/provision, having regard to the settled principles of law, would not be protected by the provision of Article 19(2) of the Constitution of India inasmuch as the revenues generated by subscription/advertisement for any television channel (being the lifeline for any television channel) can never be restricted either on the ground of sovereignty and integrity, the security of the State, friendly relations with foreign states, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

T. As such, any Regulation that curtails the right of the broadcaster to negotiate and enter into a mutually negotiated agreements/arrangements which has a direct impact on the subscription revenue and/or advertisement revenue of any broadcaster would be ultra vires of the Constitution.

U. The Hon'ble Supreme Court, further, in the matter of Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd. (1995) 5 SCC 139 held as under:

> ".....19. The combined reading of Hamdard Dawakhana's case and the Indian Express Newspaper's case leads us to the conclusion that "commercial speech" cannot be denied the protection of Article 19(1)(a)of the Constitution merely because the same are issued by businessmen.
>
> *20.* Advertising is considered to be the cornerstone of our economic system. Low prices for consumers are dependent upon mass production, mass production is dependent upon volume sales, and volume sales are dependent upon advertising. Apart from the lifeline of the free economy in a democratic country, advertising can be viewed as the lifeblood of free media, paying

most of the costs and thus making the media widely available. The newspaper industry obtains 60%/80% of its revenue from advertising. Advertising pays a large portion of the costs of supplying the public with newspaper. For a democratic press the advertising 'subsidy' is crucial. Without advertising, the resources available for expenditure on the 'news' would decline, which may lead to an erosion of quality and quantity. The cost of the 'news' to the public would increase, thereby restricting its 'democratic' availability……."

V. Any restriction on mutually negotiated agreements between the broadcaster and the DPOs would not fall within the purview of any of the permissible grounds which are enumerated under Article 19(2) of the Constitution of India for imposing restrictions on the freedom of speech and expression are as under:-

(a) In the interests of the sovereignty and integrity of India

(b) The security of the State

(c) Friendly relations with foreign States

(d) Public order, decency or morality,

(e) In relation to contempt of court, defamation or incitement to an offence

W. Even otherwise the competition in the electronic media is ostensibly apparent in India. Even according to the Consultation Paper dated 04.05.2016 floated by TRAI itself states that there are numerous broadcasters and many television channels which are available to every viewer in the country. In case, the viewers find that the cost of any pay channel is not affordable then, the viewer would not opt for such channel which would ultimately result in closure of such channel. Consumers / viewers have available to them, more than sufficient choice in this regard. In any case, even otherwise State/TRAI does not get authorized / permitted to seek to impose any restriction whatsoever on the area of revenues that can be earned by the broadcaster either through advertisement and/or subscription.

As stated herein above, the Regulation of the broadcasting sector would involve various issues relating to Copyright, Freedom of Speech and Expression to conduct business.

In the backdrop of the above we would request the Authority to frame the Regulation which are in line with the Copyright Act, Contract act and foremost the Constitution of India.

With our introductory comments and in the backdrop of the present scenario we proceed to give our response to the various issues raised in the present consultation paper and our response herein below should not in any manner be construed as a waiver of any comments herein above.

Issue 1:- COMMON INTERCONNECTION FRAMEWORK FOR ALL TYPES OF ADDRESSABLE SYSTEMS

1.1 How a level playing field among different service providers using different addressable systems can be ensured?

1.2 Should a common interconnection regulatory framework be mandated for all types of addressable systems?

Response: We do agree that the objective of providing a level playing field amongst seekers and providers can be met with the principles of transparency non-exclusivity and non-discrimination. Presently, all these aspects are covered in the services rendered by all addressable platforms. The transparent declaration in the cable addressable distribution platform has brought in transparent business transactions, protection of content, has reduced scope of disputes and has improved monetization of content. Moreover, the sunset date of 31st December, 2016 for analogue cable TV services would also ensure that addressability in cable services all across the country would be uniform resulting absolute transparency and accountability. In the case of DTH, HITS, IPTV platforms addressability is already in place.

But at the same time it is pertinent to point out that different distribution platforms like DTH, HITS, IPTV use different network topologies, the cost of delivery of services through these platforms vary on account of variance in licensing norms, cost of delivery through these Platform also differs. Therefore, a specific regulatory framework for interconnection may need to be put in place for each type of addressable platforms such as DAS, DTH, HITS and IPTV.

It is important to note that the functioning of each of the above is completely different from another and even though the end product to the consumer might be the same, the entire process involved in all these 3 distribution systems is completely at variance with each other which also involves different cost factors.

It is recommended that requisite changes may be made by amending the Interconnection Regulations, 2004 applicable for DTH, HITS and IPTV to achieve the objective of ensuring level playing field among different service providers using different addressable systems.

Issue 2:- <u>TRANSPARENCY, NON-DISCRIMINATION AND NON-EXCLUSIVITY</u>

2.1 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.

Response: In our view there is no 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 number. In fact after the NSTPL judgement pronounced by the Hon'ble TDSAT on 7th December, 2015, made effective from 1st May 2016, has ruled out the possibility of any such mutually agreed arrangement other than in terms of the published Reference Interconnect offer (RIO) of the Broadcaster which is transparent in offering its channels on ala carte as well in Bouquet(s) and also by explicitly clarifying the discounts upfront which are offered in the most non-discriminatory manner on account of various parameters such as size of the network, level of penetration, visibility of channels, LCN's, prompt payment, submission of prompt subscriber monthly reports etc. By publishing RIO's the Broadcasters are already ensuring total transparency and also complying with the regulatory requirement mandated by the applicable Regulations.

Notwithstanding the above, we would also like to point out that the power to negotiate and have a mutual agreement is not only provided in the Indian Contract Act but is also provided in the Copyright Act. Further, any regulatory regime that curbs the rights of mutual negotiations and mutual agreement between the parties in the broadcasting sector (which involves freedom of speech and expression) would fail the test of constitutional validity as would be beyond the reasonable restrictions provided in Article 19(2) of the Constitution.

Thus, it is recommended that TRAI should allow the parties the scope for having mutual agreements in addition to the option of

entering into Interconnect Agreements in terms of the Published RIO of the Broadcaster/Provider of signals as well.

2.2 How to ensure that the interconnection agreements entered on mutually agreed terms meet the requirement of providing a level playing field amongst service providers?

Response: As per the existing regulatory framework, the terms and conditions of interconnection agreement are mutually agreed or finalized as per the terms and conditions of the published RIO. However, even in the case of mutually agreed interconnection agreements whereby the distribution platform opts for any one or more of the incentives/discounts offered in the RIO along with the plain offerings of channels on ala carte and or Bouquet basis, the same are as per the existing Regulations, thereby creating a level playing field among the service providers.

2.3 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

Response: One of the methods for effectively implementing non-discrimination on ground could be that the published RIO clearly spells out, objectively and in sufficient detail, all the terms and conditions including rates and discounts, for each and every alternative in which manner provider is willing to arrive at an agreement. These could include a-la-carte and their different combinations/ assortment/ number of channels and also include different formations, assemblages and Bouquets in which the Broadcaster wishes to offer its channels for distribution along with the rates of each of the formations or Bouquet(s). so that the seeker unambiguously is aware of all options available to it before entering into an interconnection agreement. Such an arrangement may be made binding on broadcasters as well as distributors. It is important to note that all incentives/discounts/ benefit are presently offered by the provider to any seeker within the construct of the published RIO in order to ensure effective implementation of non-discrimination on ground.

At the same time, it is necessary to ensure confidentiality with regards to the Interconnection Agreements executed between the service provider and the seeker of signals since, it would not be in the interest of the parties involved to disclose all the parameters of incentives/discounts/ benefits offered/availed or the net price paid per

subscriber. Any such disclosure same may jeopardize the negotiating capacity and the competitive position of the Distribution platform with last mile subscriber.

Moreover, commercially and financially sensitive information should not be disclosed which forms part of the Interconnect agreement, the disclosure of which to the general public is likely to cause unfair gain or unfair loss to the service provider or to compromise his competitive position. Hence, confidentiality of Interconnect Agreements is a necessity.

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

Response: As seen from our above submissions we are propagating a transparent regime of disclosing everything in the RIO, thereby keeping all the stakeholders informed about the availability of channels, rates and incentives, discounts, benefits including channels offered on a-la-carte and their different combinations/ assortment/ number of channels and also include different formations, assemblages and Bouquets in which the Broadcaster wishes to offer its channels for distribution along with the rates of each of the formations or Bouquet(s).

In view of all the relevant information available to the seeker of channels, it would not be necessary to separately disclose the arrangement/agreements executed between the provider of signals with the various distribution platform(s) as this would breach the confidentiality clause between the parties concerned as they are strictly private contracts.

It is quite possible today that even if it is left to seeker to choose any of the incentive scheme from the RIO of respective provider for which the seeker qualify or depending on their business model the one which is most beneficial to them. Thus, two seekers which are similarly placed may opt for different incentives at different levels thereby resulting in different payout to the broadcaster. In such a scenario, the agreement between the provider and seeker does not only reflect the commercial agreement between the provider and the seeker but is also capable of disclosing the entire business plan and model it opted for in such seekers. Thus, disclosure of the agreements would severely compromise any

competition advantage that a particular seeker might have following a particular business model.

In view of all the relevant information available to the seeker of channels, it would not be necessary to separately disclose the arrangement/agreements executed between the provider of signals with the various distribution platform(s) as this would breach the confidentiality clause between the parties concerned as they are strictly private contracts.

2.5 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?

Response: The fundamental principles of non-exclusivity, must-provide, must-carry, written agreement, and time bound provisioning of signals as laid down by the Authority have largely paved the way for orderly growth in the broadcasting and cable services sector. while keeping in mind the present state of the sector and the nature of the prevailing issues, need for non-exclusivity, must-provide, and must-carry continue to remain relevant as many issues which have been put to rest on the basis of these principles also be required for future growth of the sector even though the competition has already kicked in.

2.6 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.

Response: The Reference Interconnect offer (RIO) of a Broadcaster provides the technical and commercial terms and conditions based on which a Broadcaster offers its channels/ Bouquet of channels to various DPO's. Thus, the RIO framework provides a reference and a basis to a DPO in arriving at an Interconnect Agreement. In addition as per the Interconnect Regulation 2004 applicable to DTH, HITS and IPTV it is obligatory for the Broadcasters of Pay channels to reduce the terms and conditions of the Interconnect Agreement in writing and provide a copy of the same to DPO. A similar obligation is also on the DPO to supply the copy of Interconnect agreement to the LCO. Therefore, an RIO should be considered as a first point of reference and cannot be

construed as a Final Agreement.

This can be further explained by a hypothetical example whereby a DPO opts only for say three incentives out of the six available in an RIO. In such a scenario the Agreement has to be tailor made to cover the terms and conditions applicable for this specific commercial arrangement consisting for such incentives opted. Alternatively, if the DPO opts for plain ala carte channels or Bouquet of channels without any incentives, then in such a scenario again it would be necessary to come out with a custom made agreement for only such specific arrangement. In view of the same no uniform RIO is available nor any strait jacket format can be introduced for various combination of commercial arrangements available to a DPO. Thus to summarize the parties can always arrive at customized Interconnect Agreements from an RIO, however, the reverse is not possible.

2.7 Should RIO be the only basis for signing of agreement? If no, then how to make agreements comparable and ensure non-discrimination?

Response: Yes, in our view RIO should be the only basis on which a detailed Agreement can be executed with additional clauses which may be required to be incorporated for specific tailor made Agreement in terms of the RIO itself between a Broadcaster and a DPO. It would be mandatory to have the technical and commercial terms and conditions, that should necessarily form part of the RIOs. These terms and conditions should include the calculation of license fee, payment terms, delivery and security terms, anti-piracy terms and technical audit methodology, norms for reporting and audit subscriptions, term of the contract, termination conditions and jurisdiction in respect of any dispute between the parties, to ensure non-discrimination.

2.8 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?

Response: In our view the Standard Interconnect Agreement (SIA) is not required to be published by the Provider. The reason being the RIO of a Broadcaster may comprise of different formations, assemblages and Bouquets in which the Broadcaster wishes to offer his channels for distribution along with the rates of each formation or bouquet(s). Additionally, the bouquets clearly spell out any bulk discount schemes for any special schemes based on regional, cultural or linguistic

considerations that would be available on a non-discriminatory basis to all seeker of signals. Thus, the probability of disagreement between a Broadcaster and the seeker is brought down substantially. Moreover, it would be rather impossible to have a SIA for all eventualities which would arise in case of different combinations/option(s) preferred by the seeker to be captured in one single standard format.

2.9 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?

Response: In our view a standardized 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 submitted prior to signing of Interconnect Agreement. We have given our reasons for not having a SIA in our response to question no: 2.8 herein above. The proposed standardized format of application is provided herein below marked as **ANNEXURE – 1.**

ANNEXURE - 1

LIST OF DOCUMENTS REQUIRED FOR EXECUTING THE AGREEMENT

1.	Contact Person from DPOs end with Phone number: _____	☐
2.	PAN Card: _____	☐
3.	Entertainment Tax Registration: _____	☐
4.	Service Tax Registration: _____	☐
5.	TAN No. _____	☐
6.	Copy of Permission issued by the relevant governmental authority	☐ DAS ☐ DTH ☐ HITS ☐ IPTV

7.	Copy of the Resolution Passed by Board of Director of Seeker or an Authority Letter from Seeker authorising _____ to execute the Agreement on behalf of the Seeker	☐
8.	Certificate of Registration of Company along with a map of Territory for which Signal Providers channels are being provided by Provider to Seeker (If applicable)	☐
9.	SMS Declaration from the SMS vendor as per **Schedule 'A'**	☐
10.	CAS Declaration from conditional access Vendor as per **Schedule 'B'**	☐
11.	Photo of the Authorized Signatory of the Seeker	☐
12.	Name of Technical Contact Person:	☐
13.	Mobile No. of the Technical Contract Person:	☐

The information sought in **ANNEXURE – 1** above should be furnished by the seeker of signals at the time of making application as a mandatory requirement.

2.10 Should 'must carry' provision be made applicable for DTH, IPTV and HITS platforms also?

Response: In our view at the present juncture 'Must carry' provision should not be made applicable to DTH and HITS platforms as there are transponder capacity constraints. Imposition of any such a mandatory requirement would make it commercially unviable for such DPO's.

However, we do agree that 'Must carry' provision can still be made applicable for IPTV platform as they do not have any capacity constraints to carry the channels on their platform.

2.11 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?

Response: We have given our comments in 2.10 herein above whereby, we have not recommended any cut-off percentage to discontinue carrying of a channel by a DTH and HITS operator in case subscription for such particular channel falls below a predefined cut-off percentage.

In case of DAS, presently there is a regulation that permits a DAS operator to discontinue carrying a particular channel in case its subscription in the preceding six months is less than or equal to a given minimum percentage of 5% of the total active subscriber base of that operator averaged over that period.

We also recommend that IPTV platform may be permitted to discontinue a particular channel in case its subscription in the preceding six months is less than or equal to a given minimum percentage of 5% of the total active subscriber base of that operator averaged over that period, as is permissible under DAS regulation.

2.12 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.

Response: In our view the provision of 'must carry' should not be made applicable for DTH and HITS platform for the reasons mentioned in 2.10 and 2.11 herein above. Any attempt to make it mandatory will make it commercially unviable for these DPO's.

2.13 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?

Response: In our view all commercial dealings may be reflected in the Interconnect Agreement on key commercial dealings viz. subscription, carriage, placement, marketing and all its cognate expressions provided the same entity is distributing the channels and is also the owner of channels.

In case there are two different entities whereby one entity is the distributor of channels and another is the owner of the said channels, then in such an event, distributor entity should be under a legal obligation to reflect only the subscription commercial details in its

Interconnect Agreement and the entity who is the owner of the channel(s) should have separate Agreement with the DPO for carrying its channels on a particular LCN for which there may be commercial arrangement for carriage, placement, marketing since these expenses are not directly related to distribution of channels and therefore one cannot expect these details to be provided in a Interconnection agreement as the said entity is not privy or a party to such agreement or arrangement.

Issue 3:- <u>EXAMINATION OF RIO</u>

3.1 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?

Response: In our view, the existing regulatory framework casts an obligation on the service providers to file with the Authority copy of RIO, describing the technical and commercial conditions for interconnection. A service provider is also required to publish the RIO on its website after its submission to the Authority. Mandating that a service provider upload the RIO on its website is done so as to ensure that there is transparency, non-discrimination and a level playing field in the interconnection between the service providers. This framework provides for equal opportunity amongst all the seekers of TV channels and also in the access to platforms by providing for equal knowledge of the terms and conditions and rates offered by every provider for interconnection.

3.2 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?

Response: In our view, the regulatory framework should prescribe a time period of 30 days during which any stakeholder may be permitted to raise objections on the terms and conditions of the draft RIO published by the provider. It is also important for the Authority to scrutinize and examine the draft RIO filed with them within 30 days of receiving the RIO and come out with any queries/clarifications to be sought from the provider rather than stating that it is not the responsibility of the Regulator to examine the RIO unless a contentious issue is raised by any stakeholder. As a regulator, we feel that the Authority should be pro-active rather than being reactive to adjudicate the legality of the RIO only after receipt of any particular complaint,

which may be after of lapse of substantial period of time. This may result in opening of contentious issues in number of Interconnection Agreements already executed by the Broadcaster and the DPO's on PAN India basis from the date of publication of RIO and the contentious issue reported to the Authority. Therefore, it is recommended that the Authority should be cast with the responsibility to come out with a detailed analysis of the RIO's filed by the Providers within 30 days to (a) avoid multiplicity of litigation and (b) to curtail the requirement of carrying out amendments in the Agreements with multiple DPO's.

Even if the above pro-active steps recommended are initiated by the Authority, the impacted party may still have the option to approach TDSAT under section 29 of the TRAI Act for seeking adjudication on certain contentious clauses of the RIO published by the Provider of signals.

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

Response: We have already recommended a time frame of 30 days for the Authority as well as the concerned stakeholders to raise any objections/contentions with regard to the RIO filed/published by the provider/Broadcaster, for the reasons enumerated in 3.2 herein above.

Issue 4:- <u>TIME LIMIT FOR PROVIDING SIGNALS OF TV CHANNELS / ACCESS TO THE PLATFORM</u>

4.1 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.

Response: In our view there should not be any further sub division into sub periods of the 60 days as discussed in the consultation paper as it may render the process of monitoring more difficult and would also give room for adverse interpretation of the initial consent. It is a normal practice for the seeker to delay the process of technical audit of its SMS and CAS on one pretext or another and thereby deferring the entire process and blaming it on the Broadcaster for the delay perpetuated by the seeker himself.

4.2 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?

Response: The present regulation intends that the provider and the seeker enter into Interconnection Agreement within 60 days of request made by the seeker. The onus is equally on the seeker as well as the provider to formalize the commercial terms prior to transmission of signals. Imposition of financial disincentives could act as effective deterrents to ensure timely execution of Interconnection agreements. But in order to ascertain who is at fault would require adjudication by Hon'ble TDSAT and this would require examination of evidence, and issues being framed for resolution. Nevertheless, a minimum fine in terms of financial quantum may be fixed by TDSAT for such defaulters.

4.3 Should the SIA be mandated as fall back option?

Response: In our view SIA cannot be mandated as a fall back option as explained in detail in our response to question no: 2.8 and 2.9 herein above. Further, we would also like to rely on adjudication by TDSAT in case the seeker and the provider delay the execution of Agreement for whatever reasons.

4.4 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.

Response: In our view onus of completing technical audit within the prescribed time should not squarely lie with the Broadcaster. The task of completing the technical audit lies equally on the seeker of signal as well. It is important to point out that RIO's of the Broadcaster cover every aspect of the technical requirements including the pre requisite parameters clearly spelt out leaving practically no scope for mis-interpretation by the seeker. It has been found on numerous occasions that the seeker of signal is not fully compliant with the CAS and SMS which is the bare minimum requirement to be eligible to operate in DAS areas. We are of the opinion that TRAI should introduce a mechanism to ensure that any applicant seeking License to operate in the DAS areas is completely compliant before any License is granted by MIB. This will ensure that License are not granted unless the seeker is cleared by TRAI as being technically eligible for License. For ensuring the pre-licensing check the Authority may empanel professionals not only

from BECIL but also from the general pool of eminent technologists rendering such services to ensure speedy completion of the process with minimize time spent on technical audit by the Broadcasters. A pre-defined fee structure may also be introduced by TRAI for such services.

In our view it is a joint responsibility of the Authority, seeker as well the provider in curtailing the delay in completing the technical audit and thereby ensuring speedy Interconnection.

4.5 Whether onus of fixing the responsibility for delay in individual cases may be left to an appropriate dispute resolution forum?

Response: The onus of fixing the responsibility for delay in individual cases may arise on account of various reasons/facts which needs examination and adjudication on case to case basis. Therefore, it is best that it may be left for resolution by the Hon'ble TDSAT.

Issue 5:- <u>REASONS FOR DENIAL OF SIGNALS / ACCESS TO THE PLATFORM</u>

5.1 What are the parameters that could be treated as the basis for denial of the signals/ platform?

Response: The parameters on which the signals can be denied by a broadcaster have already been provided for in the existing regulations including, default of payment of subscription fee, past history of piracy, failure to get technical and commercial audit conducted, non-submission of subscriber report on regular monthly basis.

In addition, to the above, the Authority may in consultation and in consensus with the Broadcaster/DPO's may come out with a comprehensive indicative list outlining the possible reasons for denying signals. At the same time, it may not be possible for the Broadcaster to provide all possible reasons for denial in advance and the exact reasons would vary on case to case basis. In case of any dispute, the matter may be referred to Hon'ble TDSAT for adjudication.

5.2 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.

Response: As stated in our response to question no: 5.1 herein above,

our view is that it should not be made mandatory for the service provider to provide exhaustive list in the RIO which will be the basis for denial of signals of TV channels/access of the platform to the seeker. Nevertheless a indicative comprehensive list may be published by the Authority outlining the possible reasons for denying signals with a caveat allowing the Broadcaster to provide reasons for denial on case to case basis.

Issue 6:- <u>INTERCONNECTION MANAGEMENT SYSTEM (IMS)</u>

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

Response: In our view Information Communication Technology (ICT) can be developed to have the Industry data at one centralized place but this data can be selectively put in public domain by the Authority which is of general nature from the regulatory perspective and not relating to commercial details which are of confidential nature.

It would not be prudent to have critical confidential commercial details relating to various stakeholders pertaining to (a) publishing of RIOs at central place, (b) placement of interconnection requests along with the requisite documents, (c) ensure acknowledgement of the request, initial consent by provider for providing signal/ access, (d) mutual negotiations to arrive at agreement, (e) signing of commercial 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, notice for disconnection, (j) revenue settlement between service providers and (k)making available details of interconnection agreements to the Authority etc.

In our view the above data is presently maintained by the Broadcaster(s) /DPOs at their end in a most efficient manner. It is a testimony to the fact that Annual Filing of all commercial agreements is done on regular basis ensuring all the relevant data of the Industry is available with the Authority.

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

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

6.4 What functions can be performed by IMS in your view? How would

it improve the functioning of the industry?

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

Response: As explained in 6.1 herein above, we are not in favour of signing Interconnection through IMS and the question of such an arrangement being made mandatory for all service providers is out of question. Our response to Question no's: 6.2 to 6.5 is not warranted since, we are not in agreement with the proposal of setting up IMS for ensuring centralized data relating to Broadcasting Industry as the same in our view is confidential in nature and sharing of the same would impact the business itself.

Issue 7:- <u>TERRITORY OF INTERCONNECTION AGREEMENT</u>

7.1 Whether only one interconnection agreement is adequate for the complete territory of operations permitted in the registration of MSO/ IPTV operator?

Response: In our view no single interconnection agreement should be allowed for the complete territory of operations permitted in the registration of MSO. There are certain practical problems faced by the Broadcaster while monitoring the exact area of operation of a MSO operating in DAS areas and the number of subscribers actually serviced and reported to the Broadcaster. The DAS market is dynamic and rapidly changing on the ground due to alignment of MSO or group of MSO's due to multiple reasons, one of them would be that a MSO may have got a License to operate in DAS – III areas but due to financial constraints is unable to seed boxes in DAS – III areas and therefore he merges or enters into an arrangement with an established MSO in DAS – III area having financial clout. In such a scenario the financially weaker MSO either opts out of DAS – III area as an entity due to his alignment with another MSO and continues to operate in DAS – I and II areas thereby making it necessary to have separate Agreements for different areas although he may hold a PAN India License.

In addition, it has been seen that the MSO does not report the number of subscribers for each city but has adopted a practice of reporting subscriber number for cluster of 6 or 9 cities in a combined manner which makes it difficult for the Broadcaster to identify the exact number of subscribers services by a MSO in a particular city in a month. Also, during audit as well the MSO refuses to share subscriber number

pertaining to each city giving room to suspect the authenticity of Subscribers reported by an MSO.

In view of the above, it is recommended that separate agreements for different territories be executed to take care of situation/circumstances explained herein above for better control and total transparency.

7.2 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?

7.3 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 afresh in advance? What could be the period for such advance notification?

Response: In our view MSO should **not** be allowed to expand the territory within the area of operation as permitted in its registration issued by MIB without any advance intimation to the Broadcaster for the reasons stated in our response to question no: 7.1 herein above. In addition to the above, it has been seen that the MSO does not report the number of subscribers for each city but has adopted a practice of reporting subscriber number for cluster of 6 or 9 cities in a combined manner which makes it difficult for the Broadcaster to identify the exact number of subscribers services by a MSO in a particular city in a month. Also, during audit as well the MSO refuses to share subscriber number pertaining to each city giving room to suspect the authenticity of Subscribers reported by an MSO.

Therefore, it should be made mandatory for an MSO to inform the Broadcaster in writing at least 15 days in advance prior to the commencement of operations in new territories which have not been reported in the Subscriber report submitted to the Broadcaster during the previous month.

Issue 8:- <u>PERIOD OF AGREEMENTS</u>

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

Response: In our view the term of the Interconnection Agreement is a matter of mutual negotiation and understanding between the provider and the seeker of signals and should best be left to the discretion and

good judgment of the parties so far such arrangement is within the stipulated regulations. Therefore, we do not recommend to have a regulation prescribing a minimum term for an Interconnection Agreement.

Issue 9:- <u>CONVERSION FROM FTA TO PAY CHANNELS</u>

9.1 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?

9.2 If so, what should be the period for prior notice?

Response: In our view it should be made mandatory for all Broadcasters to provide 30 days' prior written notice to the DPO's before converting a Free to Air channel (FTA) channel to a pay channel.

Issue 10:- <u>MINIMUM SUBSCRIBERS GUARANTEE</u>

10.1 Should the number of subscribers availing a channel be the only parameter for calculation of subscription fee?

10.2 If no, what could be the other parameter for calculating subscription fee?

Response: The parameter for calculation of subscription fee for addressable systems should be solely on the basis of number of subscribers availing a channel. In order to fully comply with the regulations pertaining to DAS areas, it is important that only one parameter i.e. number of subscribers is followed for uniformity and standardization. If more than one parameter is adopted, it may lead to different interpretations and give room for disputes between the provider and seeker of signals. Moreover, the crux of digitalization provides for subscription money being paid for each and every subscriber availing the services who is identified by a unique subscriber number confirmable through verification & audit thereby making the deals comparable and transparent as well.

At the same time the option to enter into an agreement on mutually agreed terms between the parties should be allowed by the Authority in terms of the freedom allowed under the Indian Contract Act but is also provided in the Copyright Act. Further, any regulatory regime that curbs the rights of mutual negotiations and mutual

agreement between the parties in the broadcasting sector (which involves freedom of speech and expression) would fail the test of constitutional validity as it would be beyond the reasonable restrictions provided in Article 19(2) of the Constitution

10.3 What kind of checks should be introduced in the regulations so that discounts and other variables cannot be used indirectly for minimum subscribers guarantee?

Response: In our view the RIO of the Broadcasters should reflect all the incentives/discounts/ and other variables which can be availed by the seeker across the universe in the most transparent manner leaving no room for ambiguity or different interpretation. In other word's there cannot be any scope to avail discounts indirectly or in a veiled manner other than what has been disclosed by the Broadcaster in its RIO. Extending discounts/incentives in a transparent manner will not result in minimum subscriber guarantee from any one seeker since the same is offered without any discrimination to one and all.

Issue 11:- <u>MINIMUM TECHNICAL SPECIFICATIONS</u>

11.1 Whether the technical specifications indicated in the existing regulations of 2012 adequate?

Response: A lot of change and advancement in Technology and industry practices have led to a situation where current regulations are either insufficient or are prone to misuse by the DPO's for underreporting and piracy. With the implementation of next Phase of DAS the number of MSOs/ LCOs licensed will exceed over a thousand, and will lead to a chaotic situation unless a uniform and well laid out guidelines are not followed.

11.2 If no, then what updates/ changes should be made in the existing technical specifications mentioned in the schedule I of the Interconnection Regulations, 2012?

Response: The TRAI in consultation with BECIL/body of technology expert professionals should formulate an "Approval Document" which should be filed by every DPO before commencing operations.

This document should contain Inter-Alia

(i) Full Detail of Network Diagram including the location of Headend, Muxes and Encryption System including the insertion points of CAS.
(ii) Details of CAS system having inter-alia
(a) Locations/ Networks where deployed, and hacking history
(b) Antipiracy features of CAS.

In addition to the above it is recommended that the following parameters may be made as mandatory requirements:

1. Special Finger printing with multicolor, different font size and vertical FP feature should support CAS and STBs.
2. Covert Finger printing should be available
3. Scroll messaging feature to be available at STB & CAS end.
4. CAS system should be able to disable piracy software (to mask/remove FP, remove OSD layer and EMM).
5. STBs with PVR/USB recording option should have following capability:

a. Capability to record live Fingerprinting, forced message and watermarking logo along with content.
b. During playout live Finger printing & forced message should flash on screen.
c. Recorded content should get disabled on deactivated STB.

6. STB should be paired with viewing card on chip set level, and viewing cards should not be portable. There should be hardware protection so that Control words cannot be extracted from any point in the STB

7. Facility of Watermarking logo to be inserted at Encoder/headend level.
8. The CAS system should be able to extract following reports:
   a. Total active/de-active STB/VCs at any particular date.
   b. Channel wise/service wise active and de-active detail with STB/VC and date/time stamp.
   c. Package channel composition detail with creation, modification and discontinue date.
   d. Historical active/de-active STB/VCs detail.
   e. Linkage of all SIDs (service id of channels) created in CAS with SMS and packages.
   f. Logs of all Mux installed by Operator.
   g. Logs of all Activation, De-activation, FP, OSD and all actions performed by CAS to be available for last 2 years.

h. Fiber network diagram connected to Operator NOC directly/indirectly.

9. Detail of all transport streams/LCN to insert local channel at LCO/ in field.

10. Facility of Extraction of reports should be made available to external agencies whenever required by well-defined programmatic interfaces instead of ad-hoc report generating commands which may not correctly reflect the network devices.

11.3 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?

Response: It has been observed that a lot of CAS and SMS vendors and in house products have been implemented which have no standards and uniformity. A lot of the CA an SM systems do not even have basic security features and means of Authenticity of reporting. It is therefore recommended that Authority on the lines of TEC/BECIL should lay guidelines for CAS and SMS systems and the vendor should take certification from the agency before the product (with specific version) could be deployed in any DPO in India.

11.4 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.

Response: Since Most of the addressable systems are one way systems and Broadcaster depends completely on the accuracy of SMS and CAS systems maintained and deployed by DPO, it becomes important that the systems and subscribers reporting should be correct and should not be prone to Manipulation by both DPO and System Vendor. While there should be un-editable logs for every activity in standard format to prevent any misuse, the vendor should be responsible for misuse of system by himself in connivance with DPO or any wrong doing done by DPO himself.

All DPOs should be also made responsible for all downstream operators for maintaining sanctity of CAS and Encryption systems. If any DPO is found indulging in manipulation of data or found aiding DPO in manipulation of data, he and his associate companies should be blacklisted for minimum period of 5 years and he should be allowed to operate in India after he proves technical changes in product which prevent himself or the DPO's to manipulate data.

Issue 12:- <u>TECHNICAL AUDIT OF ADDRESSABLE SYSTEMS</u>

12.1 Whether the type approved CAS and SMS be exempted from the requirement of audit before provisioning of signal?

12.2 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?

Response: Since there is no Specified standard of setting up a DPO network and there are lot of ad-hoc solution implemented, technical audit of broadcaster checks not only the standalone CAS and SMS but also its integration and its operational implementation including encryption in the transport stream along with Antipiracy features implementation. Hence the audit by broadcaster will still be required but the audit will become less cumbersome, short and seamless.

12.3 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?

Response: There are customised implementations at DPO end even for same Systems havening same version, with each DPO having mix and match of different systems and hardware, there should be laid out standards for Hardware, Systems and Network architecture for cutting down delays in signal provisioning.

12.4 Whether the technical audit methodology prescribed in the regulations needs a review? If yes, kindly suggest alternate methodology.

Response: We recommend the following Additions in regulation:

"On field" verification is an integral part of Audit exercise. The operation of MSO are not confined merely to control room. The network through which the channels are delivered is spread over an area. Broadcaster should be allowed to record Transport stream (TS) from MSO's network without prior intimation and such recording of the Broadcaster should be considered as part of Audit Exercise.

Appropriate clarification be issued by TRAI clarifying that the Broadcaster can collect field samples comprising of Set Top Box (STB)

and Viewing Card Number (VC's) from the ground and validate them with the Subscriber data base provided by MSO during the Audit.

12.5 Whether a panel of auditors on behalf of all broadcasters be mandated or enabled? What could be the mechanism?

Response: In our view the issue of panel of Auditors on behalf of all Broadcasters be mandated or enabled.

1. The thought process of setting up of a central facility is indeed a step in the right direction to have authenticated data which can be relied upon by all the stakeholders. It will also ensure ease, correctness and transparency of the data with regards to reporting of Subscriber numbers from the CAS and SMS systems of DPO's. Additionally, it will also ensure a baseline for Broadcasters to conduct their Audit of the DPO's by looking into specific areas of inconsistencies observed in the data fetched from the central facility and thereby improving the outcome of the audit exercise as well and also reduce the overall time for conducting audit.

   In our view the central facility can be set up maintained by the Industry body which can be floated by all stakeholders including Broadcasters and DPOs' coming together. A mechanism can be worked out to fund the Capex and Opex thru contribution from the stakeholders. Also, a rate card for different services including data, forms, formats and Reports could be made applicable by the central facility for ensuring complete transparent transactions.

2. <u>Existing Technological scenario</u>

   Broadcaster in current technology framework provides signals of its channels to DPO's which is essentially one-way system. Broadcaster has to rely upon the report submitted by DPO relating to the channel wise subscriber count for all financial decisions and invoicing. Other than this reporting mechanism there is no way in which broadcaster can arrive at true and correct number of subscribers of a channel serviced through a DPO.

   At DPO level all subscribers and their entitlements to avail channels are configured/provisioned in Conditional Access System (CAS). CAS is network element which actually decides which STB/VC will be able to avail any particular channel at any point in time. Depending on the inorganic growth of operator and based on technological and cost considerations a DPO generally has one or more CA systems and databases/instances at any point in time. Since CA system is a

Network element, a BSS system generally called as SMS is used to manage the customer lifecycle process which in turn interfaces with CA system to Actual enablement of channel on a STB/VC.

3. Suggested Guidelines for ensuring data availability in the Central facility

A central facility which is proposed to be created should have some essential principles for it to be effective and to ensure integrity of data.

3.1 Data Sources- Such central facility should access data from both

i. CAS
ii. SMS

3.1.1 From CAS the data that should be pulled from the DPO's should have the active VC's with the products/packages or entitlements on the daily basis.

3.1.2 Daily logs of change in package to channel mapping must be part of data pulled.

3.1.3 Daily logs having complete information about the command type, time of command, command syntax, user id/IP of sender of command should be captured

3.1.4 CA system should also provide the Inventory of VC's uploaded in the CAS system and status of those VC's on end of each data when data is pulled by Central facility.

3.1.5 There should be a very high penalty in the regulation for not declaring any CA system/instance or database to the central facility or having facility of duplicate VC/STB numbers in the field.

3.1.6 Similarly, there should be extremely high penalty defined in regulation in case of any channel found running in unencrypted mode.

3.1.7 Daily data pulled from SMS should have list of all VC's having packages active on that date along with package to channel mapping.

3.1.8 Log of all activities done from SMS to CAS must also be captured.

3.1.9 Logs of package to channel mapping should also be obtained on daily basis.

3.1.10 Details of all inventory uploaded in the system with their activation status on daily basis should also be captured.

3.1.11 There should be provision of high penalty in case any SMS system/database or instance is not declared by the DPO.

3.1.12 There should be penalty defined in the regulation in case of DPO is not allowing access or providing delayed information to central facility.

3.1.13 Data should be available for all packs and VC's/STB's activated and deactivated during the day.

4 Audit

4.1.1 Current provision of allowing Broadcaster to do Audit 2 times in a year should be continued and there should not be any fee paid by broadcaster for getting Audit done as broadcaster has to rely on the system of DPO to ascertain true and correct subscriber number of a channel and he does not have any other mechanism to check the accuracy of data.

4.1.2 There should be penalties defined in the regulation if the DPO does not allow Audit within 7 days of request by broadcaster. Deterrent should be defined in the regulation itself and should not be left to judicial interpretation.

12.6 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?

Response: Current regulations do not have any deterrent for incorrect subscriber reporting. In case of default by the DPO, there should be stiff monetary/financial disincentives.

(a) Fine equivalent to One (1) month's Subscription fee payable to Broadcaster for every Seven (7) day delay in conducting Audit.

(b) During the Audit findings if it is found that the DPO has not declared the additional CAS and SMS systems along with database. It is suggested that stringent punitive action coupled with stiff financial dis-incentives should be imposed on the errant DPO by e.g. One (1) Year's Subscription fee payable to Broadcaster and/or cancellation of DAS License issued by the Ministry of Information and Broadcasting (MIB).

(c) In case of manipulation of subscriber numbers by the DPO, there should be stiff financial disincentives. For example, a fine equivalent to Two (2) month's Subscription fee payable to Broadcaster for not furnishing historical data for each month defaulted.

(d) In case of 2 or more instances of CAS and SMS system has been found for manipulating data for reporting hefty fine and blacklisting of CAS and SMS vendor should be implemented.

Issue 13:- <u>SUBSCRIPTION DETAILS</u>

13.1 Should a common format for subscription report be specified in the regulations? If yes, what should be the parameters? Kindly suggest the format also.

Response: In our view a common format for subscription report cannot be specified in the regulation since the reporting requirement may vary from Broadcaster to Broadcaster in terms of their unique and distinct RIO's having separate set of incentives/discounts

13.2 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?

Response: In our view the method of calculation of subscription number for each channel/Bouquet should be on daily basis in the

present era of computer technology. We do believe that no extra effort nor any additional man power is required to cull out the subscriber number on daily basis from the system of a DPO. we recommend that the daily subscriber number be captured for example at 9:00 P.M i.e the prime time instead of midnight 00.00 AM. This daily count will also ensure that the DPO will not be able to hide details regarding subscribers who are not active for less than 30 or 31 days in a month.

13.3 Whether the subscription audit methodology prescribed in the regulations needs a review?

Response: In our view the methodology prescribed in the regulation needs to be tweaked with necessary changes to make the audit exercise more meaningful as well as to ensure that the DPO's furnish their Subscriber data in the most transparent manner thereby making the audit as a powerful tool to bring in semblance of discipline in reporting the true and correct number of subscribers. We herein below outline some of the issues faced by the Broadcasters while undertaking the audit of DPOs systems and also suggest ways to counter them by requesting the Authority to introduce changes in the regulatory framework.

Sr. No.	Issues	TRAI's intervention required
1	DPO does not confirm the Audit dates nor does it respond to the Broadcaster's intimation for conducting Audit for days/months together on one pretext or another	i. It should be made mandatory in regulation for a DPO to allow Broadcaster to conduct Audit within 7 days from the receipt of intimation from the Broadcaster. ii. In case of default by the DPO, there should be stiff monetary/financial disincentives in regulation. For example a fine equivalent to One (1) month's Subscription fee payable to Broadcaster for every Seven (7) day delay in conducting Audit.

2	Some DPOs are using multiple CAS systems. It has been observed that DPOs do not declare the correct number of multiple Conditional Access Systems (CAS) and Subscriber Management System(s) (SMS) along with the database, thereby intentionally concealing the true and correct number of subscribers resulting in huge financial loss to the Broadcaster. The Broadcasters are able to detect the same by recording the transport stream (TS) from DPOs network. However, the disputes are raised by DPOs alleging that such recording behind the back of DPO's without informing them is not authentic. In this context it is pertinent to point out that such recording has to be without intimation as otherwise after receipt of intimation, the DPO can make the necessary adjustment in its network such as switching off the CAS for a temporary period, thereby defeating the very purpose of such recording.	i. "On field" verification is an integral part of Audit exercise. The operation of DPO are not confined merely to control room. The network through which the channels are delivered is spread over an area. Broadcaster should be allowed to record Transport stream (TS) from DPO's network without prior intimation and such recording of the Broadcaster should be considered as part of Audit Exercise. ii. During the Audit findings if it is found that the DPO has not declared the additional CAS and SMS systems along with database. It is suggested that stringent punitive action coupled with stiff financial dis-incentives should be imposed on the errant DPO by e.g One (1) Year's Subscription fee payable to Broadcaster and/or cancellation of DAS License issued by the Ministry of Information and Broadcasting (MIB) iii. Appropriate clarification be issued by TRAI clarifying that the Broadcaster can collect field samples comprising of Set Top Box (STB) and Viewing Card Number (VC's) from the ground and validate them with the Subscriber data base provided by DPO during the Audit.

3	i. DPO does not provide complete and un-edited CAS and SMS data during Audit exercise. ii. DPO does not provide city-wise break of Subscriber VC/STB details from CAS and SMS. iii DPO provides a single figure indicating the number of Subscribers for certain cluster of cities. For example DPO quotes a single number for three (3) cities comprising of Pune, Nasik and Ahmednagar instead of giving a separate count for each city.	i. The DPO must furnish the complete CAS and SMS Data (STB wise, VCs wise, Package-wise) and channel to package mapping as on the day of Audit for the same time stamp. The said CAS and SMS Data must be provided in respect of the DPO's network as well as its other subsidiary/affiliate networks. ii. The DPO must furnish the data for both DAS and Non-DAS areas with city wise details. iii. The DPO must furnish data for all the packs/a-la-carte offerings irrespective of whether the pack contains the channels of the Broadcasters who is conducting Audit or not. The same is warranted in order to make sure that channels of the Broadcaster who has initiated Audit are not present in other Bouquet/Package being offered by DPO.
4	i. DPO does not provide historical reports from CAS and SMS for the previous two (2) years as mandated by the Regulation under the pretext that: ii. Current regulation mandates an DPO to maintain CAS logs only and it does not specify	i. The DPO must furnish the complete CAS and SMS Data including STB numbers, VC Numbers with package(s) and channel to package mapping subscribed by each customer including historical data for the previous 24 months till the day of Audit in order to ascertain veracity of the reported numbers.

	what a CAS log should contain. Also, there is no mention of providing reports from CAS. iii. DPO's cite system and technical limitations in providing historical data from SMS	ii. In case of default by the DPO, there should be stiff financial disincentives. For example a fine equivalent to Two (2) month's Subscription fee payable to Broadcaster for not furnishing historical data for each month defaulted.
5	i. DPO does not allow Auditors to take data relevant to the Audit whereby the Auditors do not have any evidence whatsoever to prove their claim/ findings /non-compliances of the DPO. Moreover, the said data is also required for carrying out lot of analysis as well as verification from various angles. ii. Since, the data submitted by the DPO during the previous Audit is not made available to the Auditors during the audit exercise, it is not possible to compare data of the previous period with current data during successive Audits.	i. TRAI should allow the Auditors' to take DPO's data on to their Laptops. In order to safeguard the interest of DPO and to ensure the data protection, the TRAI can stipulate execution of a Non-Disclosure Agreement between the Auditor and the DPO. ii TRAI should make it mandatory for the DPO furnish data made available to the Auditors during the previous audit.
6	DPO provides logs which are either not readable or are not formatted resulting in the data being unfit for meaningful analysis.	i. TRAI should direct that the DPO must furnish its complete 'logs' in a formatted and readable format, covering both its CAS as well as SMS.
7	DPOs do not follow standard format for	TRAI should mandate that the DPO uses standard

	reporting data pertaining to multiple CAS and SMS for the purpose of Audit. It has been observed that DPO's have installed more than one CAS and SMS and resort to different and varied reports for such multiple CAS and SMS. This results in numerous formats thereby defeating the purpose of assimilating meaningful and complete data.	formats for reporting basic data extracted from multiple CAS and SMS's installed at the DPO's headend.

13.4 Whether a common auditor on behalf of all broadcasters be mandated or enabled? What could be the mechanism?

Response: In our view no one or two firms or individuals be appointed as common auditor on behalf of all broadcasters be mandated or enabled. We firmly believe that a common pool auditors be formed with expertise in the Broadcasting and distribution business under a central facility as suggested herein above in answer to question no: 12.5. The auditors so appointed in a central facility shall undertake the audit exercise on a rotational basis.

Presently BECIL is the only firm which has been authorized by TRAI to oversee as to whether the audit done by individual audit firms appointed by the Broadcasters has done the audit as per the audit parameters under the regulation or not. The authorization accorded to lone entity like BECIL may give room for biased interpretation in favour of one or the other party which can be avoided or totally eliminated by launching of a central facility for appointment of auditors.

13.5 What could be the compensation mechanism for delay in making available subscription figures?

Response: In our view, the following compensation mechanism should be prescribed for delay in making available the subscription figures:

(I) If the DPO fails to send the subscriber figures within a period of

seven (7) days, Provider shall be entitled to raise Provisional Invoice for the Monthly License Fee based on the last Report or the last month's invoice, whichever is higher and the DPO should be further directed to make payment based on the Provisional Invoice;

(II) If the DPO fails to send the subscriber figures for two (2) consecutive months, the Authority should prescribe a penal compensation equivalent to previous three month's invoice amount towards Monthly Fee as additional charge for every such default;

13.6 What could the penal mechanism for difference be in audited and reported subscription figures?

Response: In our view, in the event an audit reveals that DPO has under-reported the number of Subscribers or has misrepresented any item or has failed to keep accurate and complete records:

(I) having a bearing on the computation of the License Fee payable by the DPO, Provider shall provide the DPO with written notice setting out the amount of such additional fee ("Shortfall Amount") payable by the DPO to Provider ("Notice of Shortfall"). Upon receipt of the Notice of Shortfall, the DPO shall immediately, and in any event no later than Seven (7) calendar days from the date of receiving such Notice of Shortfall pay the Shortfall Amount together with interest at the Default Interest Rate for the period from the date when the payments should have been made by the DPO until the actual date of payment @ 1.5% Per Month.

(II) In the event during the audit exercise if it is found that the DPO has not informed Provider about any change/ replacement of his existing SMS / CAS system declared at the time of execution of the agreement or in case where the DPO has introduced and is making use of one or more SMS / CAS systems for which it has not declared true and correct subscribers count along with the choice of channels subscribed by the subscribers then in such an event Provider shall at its discretion, charge for such additional subscribers attributable to such supplementary/ additional SMS / CAS systems at rate equivalent to 125% of the agreed rates from the date of agreement

13.7 Should a neutral third party system be evolved for generating subscription reports? Who should manage such system?

Response: In our view no neutral third party system be evolved for generating subscription reports. The number of subscribers of every

broadcaster is confidential information and no risk can be taken with regards to these number being shared with any outside agency.

13.8 Should the responsibility for payment of audit fee be made dependent upon the outcome of audit results?

Response: Yes, in our view, the responsibility for payment of audit fee under the following circumstances be made dependent on the outcome of the audit:

(I) In the event an audit reveals that –

(a) DPO has under-reported the number of Subscribers or
(b) DPO has misrepresented any item or
(c) DPO has failed to keep accurate and complete records.

(II) The responsibility for payment of audit fee incurred by the Provider should be casted on the DPO, in the event,

(a) the Shortfall Amount due for any period exceeds the fees reported by the MSO to be due for such period by two percent (2%) or more and

(b) the Authority should also consider direct the DPO to pay additional charge at the rate of ten percent (10%) of the agreed rates for such additional subscribers revealed during the audit exercise;

The aforesaid recommendation will act as a deterrent for the DPOs will help in maintaining as well as accurate inflow & reporting of the information.

Issue 14:- <u>DISCONNECTION OF SIGNALS OF TV CHANNELS</u>

14.1 Whether there should be only one notice period for the notice to be given to a service provider prior to disconnection of signals?

14.2 If yes, what should be the notice period?

14.3 If not, what should be the time frame for disconnection of channels on account of different reasons?

Response: Yes. There should be only one notice period be given to the service providers prior to disconnection of signals. The time period for the said notice should be reduced to 15 days from 21 days. There cannot be different time frame for disconnection of channels on account of different reasons

Issue 15:- PUBLICATION OF ON SCREEN DISPLAY FOR ISSUE OF NOTICE FOR DISCONNECTION OF TV SIGNALS

15.1 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?

15.2 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?

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

Response: The Regulation should not prohibit a broadcaster and DPO from displaying notice of disconnection through OSDs. At the same time running of the scroll on a particular TV channel might be a better and effective way to inform the consumers regarding disconnection than public notice in any newspaper. The methodology of issuing notice of disconnection prescribed in the Regulation should be reviewed and in fact, the public notice should be replaced by OSD and/or running of scrolls.

Issue 16:- PROHIBITION OF DPO AS AGENT OF BROADCASTERS

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

16.2 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?

Response: The Regulation can prohibit appointment of MSO directly or indirectly for distribution of signals. The Regulation should not make it mandatory for broadcasters to report their distribution agreements. If any DPO has any issues with the

broadcaster or his agent the same can be confidentially resolved before the TDSAT.

Issue 17:- <u>INTERCONNECTION BETWEEN HITS/IPTV OPERATOR AND LCO</u>

17.1 Whether the framework of MIA and SIA as applicable for cable TV services provided through DAS is made applicable for HITS/IPTV services also.

17.2 If yes, what are the changes, if any, that should be incorporated in the existing framework of MIA and SIA.

17.3 If no, what could be other method to ensure non-discrimination and level playing field for LCOs seeking interconnection with HITS/IPTV operators?

Response: The framework of MIA and SIA as applicable for cable TV services provided through DAS should be made applicable for HITS/IPTV services also. This may help in faster digitization in far flung areas without referring the matter for adjudication in case of any disagreement.

In our view no further changes are required in the existing framework of MIA and SIA as prescribed in the Interconnection Agreement (MIA) & Standard Interconnection Agreement (SIA) through the Seventh Amendment to the Interconnection Regulations, 2012. In terms of existing regulatory framework, signals of TV channels are required to be provided to the LCO making a request for the same in a time-bound manner. MSOs and LCOs have been given the freedom to enter into interconnection agreement in lines with MIA through mutual agreement and if they fail to arrive at mutual agreement and decide to continue distribution of TV signals then they have to enter into an interconnection agreement strictly within the terms of SIA where the roles and responsibilities and revenue share have been prescribed in the regulatory framework.

Issue 18:- <u>TIME PERIOD FOR PROVIDING SIGNALS OF TV CHANNELS</u>

18.1 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.

18.2 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.

Response: Yes, in our view the same time limit as prescribed under the Interconnection Regulation 2012 applicable to DAS should also be made applicable for HITS service provider. The said Regulation mandates that the MSO should enter into a written interconnection agreement with the LCO within 30 days from the date of receipt of request for the same and the signal should be provided within the next 30 days from the date of signing of the interconnection agreement. To bring in parity and uniformity the regulatory prescription in respect of mandated time period for provisioning of signals should be similar to DAS.

The argument that LCO's are required to install a dish antenna for reception of signals from HITS satellite and therefore 30 days' time period for providing TV channels after entering into written agreements would not be adequate is an argument which is totally fallacious without any merit whatsoever. The dish antennas are readily available as it is pre-requisite for an HITS operator in terms of its business model to provide the same to the LCO without any delay whatsoever. Any additional time provided to an HITS operator would be totally discriminatory and not in the interest of the consumer as well.

Issue 19:- <u>REVENUE SHARE BETWEEN HITS/IPTV OPERATOR AND LCO</u>

19.1 Whether the Authority should prescribe a fall back arrangement between HITS/IPTV operator and LCO similar to the framework prescribed in DAS?

19.2 Is there any alternate method to decide a revenue share between MSOs/ HITS/IPTV operators and LCOs to provide them a level playing field?

Response: In our view the Authority should prescribe a fall back arrangement between HITS/IPTV operator and LCO similar to the regulatory framework prescribed in DAS. The existing regulatory framework provides that the commercial arrangements between

HITS/IPTV/MSOs and the LCOs are to be decided through mutual negotiations. However, in DAS, it has been provided that if the MSO and the LCO fail to arrive at mutual agreement, the charges collected from the subscribers shall be shared in the following manner:

(a) the charges collected from the subscription of channels of basic service tier, free to air channel and bouquet of free to air channels shall be shared in the ratio of 55:45 between multi-system operator and local cable operator respectively; and

(b) the charges collected from the subscription of channels or bouquet of channels or channels and bouquet of channels other than those specified under clause (a) shall be shared in the ratio of 65:35 between multi-system operator and local cable operator respectively

In view of the regulatory position applicable for DAS, it is recommended that the fall back arrangement for HITS/IPTV should be also be prescribed on the same lines of DAS.

Issue 20:- <u>NO-DUES CERIFICATES</u>

20.1 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?

Response: In our view the service provider should provide on demand a no due certificate or details of dues within a period of seven (7) days of request with requisite details of arrears being shown against each month separately for absolute clarity with regards to the outstanding amount on a particular date.

Issue 21:- <u>PROVIDING SIGNALS TO NEW MSOs</u>

21.1 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?

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

Response: Yes. It should be mandatory for a new MSO to provide copy of the current invoices and the payment receipt as the proof of clearing the outstanding amounts with the last affiliated MSO. If the new MSO has an old outstanding due payable by the last affiliated MSO, such new MSO has to be treated as a defaulter by the broadcaster and signals to the new MSO can be denied on the grounds of outstanding payment.

Issue 22:- <u>SWAPPING OF SET TOP BOX</u>

22.1 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?

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

Response: In our view it should be made mandatory that before acquiring an LCO, the new MSO should demand a no-dues certificate along with the last Invoice and Receipt from the LCO in respect of the past affiliated MSO. This will help to curtail problems related to instances wherein the linked LCO replace the STBs deployed at the subscriber's premises with the STBs of another MSO without the written consent of subscribers. Such swapping of STBs without following proper procedure for filling of any subscriber surrender forms has resulted in huge revenue losses to the past affiliated MSO of the LCO. Hence our above recommendation will reduce losses for the MSO as well as make the LCOs more accountable and would also ensure that LCO movement from MSO to another MSO is monitored with proper checks and balances.

Issue 23:- <u>ANY OTHER RELEVANT ISSUE THAT THEY MAY DEEM FIT IN RELATION TO THIS CONSULTATION PAPER</u>.

Response: Save and except the aforesaid we do not have any other issue to comment upon at this juncture. We reserve our rights to offer counter comments at a later date.

Conclusion: We are of the opinion that if the aforesaid recommendations are factored in by the Authority in the new regulation in the larger interest of all stakeholders it would definitely result in fostering competition, increase trust amongst service providers, increase the ease of doing business, reduce

disputes, improve transparency and efficiency, promote sustainable orderly growth and effective choice of content to consumers at large.

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Proposed Format of Schedule 'A' and Schedule 'B' prescribed in ANNEXURE – 1 in response to Question no: 2.9 herein above

Schedule 'A'

SMS DECLARATION FORM
(ON SMS PROVIDER COMPANY'S LETTER HEAD)

TO WHOMSOEVER IT MAY CONCERN

This is to certify that M/s _____, having its Registered Office at _____ _____ and having its DAS headend at _____ has installed SMS of our Company for its digital cable network. ____

Date of SMS Installation: _____

SMS Version: _____

With respect to the SMS installed at above mentioned headend and in terms of Schedule 1 of the TRAI (Digital Addressable Cable Television System) Notification dated 30 April 2012, we confirm the following:

1. The installed SMS is currently in use by other pay TV service providers including Multi System Operators (MSOs) having an aggregate of at least One (1) million subscribers in the global pay TV market.

2. The installed SMS has the capacity to handle at least One (1) million subscribers in the system.

3. We have the technical capability in India to be able to maintain their system on 24 x 7 basis throughout the year.

4. We, the SMS system provider are able to provide monthly log of activation and deactivation on a particular channel or on a particular Bouquet / Subscriber Package which is or will be provided by the MSO.

5. This SMS has the provision to tag and blacklist VC numbers and STB numbers that have been involved in piracy in the past to ensure that the VC's or the STB's cannot be redeployed.

6. The installed SMS is capable of individually addressing subscriber's

choice, on a channel by channel and STB by STB basis as well.

7. This installed SMS is independently capable of generating log of all activations and deactivations.

8. This installed SMS has the capability to store history logs of all activations and deactivations for the period of last two (2) years for every channel provided by the MSO.

Please find enclosed sample log of all activations & deactivations of a particular channel generated from the installed SMS system.

Thanking you,

For (SMS company name)

(Signature)

Name: _____

Designation: _____ (not below the level of COO or CEO or CTO)

Company seal:

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'Schedule B'

DECLARATION FORM TO BE OBTAINED FROM CAS PROVIDER (ON THE CAS PROVIDER COMPANY'S LETTER HEAD)

TO WHOMSOEVER IT MAY CONCERN

This is to certify that M/s _____, having its Registered office at _____ and having its DAS headend at _____ has installed Conditional Access System (CAS) of our company for its digital cable network.

Date of CAS Installation: _____ CAS Version: _____

CAS ID: _____, NETWORK ID: _____

With respect to the CAS installed at above mentioned headend and in terms of Schedule 1 of the TRAI (Digital Addressable Cable Television System) Notification dated 30 April 2012, we confirm the following:

9. The current version of CAS does not have any history of hacking.

10. We have the capability of upgrading of CAS in case it gets hacked at any point of time.

11. The CAS is currently in use by other pay TV services providers including Multi System Operators (MSOs) and it has an aggregate of at least One (1) million subscribers in the global pay TV market.

12. The installed CAS has the capacity to handle at least One (1) million subscribers in the system.

13. We, the CAS system provider are able to provide monthly log of activation and deactivation on a particular channel or on a particular Bouquet / Subscriber Package provided by the MSO to its end subscribers.

14. We have the technical capability in India to maintain this CAS system on 24x7 basis throughout the year.

15. This CAS installed is independently capable of generating log of all activations and deactivations.

16. This CAS has the provision to tag and blacklist VC numbers and STB numbers that have been involved in piracy in the past to ensure that the VC's or the STB's cannot be redeployed.

17. The installed CAS is capable of individually addressing subscriber's choice of channel(s), on a channel by channel and STB by STB basis.

18. This CAS installed has the capability to store history logs of all activations and deactivations for the period of last 2 years for every channel and Bouquet/ Subscriber Package introduced and made available by the Multi System Operator to its last mile subscribers.

Please find enclosed sample log of all activations & deactivations of a particular channel generated from the installed CAS system.

Thanking you,

For (CAS company name)

(Signature)

Name: _____

Designation: _____ (not below the level of COO or CEO or CTO)

Company seal:

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