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EXTRAORDINARY,
PART III, SECTION 4

**THE TELECOMMUNICATION (BROADCASTING AND CABLE
SERVICES) INTERCONNECTION (FIFTH AMENDMENT)
REGULATIONS, 2009**

No. 4 of 2009

TELECOM REGULATORY AUTHORITY OF INDIA

NOTIFICATION

New Delhi, the 17th March, 2009

F. No. 3-21/ 2009 - B&CS.-- In exercise of the powers conferred by section 36, and by sub-clauses (ii), (iii), (iv) and (v) of clause (b) of sub-section (1) and sub-section (2) of section 11 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), read with notification of the Government of India, in the Ministry of Communication and Information Technology (Department of Telecommunication) No.39,-----

(a) issued, in exercise of the powers conferred upon the Central Government under clause (d) of sub-section (1) of section 11 and proviso to clause (k) of sub-section (1) of section 2 of the said Act, and

(b) published under notification No. S.O.44 (E) and 45 (E) dated the 9th January, 2004 in the Gazette of India, Extraordinary, Part III, Section 4,

the Telecom Regulatory Authority of India hereby makes the following regulations further to amend the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004 (13 of 2004), namely:-

1. (1) These regulations may be called the Telecommunication (Broadcasting and Cable Services) Interconnection (Fifth Amendment) Regulations, 2009.

(2) They shall come into force with effect from the date of their publication in the Official Gazette.

2. In regulation 2 of the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004 (13 of 2004), (hereinafter referred to as the principal regulations), -----

(a) sub-clause (ia) shall be renumbered as sub-clause (ib);

(b) after sub-clause (i), the following sub-clause shall be inserted, namely:-

“(ia) “**carriage fee**” means any fee paid by a broadcaster to a distributor of TV channels, for carriage of the channels or bouquets of channels of that broadcaster on the distribution platform owned or operated by such distributor of TV channels, without specifying the placement of various channels of the broadcaster vis-à-vis channels of other broadcasters;”

(c) after sub-clause (l), the following sub-clause shall be inserted, namely:-

“(la) “**Internet Protocol television service**” means delivery of multi channel TV programmes in addressable mode by using Internet Protocol over a closed network of one or more service providers;”

(d) sub-clause (mc) shall be renumbered as sub-clause (md);

(e) after sub-clause (mb), the following sub-clause shall be inserted, namely:-

“(mc) “**placement fee**” means any fee paid by a broadcaster to a distributor of TV channels, for placement of the channels of such broadcaster vis-à-vis channels of other broadcasters on the distribution platform owned or operated by such distributor of TV channels;”.

3. In regulation 3 of the principal regulations, -----

(a) after the second proviso to sub-regulation 3.2, the following proviso shall be inserted, namely :-

“Provided also that the provisions of this sub-regulation shall not apply in the case of a distributor of TV channels, who seeks signals of a particular TV channel from a broadcaster, while at the same time demanding carriage fee for carrying that channel on its distribution platform.”.

(b) the Explanation after the third proviso so inserted in sub-regulation 3.2 shall be numbered as Explanation 1;

(c) after Explanation 1 so numbered, the following explanation shall be inserted, namely:-

“Explanation 2. The stipulation of “placement frequency” or “package/tier” by the broadcaster from whom the signals have been sought by a distributor of TV channels, as a “pre-condition” for making available signals of the requested channel(s) shall also amount to imposition of unreasonable terms.”

4. In regulation 4 of the principal regulations,---

(a) in the first proviso to sub-regulation 4.1, for the words “an agreement, written or oral”, the words “a written agreement” shall be substituted;

(b) in the second proviso to sub-regulation 4.1, for the words “agreement, written or oral,” the words “written agreement” shall be substituted;

5. In the principal regulations, after regulation 4, the following regulations shall be inserted, namely:-

“4A. Interconnection Agreements to be in writing.

4A.1 It shall be mandatory for the broadcasters of pay channels and distributors of TV channels to reduce the terms and conditions of all their interconnection agreements to writing.

4A.2 No broadcaster of pay channels or distributor of TV channels, such as multi system operator or headend in the sky operator, shall make available signals of TV channels to any distributor of TV channels without entering into a written interconnection agreement.

4A.3 Nothing contained in regulations 4A.1 or 4A.2 shall apply to any supply of signals or continuance of supply of signals of TV channels by a broadcaster or distributor of TV channels, such as multi system operator or headend in the sky operator, in pursuance of or in compliance with any order or direction or judgment of any court or tribunal, including any order or direction or judgment of any court or tribunal on any proceeding pending before such court or tribunal.

4A.4 It shall be the responsibility of every broadcaster of pay channels

who enters into an interconnection agreement with a distributor of TV channels to hand over a copy of signed interconnection agreement to such distributor of TV channels and obtain an acknowledgement in this regard within a period of 15 days from the date of execution of the agreement and, similarly, it shall be the responsibility of every multi system operator or headend in the sky operator, as the case may be, who enters into an interconnection agreement with a cable operator to hand over a copy of signed interconnection agreement to such cable operator and obtain an acknowledgement in this regard within a period of 15 days from the date of execution of the agreement.”.

6. In regulation 13.2A of the principal regulations, -----

(a) for regulation 13.2A.1, the following regulation shall be inserted, namely:-

“**13.2A.1** Every broadcaster, providing broadcasting services before the date of commencement of the Telecommunication (Broadcasting and Cable Services) Interconnection (Fifth Amendment) Regulation, 2009 (4 of 2009) and continues to provide such services after such commencement shall, within thirty days from the date of such commencement, intimate to all the direct to home operators existing on that date and coming into existence within the said period of thirty days, its Reference Interconnect Offer specifying, *inter-alia*, the technical and commercial terms and conditions for interconnection for the direct to home platform, including the terms and conditions listed in Schedule-III to these regulations.

Provided that no broadcaster shall, directly or indirectly, compel any direct to home operator not to make available its direct to home service to any class of subscribers including commercial subscribers.

Provided further that a broadcaster may have a different Reference Interconnect Offer for supply of signals by the direct to home operators----

- (a) to the following categories of commercial subscribers, namely:-
- (i) hotels with rating of three star and above;
 - (ii) heritage hotels (as described in the guidelines for classification of hotels issued by Department of Tourism, Government of India);
 - (iii) any other hotel, motel, inn, and such other commercial establishment providing board and lodging and having fifty or more rooms; and

(b) in respect of programmes of such broadcaster, shown on the occasion of a special event for common viewing, at any place registered under the Entertainment Tax Law and to which access is allowed on payment basis for a minimum of fifty persons.

Explanation:

For removal of doubts, it is clarified that the reference interconnect offer containing various terms and conditions including commercial terms, published by a broadcaster for provision of signals to ordinary subscribers shall apply to provision of signals to commercial subscribers not specified in the second proviso.”

(b) in the proviso to regulation 13.2A.2, for the words and figures “the Telecommunication (Broadcasting and Cable Services) Interconnection (Fourth Amendment) Regulation, 2007 (9 of 2007)”, the words and figures “the Telecommunication (Broadcasting and Cable Services) Interconnection (Fifth Amendment) Regulation, 2009 (4 of 2009)” shall be substituted;

(c) in regulation 13.2A.3, -----

(i) for the words and figures “the Telecommunication (Broadcasting and Cable Services) Interconnection (Fourth Amendment) Regulation, 2007 (9 of 2007)”, the words and figures “the Telecommunication (Broadcasting and Cable Services) Interconnection (Fifth Amendment) Regulation, 2009 (4 of 2009)” shall be substituted; and

(ii) for the words “ninety days”, the words “thirty days” shall be substituted;

(d) in regulation 13.2A.4, -----

(i) for the words “ninety days”, the words “thirty days” shall be substituted; and

(ii) for the words and figures “the Telecommunication (Broadcasting and Cable Services) Interconnection (Fourth Amendment) Regulation, 2007 (9 of 2007)”, the words and figures “the Telecommunication (Broadcasting and Cable Services) Interconnection (Fifth Amendment) Regulation, 2009 (4 of 2009)” shall be substituted;

(e) in regulation 13.2A.6, -----

(i) in the second proviso to sub-regulation (1), for the words and figures “the Telecommunication (Broadcasting and Cable Services) Interconnection (Fourth Amendment) Regulation, 2007 (9 of 2007)”, the words and figures “the Telecommunication (Broadcasting and Cable Services) Interconnection (Fifth Amendment) Regulation, 2009 (4 of 2009)” shall be substituted; and

(ii) in sub-regulation (2) and sub-regulation (3), for the words and figures “the Telecommunication (Broadcasting and Cable Services) Interconnection (Fourth Amendment) Regulation, 2007 (9 of 2007)”, wherever they occur, the words and figures “the Telecommunication (Broadcasting and Cable Services) Interconnection (Fifth Amendment) Regulation, 2009 (4 of 2009)” shall be substituted;

(f) in the proviso to regulation 13.2A.11, for the words “the entire bouquet”, the words “any channel or channels or bouquet” shall be substituted.

7. In the principal regulations, after regulation 13.2A.13, the following regulations shall be inserted, namely:-

“13.2B Reference Interconnect Offers for addressable systems other than direct to home service.

13.2B.1 Every broadcaster, providing broadcasting services before the date of commencement of the Telecommunication (Broadcasting and Cable Services) Interconnection (Fifth Amendment) Regulation, 2009 (4 of 2009) and continues to provide such services after such commencement shall, within thirty days from the date of such commencement, submit its Reference Interconnect Offer specifying, *inter-alia*, the technical and commercial terms and conditions including those listed in Schedule III for interconnection with addressable systems other than -----

(a) cable service in areas notified by the Central Government under sub-section (1) of section 4A of the Cable Television Networks (Regulation) Act, 1995 (7 of 1995);

(b) the direct to home service, -----

to the Authority.

13.2B.2 Every broadcaster, who begins to provide broadcasting services after the date of commencement the Telecommunication (Broadcasting and Cable Services) Interconnection (Fifth Amendment) Regulation, 2009 (4 of 2009) shall, within thirty days of such commencement or before providing such services, whichever is later, submit to the Authority, its Reference Interconnect Offer specifying therein the technical and commercial terms and conditions referred to in sub-regulation 13.2B.1 and publish the same, before or simultaneously with such intimation, on its website.

13.2B.3 The provisions of regulations 13.2A.1, 13.2A.2, 13.2A.4, 13.2A.5, 13.2A.6, 13.2A.7, 13.2A.8, 13.2A.9, 13.2A.10, 13.2A.11, 13.2A.12 and 13.2A.13, relating to Reference Interconnect Offers for direct to home service, shall apply, mutatis mutandis, to such a Reference Interconnect Offer for interconnection with addressable systems other than cable service in areas notified by the Central Government under sub-section (1) of section 4A of the Cable Television Networks (Regulation) Act, 1995 (7 of 1995) and the direct to home service:

Provided that a broadcaster may have different Reference Interconnect Offers for different types of addressable systems.

13.2B.4 Any distributor of TV channels using an addressable system for distribution of TV channels seeking interconnection with a broadcaster in terms of the Reference Interconnect Offer referred to in regulation 13.2B.1 or 13.2B.2, as the case may be, shall ensure that the addressable system being used for distribution of TV channels satisfies the minimum specifications for addressable systems as specified in Schedule IV to these regulations:

Provided that in cases where a broadcaster is of the opinion that the addressable system being used for distribution of TV channels does not satisfy the minimum specifications for addressable systems as specified in Schedule IV to these regulations, upon being informed of such opinion by the broadcaster, the distributor of TV channels shall get the addressable system audited by M/s. Broadcast Engineering Consultants India Ltd., or any other agency as may be notified by the Authority from time to time for the purpose of such audit and obtain a certificate to the effect that the addressable system being used for distribution of TV channels satisfies the minimum specifications for addressable systems as specified in Schedule IV to these regulations:

Provided further that the finding of M/s. Broadcast Engineering Consultants

India Ltd., or any other agency notified by the Authority in this regard, as the case may be, based on such audit as referred to in the first proviso, about the addressable system being used for distribution of TV channels satisfying or not satisfying the minimum specifications for addressable systems as specified in Schedule IV to these regulations, shall be final.”.

8. In the principal regulations, after Schedule II, the following Schedules shall be inserted, namely:-

“Schedule III

Terms and conditions which should compulsorily form part of Reference Interconnect Offers for interconnection for the direct to home platform and for other addressable platforms

Licence Fee	<p>For each month or part thereof during the Term of the agreement, the DTH operator shall pay to _____ (name of the Broadcaster) the Monthly Licence Fee which shall be the Rate multiplied by the Monthly Average Subscriber Level.</p> <p>The a-la-carte and bouquet “Rate” per Subscriber is set out in Annexure to this RIO. The rates mentioned in the Annexure to this RIO, as referred to above, are exclusive of all taxes and levies.</p> <p>The “Monthly Average Subscriber Level” is equal to the sum of the number of subscribers on the first and last day of the month in question divided by two.</p> <p>For the purpose of calculation of the Monthly License Fee payable to _____ (name of the Broadcaster), “Subscriber” means, for any calendar month, each Set Top Box, which is availing the Channel(s) of _____ (name of the Broadcaster) through the DTH operator.</p> <p><u>Calculation of License Fee:</u></p> <p>I. In case a DTH operator avails one or more Bouquet(s) of _____ (name of the Broadcaster):</p> <p style="padding-left: 40px;">(a) If the DTH operator is providing the Bouquet(s) as a whole to its DTH subscribers, the Monthly License Fee for such Bouquet(s) shall be equal to the Bouquet rate as set out in the Anenxure multiplied by the number of</p>
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monthly average number of subscribers availing the Bouquet(s).

(b) if the DTH operator does not offer such opted bouquet(s) as a whole to its direct to home subscriber but offers only certain channels comprised in such bouquet or packages the channels comprised in such opted bouquet in a manner resulting in different subscriber base for different channels comprised in such opted bouquet, then the payment to _____ (name of the Broadcaster) for such entire opted bouquet by the DTH operator, shall be calculated on the basis of subscriber base for the channel which has highest subscriber base amongst the channels comprised in the bouquet.

II In case a DTH operator avails one or more or all channels of _____ (name of the Broadcaster) on ala carte rate basis:

(a) If the DTH operator is providing the channels on ala carte basis to its DTH subscribers, the Monthly License Fee for such ala carte channels shall be equal to the ala carte rate as set out in the Annexure multiplied by the number of monthly average number of subscribers availing the channels on ala carte basis.

(b) if the DTH operator does not offer such opted ala carte channel(s) as ala carte to its direct to home subscriber but offers the ala carte channel (s) in packages, then the payment to _____ (name of the Broadcaster) for each of the ala carte channels, shall be calculated on the basis of subscriber base of the package in which such opted ala carte channel has been placed.

III In case a DTH operator avails one or more channels on ala carte rate basis and also opts for different Bouquet(s) not comprising of channels opted on ala carte basis of _____ (name of the Broadcaster):

(a) For bouquet(s), the monthly license fee shall be calculated on the basis of sub clause I above.

(b) For ala carte channels, the monthly license fee shall be calculated on the basis of sub clause II above.

Payment of the License Fee shall be subject to deduction of any withholding tax/ TDS in accordance with the provisions of

	<p>the Indian Income Tax Act, 1961, as amended from time to time.</p>
<p>Payment Terms</p>	<p>The Monthly Licence Fee shall be paid monthly in arrears within fifteen (15) days of receipt of invoice raised on the basis of report of the DTH operator by _____ (name of the Broadcaster) without any deduction except deduction of withholding tax/TDS as provided in this RIO.</p> <p>Within seven days of end of each month, the DTH operator shall provide opening, closing and average number of subscribers for that month, based on which _____ (name of the Broadcaster) shall raise an invoice on the DTH operator. In case the DTH operator fails to send the report within the said period of seven days, _____ (name of the Broadcaster) shall have the right to raise a provisional invoice and the DTH operator shall be under obligation to pay the license fee on the basis of such provisional invoice in accordance with the terms of this clause. However the provisional invoice shall be for an amount not more than the monthly license fee payable by the DTH operator for the immediately preceding month. On receipt of the report from the DTH operator, the parties would conduct reconciliation between the provisional invoice raised by _____ (name of the Broadcaster) and the report sent by the DTH operator.</p> <p>The DTH operator shall be required to make payments by the Due Date in accordance with the terms hereof, and any failure to do so on the part of the DTH operator shall constitute a material breach hereunder. Late payments shall also attract interest calculated from the date payment was due until the date payment is made in full at a pro rata monthly rate of ____%. The imposition and collection of interest on late payments does not constitute a waiver of the DTH operator's obligation to pay the License Fee by the Due Date, and _____ (name of the Broadcaster) shall retain all of its other rights and remedies under the Agreement.</p> <p>All Licence Fee payments hereunder are exclusive of all applicable indirect taxes including all and any service taxes, VAT, works contract taxes, customs duties, excise duties, entertainment taxes and other such taxes. All such taxes shall be at DTH operator's cost and will be charged at the prevailing rates by _____ (name of the Broadcaster) to the DTH operator.</p>

	<p>If payment of the Licence Fee is subject to deduction of any withholding tax/TDS in accordance with the provisions of the Indian Income Tax Act 1961, as amended, the DTH operator shall provide tax withholding certificates to _____ (name of the Broadcaster) within such period as has been specified in the Income Tax Act/ Rules/ Notifications/ Circulars issued thereunder.</p>
Delivery and Security	<p>All _____ (name of the Broadcaster) Channels must be delivered by DTH operator to subscribers in a securely encrypted manner and without any alteration.</p> <p>The uplink specifications, satellite capacity and infrastructure allocated by DTH operator in respect of the broadcast signal of the _____'s (name of the Broadcaster) Channels by DTH operator to its subscribers shall be no worse than that of the broadcast signal of any other channel within the same genre on its DTH platform.</p>
Anti-Piracy	<p>In order to prevent theft, piracy, unauthorized retransmissions, redistribution or exhibition, copying or duplication of any Channel, in whole or in part, (hereinafter collectively referred to as "Piracy"), the DTH operator shall, prior to the commencement of the Term of the agreement and at all times during such Term, employ, maintain, and enforce fully effective conditional access delivery and content protection and security systems, and related physical security and operational procedures (hereinafter collectively referred to as the "Security Systems") as may be specified (security specifications), in a non-discriminatory manner in writing, from time to time, by the _____ (name of the Broadcaster).</p> <p>To ensure the DTH operator's ongoing compliance with the security requirements set out in the Agreement, _____ (name of the Broadcaster) may require technical audits ("Technical Audit(s)") conducted by an independent security technology auditor ("Technical Auditor"), approved by _____ (name of the Broadcaster) in writing no more than twice per year during the Term, at _____ (name of the Broadcaster)'s cost and expense. If the results of any Technical Audit are not found to be satisfactory by either the DTH operator or _____ (name of the Broadcaster), then _____ (name of the Broadcaster) shall work with the DTH Operator in resolving this issue in the next fourteen (14) business days. If a solution is not reached at by then, _____ (name of Broadcaster) may, in its sole discretion, suspend the DTH operator's right to distribute the Channels or take other actions as provided under the Agreement, until such systems, procedures and security measures have been corrected to _____ (name of the</p>

Broadcaster)'s satisfaction. DTH operator shall bear the cost and expense of any subsequent Technical Audit to verify that the systems, procedures and security measures have been corrected by the DTH operator to _____ (name of the Broadcaster)'s satisfaction.

DTH operator shall deploy finger printing mechanisms to detect any piracy, violation of copyright and unauthorized viewing of the Channels, distributed / transmitted through its Platform at least every 10 minutes on 24 x 7 x 365(6) basis.

DTH operator shall not authorize, cause or suffer any portion of any of the Channels to be recorded, duplicated, cablecast, exhibited or otherwise used for any purpose other than for distribution by DTH operator at the time the Channels are made available. If DTH operator becomes aware that any unauthorized third party is recording, duplicating, cablecasting, exhibiting or otherwise using any or all of the Channels for any other purpose, DTH operator shall within ten minutes of so becoming aware of such recording, duplicating, cablecasting, exhibiting or otherwise using any or all of the Channels for any other purpose, notify _____ (name of the Broadcaster) and the DTH operator shall also switch off the concerned Set Top Box to prevent such unauthorized use. However, use of a Set Top Box with Personal Video Recorder/ Digital Video Recorder facility which has been supplied by the DTH operator shall not be treated as unauthorized use, as long as such Set Top Box is used in accordance with the terms and conditions of the subscription agreement between the DTH operator and the subscriber.

If so instructed by Information (as defined below) by _____ (name of the Broadcaster), the DTH operator shall shut off or de-authorize the transmission to any unauthorized subscriber/ subscriber indulging in piracy, within ten minutes from the time it receives such instruction from _____ (name of the Broadcaster). Any communication under this clause shall be considered as valid Information only if (i) the information is sent through e mail in a format as mutually agreed by the parties and (ii) the information is sent by a person(s) who is designated to send such information. However the "information" may even be provided by _____ (name of the Broadcaster) representatives through other means of communications such as telephonic message, fax etc and the said "information" shall later be confirmed by _____ (name of the Broadcaster) through e mail and the DTH operator shall be under obligation to act upon such information.

<p>Reports</p>	<p>DTH operator will maintain at its own expense a subscriber management system (“SMS”) which should be fully integrated with the CAS (Conditional Access System).</p> <p>DTH operator shall provide to _____ (name of the Broadcaster) complete and accurate opening and closing subscriber monthly reports for the _____ (name of the Broadcaster) Channels and the tier and/or package containing the _____ (name of the Broadcaster) Channels within seven (7) days from the end of each month in the format provided by _____ (name of the Broadcaster).</p> <p>Such reports shall specify all information required to calculate the Monthly Average Subscriber Level (including but not limited to the number of Subscribers for each _____ (name of the Broadcaster) Channel and each package in which a _____ (name of the Broadcaster) Channel is included) and the Licence Fees payable to _____ (name of the Broadcaster) and shall be signed and attested by an officer of the DTH operator of a rank not less than Head of Department/Chief Financial Officer who shall certify that all information in the Report is true and correct.</p>
<p>Audit</p>	<p>_____ (name of the Broadcaster)’s representatives shall have the right, not more than twice in a calendar year, to review and / or audit the subscriber management system, conditional access system, other related systems and records of Subscriber Management System of the DTH operator relating to the Channel(s) provided by the broadcaster for the purpose of verifying the amounts properly payable to _____ (name of the Broadcaster) under the Agreement, the information contained in Subscriber Reports and full compliance with the terms and conditions of the Agreement. If such review and or audit reveals that additional fees are payable to _____ (name of the Broadcaster), the DTH operator shall immediately pay such fees, as increased by the Late Payment Interest Rate. If any fees due for any period exceed the fees reported by the DTH operator to be due for such period by two (2) percent or more, DTH operator shall pay all of _____ (name of the Broadcaster)’s costs incurred in connection with such review and / or audit, and take any necessary actions to avoid such errors in the future.</p> <p>The DTH operator shall remain the sole owner and holder of all customer databases compiled by the DTH operator under the Agreement.</p> <p>DTH operator will maintain at its own expense a subscriber</p>

	<p>management system (“SMS”) capable of, at a minimum:</p> <p>(i) maintaining a computerised customer database capable of recording adequate details of each Subscriber, including name, address, chosen method of payment and billing;</p> <p>(ii) administering subscriptions of Subscribers by producing and distributing contracts for new Subscribers and setting up and maintaining an infrastructure whereby Subscriber contracts are collected and recorded in the SMS database for ongoing administration;</p> <p>(iii) handling all ongoing administrative functions in relation to Subscribers, including, without limitation, billing and collection of subscription payments, credit control, sales enquiries and handling of complaints;</p> <p>(iv) administering payments of any commission fees from time to time payable to the DTH operator’s authorised agents for the sale to Subscribers of programming packages;</p> <p>(v) obtaining and distributing receivers and smartcards, if applicable, to Subscribers, and issue replacement smartcards from time to time in its discretion; and</p> <p>(vi) enable new Subscribers via the SMS over-the-air addressing system and disable defaulting Subscribers from time to time in its discretion.</p>
Term	<p>AS mutually agreed between _____ (name of the Broadcaster) and the DTH operator subject to a minimum of One (1) Year from the date of signing of the Agreement unless terminated earlier in accordance with the Agreement.</p> <p>The Term of the Agreement may be extended on terms and conditions to be mutually agreed and recorded in writing between the parties.</p>
Termination	<p>Either Party has a right to terminate this Agreement by a written notice, subject to applicable Law, to the other in the event of:</p> <ol style="list-style-type: none"> 1. material breach of this Agreement by the other Party which has not been cured within thirty (30) days of being required in writing to do so; 2. the bankruptcy, insolvency or appointment of receiver over the assets of the other Party; 3. The DTH licence or any other material licence necessary for DTH operator to operate its DTH service being revoked at anytime other than due to the fault of DTH operator.

	<p>_____ (name of the Broadcaster) shall have the right to terminate this Agreement by a written notice to DTH operator if (i) DTH operator breaches any of the Anti Piracy Requirements and fails to cure such breach within ten (10) days of being required in writing to do so; or</p> <p>(ii) _____ (name of the Broadcaster) discontinues the _____ (name of the Broadcaster) Channels with respect to all distributors in the Territory and provides DTH operator with at least ninety (90) days prior written notice.</p> <p>DTH operator shall have the right to terminate this Agreement on written notice to _____ (name of the Broadcaster) if DTH operator discontinues its DTH business and provides at least ninety (90) days prior written notice.</p>
Jurisdiction	<p>The Governing Law shall be the Indian Law and TDSAT, shall have exclusive jurisdiction in respect of any dispute between the parties, arising out of /in connection with or as a result of the Agreement.</p>

Note: The expression “DTH operator” appearing in the Schedule above shall get replaced by the appropriate nomenclature connoting the addressable platform for which the Reference Interconnect Offer is to be issued by the broadcaster.

(B) BOUQUET RATES

BOUQUET – 1

Channels	Rate to DTH operator (Rs)
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	

BOUQUET 2

Channels	Rate to DTH operator (Rs)
1.	
2.	
3.	
4.	
5.	
6.	

BOUQUET 3

Channels	Rate to DTH operator (Rs)
1.	
2.	
3.	
4.	
5.	

Schedule IV

Specifications for Set-Top-Boxes (STBs), Conditional Access System (CAS) & Subscribers Management System (SMS) for implementation of Digital Addressable Systems

(A) STB Requirements:

1. All the STBs should have embedded Conditional Access.
2. The STB should be capable of decrypting the Conditional Access inserted by the Headend.
3. The STB should be capable of doing Finger printing. The STB should support both Entitlement Control Message (ECM) & Entitlement Management Message (EMM) based fingerprinting.
4. The STB should be individually addressable from the Headend.
5. The STB should be able to take the messaging from the Headend.
6. The messaging character length should be minimal 120 characters.
7. There should be provision for the global messaging, group messaging and the individual STB messaging.
8. The STB should have forced messaging capability.
9. The STB must be BIS compliant.
10. There should be a system in place to secure content between decryption & decompression within the STB.
11. The STBs should be addressable over the air to facilitate Over The Air (OTA) software upgrade.

(B) Fingerprinting Requirements:

1. The finger printing should not be removable by pressing any key on the remote.
2. The Finger printing should be on the top most layer of the video.
3. The Finger printing should be such that it can identify the unique STB number or the unique Viewing Card (VC) number.
4. The Finger printing should appear on all the screens of the STB, such as Menu, EPG etc.
5. The location of the Finger printing should be changeable from the Headend and should be random on the viewing device.
6. The Finger printing should be able to give the numbers of characters as to identify the unique STB and/ or the VC.
7. The Finger printing should be possible on global as well as on the individual STB basis.
8. The Overt finger printing and On screen display (OSD) messages of the respective broadcasters should be displayed by the MSO/LCO without any alteration with regard to the time, location, duration and frequency.
9. No common interface Customer Premises Equipment (CPE) to be used.
10. The STB should have a provision that OSD is never disabled.

(C) CAS & SMS Requirements:

1. The current version of the conditional access system should not have any history of the hacking.
2. The fingerprinting should not get invalidated by use of any device or software.
3. The STB & VC should be paired from head-end to ensure security.
4. The SMS and CA should be integrated for activation and deactivation process from SMS to be simultaneously done through both the systems. Further, the CA system should be independently capable of generating log of all activations and deactivations.
5. The CA company should be known to have capability of upgrading the CA in case of a known incidence of the hacking.
6. The SMS & CAS should be capable of individually addressing subscribers, on a channel by channel and STB by STB basis.
7. The SMS should be computerized and capable to record the vital information and data concerning the subscribers such as:
 - a. Unique Customer Id
 - b. Subscription Contract no
 - c. Name of the subscriber
 - d. Billing Address
 - e. Installation Address
 - f. Landline no
 - g. Mobile No
 - h. Email id
 - i. Service /Package subscribed to
 - j. Unique STB No
 - k. Unique VC No
8. The SMS should be able to undertake the:
 - a. Viewing and printing historical data in terms of the activations, deactivations etc
 - b. Location of each and every set top box/VC unit
 - c. The SMS should be capable of giving the reporting at any desired time about:
 - i. The total no subscribers authorized
 - ii. The total no of subscribers on the network
 - iii. The total no of subscribers subscribing to a particular service at any particular date.
 - iv. The details of channels opted by subscriber on a-la carte basis.
 - v. The package wise details of the channels in the package.
 - vi. The package wise subscriber numbers.
 - vii. The ageing of the subscriber on the particular channel or package
 - viii. The history of all the above mentioned data for the period of the last 2 years
9. The SMS and CAS should be able to handle at least one million concurrent subscribers on the system.

10. Both CA & SMS systems should be of reputed organization and should have been currently in use by other pay television services that have an aggregate of at least one million subscribers in the global pay TV market.
11. The CAS system provider should be able to provide monthly log of the activations on a particular channel or on the particular package.
12. The SMS should be able to generate itemized billing such as content cost, rental of the equipments, taxes etc.
13. The CA & SMS system suppliers should have the technical capability in India to be able to maintain the system on 24x7 basis throughout the year.
14. CAS & SMS should have provision to tag and blacklist VC numbers and STB numbers that have been involved in piracy in the past to ensure that the VC or the STB can not be re-deployed. ”.

(N. Parameswaran)
Principal Advisor (B&CS)

Note.1-----The principal regulations were published vide notification no. 8-26/2004-B&CS dated 10th December, 2004 and subsequently amended vide notifications no.3-57/2005-B&CS dated 3rd March, 2005, no.11-13/2006-B&CS dated 24th August, 2006, no. 6-4/2006-B&CS dated 4th September, 2006 and no. 4-54/2007-B&CS dated 3rd September, 2007.

Note.2-----The Explanatory Memorandum explains the objects and reasons of the Telecommunication (Broadcasting and Cable Services) Interconnection (Fifth Amendment) Regulation, 2009.

EXPLANATORY MEMORANDUM

Background

1. The Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004, was issued on 10th December, 2004 to provide for a regulatory framework for interconnection in respect of broadcasting and cable services. These regulations were issued to enable the distributors of TV channels to get non discriminatory access to content of all broadcasters and to mandate issue of a public notice by a broadcaster or MSO, as the case may be, before disconnection of signals so as to enable the consumers to protect their interests.

2. These Regulations have been amended four times since their issue. The amendment regulations were issued on 3rd March, 2005, 24th August, 2006, 4th September, 2006 and 3rd September, 2007 for amplification and modification of the existing provisions and to cover some new issues that had not been covered in the Regulations till then. Such amendments were necessitated by changes over time in the broadcasting and cable services sector on account of notification of CAS, growth of DTH and other addressable systems and experience gained in implementation of the interconnection regulation. Recently, a need has again been felt to consider amendments to these regulations on certain issues relating to addressable and non-addressable platforms. Accordingly, a consultation process was initiated as mentioned ahead.

Consultation Process

2. Sub-clause (ii), (iii) and (iv) of clause (b) of sub-section (1) of Section 11 of the Telecom Regulatory Authority of India Act, 1997 (hereinafter referred to as the TRAI Act, 1997), provides for the Authority to “(ii)...fix the terms and conditions of inter-connectivity between the service providers;”, “(iii) ensure technical compatibility and effective inter-connection between different service providers;” and “(iv) regulate arrangement amongst service providers of sharing their revenue derived from providing telecommunication services;”. Sub-section (4) of Section 11 of the TRAI Act, 1997 requires the Authority to ensure transparency while exercising its powers and

discharging its functions. Accordingly, the Authority decided to go in for a consultation process before amending the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004.

3. The process of consultation was initiated by circulating a consultation paper on Interconnection issues relating to Broadcasting & Cable on 15th December, 2008 inviting inputs from the stakeholders. Responses were received from 29 stakeholders/representatives. An open house discussion was also held on the 6th February, 2009 in Kolkata with representatives of stakeholders to further deliberate on various issues raised in the consultation paper. The Authority had released the draft amendment regulation for amending the Interconnection Regulations on its website on 26th February, 2009 for seeking comments of the stakeholders. The comments were invited till 7th March, 2009. Responses were received from 9 stakeholders. These comments have been taken into consideration while finalizing the regulations.

Issues for Consultation

4. The issues which were raised for consultation in the consultation paper are reproduced below.

A. Interconnection for Addressable Platforms

- A.1 Whether the Interconnection Regulation should make it mandatory for the broadcasters to publish Reference Interconnect Offers (RIOs) for all addressable systems, and whether such RIOs should be same for all addressable systems or whether a broadcaster should be permitted to offer different RIOs for different platforms?
- A.2 Is there any other methodology which will ensure availability of content to all addressable platforms on non-discriminatory basis?
- A.3 What should be the minimum specifications/ conditions that any TV channel distribution system must satisfy to be able to get signals on terms at par with other addressable platforms? Are the specifications indicated in the Annexure to the Consultation Paper adequate in this regard?
- A.4 What should be the methodology to ensure and verify that any distribution network seeking to get signals on terms at par with other addressable platforms satisfies the minimum specified conditions for addressable systems?

- A.5 What should be the treatment of hybrid cable networks in non-CAS areas which provide both types of service, i.e., analogue (without encryption) and digital (with encryption) services?
- A.6 Whether there is a need to define “Commercial Subscribers”, and what should be that definition?
- A.7 Whether the Broadcasters may be mandated to publish RIOs for all addressable platforms for Commercial Subscribers as distinct from broadcasters’ RIOs for non-Commercial Subscribers?
- A.8 Whether the regulation should mandate publishing of Reference Interconnect Agreements (RIAs) for addressable systems instead of Reference Interconnect Offers (RIOs)?
- A.9 Whether the time period of 45 days prescribed for signing of Interconnection Agreements should be reduced if RIOs are replaced by RIAs as suggested above?
- A.10 Whether the regulation should specifically prohibit the broadcasters from imposing any kind of restrictions on packaging of channels on an addressable platform?
- A.11 Whether the regulation should specifically prohibit the broadcasters from imposing any kind of restrictions on pricing of channels on an addressable platform?

B. Interconnection for non-addressable platforms

- B.1 Whether the terms & conditions and details to be specifically included in the RIO for non-addressable systems should be specified by the Regulation as has been done for DTH?
- B.2 What terms & conditions and details should be specified for inclusion in the RIO for non-addressable systems?

C. General Interconnection Issues

- C.1 Whether it should be made mandatory that before a service provider becomes eligible to enjoy the benefits/ protections accorded under interconnect regulations, he must first establish that he fulfills all the requirements under quality of service regulations as applicable?
- C.2 Whether applicability of clause 3.2 of the Interconnect Regulation should be restricted so that a distributor of TV channels is barred from seeking signals in

- terms of clause 3.2 of the Interconnect Regulation from a broadcaster for those channels in respect of which carriage fee is being demanded by the distributor of TV channels from the broadcaster?
- C.3 Whether there is a need to regulate certain features of carriage fee, such as stability, transparency, predictability and periodicity, as well as the relationship between TAM/TRP ratings and carriage fee.
- C.4 If so, then what should the manner of such regulation be.
- C.5 Whether the standard interconnect agreement between broadcasters and MSOs should be amended to enable the MSOs, which have been duly approved by the Government for providing services in CAS areas, to utilize the infrastructure of a HITS operator for carriage of signals to the MSO's affiliate cable operators in CAS areas?
- C.6 Whether the standard interconnect agreement between broadcasters and HITS operators need to be prescribed by the Authority, and whether these should be broadly the same as prescribed between broadcasters and MSOs in CAS notified areas?
- C.7 What further regulatory measures need to be taken to ensure that DTH operators are able to provide six month protection for subscribers as provided by Sub clause (1) of Clause 9 of the Direct to Home Broadcasting Services (Standards of Quality of Service and Redressal of Grievances) Regulations, 2007?
- C.8 Towards this objective, should it be made mandatory for broadcasters to continue to provide signals to DTH operators for a period of six months after the date of expiry of interconnection agreement to enable the DTH operators to discharge their obligation?
- C.9 Is there any other regulatory measure which will achieve the same objective?
- D. Registration of Interconnection Agreements**
- D.1 Whether it should be made mandatory for all interconnect agreements to be reduced to writing?
- D.2 Whether it should be made mandatory for the Broadcasters/ MSOs to provide signals to any distributor of TV channels only after duly executing a written interconnection agreement?
- D.3 Whether no regulatory protection should be made available to distributors of TV channels who have not executed Interconnect Agreements in writing?

- D.4 How can it be ensured that a copy of signed interconnection agreement is given to the distributor of TV channels?
- D.5 Whether it should be the responsibility of the Broadcaster to hand over a copy of signed Interconnect Agreement to MSO or LCO as the case may be, and obtain an acknowledgement in this regard? Whether similar responsibility should also be cast on MSOs when they are executing interconnection agreements with their affiliate LCOs?

Analysis of the responses received during the consultation process

RIO for all addressable systems

5. Most of the broadcasters were in favour of having RIOs for all addressable systems. However, a few broadcasters were opposed to the idea. All the distributors of TV channels wanted the broadcasters to publish RIOs for all addressable systems. Individuals and consumer groups also favoured the concept of RIOs for all addressable systems. However, on the issue of having same RIO for all addressable platforms, there was no unanimity amongst the broadcasters. The distributors of TV channels were also divided in their views on the subject.

Minimum specifications for addressable systems

6. Most of the Broadcasters were of the view that the specifications for addressable systems as given in the annexure to the Consultation paper were insufficient. The distributors of TV channels were divided in their views. While the consumer groups felt that the specifications were sufficient, the individuals termed the specifications for addressable systems as given in the annexure as inadequate.

Commercial Subscribers

7. Most of the broadcasters suggested that there was a need for defining “commercial subscribers”. All the distributors of TV channels, with the exception of two DTH operators, also agreed with this view. The two DTH operators, who opposed the need for defining “commercial subscribers”, have suggested that no distinction should be made between commercial and residential subscribers. It has been asserted by these DTH operators that in case of an addressable platform, each and every subscriber is accounted for and therefore there should not be any distinction between residential and commercial

subscribers. Same rates and terms and conditions should apply for supply of signals by addressable platforms to all types of subscribers including commercial subscribers. The consumer groups and individuals have also favoured defining “commercial subscribers”. As regards the issue of mandating broadcasters to publish RIOs for all addressable platforms for commercial subscribers, most of the broadcasters agreed to such an amendment. All the distributors of TV channels, with the exception of two DTH operators, also wanted the broadcasters to be mandated to publish RIOs for all addressable platforms for commercial subscribers. The two DTH operators, who opposed the need for such RIOs for commercial operators, have suggested that no distinction should be made between commercial and residential subscribers.

Reference Interconnect Agreements for all addressable systems

8. The proposal has been opposed by most of the broadcasters. On the other hand, most of the distributors of TV channels have supported the proposal. The consumer groups and individuals have also supported the proposal.

Restrictions on packaging/ pricing of channels

9. All the broadcasters have opposed any kind of prohibition on broadcasters from imposing packaging restrictions on addressable platforms. All the distributors of TV channels want such a prohibition to be mandated. The consumer groups and individual stakeholders have also favoured such a prohibition. Similar comments have been received regarding prohibition on broadcasters from imposing pricing restrictions on addressable platforms. However, one broadcasting company has agreed with the concept of restricting broadcasters from imposing pricing restrictions on addressable platforms. It has been stated by this broadcasting company that there is severe competition on the ground amongst platforms hence market forces should determine the pricing of channels by the platforms and the broadcasters should not be allowed to impose any restrictions on pricing of channels.

Interconnection for Non addressable platforms

10. The Eighth Amendment to the Non-CAS Tariff Order has been set aside by the Hon’ble TDSAT by its judgment dated 15th January, 2009 in Appeal No. 9(C) of 2006 and Appeal Nos. 10(C), 11(C), 12(C), 13(C) and 15(C) of 2007. Accordingly, the Authority has not deemed it appropriate at present to examine the issues relating to

interconnection for non-addressable platform because the objective of the proposed amendment relating to interconnection for non-addressable platforms was to harmonize the provisions of interconnection regulations with those of the tariff order.

Compliance with Quality of Service Regulations

11. Most of the stakeholders have favoured the concept that before a service provider becomes eligible to enjoy the benefits/ protections accorded under interconnect regulations, he must first establish that he fulfills all the requirements under quality of service regulations as applicable. However, this has been opposed by two of the DTH operators on the ground that such a move will deny the benefit of smoother inter connection and distribution of content, and could be a retrograde step and that linking the two issues would only create confusion and would give an excuse to Broadcasters for not providing signals to Service Provider on a non-discriminatory basis.

Carriage Fee – restricting the applicability of clause 3.2 of the Interconnect Regulation

12. All the broadcasters have demanded that the “must provide” provision should be restricted for those channels in respect of which carriage fee is being demanded by the distributor of TV channels. On the other hand, all the distributors of TV channels have opposed such a restriction. The consumer groups have agreed with the view of the broadcasters and the individual stakeholders are divided on the issue.

Carriage Fee – need for regulation

13. The distributors of TV channels have opposed any kind of regulation of carriage fee. It has been asserted by them that the issue is very complex and intricate and that there cannot be one universal rule for governing the carriage fee. It has been pointed out that the addressable platforms suffer huge operational losses due to mismatch between infrastructure cost and the meager subscription revenues. It has been highlighted that the advertisement revenue of a Broadcaster is incapable of being regulated, similarly carriage fee needs to be left to market forces to decide because the two are intimately linked. On the other hand the broadcasters have demanded some regulation of carriage fee. One broadcaster has suggested that the Regulator must achieve this purpose through a separate consultation process and through a process of constitution of a core consultative committee comprising all stakeholders to come up with a workable balanced mechanism

Standard Interconnect Agreements for CAS areas – use of HITS operator infrastructure

14. All the distributors of TV channels have demanded amendment in standard interconnect agreements for CAS areas to enable MSOs to utilize the infrastructure of HITS operators for carrying signals. Similar views have been expressed by consumer groups. The broadcasters are divided on this issue. On the issue of need for prescribing standard interconnect agreements between Broadcasters and HITS operators, all the segments of stakeholders, namely broadcasters, distributors of TV channels and consumers are divided.

Tariff protection for DTH subscribers

15. The broadcasters are opposed to any kind of compulsion on broadcasters to continue to provide signals to DTH operators for a period of six months after the date of expiry of interconnection agreement to enable the DTH operators to discharge their obligation. The DTH operators want such a provision to be introduced. The MSOs are divided on the issue and the consumer groups agree with the broadcasters.

Mandating Written Interconnection Agreements

16. Almost all the stakeholders suggested that it should be mandatory for all interconnection agreements to be in writing. One broadcaster opposed the proposal on the ground that there should be no regulation in this regard. One DTH operator has commented that written interconnection agreements is not a requirement of law of the Country (As per the Contract Act) and therefore such requirement would be contrary to the established legal principles. Another DTH operator has opined that manner of entering into Interconnect Agreement is an operational matter and may be left to market forces to decide.

17. Most of the stakeholders are in favour of making it mandatory for the Broadcasters/ MSOs to provide signals only after duly executing a written interconnection agreement. However, a view has also been expressed that on finalization of terms and conditions, signals should be provided with an undertaking to execute an agreement within a stipulated time. One stakeholder has also pointed out that sometimes

signals are provided in compliance with the directions of courts of law without any formal agreement.

18. Most of the stakeholders have favoured withdrawal of regulatory protection to distributors of TV channels who have not executed interconnect agreements in writing. Similarly, on the issue of fixing responsibility for handing over copies of signed agreements to MSO/ LCO, most stakeholders want the Broadcaster/ MSO to be held responsible.

Analysis of the responses received during the second stage consultation process

19. One MSO and one DTH operator suggested that the definition of IPTV should be incorporated in the Interconnection Regulations as the Ministry of Information & Broadcasting has already issued the guidelines for provisioning of IPTV services on 8th September, 2008.

20. On the issue of restricting the applicability of Clause 3.2 of Interconnect Regulations in cases where carriage fee is also being demanded, two MSOs opposed the proposed amendment. The broadcasters have agreed with the proposed amendment. One DTH operator and one MSO have suggested that such a restriction should not prevent the distributors from charging placement fee.

21. Proposed amendment mandating written agreements was welcomed by one broadcaster, whereas another broadcaster opposed the proposal saying that such a stipulation imposed a commercial cost on the broadcasters. One DTH operator referred to the Contract Act and asserted that written agreements are not mandatory as per the Contract Act. It was pointed out by one DTH operator and one MSO that sometimes signals are provided in compliance of Court orders and the proposed amendment should take into account such cases also.

22. The proposed amendment requiring broadcasters and MSOs to hand over a copy of signed interconnect agreement to MSOs/ cable operators has been opposed by one broadcaster. Other stakeholders have welcomed the move. It has been suggested by two stakeholders that a time limit should be specified for handing over copies of signed agreements by the broadcasters, MSOs or HITS operators, as the case may be.

23. Two stakeholders have suggested amendments in Regulation 13.2A to specify the time limits for issue of revised RIOs by the Broadcasters for DTH operators. A time limit of seven days has been suggested.

24. The proposed amendments for enabling the DTH operators to supply signals to commercial subscribers have been welcomed by all the stakeholders except for one broadcaster who has opposed the amendment and asserted that the commercial subscribers have sufficient bargaining power to protect their interests. One stakeholder has welcomed the proposal to enable the DTH operators to supply signals to commercial subscribers and at the same time opposed any distinction between residential and commercial subscribers in the matter of RIO.

25. The proposed amendment regarding different RIO for commercial subscribers has been opposed by a broadcaster. The broadcaster has commented that if such a regulation has to be made, then different RIOs for different commercial subscribers should be permitted. Some other stakeholders have commented that permitting different RIOs for different addressable systems is a welcome step.

26. Two stakeholders have suggested amendments in Regulation 13.2B.1 to specify the time limits for issue of revised RIOs by the Broadcasters for addressable systems. A time limit of fifteen days has been suggested.

Rationale for making amendment to the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004

27. The Authority noted that with the advancement of technology the marketshare of addressable systems for distribution of TV channels is set to rise in coming years. Apart from DTH, the HITS and IPTV platforms are already present in the pay TV market. Digitalization of cable TV networks and introduction of voluntary CAS has also started in different pockets in the country. Therefore, the Authority felt that the interconnection regulations should facilitate interconnection agreements for addressable systems. Further, most of the stakeholders are in favour of having RIOs for all addressable platforms. Accordingly, the Authority has mandated publishing of RIOs for all addressable platforms by the broadcasters (other than cable service in CAS notified

areas). At the same time, the Authority has permitted the broadcasters to have different RIOs for different addressable systems. This flexibility has been given to the broadcasters to customize their RIOs depending upon different characteristics of different addressable systems. The definition of Internet Protocol Television Service (IPTV) has been inserted in the Regulations as the Ministry of Information & Broadcasting has already issued the guidelines for provisioning of IPTV services on 8th September, 2008 and many service providers have already rolled out their IPTV services.

28. The Authority also recognized the fact that certain minimum specifications of an addressable system need to be specified upfront so as to minimize disputes in this regard between broadcasters and distributors of TV channels. The Authority has decided to adopt the same minimum specifications for addressable systems (with minor modifications) which was earlier recommended by the expert group consisting of members drawn from TRAI, Ministry of Information & broadcasting, Prasar Bharti, Broadcasters, MSOs, DTH operators, Cable Operator/ Distributor associations and consumer organizations constituted by the Authority to deliberate on the issues relating to Digitalization and Introduction of Voluntary CAS. These specifications were annexed as Annexure C to the report submitted by the expert group. Moreover, a mechanism has also been put in place for audit of such addressable system where the broadcaster is of the opinion that the addressable system deployed by a distributor of TV channels does not meet the minimum specifications.

29. The Authority has decided to not to lay down specific regulations in respect of hybrid cable networks in non-CAS areas which provide both types of service, i.e., analogue (without encryption) and digital (with encryption) services, as the interconnection regulations take care of addressable as well as non-addressable systems. Finer details can be worked out by the parties through commercial negotiations.

30. The Authority has also noted that the RIOs published by many broadcasters prohibit DTH operators from making available their services to subscribers other than residential subscribers. The Authority is of the view that such a stipulation prevents the DTH operators from supplying services to a large number of subscribers who may be interested in availing their services. At the same time, the interests of the broadcasters also need to be protected. Accordingly, the Authority has prohibited the broadcasters

from, directly or indirectly, compelling any DTH operator not to make available its direct to home service to any class of subscribers including commercial subscribers. At the same time, the broadcasters have been permitted to have a different Reference Interconnect Offer for supply of signals by the DTH operators to specified commercial subscribers as listed in item (ii) of sub-clause (f) of clause 2 of the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order 2004 as amended from time to time. These provisions are also applicable for RIOs for other addressable platforms.

31. The Authority has decided against mandating Reference Interconnect Agreements (RIAs) for addressable systems. Instead it was felt that the important terms and conditions of RIOs must be specified by the Authority so as to ensure that there are no provisions in the RIOs which are contrary to the objectives sought to be achieved by the Regulations. The Authority felt that RIAs need not be mandated in place of RIOs as the important terms and conditions have already been specified by the Authority.

32. The Authority has amended regulation 13.2A.11 to ensure that the DTH operators and other addressable platforms have complete flexibility regarding packaging of channels taken from any broadcaster. As regards pricing restrictions on channels on addressable platforms, the Authority is of the view that this is a commercial issue to be settled mutually by the broadcasters and distributors of TV channels.

33. The issue of whether fulfillment of all the requirements under quality of service regulations as applicable should be made a precondition for a service provider to become eligible to enjoy the benefits/ protections accorded under interconnect regulations has been analyzed in detail by the Authority. The Authority decided against introducing such a provision because it was felt that such a provision could open floodgates of litigation.

34. The Authority has decided against regulation of carriage fee at this stage for the following reasons:-

- a. Carriage Fee is a market driven phenomenon and the levels of carriage Fee are determined by play of market forces. Carriage fee is a direct result of demand-supply mismatch due to capacity constraints of distribution platforms.
- b. Payment of Carriage/ Placement/ Technical Fee by a broadcaster is intimately linked with the perceived benefit that the broadcaster would enjoy by way of increased

advertising revenue. This linkage is manifested by higher levels of Carriage Fee in TAM cities (cities where the rating agencies have installed their metering devices in sample households). Therefore, regulation of Carriage Fee cannot be done in isolation without regulating the advertising revenue.

- c. Payment of Carriage Fee ultimately gets recovered from the advertisers on TV channels by way of higher advertisement charges. However, no objections have been made by any advertiser in this regard so far.
- d. Carriage Fee has emerged in the market primarily as a result of inadequate digitalization in the Broadcasting & Cable TV market in the country. A view has also been expressed by some distributors of TV channels that Carriage Fee is genuinely required to promote digitalization. Any attempt to regulate it by way of ceiling or specifying a charge on carriage may slow down deployment of digital networks.
- e. The payment of Carriage Fee is often done in cash or kind (equipment for head-end, foreign tours, gifts etc.). Moreover many of the distributors of TV channels receiving Carriage Fee are small operators and their accounts are not subject to statutory audit. Therefore any regulation of Carriage Fee is bound to be a very porous regulation. Further, enforcement problems are anticipated in Carriage Fee regulation which may lead to other distortions in the market.
- f. If some kind of ceiling is laid down for carriage fee, then there is a possibility that more channels may be willing to pay the maximum permissible Carriage Fee than the number of available channel slots. Selection of which channels to carry in such a situation would again result in covert deals.
- g. There are some distributors of TV channels having other businesses (such as newspapers, radio stations, amusement parks etc.) also. If such distributors of TV channels start collecting carriage fee disguised as payments for other goods or services sold by other companies within the group, then it will be practically impossible to regulate carriage fee.
- h. Carriage Fee is also linked with popularity of a channel, which in turn is determined by the market. In such a scenario, laying down a carriage fee regime through regulation for channels of varying popularity will be extremely difficult.
- i. There is no suitable mechanism for enforcement of any regulation on carriage Fee.

35. However, the Authority has amended regulation 3.2 to restrict its applicability in respect of those channels in respect of which any fee is being demanded by the

distributor of TV channels from a broadcaster for carriage of the channels on its distribution platform. This has been done to ensure that the broadcasters are not forced to supply their channel in terms of regulation 3.2 and at the same time forced to pay carriage fee for the same channel. This amendment has been made to prevent a distributor of TV channels from misusing the regulation 3.2. However, this amendment does not prevent the distributor of TV channels from charging a fee for placement of the channel of a broadcaster vis-à-vis channels of other broadcasters on its distribution platform, in case the broadcaster wants the channel to be placed at a particular frequency spot.

36. The “placement fee” is paid by the broadcasters to the distributors of TV channels for placing their channel(s) at the desired frequency/tier/package for maximizing viewership and revenue of their channel(s). The placement fee is different from “carriage fee” and the said aspect has been explicitly recognized by the Authority by defining these two terms separately in the definition clause. The amendment seeks to address the issue of carriage fee only and not the placement fee, which is governed by the market forces and mutual negotiations between the broadcaster(s) and distributor(s) of TV channel.

37. The Ministry of Information & Broadcasting has not issued licensing policy for HITS platforms as yet. In such a scenario, the Authority did not deem it fit to come out with any regulations relating to HITS operators at present. Accordingly, the issues relating to HITS have not been addressed in the amendment regulation.

38. The Authority felt that the objective of providing six month tariff protection for DTH subscribers can be achieved by the DTH operators by appropriate interconnection agreements with the Broadcasters. Further, the DTH operators also have the option of stopping enrolment of new subscribers for a package from which a channel is to be dropped in coming six months. Accordingly, the Authority has decided not to introduce any regulatory measures at this stage for helping the DTH operators in providing six month tariff protection for subscribers as provided by Sub clause (1) of Clause 9 of the Direct to Home Broadcasting Services (Standards of Quality of Service and Redressal of Grievances) Regulations, 2007.

39. The Authority is of the opinion that absence of written interconnection agreements leads to a large number of disputes. Further, it is not possible to record oral agreements in the Register of Interconnection Agreements. In view to bring transparency in the sector the Authority has mandated that no broadcaster of pay channels or distributor of TV channels, such as multi system operator or headend in the sky operator, shall make available TV channel signals to any distributor of TV channels without entering into a written interconnection agreement. Further, the responsibility to hand over a copy of signed interconnection agreement to the distributor of TV channels and obtain an acknowledgement in this regard has been placed on the broadcasters of pay channels. Similar responsibility has been cast upon the multi system operators to hand over a copy of signed interconnection agreement to the cable operators and obtain an acknowledgement in this regard.

40. The Authority has not specified the minimum necessary details to be included in any interconnection agreement. Thus, a term sheet signed by two service providers will be sufficient for compliance with the requirement of this regulation. Therefore, the supply of signals can be commenced after signing of a term sheet. The detailed agreement can be signed later.

41. In order to curb the practice of oral interconnection agreements, the provisions of regulation 4.1 have also been amended to restrict the regulatory protection from disconnection without any notice to only those distributors of TV channels which have entered into written interconnection agreements.

42. However, considering the fact that sometimes signals are given to distributors of TV channels in compliance of orders of Courts of law, an exception has been made enabling the broadcasters/ distributors of TV channels (MSOs/ HITS operators) to give signals to distributors of TV channels (LCOs) without entering into written agreements.