



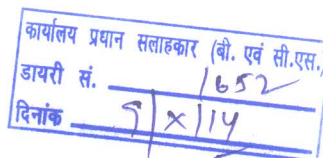
By Email <cp@traigov.in> / Hand Delivery

September 30, 2014

**Dr. Rahul Khullar**

Chairperson

Telecom Regulatory Authority of India,  
Mahanagar Door Sanchar Bhawan  
Jawahar Lal Nehru Marg, (Old Minto Road)  
New Delhi – 110 002



Dear Sir,

**Re: Civil Appeal Nos. 829-833 of 2009, namely Telecom Regulatory Authority of India Vs. Set discovery before the Hon'ble Supreme Court.**

While disposing off the above appeals the Hon'ble Supreme Court' vide order dated September 17, 2014 has stated that in "In case any of the stakeholders intend to make representations to the TRAI, they may do so positively within ten days and in any case on or before 30.09.2014". **Copy of Order attached.**

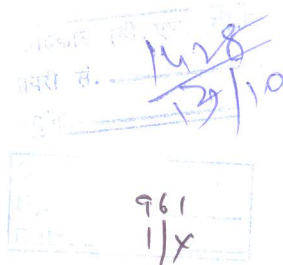
In view of the Order of the Hon'ble Supreme Court and our various submissions relating to carriage fees, it is requested that the Authority may include within the ambit of the new consideration/consultation, the issue of regulation of carriage fee. Copy of our representations sent in regard to carriage fees to the TRAI are attached for your reference.

NBA also wishes to clarify that on the subject of carriage/placement fees another batch of civil appeals, including **Civil Appeal No. 1525 of 2013 News Broadcasters Association & Anr. v/s Telecom Regulatory Authority of India & Ors.** are also pending decision before the Hon'ble Supreme Court. However, as you are aware, the issues raised by the NBA in relation to carriage/placement fees are much wider and numerous compared to the challenge pending before the Hon'ble Supreme Court in the last mentioned batch of Civil Appeals.

NBA urges the TRAI to consider all issues in relation to carriage/placement fees in order to resolve this long pending issue in the interest of all stakeholders.

We request you to kindly consider the attached representations and give us a personal hearing to explain our stand.

Thanking you,



Yours faithfully,

*Annie Joseph*

Annie Joseph  
Secretary General

Encl: As above

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NOS. 829-833 OF 2009

TELECOM REGULATORY AUTHORITY OF INDIA

Appellant(s)

VERSUS

SET DISCOVERY P. LTD. ETC.

Respondent(s)

O R D E R

These appeals are directed against an order dated 15.01.2009 passed by the Telecom Disputes Settlement & Appellate Tribunal (for short 'the Tribunal').

The Tribunal dealt with the validity of the Telecommunications (Broadcasting and Cable) Service (Second) Tariff (Eighth Amendment) Order 2007 dated 04.10.2007 issued by the Telecom Regulatory Authority of India (for short 'the TRAI').

During the pendency of the appeal, an order was passed on 13.05.2009 by this Court noticing that the Tribunal has directed the TRAI to study the matter afresh and issue a comprehensive order covering all the aspects including the issue of subscription base in a non-addressable system.

It was stated by learned senior counsel appearing for the TRAI that a revised study would be completed within a short period after hearing all the stakeholders at the earliest.

Signature Not Verified  
Digitally signed by  
Meenakshi Kohli  
Date: 2014.09.23  
16:40:46 IST  
Reason: [ ]

Pursuant to the order dated 13.05.2009, the TRAI prepared a report dated 21.07.2010, but that is not the subject-matter of the present appeals.

While challenging the order passed by the Tribunal, learned counsel for the TRAI made two principal submissions, namely, (i) that the Tribunal erroneously held that the TRAI could not fix a ceiling of charges to be paid by the subscribers to the LCOs/MSOs and by the LCOs/MSOs to the broadcasters and (ii) the Tribunal was wrong in holding that the process of issuing the impugned tariff order was not transparent in terms of Section 11(4) of the Telecom Regulatory Authority of India Act, 1997 (for short 'the Act')

We have heard learned counsel for the parties and find that there is no clear finding given by the Tribunal that the TRAI cannot fix a ceiling as has been done in the impugned tariff order. Whether the TRAI can in fact put a ceiling on charges will, therefore, need to be decided in an appropriate case.

As far as the issue of transparency is concerned, now that a fresh report has been prepared by the TRAI, pursuant to our order dated 13.05.2009, after hearing all the parties, we are of the opinion that the question whether the impugned tariff order was issued in a non-transparent manner or suffers from absence of indicating all the material relied upon by the TRAI, has become academic. If the report that has now been prepared by the TRAI during the pendency of the appeal is notified and converted into a tariff order (as proposed by the TRAI), it would be open to the respondents and other stakeholders to challenge that order, inter alia, on the ground that it suffers from a lack of transparency as required by Section 11(4) of the Act.



In this view of the matter, we do not feel it appropriate to go into the correctness of the order passed by the Tribunal on 15.01.2009, the exercise having been rendered academic.

We accordingly dispose of these appeals leaving all questions open for being agitated by the stakeholders as and when the TRAI passes a fresh tariff order in terms of the report prepared by it.

We may note the submissions made by learned counsel for the TRAI that since the report was prepared in 2010, there may be a necessity of holding further consultations. In any case, representations may be made by the stakeholders and to the extent possible, the TRAI will attempt to notify the fresh order immediately after 31.12.2014.

We make it clear that we have left all questions of law open and also make it clear that the status quo as on today will continue till 31.12.2014.

In case any of the stakeholders intend to make representations to the TRAI, they may do so positively within ten days and in any case on or before 30.09.2014.

The appeals are disposed of in view of the above.

..... J.  
(MADAN B. LOKUR)

..... J.  
(C. NAGAPPAN)

New Delhi;  
September 17, 2014.

ITEM NO.101

COURT NO.12

SECTION XVII

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 829-833/2009

TELECOM REGULATORY AUTH.OF INDIA

Appellant(s)

VERSUS

SET DISCOVERY P.LTD.ETC.

Respondent(s)

(with appln. (s) for intervention and vacating stay and permission to file additional documents and ex-parte stay and intervention and directions and office report)

Date : 17/09/2014 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE MR. JUSTICE C. NAGAPPAN

For Appellant(s)      Mr. Rakesh Dwivedi, Sr. Adv.  
                                 Mr. Sanjay Kapur, Adv.  
                                 Ms. Lekha Vishwanath, Adv.  
                                 Mr. Anmol Chandan, Adv.

For Respondent(s)    Mr. Amit Sibal, Sr. Adv.  
                                 Mr. Amitesh Chandra Mishra, Adv.  
                                 Ms. Shalini Sati Prasad, Adv.  
                                 Mr. Namit Suri, Adv.

Mr. Parag Tripathi, Sr. Adv.  
Mr. Manjul Bajpai, Adv.  
Mr. Shashwat Bajpai, Adv.  
Ms. Bina Gupta, Adv.  
Mr. Ranjit Raut, Adv.  
Ms. Disha Sachdeva, Adv.

Mr. Gopal Jain, Sr. Adv.  
Mrs. Nandini Gore, Adv.  
Ms. Aditi Bhatt, Adv.  
Ms. Devina Sehgal, Adv.  
Ms. Chinmayee Chandra, Adv.  
Mrs. Manik Karanjawala, Adv.

Mr. Tejveer Singh, Adv.  
Mr. Gaurav Sharma, Adv.  
Mr. Abhinav Mukerji, Adv.

Mrs. Pratibha M. Singh, Sr. Adv.  
 Mr. Saikrishna Rajagopal, Adv.  
 Mr. Sidharth Chopra, Adv.  
 Mr. Saurabh Srivastava, Adv.

Mr. Anil Kumar Mishra-I, Adv.

Mr. Atul Sharma, Adv.

Mr. Gagan Gupta, Adv.

Mr. Rajiv Mehta, Adv.

M/s Fox Mandal & Co., Advs.

Ms. Sumita Hazarika, Adv.

UPON hearing the counsel the Court made the following  
 O R D E R

The appeals are disposed of in terms of the signed order.

(R.NATARAJAN)  
 Court Master

(JASWINDER KAUR)  
 Court Master

(Signed order is placed on the file)





Fax 011-23236026 / Email <cp@trai.gov.in>

September 28, 2012

Dear Mr. Khullar,

As you are aware Sir, we have in our representation and discussions sought the intervention of TRAI regarding the unreasonable carriage fees being demanded by MSOs.

It may be recalled that TRAI in its first amendment dated 14.5.12, has stated that "No multi system operators shall demand from a broadcaster any placement fee". However, we need to bring to your notice that MSOs are in fact demanding "placement fee" in a hidden guise by terming it as "tiering" or "marketing" fee or some such term. MSOs therefore, are expecting broadcasters to pay to place their channels in various packs. They threaten that the channel will not be carried / placed in a visible pack until the placement fee is paid in a hidden guise as above. This is an attempt by the MSOs to subvert the regulations of the TRAI through the back door, for which we seek your urgent intervention as such demands should be nipped in the bud.

Secondly, TRAI in its regulations has permitted every MSO to fix a carriage fee which would be published in the Reference Interconnect Offer (RIO) and applied in a uniform, non-discriminatory and transparent manner. These Regulations were framed by the TRAI with the expectation that carriage fee would be nominal, and this assurance was repeatedly given to broadcasters by the government and by TRAI. In fact, the TRAI order itself clearly says that it "would intervene in case it is felt that the carriage fee is unreasonable".

Since there was no clarity in the regulations of what is "reasonable carriage fee", which can be demanded by MSOs, the erstwhile Chairperson, TRAI, had indicated that "any carriage fee in excess of 50 paise to 1 Rupee per subscriber per channel *per year*" would be unreasonable. Carriage fees on this calculation would work out to be substantially lower than what most broadcasters are currently paying in the analogue regime. Unfortunately, with barely a month to go for DAS, MSOs are continuing to demand carriage fees that are as high as the earlier level or even higher. This now requires urgent TRAI intervention, as promised in its order.

Finally, it was expected that the "must carry" provision would eventually serve to bring down carriage fees in the medium term. Unfortunately, the "must carry" provision has been made **conditional** on the payment of carriage fees, which means that broadcasters are back to square one. We would urge you to remove this conditionality. "Must carry" should not be conditional on the payment of any charge – or if at all there is a charge for costs, it must be well defined in terms of the actual cost of IRDs and cables. This cannot be left to the whims of MSOs / cable operators.

Sir, broadcasters – and news broadcasters in particular – have long been among the biggest champions of the digitization process, because we were convinced this would set the industry



on a new sound footing. With the deadline approaching, we are now deeply concerned that the basic problems would continue— especially the menace of carriage and placement fees

We seek your urgent intervention to sort out the above issues before the roll out of digitization in four metros on 1.11.2012.

To discuss these issues we need an urgent meeting with you, which you may kindly grant sometime next week where we can come and explain to you the ground realities.

We await a confirmation from your office regarding your convenience to meet us.

With kind regards,

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'KVL Narayan Rao', is written over the typed name.

KVL Narayan Rao  
President

**Shri Rahul Khullar**  
Chairperson  
Telecom Regulatory Authority of India  
Mahanagar Doorsanchar Bhawan  
Jawahar Lal Nehru Marg (Old Minto Road)  
New Delhi-110 002





By e-mail [cp@trai.gov.in](mailto:cp@trai.gov.in) /Speed Post

Dated : 30th November 2012

Dr Rahul Khullar  
Chairperson  
The Telecom Regulatory Authority of India  
Mahanagar Doorsanchar Bhavan  
Jawaharlal Nehru Marg  
(Old Minto Road)  
New Delhi - 110 002

Dear Sir ,

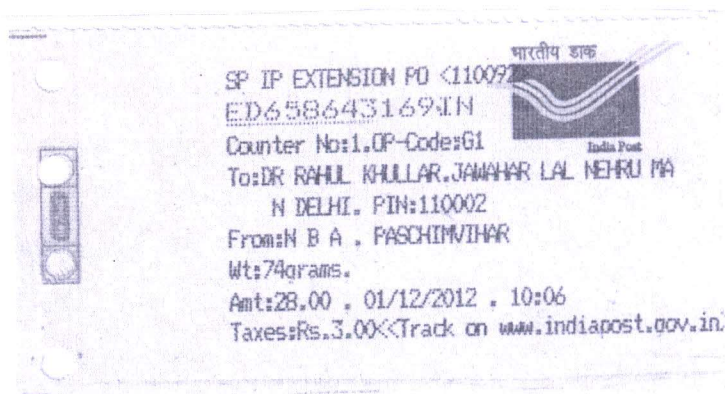
Attached please find a note prepared by our member, with legal inputs wherever needed on the matter of TRAI being legally permitted to determine and lay down what reasonable carriage fee should be.

Also attached are the costing details for MSOs in a digital scenario.

Thanking you.

Yours faithfully

Annie Joseph  
Secretary General, NBA



CC: Mr. N. Parmeshwaran, Principal Advisor (B&CS) TRAI



### CARRIAGE OF CHANNELS ON DIGITAL ADDRESSABLE CABLE TV SYSTEMS PLATFORM

1. It was in the year 1994 that the Cable Television Network (Regulation) Ordinance 1994 was promulgated. By a notification dated, 29.09.94, the Cable Television Network Rules 1994 had been published in the Gazette of India. The Ordinance of 1994 had then taken the shape and form of Cable Television Network (Regulation) Act, 1995 (7 of 1995).
2. The preamble of the above-mentioned 1995 Act is as under:

“...An Act to regulate the operation of Cable Television Networks in the country and for matters connected therewith or incidental thereto...”
3. The TRAI has been defined in clause 2 (aa) of the Cable Television Network Rules 1994 (hereinafter referred to as the Rules). Clause 2(aa) of the 1994 Rules provide the definition of “Authority” meaning the Telecom Regulatory Authority of India established under Section 3 (1) of the Telecom Regulatory Authority of India Act, 1997. This clause has been inserted by the Central Govt. gazette notification dated, 31.07.06.
4. It is further to be noted that the 1994 Rules have been framed by the Central Govt. in exercise of its power u/s 22(1) of the 1995 Act. It further shows that by the amendment of the rules vide notification dated, 31.07.06, some of the functions of the Ministry of Information & Broadcasting under the 1995 Act, have been delegated to the TRAI. It further appears that by virtue of the said delegation made in favour of the TRAI by the Central Govt. (MIB) vide notification dated, 31.07.06 that the TRAI has been issuing regulations for regulating certain aspects of Cable TV networks in accordance with the delegation made in its favour by the Central Govt. (MIB). Such regulations for regulating the Cable TV networks by virtue of the delegation made in favour of the TRAI, the Authority is framing regulations in exercise of its powers u/s 36 read with other provisions of the TRAI Act, 1997.
5. Digitalization of Cable TV network, indisputably, is the goal to be achieved which is also in the larger public interest. Every stakeholder has accepted this proposition and all of them had decided to join their heads for achieving this objective.

6. The necessary amendment in the Cable TV Act for implementing digitalization had been carried out by a notification dated. 11.11.11 when Section 4A(1) was inserted in the Act in the 1995 Act. Thereafter, the 1994 Rules had been amended by the Central Govt. (MIB) vide notification dated. 28.04.12. Similarly, in accordance with the delegation made by the MIB in favour of the TRAI notifications dated. 30.04.12 and 14.05.12, had been issued by the TRAI in exercise of its powers u/s 11 and Section 36 of the TRAI Act, 1997. These notifications had clearly incorporated in these regulations the mandate of the MIB that extending maximum choice to the consumers and for eliminating the concept of carriage fee in the functioning of Cable TV networks. The TRAI had accordingly stipulated an obligation on the MSOs registered under the Rules for providing Cable TV networks in the areas covered by the digitalization to augment the requisite infrastructure so as to necessarily provide re-transmission of 500 channels on their Cable TV networks.
7. DAS and DTH cannot be treated at par. DTH operator has restrictions in enhancing capacity even he wants to due to limited availability of transponders. MSO has no such restriction: it can put modulators to increase capacity to 500 channels. This has also been so accepted by the Hon'ble TDSAT in its judgment dated 9.10.2012 in Appeal No. 3(C) of 2012 – United Cable Operator's Welfare Association Vs. TRAI and other connected appeals. In para 36 of this judgment, the Hon'ble TDSAT has set out the notable distinctions between the Cable platform of an MSO and the DTH platform, by providing a table. Item No. 2 in the said table, is in the following manner:-

Sr. No.	MSO	DTH
1.	.....	.....
2.	In digital addressable cable TV system environment of MSO there is no capacity constraint to carry TV channels.	There is capacity constraint due to limited number of transponder capacity. Presently DTH operators carry capacity of 300 to 350 channels only; due to unavailability of KU band





		satellite transponders. This cannot be an enhanced till transponders become freely available to DTH service.
3.	.....	.....

8. Similarly, proceeding further with this distinction, in para 41 of the same judgment, the following has been observed by the Hon'ble TDSAT:-

**"...41. One of the main distinctions, so far as the operation of the DTH operators and the DAS operators are concerned, is that the DTH operators had applied for and granted satellite transponder capacitors which are being used by them to the fullest extent and, thus, it may not be possible for the Respondent to direct increase in their existing capacity. They are furthermore required to pay transponder charges to a satellite company and ten percent of the gross revenue as licence fee. Moreover, the law applicable, as indicated heretofore, to the DTH operators and DAS operators differ. The DTH operators operate on Pan India basis; whereas the DAS operators do not..."**

9. The TRAI in para 11 of the Explanatory Memorandum to the Regulation dated. 30.04.12. has observed the following:-

**"...11. In the digital transmission environment, the capacity to carry the channels is very high. So one of the main advantages of a digital environment to the subscriber is the availability of large number of channels. However, there is a component of cost to carry channels. If the operator is compensated for the cost of carriage of a channel, there should not be any technological or other infrastructural constraints for the operator to carry a channel. Further, as per the Cable Television Networks (Amendment) Rules, 2012, the channel carrying capacity of the multi system operator is to be specified by the Authority...."**

10. The TRAI has also observed that at present there are 650 operational private channels and it has taken the figure of 473 operational channels (in Andhra Pradesh) which it had felt to be provided as being relevant to any State or Union Territory, besides and apart from the Prasar Bharti channels. It has also taken into account the fact that MIB has granted



permission to 831 channels. More number of channels are likely to get permission from the MIB by 01.01.13. Accordingly, the TRAI had taken the figure of 500 channels per head-end for which it had stipulated a mandatory condition for the MSOs to provide capacity for carriage of minimum of 500 channels.

11. In para 17 of its explanatory memorandum, the TRAI has also observed that due to transparency on the digital platform used for re-transmission, the subscription revenue of the MSOs is expected to go up on being paid for all the subscribers availing the Cable TV services from them. It has further observed that the dependence of MSOs on the carriage fee, as a source of revenue, is likely to be reduced.
12. The fundamental rationale for which the stipulation for creating capacity for carrying 500 channels on the network of each of the MSO is to provide access to a larger number of channels and to give a larger option to the consumers. This stipulation also achieves the purpose of eliminating the concept of Carriage Fee.
13. It is significant to notice the fundamental distinction between the capacity constraint upon DTH operators for non-availability of transponders and only the requirement of finances for creating unlimited capacity for the MSOs to carry larger number of channels by providing equipments, which are easily available.
14. In this regard, the only issue which remains to be addressed is the finances needed for enhancing the capacity of the networks of MSOs to necessarily carry 500 channels. In fact "Revenue share" between broadcasters and MSOs fully takes care of this aspect as well. However, even when it is felt, based upon facts and data that there would be a necessity for participating with MSOs for providing finances needed for enhancing the capacity of the networks of MSOs, similar arrangements on the basis of rentals/charges are already in place in the telecom operations.
15. Historically, before the growth of telecom sector in last few years, it had been an accepted concept of payment of rentals /charges to be paid by a seeker to a provider for



various telecom network components by one telecom service provider to another such as annual charges for active links, passive links, port charges etc., these annual rentals /charges to be paid by seeker to the provider are besides and over and above the revenue share arrangements. In such annual rentals / charges for various network components, the actual cost is determined on the basis of realistic data which is then annualised for being paid by the seeker to the provider in annual installments i.e., in the form of Annualised charges/rentals over a period of 8 - 10 years.

16. This concept of seeker and provider and payment of annualized charges / rentals by one service provider to another in the telecom sector has stood significantly diluted with the rising importance of revenue share between two service providers. On the aspect of revenue share between two service providers, the Hon`ble TDSAT in its judgment dated, 04.02.11 in Petition No. 32/2010 – M/s Vodafone Essar Mobile Services Ltd. Vs. MTNL and other connected matters, the Hon`ble TDSAT has, inter alia, laid down as under:-

“....The matter relating to grant of inter connection is in public interest. It is also in the interest of the service providers. It has been admitted before us that *stricto sensu* nobody is a provider of interconnection or a provider or a seeker of inter connection. Both of them benefit therefrom.....”

17. Thus, with these evolving principles including the principle that from an interconnection between two service providers, it is both the service providers who are beneficiaries thereof, the concept of seeker and provider is slowly disappearing. Since both the service providers benefit from the interconnection, one service provider would not be justified in asking for participation in the cost by other service provider for providing necessary equipments for achieving interconnection. This is now an integral part of the above-mentioned pronouncement of the Hon`ble TDSAT.
18. Thus, while mandating and bringing into force the stipulation for MSOs to necessarily create capacity at their digital cable network to carry a minimum of 500 channels, if it becomes necessary that over and above adherence to revenue share between two service



providers i.e. MSOs on the one hand and a broadcaster on the other for also providing for sharing of the cost, then in that case, the TRAI may kindly consider applying of similar concept of payment of annual rental / charges by the broadcasters to the MSOs in the same manner as it exists in telecom services and where some of those annual rentals / charges are determined and /or are regulated by the TRAI.

19. The TRAI, while mandating and implementing this stipulation of 500 channels, can take into account the realistic data (if the TRAI feels that over and above revenue share between MSO and the broadcaster, there is a necessity) for also providing participation by the broadcasters in the cost to be incurred by the MSOs and to be paid by the broadcasters in a staggered manner and in the form of annualized rentals / charges for the equipment for carrying the signals of the channels of a broadcaster on the digitalized network of an MSO.
20. It is reiterated and re-emphasized that there is no impediment whatsoever for any MSO to carry on its digitalized network to carry any number of channels of the broadcasters. It is not impeded by any requirement such as availability of a transponder. It has only to secure the necessary equipment for carrying the signals of any channel of a broadcaster who is desiring the MSO to do so. There is no impediment of any kind whatsoever, except the cost of the equipment, for this purpose. The equipment is easily available at extremely reasonable cost. There are also no time lag in the supply of such equipments from the date of orders placed by any MSO in this regard. Accordingly, in the event the TRAI reaches a conclusion that over and above the concept of 'revenue share between two service providers' (both the MSO and the broadcaster are service providers) prescription of such annualized rental / charges on staggered basis – **has to be on cost basis**. Some of the data regarding realistic cost for such equipment for carrying one channel on the digitalized platform of any MSO is enclosed herewith.
21. It would deserve to be appreciated and mandated by the TRAI that no MSO, on its digital platform, would deny carrying of any channel of a broadcaster for which – besides and in addition to the revenue share between two service providers, **the cost based annual**



charges / rentals prescribed by the TRAI are agreed to be paid by the concerned broadcaster to the MSO for carriage of its channel.

By Rajat Sharma  
On Behalf of India TV  
30.11.2012



### COSTING DETAILS

Quoting Rates from recognized vendors of Chinese origin which many of the Cable Operators use. Before everything, it is necessary understand the major components of a Digital Cable Head end (ref image attached):

1. Input section (where signals of broadcasters are received/ added etc)
2. Processing section ( where received signals are mixed with other channels)
3. Encryption section ( where conditional access system is introduced)
4. RF section ( where digital signal is converted into Radio Frequency mode which will be transported to viewers )

#### 1. Input section:

This is where each broadcaster's signal is received using a Professional IRD or STB supplied by Broadcaster. Each channel can be received independently or a combination of 6 channels simultaneously; Cable operators use 4 / 6 channels in one IRD

#### 2. ProceSSION section:

Here received channels are mixed to form 1 output called ASI stream; Cable operators cluster 6 channels per one ASI; and likewise each cluster depending upon number of channels are further grouped into one Signal commonly known as "Re-Mux"; **each remux can take 8 inputs; so one REMUX will have 8 x 6 = 48 channels**

#### 3. Encryption section

This is common for all all the channels ; one time investment and since this is IP based, generally no addition is required in case of channel increase unless their

#### 4. RF Section

Main Device: QAM modulator: Each QAM modulator can deliver upto 96 channels; basically Cable operator need not invest on this practically for addition of 1 or few channel(s) beacuse of the combinations that they get to purchase.

1 QAM modulator = 96 channels

2 QAM modulator = 192 Channels

3 QAM modulator = 288 channels

1 QAM modulator = 384 channels





So, if a cable operator has to add 1 channel, there is always a possibility that he will be investing for 6 channels in advance (that too in input section only) and likely to charge from everyone on the CAPEX

What are all needed for a cable operator to introduce 1 additional channel (maximum):

1. IRD

Chinese make: USD 1200 to USD 1900 (list price)

Tandberg make (approx) : USD 3600 (list price)

2. ReMUX

Chinese: USD 2300 to USD 3500 (list price)

Tandberg: not available ; even at max level, it can be just the double of a Chinese make

So on average per channel, CAPEX for single channel will not be more than INR 1.5 lakhs at the most.

30.11.2012