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AIDCF

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

AIDCF

ALL INDIA DIGITAL CABLE FEDERATION

We would like to take this opportunity to thank and congratulate the TRAI (Authority), for making a very sincere and concerted effort to streamline all aspects of the Broadcasting Sector. The authority in a short span of time, has taken Consultation Papers, covering every aspect of the Broadcasting Sector, as also the interest of various stakeholders i.e. Consumers, LCOs, DPOs and the Broadcasters. We genuinely appreciate the hard-work and the effort being put in by the authority, to ensure the smooth functioning of this sector.

With due respect to the entire exercise being conducted by the Authority, we however, after going through the issues raised in the present consultation paper, felt that the same may be premature to some extent. The authority has already undertaken a detailed consultation exercise with regard to various tariff related issues, which had also dealt with various models for re-transmission of signals. We would like to take this opportunity to once again reiterate, that the Distribution Network Model is most suitable for all players in the Industry. Be that as it may, any change in the Distribution Model would need corresponding changes to the Interconnection Regime. Every Distribution Model i.e. Regulated RIO/ Distribution Network Model/ Forbearance presents its unique sets of problems, which would have to addressed by the authority. We propose that the present consultation exercise be taken up after, all tariff related issues have been decided upon by the AUTHORITY. It is submitted that it would be in the interest of all stakeholders, that once the authority decides from the various proposed Distribution Models, the present exercise regarding the mode and manner of Interconnection be taken up, so that there is clarity for all stakeholders as to the context in which their responses are being sought. We feel that in the event that the authority chooses a Distribution Model other than the Regulated RIO i.e. the present regime, the present consultation exercise may not attain fruition.

Our opinion aside, please find below our responses to the Consultation Paper in the context of the existing Regulatory Framework i.e. Regulated RIO.

The responses to the various issues raised in the Consultation Paper are as follows:

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

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

Response: Though service providers can broadly be divided on the basis of addressable and non-addressable systems, the same does not capture the complexity and entirety of the different models involved. As far as MSOs and HITS Operators are concerned, they are quite distinct from DTH and IPTV Operators. Though, all of the above mentioned DPOs are using addressable systems, it is only the MSOs and HITS Operators who have a statutorily mandated 3rd party intermediary i.e. LCOs connecting it to the end consumers. Under the existing Regulatory Regime, a MSO is mandated to provide its signals to all signals seekers i.e. LCOs as well as direct consumers. Once such a statutory mandate exists, it has to be ensured that other addressable systems like DTH and IPTV, which do not have an intermediary and deal directly with the customers do not have any unfair advantage vis-à-vis MSOs and HITS Operators. Steps have to be taken so that, it does not become commercially/ financially unviable and uncompetitive for MSOs and HITS Operators to compete with DTH and IPTV. As the position stands today, DTH and IPTV Operators are able to retain a much larger percentage of their net revenue collection, as they do not have to share it with any 3rd party. As far as

content cost is concerned, the same is similar across platforms, thus leading to a situation wherein the statutory framework ends up being inequitable to the MSOs qua other DPOs. It is therefore requested, that the Authority take steps to correct this anomaly. The Authority may consider either reducing the percentage share of the LCOs from the Subscription Collection or formulate some other mechanism to ensure a level playing field.

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

Response: Yes. As far as Interconnection Issues Vis-à-vis Broadcasters are concerned all addressable systems i.e. MSOs, HITS, DTH and IPTV are similarly placed. However, as mentioned above it has to be borne in mind that for MSOs and HITS Operators there is a statutorily mandated 3rd party i.e. LCO connecting it to the end consumers and hence, any common regulatory framework would have to keep take this distinction into account and make an appropriate framework regarding the same.

Issue 2:- TRANSPARENCY, NON-DISCRIMINATION AND NON-EXCLUSIVITY

2.1 *Is there any need to allow agreements based on mutually agreed terms, which do not form part of RIO, in digital addressable systems where calculation of fee can be based on subscription numbers? If yes, then kindly justify with probable scenarios for such a requirement.*

Response: It is felt by the Federation that the present consultation exercise being undertaken by the Regulator may be premature to some extent. The Regulator has already undertaken a detailed consultation exercise with regard to various tariff related issues, which had also dealt with various models for re-

transmission of signals. We would like to take this opportunity to once again reiterate, that the Distribution Network Model is most suitable for all players in the Industry. Be that as it may, any change in the Distribution Model would result in corresponding changes to the Interconnection Regime. The Federation proposes that the present consultation exercise be taken up after all tariff related issues have been decided upon by the Regulator. In the context of the present regime i.e. Regulated RIO continuing, it is submitted by the Federation that there is no need for any mutually agreed terms which do not form part of the RIO. It has been noticed by all stakeholders that under the garb of mutually agreed terms the Broadcasters executed discriminatory and unreasonable agreements, which practice should not be permitted.

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

Response: As mentioned above, Subscription Agreements should only be executed on the basis of the RIO and mutually agreed terms should not be permitted other than those specifically mentioned in the RIO.

2.3 *What are the ways for effectively implementing non-discrimination on ground? Why confidentiality of interconnection agreements a necessity? Kindly justify the comments with detailed reasons.*

Response: Once Subscription Agreements based on mutually agreed terms have been specifically prohibited i.e. 01.05.2016 onwards in view of the judgment of the Hon'ble TDSAT dated 07.12.2015 in Petition No. 295(C) of 2014 – Noida Software Technology Park Ltd. vs. MediaPro Enterprise India Pvt. Ltd. & Ors. All Subscription Agreements would have to be entered into on the

basis of the RIO, which would automatically result in non-discrimination on the ground. If there is no other mechanism other than RIO for execution of Subscription Agreements, parity and non-discrimination would be prevalent on the ground.

As far as confidentiality of Subscription Agreements is concerned the same should be maintained and not be put in the public domain. The Subscription Agreements would contain sensitive commercial information like subscriber numbers, packaging obligations and other such details which are unrelated to the subscription fee like head-end location, particulars of IRDs etc. whose disclosure could result in tremendous losses to the DPOs. In any event, the only argument in favour of disclosure is implementation of non-discrimination, which concern is already taken care of execution of Subscription Agreements only on the basis of RIO.

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

Response: As mentioned above, Subscription Agreements should only be executed on the basis of the RIO and mutually agreed terms should not be permitted other than those specifically mentioned in the RIO. In the event some party violates the Regulations and executes such an Agreement, the information is available in the public domain and can be brought to the notice of the Authority. Further, the Authority has already made regulations for the Broadcasters and the DPOs to submit their Agreements to it and hence the AUTHORITY being the Regulator would also take action in case it is felt that there is discrimination.

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

Response: Yes. Even under the existing Regulatory Regime, the concepts of non-exclusivity, must-provide and must-carry have been incorporated, which has led to a robust and highly competitive market at the DPO level. It is submitted by the Federation that the existing Regulatory Framework adequately covers these aspects and there is no need at present for modifying the same. In fact, as far as consumers are concerned, each consumer has a choice of minimum 7-8 DPOs and the inter-se competition between the DPOs ensures competitive pricing. It is due to the intense competition at the DPO level, that retail tariffs in India are amongst the lowest in the world.

2.6 *Should the RIO contain all the terms and conditions including rates and discounts, if any, offered by provider, for each and every alternative? If no, then how to ensure non-discrimination and level playing field? Kindly provide details and justify.*

Response: Yes. In addition to the Subscription Agreement containing all terms and conditions it should be mandated that there should be no further Addenda's, Side Letter's or understanding through any other mechanism with respect to Subscription Fee. The RIO Agreement should be comprehensive and should contain all the terms and conditions.

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

Response: Yes.

2.8 *Whether SIA is required to be published by provider so that in cases where service providers are unable to decide on mutually agreed terms, a SIA may be signed?*

Response: The Federation is in favour of publication of SIA, however subject to the fact that the same is published by the Authority and not the provider. The Authority has already published the MIA/ SIA for Interconnection between MSO and LCOs and has provided for a revenue share with regard to the same. A similar SIA can be made by the Authority qua DPO and service providers, which clearly demarcates the revenue payable. If the Broadcaster is permitted to publish the SIA, it would once again lead to the present situation where the RIO is used as an arm-twisting technique and a tool to harass some DPOs and to favour others. Only the nomenclature would change from RIO to SIA, but all things would practically remain the same. In this light it would also be important to mention that in case the Distribution Network Model is adopted by the AUTHORITY wherein the prices of TV channels would be notified to be payable by the consumer directly, then a SIA would take care of the entire distribution chain and hence there would be no requirement of separate SIA for the various tiers in the distribution chain.

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

Response: It is submitted that the Authority should prescribe a format for all applications. The minimum documents required along with the application are as follows:

a. License/ Permission
b. Proof of Identification

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

Response: Yes

2.11 *If yes, should there be a provision to discontinue a channel by DPO if the subscription falls below certain percentage of overall subscription of that DPO. What should be the percentage?*

Response: Yes. Under the existing Regulatory Framework for MSOs under proviso to Clause 3(10), it is not obligatory for an MSO to carry a channel for the next one year, if the subscription for the particular channel, in the last preceding 6 months is less than or equal to 5% of the subscriber base of that MSO taken as an average of subscriber base of the preceding six months. The percentage of 5% can be transposed from the extant provision, however the DPO should be permitted to discontinue the channel on the average subscriber base of the past 3 months instead of 6 months, and the period of refusal should be increased from 1 year to 3 years.

2.12 *Should there be reasonable restrictions on 'must carry' provision for DTH and HITS platforms in view of limited satellite bandwidth? If yes, whether it*

should be similar to that provided in existing regulations for DAS or different. If different, then kindly provide the details along with justification

Response: It is the submitted that all DPOs including MSOs have bandwidth constraints. It is not possible for the MSOs without spending on infrastructure, equipment, network, bandwidth etc. to supply an unlimited amount of channels. Even, the capacity of MSOs to carry channels on its Network is limited by various factors and hence, any reasonable restriction on 'must carry' should be equally applicable to MSOs as well. Under the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 it had been mandated that each MSO has a capacity of minimum 500 channels. The said condition was struck down by the Hon'ble TDSAT vide its judgment dated 19.10.2012 in Appeal 3(C) of 2012- United Cable Operators Welfare Association vs TRAI being discriminatory. Furthermore, MSOs also incur cost for the bandwidth they utilize, and hence, the same is not unlimited and further bandwidth has cost implications for MSOs which is completely independent of the collections from the LCOs or the consumers and/or content being retransmitted through such bandwidth. The MSOs have to pay per Megabyte i.e. per channel for the Dark-Fiber/ Leased Lines they hire from various service providers like Railtel, Airtel etc. It is submitted that reasonable restrictions on 'must carry' be made equally applicable on all DPOs.

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

Response: This question implies clubbing together of subscription, carriage, placement, marketing and all its cognate expressions. As far as Carriage and Placement are concerned they are separate, distinct and cannot be clubbed together. With regard to Subscription Agreements it is the DPO which is the signal seeker and all discounts offered on the Subscription Fee as mentioned above through any nomenclature including marketing etc. should be clearly spelt out in the RIO Agreement, being in the nature of a discount on the Subscription Fee. However, as far as Carriage Fee and/ or Placement Fee are concerned the same are a service being provided by the DPO for which the Broadcaster is a service seeker and the DPO a provider, thus reversing the relationship between the parties. Carriage Fee and/ or Placement Fee are not a means of discounting/ reducing the Subscription Fee payable. They are amounts being paid to a service provider for a service being rendered by it. In fact, in a multitude of cases before the Hon'ble TDSAT it has been repeatedly argued by the Broadcasters that Carriage Fee and/ or Placement Fee do not have a direct co-relation with Subscription Fee and the same cannot be offset. The Hon'ble Tribunal has on more than once occasion accepted this contention. In fact, under the existing Regulatory Framework a signal seeker (DPO) can be denied signals on the ground that carriage fee is being demanded while seeking interconnection. In fact, making subscription, carriage, placement, part of the Interconnection would lead to a highly anomalous situation inasmuch as; 1) Subscription Agreements are drafted by the Broadcaster; 2) Carriage and/ or Placement Agreements are drafted by the DPO; 3) At times the Authorized Agent of the Broadcaster executes the Subscription Agreement whereas the Broadcaster executes the Carriage and/or Placement Agreement; 4) The Broadcaster pays Carriage and/or Placement Fee for getting higher viewership or eyeballs, resulting in higher advertisement revenues usually for channels which are not popular and for which interconnection is not being sought by the DPO; 5) Carriage and/or Placement

Agreements may or may not be concurrent with the Subscription Agreements; 6) Demand of Carriage Fee as a matter of right from the Broadcaster by the DPO results in denial of signals; 7) Carriage and/ or Placement Fee is dependent upon the demographic/ area of operation etc. of the DPO and the target market for the channel of the Broadcaster. For eg: A Tamil Channel would not pay Carriage and/ or Placement Fee to DPOs in non-Tamil markets (like Delhi) and will instead pay DPOs operating in Tamil Nadu; 8) The freedom of each DPO to charge Carriage and/ or Placement Fee will be completely taken away and would in fact be on the whims of the Broadcaster at the rate fixed by the Broadcaster. In fact, the same would in the context of the Broadcaster(s) amount to pricing all channels irrespective of genre, content, language or Broadcaster at the exact same rate.

Issue 3: - EXAMINATION OF RIO

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

Response: It is submitted by the Federation that the RIOs, which have been published by the Broadcasters as on date, do not comply with either a) the statutory mandate and b) the judgment of the Hon'ble TDSAT dated 07.12.2015 in Petition No. 295(C) of 2014 – Noida Software Technology Park Ltd. vs. MediaPro Enterprise India Pvt. Ltd. & Ors. It is submitted that even the bouquet rates, which are mentioned in the RIOs are exorbitant and completely de hors the market conditions. It is submitted by the Federation that since the number of pay channel Broadcasters is not substantial, it should be mandated that all draft RIOs be first submitted to the Regulator, who would have sufficient time to go through them and the same can only be published after

the approval of the Regulator. If the above suggestion is accepted, the Regulator would have sufficient time to monitor and also take corrective action against the non-compliant RIOs and it would ensure that non-compliant RIOs are not put out in the public domain. Furthermore, the Regulator is in possession of all Interconnect Agreements and in the event it is found that the same are non-compliant, the Regulator can take appropriate action.

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

Response: As mentioned in Response to 3.1 above, it is submitted that all draft RIOs of pay Broadcasters should be first submitted to the Regulator and only after the approval of the Regulator, should the same be published. As far as Interconnect Agreements between MSOs and LCOs are concerned, the Regulator has already issued a Regulation for execution of SIA/ MIA, which adequately protects the rights of all stakeholders.

Even after the approval of RIOs by AUTHORITY, the DPOs should be given an opportunity to challenge the same, in the event they find that some clauses are contrary to the Regulatory Framework.

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

Response: It is the submission of the Federation, that the legality or illegality of any provision of the RIO is only considered when a party is considering execution of the RIO. Furthermore, just by virtue of the fact that the RIO is in public domain, does not give rise to a cause of action for challenging the same.

Fixing of a time period for raising objections from date of publication of RIOs, would severely prejudice the rights of non-entrants to the filed, as any such prescribed time period may expire even prior to their entering into the business. Furthermore, anything which is contrary to or in conflict with the statutory mandate cannot only by virtue of efflux of time, become compliant thereof. It is therefore proposed by the Federation that a period of at least 2 months from the date a party desires of execution of a RIO Agreement, should be considered as the time frame for challenging the RIO.

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

4.1 *Should the period of 60 days already prescribed to provide the signals may be further sub divided into sub-periods as discussed in consultation paper? Kindly provide your comments with details.*

Response: It is submitted by the Federation that the time period of 60 days prescribed should be reduced to 30 days. The time period of 60 days, only results in delaying of getting signals/ access to system, thereby causing losses to the service seeker. Furthermore, under the existing Regulatory Framework, when all Interconnection Agreements are to be signed only on the basis of RIO, having a time period of 60 days, does not serve any purpose. The proposed time period of 30 days can be further sub-divided into 2 i.e. 15 days each, the first for raising objections and the second as a time period for curing the defects, if any. The Technical Audit, if any, ought to also be completed within 30 days independent of the objections.

4.2 *What measures need to be prescribed in the regulations to ensure that each service provider honour the time limits prescribed for signing of mutual*

agreement? Whether imposition of financial disincentives could be an effective deterrent? If yes, then what should be the basis and amount for such financial disincentive?

Response: It is submitted by the Federation that there is no need to provide for specific measures, so that time limits are honored. In the event, any service provider does not act in accordance with the statutorily fixed time period, the Regulator and Hon'ble TDSAT can always be approached to take remedial action. Furthermore, the loss/ damage caused to each party due to delay in providing signals/ access to platform will have to be determined on a case to case basis, after due adjudication of all facts and circumstances.

4.3 *Should the SIA be mandated as fall back option?*

Response: Yes. It is submitted that the SIA for Interconnection Agreements should be published by the Regulator and be not left to the individual Broadcasters. The Regulator has already published the SIA for Interconnection Agreements between MSOs and LCOs, and a similar SIA can also be framed for Interconnection between Broadcasters and DPOs.

4.4 *Should onus of completing technical audit within the prescribed time limit lie with broadcaster? If no, then kindly suggest alternative ways to ensure timely completion of the audit so that interconnection does not get delayed.*

Response: No. It has been repeatedly seen under the existing framework, that the Broadcasters unreasonably delay the start of Audit, its Auditors seek irrelevant and immaterial documents, demand compliance of conditions which are not even part of Schedule – I, in order to unreasonably and illegally deny supply of signals. It is submitted that the Regulator can publish a list of

Authorized Auditors and any DPO, who is desirous of signals can approach one of the Authorized Auditors can get its CAS and SMS independently verified. The Authorized Auditor on successful completion of Audit, will provide a Certificate to the DPO, who can thereafter share it with the Broadcaster. The process of Audit can be completed within the prescribed period of 30 days (as mentioned in Response to 4.1 above), so that the signals can provided within the prescribed period.

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

Response: Yes. It is submitted that the Regulator and the Hon'ble TDSAT are empowered to take action against the errant parties in individual cases.

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

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

Response: The parameters for denial of signals by a Broadcaster to a DPO can be as under:

1. Seeker does not does not possess a valid license/ permission to operate
2. Seeker is in default of payment
3. Seeker is a person of unsound mind
4. Seeker is an undischarged insolvent
5. Seeker has been convicted of an offence involving moral turpitude

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3. Seeker is a person of unsound mind
4. Seeker is an undischarged insolvent
5. Seeker has been convicted of an offence involving moral turpitude
6. The channel is not in regional language of the region in which, the DPO is operating or in Hindi or in English Language
7. Seeker is unwilling to pay the uniform carriage fee published by the DPO
8. DPO has bandwidth constraints and is therefore unable to carry the channel on its platform.

5.2 *Should it be made mandatory for service providers to provide an exhaustive list in the RIO which will be the basis for denial of signals of TV channels/ access of the platform to the seeker.*

Response: Yes.

Issue 6: - INTERCONNECTION MANAGEMENT SYSTEM (IMS) [3.43-3.48]

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

Response: Yes

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

Response: Yes

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

Response: It is submitted that the Authority can develop, operate and maintain the IMS. It is submitted that the Authority being well-versed with the Industry, as well as Technology and being a neutral third-party, free from influence of either the Broadcasters, DPOs and LCOs is the best equipped to run the IMS.

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

Response: The Federation states that initially the IMS can be used for the deposition and retrieval of Interconnection Agreements. Depending on its acceptance, feedback and ease of use, over time further functions can be performed by the IMS. At an initial stage to make the IMS mandatory and to make various functions mandatory would result in unnecessary cost towards infrastructure and manpower for all the stakeholders. Therefore, as a first time the IMS can be used for deposition and retrieval of Interconnection Agreements. The Authority in any case, is to be provided with all the duly executed Interconnection Agreements. The retrieval through IMS, would also help in reducing disputes with regard to copies of the Agreements not being provided to the other party.

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

Response: The Authority can determine and charge a reasonable fee per Agreement to recover the costs of the IMS.

Issue 7: - TERRITORY OF INTERCONNECTION AGREEMENT

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

Response: Yes.

7.2 *Should MSOs be allowed to expand the territory within the area of operations as permitted in its registration issued by MIB without any advance intimation to the broadcasters?*

Response: Yes. Once all Interconnection Agreements are being entered into on RIO basis, there is no need from the Broadcasters end to impose area wise restrictions. The details of all subscribers would be available in the CAS/ SMS of the MSOs. Furthermore, in light of the fact that the MIB has already issued a license to the MSO to supply signals only in areas mentioned in the said license then the Broadcasters cannot be allowed to put restrictions on the same and the MSO should be free to operate within only the area restrictions of the license issued by the MIB, however, in cases where the MSO requires fresh decoders, due to setting up a new head-end in a particular area, does the MSO need to provide intimation to the Broadcaster. In such a case, the Broadcaster should issue the decoders within a period of 7 days, which should be prescribed in the Regulations.

7.3 *If no, then should it be made mandatory for MSO to notify the broadcaster about the details of new territories where it wants to start distribution of signal a fresh in advance? What could be the period for such advance notification?*

Response: N.A.

Issue 8: - PERIOD OF AGREEMENTS

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

Response: It is submitted that by the Federation, that since under the existing Regulatory framework all Interconnection Agreements between Broadcasters and DPOs have to be on the basis of the RIO, the duration of the Agreement should be the period of the license period of the parties. In the event, the Broadcaster, decides to modify the terms of its RIO as per the existing framework under Clause 5(10), it has to give Notice of 30 days to the MSOs. Therefore, no useful purpose is served by executing Interconnection Agreements for a period of 1 year only. Furthermore, in the case of DTH, the Interconnection Agreements are usually for a longer duration. The frequent execution of Agreements, only increases the scope and frequency of disputes between the parties.

Issue 9: - CONVERSION FROM FTA TO PAY CHANNELS

9.1 *Whether it should be made mandatory for all the broadcasters to provide prior notice to the DPOs before converting an FTA channel to pay channel?*

Response: Yes

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

Response: Yes. In the event a FTA Channel is converted into a pay channel prior notice to DPOs, as also to consumers by the Broadcasters ought to be circulated. Even under the existing Regulatory Framework i.e. Clause 7 of the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 a channel once declared FTA or pay has to remain such for at least a period of 1 year and before conversion a notice of 1 month has to be provided. It is submitted that the period of 1 month under the existing Regulations for conversion from FTA to Pay Channel is not sufficient. The period in case of conversion from FTA to Pay Channel, the notice period should be 6 months. It is beneficial to consumers if a channel is FTA, as a consumer does not have to pay subscription fee towards the same. Further, it is well established that each consumer only watches a few channels and especially GEC channels, wherein the TV shows continue for a long duration. Therefore, a consumer should be given sufficient advance notice that either he/ she would have to pay for the channel or it can change its viewing habits accordingly. The time period of 1 month does not sufficiently provide for a switch-over period.

Issue 10: - MINIMUM SUBSCRIBERS GUARANTEE

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

Response: Yes.

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

Response: N.A.

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

Response: It is submitted now that all Interconnections would henceforth be executed on the basis of the RIO published by the Broadcasters, it will be ensured that there are no other Agreements i.e. fixed fee or minimum guarantee. In the event, any Broadcaster, does enter into/ forces a DPO to enter into such an Agreement it could always be brought to the attention of the Regulator and/or the Hon'ble TDSAT for appropriate action. Furthermore, the Regulator is already in possession of all Interconnection Agreements and can take suo motu action, if required. The existing Regulatory framework sufficiently protects the interest of all stakeholders in this regard and does not require any changes.

Issue 11: - MINIMUM TECHNICAL SPECIFICATIONS

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

Response: Yes. It is submitted that the existing technical specifications duly take care of the concerns of all stakeholders. Furthermore, Pan-India MSOs have already spent huge amount towards upgradation of their Networks and to make them compliant with Schedule – I of the 2012 Regulations. As on date, all MSOs have been saddled with huge debts and are suffering losses due to the investments they have made towards digitalization and till now have been

unable to even recover their investments. To now change the technical specifications would result in further investment from the end of the already bleeding MSOs, resulting to their eventual closure. Once the technical specifications for DAS implementation have been prescribed and without implementation of DAS being even completed, to change the same would put the MSOs in a highly onerous and difficult position.

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

Response: N.A.

11.3 *Should SMS and CAS also be type approved before deployment in the network? If yes, then which agency may be mandated to issue test certificates for SMS and CAS?*

Response: Instead of type approved, it should be certified by a central agency that it complies with all the technical requirement under the TRAI regulation as it is done in the case of Digital Head end which is certified by BECIL.

11.4 *Whether, in case of any wrong doing by CAS or SMS vendor, action for blacklisting may be initiated by specified agency against the concerned SMS or CAS vendor.*

Response: It is submitted by the Federation with utmost humility, that though the proposal of the Regulator appears to be well intentioned, the same may not withstand legal scrutiny. It is submitted that CAS or SMS Vendor are neither the licensor nor licensee, nor are they service providers as contemplated within

the TRAI Act or the Regulations. Therefore, it may not be within the scope or the power of the Regulator to blacklist such vendors. Furthermore, the vendors are only providing equipment mostly from foreign third parties, who are outside the purview of the Regulatory Framework.

Issue 12: - TECHNICAL AUDIT OF ADDRESSABLE SYSTEMS

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

Response: N.A.

12.2 *Whether the systems having the same make, model, and version, that have already been audited in some other network and found to be compliant with the laid down specifications, need not be audited again before providing the signal?*

Response: Yes. It is submitted that once a system of the same make, model, and version, that have already been audited in some other network and found to be compliant, no useful purpose is served in re-audit of such systems, especially prior to execution of Interconnection Agreement.

12.3 *If no, then what should be the methodology to ensure that the distribution network of a DPO satisfies the minimum specified conditions for addressable systems while ensuring provisioning of signals does not get delayed?*

Response: N.A.

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

Response: No.

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

Response: It is submitted that the Regulator should publish/ prescribe a list of Auditors, who can conduct the Audit. Out of the panel, the Broadcaster and the DPO can mutually decide on Auditor for a specific assignment. In the event of a dispute regarding the choice of Auditor between the parties, the Regulator can intervene and select an Auditor. Furthermore, the procedure of Audits by the Broadcaster/ its representatives should be dispensed with and all Audits should only be conducted by the panel published by the Regulator. The process of Audit by Broadcasters is an unnecessarily complicated and cumbersome exercise, which has no end in sight and the demands of the Broadcasters are never ending and much beyond the scope and ambit of the Regulations.

12.6 *Should stringent actions like suspension or revocation of DPO license/ registration, blacklisting of concerned SMS and CAS vendors etc. be specified for manipulating subscription reports? Will these be effective deterrent? What could be the other measures to curb such practices?*

Response: It is submitted by the Federation with utmost humility, that though the proposal of the Regulator appears to be well intentioned, the same may not withstand legal scrutiny. It is submitted that CAS or SMS Vendor are neither the licensor nor licensee, nor are they service providers as contemplated within the TRAI Act or the Regulations. Therefore, it may not be within the scope or the power of the Regulator to blacklist such vendors.

Furthermore, as far as action against a DPO for manipulation of Subscription Reports are concerned the existing framework adequately protects the interests of the Broadcasters. In this regard it is submitted that any such act by a DPO, would be in the nature of a contractual breach, the penalty for which is adequately prescribed in the contract itself. Furthermore, all Interconnection Agreements between the Broadcaster and DPO contain provisions regarding incorrect reporting of subscriber numbers and the mechanism for compensation in the event the same occurs, thereby adequately protecting the interests of the Broadcasters. The license granted to a DPO by the Ministry of Information and Broadcasting or the up linking/ downlinking permission granted to a Broadcaster cannot be cancelled for reasons which are not even mentioned in such license. Furthermore, the suspension or cancellation of a license can only be done by the Authority which has granted such license and in terms of the provisions of such license.

Issue 13: - SUBSCRIPTION DETAILS

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

Response: Yes. It is submitted that the parameters prescribed in Schedule II the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 under the heading 'Reports' sufficiently take care of the interest of all stakeholders. The following format can be used for submitting Reports, which can be signed by the authorized representative of the DPO:

1. **Bouquet Report (Channel-wise)**

Sr. No.	Bouquet Name	Channels part of Bouquet	Opening STBs count for Channel	Closing STBs count for Channel	Average STBs count for Channel

2. **Channel(s) A-la-Carte Report (Channels not part of Bouquet)**

Sr. No.	Channel Name (A-la-Carte)	Opening STBs count for Channel	Closing STBs count for Channel	Average STBs count for Channel

13.2 *What should be the method of calculation of subscription numbers for each channel/ bouquet? Should subscription numbers for the day be captured at a given time on daily basis?*

Response: The method of calculation of subscriber numbers should be the "monthly average subscriber level" as described in Schedule II the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012. The subscriber numbers should be captured at midnight. It is submitted that the existing framework adequately protects the interest of all stakeholders and does not require review. It is further submitted that, there may be an apprehension on the part of the Broadcasters that a channel may be activated after the first day of the month and thereafter deactivated before the last day of the month, resulting in such subscriber number not being reflected in the Report. With regard to the same, it is submitted that during the Audit of the DPO, any such

manipulation will be detected and there is no requirement for daily subscriber level reports.

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

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

Response: In response to Issue No. 13.3 and 13.4, it is submitted that there is need to review the Audit Methodology. As mentioned above, the Regulator should publish/ prescribe a list of Auditors, who can conduct the Audit. Out of the panel, the Broadcasters and the DPO can mutually decide on Auditor for a specific assignment. It is submitted that the Auditor can audit the system of the DPO either once or twice a year. However, instead of doing an Audit on the request of a particular Broadcaster, it can Audit the entire system and subscriber reports etc. qua all pay channels at one go for a period of 6 months/ 1 year. The Report regarding each Broadcaster can thereafter be shared with the concerned Broadcaster. In this manner, the current scenario in which there is much wastage of time and resources of the DPO towards Audit can be avoided. Furthermore, as the Audit would be done by the Agency prescribed by the Regulator rather than a representative of a party, the scope for disputes would be drastically reduced.

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

Response: It is submitted that the existing Regulatory mechanism adequately and sufficiently covers the interest of all stakeholders. In the event, a DPO does

not provide the subscriber report, within the stipulated time a notice for disconnection of signals can be issued. Furthermore, once the requirement of issuance of public notice's is dispensed with, there would be no cost involved in issuing a notice, therefore, the same could be done by the Broadcaster without any financial implication.

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

Response: It is submitted that the existing Regulatory mechanism adequately and sufficiently covers the interest of all stakeholders. It is submitted that incorrect Reporting of Subscriber figures by a DPO, is a contractual breach, the penalty for which is adequately prescribed in the contract itself. Furthermore, all Interconnection Agreements between the Broadcaster and DPO contain provisions regarding incorrect reporting of subscriber numbers and the mechanism for compensation in the event the same occurs, thereby adequately protecting the interests of the Broadcasters.

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

Response: No. It is submitted that no third party can be involved in generation of subscription reports as the contents of the subscription reports are highly confidential and the disclosure of which could result in severe financial and business losses to the DPO and/ or Broadcaster. It is submitted that there are grave concerns regarding data secrecy, as also compatibility issues with regard to the different systems being utilized by the DPOs making such a system unfeasible and unworkable.

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

Response: It is submitted that in the event the Response to Issue No. 13.3 and 13.4 is accepted by the Regulator, the Audit Fee can be shared equally between all stakeholders, resulting in lower costs. For eg.: If a DPO is transmitting signals of 4 pay broadcasters, the Audit Fee can be divided equally between all i.e. 20% each.

Issue 14: - DISCONNECTION OF SIGNALS OF TV CHANNELS

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

14.2 *If yes, what should be the notice period?*

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

Response: It is submitted in Response to Issue No. 14.1, 14.2 and 14.3 that the existing Regulatory framework sufficiently and adequately deals with the interests of all stakeholders and does not require any modification. It is submitted that a common time period for all eventualities would not be practicable nor possible. For e.g. If the up linking/ downlinking permission of a channel is cancelled, or a channel is banned by the Government, a DPO has no option but to immediately stop re-transmission of such channel. Furthermore, cases of closure of business cannot be equated with breach of contractual obligations.

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

15.1 *Whether the regulation should specifically prohibit, the broadcasters and DPOs from displaying the notice of disconnection, through OSD, in full or on a partial part of the screen?*

Response: Yes. It is submitted that the OSDs, either full or partial, interfere with the TV watching experience of the end-consumer, who has not committed any default. It is submitted that the Regulator has already issued a direction in this regard, however the same should also be incorporated within the Regulations.

15.2 *Whether the methodology for issuing notice for disconnection prescribed in the regulations needs a review? If yes, then should notice for disconnection to consumers be issued by distributor only?*

Response: Yes. It is submitted by the Federation that the Regulatory requirement of Public Notice can be dispensed with, as the same only results is additional costs to the Service Provider and most times, the same is not even read by the consumers, in whose interest the same has been issued. It should be mandated that in addition to issuance of a letter notice as contemplated in Clause 6.1 of the 2012 Regulations, a mandatory scroll has to be run for the duration of the Notice period. It should however, be mandated that the scroll should only be at the bottom of the screen and not interfere with the TV viewing experience of the end-consumer.

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

Response: Yes.

Issue 16:- PROHIBITION OF DPO AS AGENT OF BROADCASTERS

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

Response: Yes. It is submitted that incorporating such a prohibition would be consonance of law laid by the Hon'ble Supreme Court in ***Star India (P) Ltd. v. Sea TV Network Ltd., (2007) 4 SCC 656*** wherein it has been held as under:

> "6.5. In our view the Tribunal, has therefore, correctly drawn a distinction between what is called as "making available of TV channels" and retransmission of TV channels under the above two clauses. Keeping in mind the above distinction it is clear that although a broadcaster is free to appoint its agent under the proviso to clause 3.3 such an agent cannot be a competitor or part of the network, particularly when under the contract between the broadcaster and the designated agent-cum-distributor exclusivity is provided for in the sense that the signals of the broadcaster shall go through the cable network owned and operated by such an agent-cum-distributor which in the present case happens to be Moon Network Pvt. Ltd."

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

Response: Yes. It is in the interest of transparency and non-discrimination that that Broadcasters Report such Agreements to the Regulator, who can thereafter examine issues of conflict of interest.

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

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

Response: Yes. It is submitted that Hon'ble TDSAT in its judgment dated 07.12.2015 in Petition No. 295(C) of 2014 – Noida Software Technology Park Ltd. vs. MediaPro Enterprise India Pvt. Ltd. & Ors. has held as under:

> *"Any difference in distribution technology can be accounted for in the technological terms stipulated in the RIO but so far as commercial terms are concerned, it is difficult to see a HITS operator as different from a Pan-India MSO and in our considered view a HITS operator, in regard to the commercial terms for an interconnect arrangement has to be taken at par with a pan-India MSO and must, therefore, receive the same treatment."*

It is submitted that once it has been held that a HITS Operator is comparable to a Pan-India MSO, thereafter all extant provisions/ regulations applicable to pan-India MSO should also be made applicable to HITS Services. There is no reason or justification for treating HITS services on a different platform, especially in matters of Interconnection.

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

Response: It is submitted that the Response to Issue No. 17.1 be in reply to this issue as well. It is submitted that there is no requirement for changes in the existing MIA and SIA, the same can mutatis mutandis be applied to HITS Services as well.

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

Issue 18:- TIME PERIOD FOR PROVIDING SIGNALS OF TV CHANNELS

18.1 *Whether the time periods prescribed for interconnection between MSO and LCO should be made applicable to interconnection between HITS/IPTV operator and LCO also? If no, then suggest alternate with justification.*

18.2 *Should the time period of 30 days for entering into interconnection agreement and 30 days for providing signals of TV channels is appropriate for HITS also? If no, what should be the maximum time period for provisioning of signal to LCOs by HITS service provider? Please provide justification for the same.*

Response: It is submitted that the Response to Issue No. 17.1 and 17.2 be read in response to Issue No. 18.1 and 18.2 as well. It is submitted that the extant provisions relating to Interconnection between MSOs and LCOs should be mutatis mutandis applied to HITS Services as well.

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

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

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

Response: It is submitted that the Response to Issue No. 17.1 and 17.2 be read in response to Issue No. 19.1 and 19.2 as well. It is submitted that the extant provisions relating to fall back i.e. SIA between MSOs and LCOs should be mutatis mutandis applied to HITS Services as well.

Issue 20: - NO-DUES CERTIFICATES

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

Response: Yes. It is submitted that the maximum time period for providing a no-dues certificate should be 21 days. The notice period of 21 days, would be in terms of the existing Regulatory framework, wherein prior to disconnection of signals a service provider is to give a Notice Period of 21 days. Furthermore, issuance of no-dues certificate on demand would help in reduction of disputes, wherein LCOs migrate from one MSO/ HITS to another.

Issue 21: - PROVIDING SIGNALS TO NEW MSOs

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

Response: Yes

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

Response: Yes

Issue 22: - SWAPPING OF SET TOP BOX

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

Response: Yes. It is submitted that at present LCOs, without even issuance of statutory notice's and without returning the STBs and clearing the dues of the MSO migrate to another MSO, resulting in huge losses to the past MSO. There is an urgent need to stop such illegal and unlawful practices by the LCOs, which is resulting in wasting of valuable infrastructure and equipment. It is submitted that on one hand due to shortage of STBs, there is a delay in implementation of DAS Phase III and on the other LCOs continue to illegally retain the STBs of the past MSO.

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

Response: Yes

Issue 23: - ANY OTHER RELEVANT ISSUE THAT THEY MAY DEEM FIT IN RELATION TO THIS CONSULTATION PAPER

Response: No

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