

PREFACE

The Government of India had issued a Notification No.39 dated 09.01.04 whereby the scope of the expression 'telecommunication services' (defined in Section 2 of the Telecom Regulatory Authority of India Act, 1997 as amended) was expanded to include the broadcasting services and cable services also. Consequently the Telecom Regulatory Authority of India was entrusted with the basic task of regulation of cable and broadcasting services in the country.

2. The TRAI issued Tariff Orders and Regulations to regulate the industry. The Tariff Orders were issued with the objective of regulating the price paid by the consumers for Cable TV services. The Interconnect Regulations were issued to ensure non-discriminatory access to content to all distributors of television channels and to safeguard the interests of consumers in case of disconnection of signals to a service provider in case of a dispute.

3. The Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004 and The Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order 2004 were issued more than one year ago. Some new issues have cropped up during this period and some issues have arisen due to implementation of Interconnect Regulations. There have also been requests for review/ amendment of the Interconnect Regulations. The Authority has, therefore, begun its process of examination of the relevant issues.

4. The enclosed Consultation Note is the first step towards a meaningful examination of the relevant issues and would provide the necessary platform for discussing them. The comments and other inputs provided by the stakeholders would enable the Telecom Regulatory

Authority of India to formulate a more detailed Consultation Paper with a view to evolving appropriate policies for the orderly growth of the cable and broadcasting services in the country. The Consultation Note has already been placed on TRAI's website (www.trai.gov.in).

5. Written responses on this Consultation Note may be furnished to the Secretary, Telecom Regulatory Authority of India by 7th April, 2006. It would be appreciated if the response is accompanied with an electronic version of the text through email at trai07@bol.net.in. The fax number of TRAI is 011-26713442.

(Pradip Baijal)
Chairman, TRAI

New Delhi
Dated March 21, 2006.

CONSULTATION NOTE ON SOME ISSUES RELATING TO BROADCASTING AND CABLE SERVICES

This Consultation Note seeks to address the issues arising out of the implementation of Interconnect Regulations. This Paper is in two Sections. Section I deals with the background of the issue; and Section II deals with the issues involved.

Section I

Background

1. The Government of India had issued a Notification No.39 dated 09.01.04 whereby the scope of the expression 'telecommunication services' (defined in Section 2 of the Telecom Regulatory Authority of India Act, 1997 as amended) was expanded to include the broadcasting services and cable services also. Consequently the Telecom Regulatory Authority of India was entrusted with the basic task of regulation of cable and broadcasting services in the country.

2. The TRAI issued Tariff Orders and Regulations to regulate the industry. The Tariff Orders were issued with the objective of regulating the price paid by the consumers for Cable TV services. The Interconnect Regulations were issued to ensure non-discriminatory access to content to all distributors of television channels and to safeguard the interests of consumers in case of disconnection of signals to a service provider in case of a dispute. The Interconnect Regulations primarily pertain to non-CAS areas as the issues and disputes in the non-CAS areas are very different from those in CAS areas. Another regulation was made for registration of all Interconnect Agreements entered into by the broadcasters.

3. More than one year has passed since The Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004 and The Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order 2004 were issued. The experience of this period has shown that some issues relating to the Tariff Order and Interconnect Regulations require clarification. Some disputes and litigation have also arisen on account of implementation of Interconnect Regulations. Some stakeholders have also requested for review/ amendment of the Tariff Order and Interconnect Regulations.

4. In view of the foregoing discussion it is felt that there is a need to expand the scope of Interconnect Regulations so as to minimize the doubts and disputes/ litigation as well as to amend the Tariff Order.

Section II

Issues involved

5.a) The provisions of clause 4.1 of The Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004 provide that

*“No broadcaster or multi system operator shall disconnect the TV channel signals to a distributor of TV channels without giving **one month** notice indicating the brief reasons for the proposed action.*

*Provided that in case a distributor of TV channel is re-transmitting signals for which he/she is not authorized and thereby affecting the commercial interest of the concerned broadcaster or multi system operator, the notice period shall be **two working days** giving reasons to the concerned distributor of TV channel for such action”.*

Thus two notice periods have been prescribed in the regulation. This leads to disputes regarding notice period applicable in specific cases. For example

- cases where the broadcaster claims that the MSO/ LCO is providing signals outside the authorized area;
- cases where the agreement has expired and no valid agreement is in force;
- cases where a new LCO has joined an MSO;
- cases in which there is no written agreement.

Thus the different definitions of piracy/ unauthorized retransmission of signals adopted by different service providers lead to disputes.

- b) The provisions of clause 4.2 of The Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004 provide that

*“Broadcaster/multi system operator shall inform the consumers about the dispute to enable them to protect their interests. Accordingly, the notice to discontinue signal shall also be given in two local newspapers in case the distributor of TV channels is operating in local area and in two national papers in case the distributor of TV channels is providing services in a wide area. Alternatively consumers can be informed through **scroll** on the concerned channel(s). Where a Broadcaster or a Multi System Operator decides to give this notice through a scroll the Multi System Operator or the Cable Operator, as the case may be, must carry the scroll in the concerned channel(s)”.*

Thus Broadcaster/multi system operator has the option to inform the consumers about the dispute by way of a notice to discontinue signal in two local/ national newspapers or by way of a scroll on the concerned channels. The issues that arise out of this requirement are:

- Sometimes, the notice to disconnect is given to the service provider however the public notice is not issued simultaneously. As a result the viewers get less than the stipulated time for protecting their interests;

- Sometimes there is a dispute between the service providers as to whether the scroll was run or not.
- c) The service providers in non-CAS areas enter into interconnection agreements on the basis of negotiated subscriber base. The agreements between service providers have provision regarding revision of subscriber base. However the periodicity of revision of subscriber base is often a matter of dispute. At present there is no mechanism/ methodology to determine the increase or reduction in subscriber-base.
- d) The term “Multi System Operator” has been defined in The Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004 as under:-

“multi system operator” means any person who receives a broadcasting service from a broadcaster and/or their authorized agencies and re-transmits the same to consumers and/or re-transmits the same to one or more cable operators and includes his/her authorised distribution agencies”.

Whether any minimum threshold of the number of subscribers and other parameters should be specified for a Cable Operator to be defined as a “Multi System Operator” and for being entitled to receive signals directly from broadcasters.

- e) The provisions of clause 3.4 of The Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004 provide that

“Any agent or any other intermediary of a broadcaster/multi system operator must respond to the request for providing signals of TV channel(s) in a reasonable time period but not exceeding thirty days of the request. If the request is denied, the applicant shall be free to approach the broadcaster/multi system operator to obtain signals directly for such channel(s)”.

Thus any agent or any other intermediary of a broadcaster/multi system operator must respond within thirty days of the request for providing signals of TV channel(s). However, there are complaints that even though the agent/ intermediary of the Broadcaster/multi system operator responds within the stipulated time, the distributors of TV channels are asked to furnish irrelevant details just to delay the matter.

- f) The interconnection agreements are normally valid for one year. Renewal of agreements is not done before the expiry of earlier agreement leading to allegations of unauthorized transmission/pressure tactics.
- g) Clause 4 of The Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order 2004 lays down the reporting requirement as under:-

“The broadcasters of such new pay channel(s) that have been introduced after 26-12-2003 or of any channel(s) that was a free to air channel on 26-12-2003 is/are converted to a pay channel subsequently, shall furnish to the Authority information in respect of charges for these channels in Schedule I of this Order. This information shall be furnished within seven days of coming into force of this order or the

launch of new pay channel(s)/conversion of free to air channel (s) to pay channels, whichever is applicable”.

It has been represented that the information regarding conversion of a FTA channel into a Pay channel should be given in advance.

6. Inputs are requested on the above issues and any other related matters. In all cases the gist of the issue to be raised in the consultation paper should be augmented by a brief explanation of the problem and how it can be solved by amending or expanding the regulation.

7. The Authority invites written responses from all interested parties by 7th April, 2006. It would be appreciated if the response is accompanied with an electronic version of the text through email. Written comments on the issues raised may please be furnished to Secretary, TRAI. For any further clarification on the matter Secretary TRAI may be contacted on rstrai@gmail.com (Telephone No.011-26167448) or Advisor (B&CS) on rakesh.kacker@gmail.com (Telephone No.011-26713291). The Fax number of TRAI is 011-26713442.