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**THE TELECOMMUNICATION (BROADCASTING AND CABLE
SERVICES) INTERCONNECTION (FOURTH AMENDMENT)
REGULATION, 2007**

No. 9 of 2007

TELECOM REGULATORY AUTHORITY OF INDIA

NOTIFICATION

New Delhi, the 3rd September, 2007

F. No. 4-54/ 2007 - B&CS.-- In exercise of the powers conferred by section 36, and by sub-clauses (ii), (iii), (iv) and (v) of clause (b) of sub-section (1) and sub-section (2) of section 11 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), read with notification of the Government of India, in the Ministry of Communication and Information Technology (Department of Telecommunication) No.39,-----

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

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

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

1. (1) These regulations may be called the Telecommunication (Broadcasting and Cable Services) Interconnection (Fourth Amendment) Regulation, 2007.

(2) They shall come into force on the 1st day of December, 2007.

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

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

‘(aa) “Act” means the Telecom Regulatory Authority of India Act 1997 (24 of 1997);’

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

‘(ia) “commercial subscriber” means any subscriber who receives a programming service at a place indicated by him to a service provider and uses signals of such service for the benefit of his clients, customers, members or any other class or group of persons having access to such place;

(iii) in sub-clause (k), the words “in KU band” shall be omitted;

(iv) after sub-clause (k), the following sub-clauses shall be inserted, namely

:-

‘(ka) “direct to home service” means distribution of multi channel TV programmes by using a satellite system by providing TV signals directly to subscriber’s premises without passing through an intermediary such as cable operator or any other distributor of TV channels;

(kb) “direct to home subscriber” means a subscriber who receives the signals of a direct to home service;’

(v) after sub-clause (m), the following sub-clauses shall be inserted, namely

:-

(ma) “ordinary subscriber” means any subscriber who receives a programming service from a service provider and uses the same for his domestic purposes;’

‘(mb) “pay channel” means a channel for which fees is to be paid to the broadcaster by the person receiving the signals from the broadcaster, for its re-transmission through electromagnetic waves through cable or through space intended to be received by the general public either directly or indirectly;

(mc)“programme” means any television broadcast and includes-

(i) exhibition of films, features, dramas, advertisements and serials through video cassette recorders or video cassette players;

(ii) any audio or visual or audio-visual live performance or presentation, and the expression ‘programming service’ shall be construed accordingly;

(vi) after sub-clause (n), the following sub-clause shall be inserted namely

:-

‘(na)“subscriber” means a person who receives the signals of a service provider at a place indicated to the service provider by him without further transmitting it to any other person and includes ordinary subscribers and commercial subscribers unless specifically excluded;’

3. In regulation 13 of the principal regulation,---

(a) in sub-regulation 13.1, in the opening portion beginning with the figures and words “13.1. All broadcasters shall submit.....”, the following shall be substituted, namely:-

“Reference Interconnect Offers for non-addressable systems.

13.1 All broadcasters shall submit----”;

(b) after sub-regulation 13.2, the following shall be inserted, namely:-

“13.2A Reference Interconnect Offers for direct to home service.

13.2A.1 Every broadcaster, providing broadcasting services before the date of commencement of the Telecommunication (Broadcasting and Cable Services) Interconnection (Fourth Amendment) Regulation, 2007 (9 of 2007) and continues to provide such services after such commencement shall, within ninety days from the date of such commencement, intimate to all the direct to home operators existing on that date and coming into existence within the said period of ninety days, its Reference Interconnect Offer specifying, *inter-alia*, the technical and commercial terms and conditions for interconnection for the direct to home platform, including the following terms and conditions, namely:-

(a) rates of the channels on a-la-carte basis and the rates of bouquets offered by the broadcaster to the direct to home operator;

(b) details of discounts, if any;

(c) payment terms;

(d) security and anti-piracy requirements;

(e) subscriber reports based on subscriber management system and audit;

(f) tenure of agreement;

(g) termination of agreements.

13.2A.2 Every broadcaster shall publish a copy of the Reference Interconnect Offer, referred to in sub regulation 13.2A.1, on its website:

Provided that any broadcaster, who had intimated or published on its website, before the commencement of the Telecommunication (Broadcasting and Cable Services) Interconnection (Fourth Amendment) Regulation, 2007 (9 of 2007), any Reference Interconnect Offer, shall modify such Reference Interconnect Offer so as to be in conformity with the Reference Interconnect offer referred to in regulation 13.2A.1 and publish the same as required under this sub-regulation.

13.2A.3 Every broadcaster, who begins to provide broadcasting services after the date of commencement of the Telecommunication (Broadcasting and Cable Services) Interconnection (Fourth Amendment) Regulation, 2007 (9 of 2007) shall, within ninety days of such commencement or before providing such services, whichever is later, intimate to all the direct to

home operators existing on that date, its Reference Interconnect Offer specifying therein the the technical and commercial terms and conditions referred to in sub-regulation 13.2A.1 and publish the same, before or simultaneously with such intimation, on its website.

13.2A.4 Every direct to home operator, who has been granted a licence after ninety days from the date of commencement of the Telecommunication (Broadcasting and Cable Services) Interconnection (Fourth Amendment) Regulation, 2007 (9 of 2007), may request a broadcaster for being provided with a copy of Reference Interconnect Offer of such broadcaster and such broadcaster shall, within ten working days from the date of receipt of such a request, provide the same to the direct to home operator.

13.2A.5 Every broadcaster, who makes any modification to its Reference Interconnect Offer referred to in sub-regulation 13.2A.1 or sub-regulation 13.2A.3 , shall, immediately after such modifications, intimate to all the direct to home operators such modifications so made to its Reference Interconnect Offer:

Provided that all such modifications shall be published and exhibited on its website in the same manner as the Reference Interconnect Offer had been intimated to the direct to home operators and published on the website of the broadcasters.

Agreements between the broadcasters and direct to home operators.

13.2A.6 (1) The Reference Interconnect Offer of a broadcaster referred to in clause 13.2A.1 or 13.2A.3 or 13.2A.5, as the case may be, and intimated to the direct to home operators and published by the broadcaster on its website shall be the basis for all interconnection agreements to be entered into between the broadcaster and direct to home operators:

Provided that the broadcaster may enter, on non discriminatory basis, into agreements with different direct to home operators modifying the Reference Interconnect Offer on such terms and conditions as may be agreed upon between them :

Provided further that in case a broadcaster had entered, before the commencement of the Telecommunication (Broadcasting and Cable Services) Interconnection (Fourth Amendment) Regulation, 2007 (9 of 2007), into an agreement with any direct to home operator and publishes, subsequently, its Reference Interconnect Offer (including its modifications) under said regulations, such broadcaster shall, after publication of the said offer, give an option to such direct to home operator to either enter into an agreement in accordance with these regulations or continue with the agreement entered before such commencement till its validity.

(2) No broadcaster, who had, before the commencement of the Telecommunication (Broadcasting and Cable Services) Interconnection (Fourth Amendment) Regulation, 2007 (9 of 2007), entered into an agreement with a direct to home operator and such direct to home operator has given an option under sub-regulation (1), to enter into an agreement with such broadcaster in accordance with the Reference Interconnect Offer published after such commencement, shall disconnect signals (except in accordance with these regulations or any other law for the time being in force) during the period beginning from the date on which such operator gave the option and ending on the date on which such agreement was entered in accordance with the Reference Interconnect Offer or the date of expiry of earlier agreement, whichever was earlier.

(3) No broadcaster, who had, before the commencement of the Telecommunication (Broadcasting and Cable Services) Interconnection (Fourth Amendment) Regulation, 2007 (9 of 2007), entered into an agreement with a direct to home operator and such direct to home operator has given an option under sub-regulation (1), to continue with the agreement entered, before such commencement, with such broadcaster, shall disconnect signals of such operator (except in accordance with these regulations or any other law for the time being in force) during the validity of such agreement.

Time limit for entering into agreements between the broadcasters and direct to home operators.

13.2A.7 (1) Every broadcaster shall, within a period of forty-five days from the date of receipt of request from a direct to home operator for entering into interconnection agreement or for modification of an interconnection agreement already entered, shall enter into an agreement, or, modify such agreement already entered, with such direct to home operator, in accordance with the Reference Interconnect Offer published under these regulations.

(2) In case a broadcaster intimates any modification as referred to in regulation 13.2A.5, the agreement referred to in sub-regulation (1) shall be modified at the option of the direct to home operator, in the same manner as that of entering into of an agreement under sub-regulation (1).

13.2A.8 In case the broadcaster and the direct to home operator fail to enter into an interconnection agreement, then both of them may jointly, without prejudice to the provisions of section 14A of the Act, at any time, request the Authority to facilitate in the process for entering into an interconnection agreement.

13.2A.9 Nothing contained in clause 13.2A.8 shall be construed to take away any legal right conferred upon the broadcaster and the direct to home operator under any law for the time being in force and either of them may, at any time during the facilitation process, exercise such right conferred upon them under any law for the time being in force.

13.2A.10 Nothing contained in clause 13.2A.8 or 13.2A.9 shall apply to any matter or issue for which ---

- (a) any proceedings are pending before any court or tribunal under the Act or any other law for the time being in force; or
- (b) a decree, award or an order has already been passed by any competent court or tribunal or Authority, as the case may be.

Compulsory offering of channels on a-la-carte basis.

13.2A.11 It shall be mandatory on the part of the broadcasters to offer pay channels on a-la-carte basis to direct to home operators and such offering of channels on a-la-carte basis shall not prevent the broadcaster from offering such pay channels additionally in the form of bouquets:

Provided that no broadcaster shall, directly or indirectly, compel any direct to home operator to offer the entire bouquet or bouquets offered by the broadcaster to such operator in any package or scheme being offered by such direct to home operator to its direct to home subscribers.

13.2A.12 The rates for pay channels on a-la-carte basis and rates for bouquets shall be subject to the following conditions, namely:-

- (a) The sum of the a-la-carte rates of the pay channels forming part of such a bouquet shall in no case exceed one and half times of the rate of that bouquet of which such pay channels are a part; and
- (b) the a-la-carte rates of each pay channel, forming part of such a bouquet, shall in no case exceed three times the average rate of a pay channel of that bouquet of which such pay channel is a part and the average rate of a pay channel of the bouquet be calculated in the following manner, namely:-
If the bouquet rate is Rs. 'X' per month per subscriber and the number of pay channels is 'Y' in a bouquet, then the average pay channel rate of the bouquet shall be Rs. 'X' divided by number of pay channels 'Y'.

13.2A.13 Every direct to home operator, who, after the commencement of the Telecommunication (Broadcasting and Cable Services) Interconnection (Fourth Amendment) Regulation, 2007 (9 of 2007), opts for one bouquet or more bouquets (hereafter referred to as the opted bouquet) offered by a broadcaster, may decide the packaging of the channels from such bouquet

or bouquets which may be offered by it to its direct to home subscribers:

Provided that in a case where a direct to home operator--

(a) does not offer such opted bouquet as a whole to its direct to home subscribers but offers to such subscribers only certain channels comprised in such opted bouquet ; or

(b) packages the channels comprised in such opted bouquet in a manner resulting in different subscriber base for different channels comprised in such opted bouquet,

then, the payment, to the broadcaster for such entire opted bouquet by the direct to home operator, shall be calculated on the basis of the subscriber base for the channel which has the highest subscriber base amongst the channels comprised in that bouquet.”.

(c) for sub regulation 13.3 the following sub-regulation shall be substituted, namely

“13.3 In case the Authority is of the opinion that the Reference Interconnect Offer requires modifications so as to protect the interests of service providers or consumers of the broadcasting sector and cable sector, or to promote or ensure orderly growth of the broadcasting sector and cable sector or the Reference Interconnect Offer has not been prepared in accordance with the provisions of these regulations, it may, after giving an opportunity of being heard to the concerned broadcaster, require the concerned broadcaster to modify the said offer and such broadcaster shall make such modifications and publish, within fifteen days of receipt of requirement for the modifications, the said offer after incorporating such modifications.”.

(R. N. Choubey)
Principal Advisor (B&CS)

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

Note.2-----The Explanatory Memorandum explains the objects and reasons of the Telecommunication (Broadcasting and Cable Services) Interconnection (Fourth Amendment) Regulation, 2007.

EXPLANATORY MEMORANDUM**A. Background**

1. In a direct to home service (hereinafter referred to as DTH service), a large number of television channels are digitally compressed, encrypted and beamed from very high power satellites. The programmes transmitted through DTH can be directly received at homes by installing small dish antennas at convenient locations in the buildings. DTH service transmission does not require any commercial intermediary, since an individual user is directly served by the direct to home operator (hereinafter referred to as DTH operator). However, a digital receiver usually referred to as set top box is required to receive the multiplexed signals and view them on a Television set.

2. In India, DTH service is a comparatively recent entrant as compared to cable transmission. DTH is an addressable system and can cover the entire country. The authority to issue DTH licence vests with the Government of India (Ministry of Information & Broadcasting). Leaving aside the Doordarshan as a public service broadcaster, two DTH operators have commenced their operations after obtaining licence from the Government of India (Ministry of Information & Broadcasting). These are M/s ASC Enterprises (under the brand name of Dish TV) and M/s Tata Sky Ltd. Dish TV had launched its services in the month of October 2003 and Tata Sky launched its service in the month of August 2006. The two DTH operators offer several pay channels along with Free to Air channels and the number of their subscribers in the country is estimated to be about 3.2 million at present. As compared to this, the other addressable delivery platform, namely, Conditional Access System (CAS) for cable television has about 5.5 lakh subscribers in the CAS notified areas of the country. The Doordarshan provides free to air channels on its DTH service (called DD Direct) for which the subscribers have to buy the dish and the set top box from the open market. Since the Doordarshan signals are unencrypted and free to air, no accurate assessment is available about the number of viewers. Recently, licences for DTH service have also been given to M/s. Sun TV Ltd. and M/s. Reliance Blue Magic Ltd, and two more potential DTH operators are awaiting the licence.

3. As pointed out in the consultation paper, availability of content on the DTH platform was limited till very recently. Hence, even though DTH services were available in the country, these were not offering any real competition to the cable services. The situation has changed in the last one year with the availability of popular content on the DTH platform. In view of the increasing competition between DTH and cable TV for providing pay TV services, it has become necessary to examine the issue of level playing field for the two platforms.

4. With the roll out of Conditional Access System (CAS) in the notified areas of the three metropolitan cities of Delhi, Mumbai and Kolkata on the 31st December, 2006, addressability in distribution of cable television services has been extended beyond Chennai, where CAS had been implemented in 2003. Roll out of CAS in the notified areas of the three metropolitan cities of Delhi, Mumbai and Kolkata was preceded by putting in place a regulatory framework for CAS by the Telecom Regulatory Authority of India (hereinafter referred to as the Authority). The regulatory framework for CAS primarily consisted of Quality of Service Regulation for cable services in CAS areas, Standard Interconnection Agreements specified through an amendment to Interconnection Regulations dated the 10th December, 2004 and a Tariff order governing the prices of Basic Service Tier charges in CAS areas, ceiling on pay channel charges and standard tariff plans for set top boxes. Accordingly, there have been demands from the subscribers and some service providers for a similar regulatory framework for DTH service.

5. The DTH service providers have been representing that their agreements with some of the broadcasters force them to carry unpopular content also and that this leads to higher charges for all consumers. It has been pointed out by the DTH Operators that they had to sign the agreements with such clauses with the broadcasters in the consumer interest in the absence of any standard agreement and effective interconnect mechanism. The DTH service providers also requested the Authority to take action in the matter. One of the DTH operators has requested the Authority to formulate a “standard subscription agreement” for DTH distribution, which is uniformly applicable to all the broadcasters.

6. The regulatory framework for cable services in CAS areas, laid down at the time of roll out of CAS in notified areas of the three metropolitan cities of Delhi, Mumbai and Kolkata, included Standard Interconnection Agreements specified through an amendment to Interconnection Regulations dated the 10th December, 2004. In respect of cable services outside CAS areas (in non-addressable mode), the Interconnection Regulations dated the 10th December, 2004 were amended on the 4th September, 2006 whereby the broadcasters are now required to file their Reference Interconnect Offers. Accordingly, there have been demands from the existing DTH operators and potential operators for an effective interconnect mechanism for DTH services to ensure availability of content on reasonable terms.

B. Consultation Process

7. Sub-clauses (ii) & (iii) of clause (b) of sub-section (1) of Section 11 of the Telecom Regulatory Authority of India Act, 1997 (hereinafter referred to as the TRAI Act, 1997), provide for the Authority to fix the terms and conditions of inter-connectivity between the service providers and to ensure technical compatibility and effective inter-connection between different service providers. Sub-section (4) of Section 11 of the TRAI Act, 1997 requires the Authority to ensure transparency while exercising its powers and discharging its functions. Accordingly, the Authority decided to go in for a consultation process before providing for an effective interconnect mechanism for DTH services.

8. The process of consultation was initiated by circulating a consultation paper on the issues relating to DTH on the 2nd March, 2007 inviting inputs from the stakeholders. Responses were received from 27 stakeholders/representatives. An open house discussion was also held on the 18th May, 2007 in Bhubaneswar with representatives of stakeholders to further deliberate on various issues raised in the consultation paper.

C. Issues for Consultation

9. The issues which were raised for consultation in the consultation paper are as under:-

- (i) Should the interconnection agreements between broadcasters and DTH service providers be regulated?
- (ii) If yes, whether the Authority should formulate and mandate “Standard Interconnection Agreements” for provision of content by the broadcasters to DTH platforms or should the Reference Interconnect Offer (RIO) methodology be adopted for the purpose?
- (iii) Is there any other method by which these agreements should be regulated?

10. The consultation paper also posed following issues regarding “must carry” provisions in the licence agreement and regulation of carriage fee for DTH services:-

- (i) Should the DTH licence conditions be amended to do away with the clause requiring provision of access to various content providers/channels on a non-discriminatory basis?
- (ii) Alternatively, whether carriage of only popular content should be mandated on the basis of viewer ship share as determined by independent monitoring agencies?
- (iii) Should the carriage fee for DTH platforms be regulated? If so, how should it be done?

D. Analysis of the responses received during the consultation process

11. The responses received during the consultation process have been examined and analyzed in detail in the background of the above basic approach. While comments received from all the stakeholders have been considered, it is important to remember that in issues relating to interconnection, the subscribers, the DTH operators and the broadcasters are the directly affected parties. Other stakeholders like cable operators and multi system operators are not directly affected by interconnection framework for DTH services. The gist of comments received from the stakeholders during the consultation process had been placed on the website of the Authority. The succeeding paragraphs briefly cover the issue-wise comments received from various stakeholders and set out the basis and rationale for the regulation.

D.1 Interconnection Agreements for DTH

12. While the comments received from the existing and potential DTH Operators were along the expected lines with all of them suggesting standard interconnection agreements as the desired regulatory framework, the broadcasters were divided on the issue. Most of the broadcasters were in favour of no regulation of interconnection agreements. One broadcaster favoured the standard interconnection agreements methodology and another recommended the Reference Interconnect Offer route. The consumer organisations and individuals were of the view that there is a need for regulating the interconnection agreements between broadcasters and DTH service providers through standard interconnection agreements. The Cable operators favoured the Reference Interconnect Offer.

D.2 Must Carry/ Carriage Fee

13. Most of the existing and potential DTH Operators were of the view that the clause requiring provision of access to various content providers/channels on a non-discriminatory basis should be retained. Certain major broadcasters also expressed a similar view. However, certain smaller broadcasters wanted allocation of at least five channels to each broadcaster by a DTH Operator. This is understandable, because for a

broadcaster with less than five channels in his stable, such a formulation automatically implies “must carry”, which is not the case with the existing clause requiring provision of access to various content providers/channels on a non-discriminatory basis. The cable operators, an MSO and one of the potential DTH Operators opined in favour of removal of the clause requiring provision of access to various content providers/channels on a non-discriminatory basis.

14. As regards regulation of carriage fee, there was near consensus that it should be left to the market forces. However, one of the potential DTH Operators recommended placing a ceiling on the amount of carriage fee. One of the smaller broadcasters and one association of the cable operators also wanted regulation of carriage fee.

E. Rationale for making amendment to the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004 (13 of 2004)

15. The Authority noted the fact that the two existing DTH Operators approached the Hon’ble Telecom Disputes Settlement and Appellate Tribunal (TDSAT) for getting access to popular content for their DTH platforms from some broadcasters in spite of clause 3.2 of the Interconnection Regulations clearly laying down that “Every broadcaster shall provide on request signals of its TV channels on non-discriminatory terms to all distributors of TV channels, which may include, but be not limited to a cable operator, direct to home operator, multi system operator, head ends in the sky operator...”. In the present scenario, when more players are likely to launch their DTH platforms in the near future, it would be necessary to have a regulatory framework which will facilitate the existing as well as the new DTH Operators to get access to content of their choice and to ensure that the consumers can watch the channels of their choice on the DTH.

16. With the objective of having light touch regulation, the Authority has preferred Reference Interconnect Offer (RIO) over Standard Interconnection Agreements as the way of regulating interconnection agreements. This methodology gives the broadcaster the choice of framing their “Reference Interconnect Offer (RIO)” as per their business and marketing needs, within the broad guidelines decided by the Authority in its

regulations/ directions. At the same time it is necessary for the Authority to reserve to itself the power to intervene to protect the interests of consumers or service providers, or when an RIO is not in accordance with the interconnection regulation or to ensure growth of the sector. Accordingly, the RIO methodology has been provided in the regulations for regulating the interconnection agreements between broadcasters and DTH Operators.

17. The RIO methodology has been in vogue for cable television services being distributed through non-addressable systems (in non-CAS areas). However, DTH platforms are also addressable and this would remove any ambiguity relating to the subscriber base. Moreover, if most of the important terms and conditions are covered in the Reference Interconnect Offer, then the possibility of not being able to arrive at an interconnection agreement is greatly reduced. With this objective, the important terms and conditions to be compulsorily specified in the Reference Interconnect Offer have been enumerated in the Telecommunication (Broadcasting and Cable Services) Interconnection (Fourth Amendment) Regulation, 2007. Such terms and conditions inter alia relate to rates of channels and discounts, payment terms, security and anti-piracy requirements, subscriber reports and audit, tenure of agreement and termination of agreements etc. Thus, it is clear that the major financial terms and conditions (rate, discount, payment terms, and subscriber base) shall be covered in the Reference Interconnect Offers which have been left to the market forces in DTH services while making provisions for protecting interests of all stakeholders in DTH services. The other contentious issue of security and anti piracy measures shall also be covered. Therefore, the Reference Interconnect Offers are likely to result in cutting down delays in arriving at interconnection agreements.

18. Since the number of DTH Operators seeking interconnection from the broadcasters is limited (two at present), it has been mandated that the broadcasters shall intimate their Reference Interconnect Offers to all the DTH Operators. Since licensing of DTH Operators is a continuous process, the new DTH Operators shall have a right to make a request for the Reference Interconnect Offers and be provided with a copy of the same by the broadcasters. At the same time, for ease of access and ready reference purposes, it has been made mandatory for the Reference Interconnect Offers to be published on the websites of the broadcasters. Similarly, any changes in the Reference

Interconnect Offers are also required to be communicated to the DTH operators and published on the website. The DTH operators have also been given the option to seek modifications in the existing interconnection agreements so as to be in consonance with the Reference Interconnect Offer published by a broadcaster under these regulations.

19. The Reference Interconnect Offer is only a methodology for arriving at interconnection agreements and the service providers and broadcasters can also enter into an interconnection agreement on mutually agreed terms and conditions. However, since the overriding principle is provision of signals on non discriminatory basis, the broadcaster shall be required to offer the same terms and conditions to any other DTH Operators if so requested by such other DTH Operators.

At the same time, principle of non discriminatory access implies that the DTH Operators who have already signed interconnection agreements with the broadcasters should also be given an option to enter into new interconnection agreements based on the Reference Interconnect Offer so published by the broadcaster.

20. For the Reference Interconnect Offer methodology to be an effective tool for access of content, it is important to specify a time limit within which the interconnection agreement based on the Reference Interconnect Offer shall be signed by the broadcaster with the DTH operator. Accordingly, a time limit of forty five days has been specified in the Telecommunication (Broadcasting and Cable Services) Interconnection (Fourth Amendment) Regulation, 2007.

21. The provisions relating to the situation where both parties namely the broadcaster and the DTH Operator jointly approach the Authority, requesting for facilitation of entering into an interconnection agreement, are based on similar provisions in the International Telecommunication Access to Essential Facilities at Cable Landing Stations Regulations, 2007 issued by the Authority on the 7th June, 2007. The provisions are merely for facilitation of an interconnection agreement by the Authority on a joint request of both the parties with a view to minimize litigation. These provisions do not in any way affect the legal rights and remedies available to the parties otherwise under any law for the time being in force.

22. There has been a persistent demand from the DTH service providers that Authority should facilitate access to content without the compulsion of carrying all the channels bundled together which in their view are relatively less popular. Even on a complaint relating to increase in tariff of DTH services, a DTH service provider has indicated bundling of channels as a reason for higher tariff. In this background, it was felt necessary that declaration of a-la-carte prices of channels in Reference Interconnect Offers should be mandated. Without the mandating provision of channels on a-la-carte basis, the very purpose of amendments in the existing interconnection regulation will be defeated.

23. The Hon'ble TDSAT had observed in its order dated the 31st March, 2007 in Petition No.189(C) Of 2006 in the case of Tata Sky Limited Versus Zee Turner Limited and others, while discussing clause 7.6 of the terms and conditions of the DTH licence agreement, requiring provision of access to various content providers/channels on a non-discriminatory basis, that :-

“...If a DTH operator has to take all the channels of every broadcaster, it may not be physically possible to do so. Moreover, if every channel has to be taken it means that it will have to be paid for. This will increase the cost for the DTH operator. Ultimately, the cost will get passed on to the consumer. If DTH becomes expensive consumers will keep away from it. It will not be able to compete with CAS or cable. Thus, such an interpretation of clause 7.6 may be anti consumer...”

24. Apart from increase in the cost of direct to home services to the subscribers, there is an important technical reason for mandating a-la-carte availability of channels to direct to home operators. There is a technical limitation on the number of channels that a direct to home operator can carry on its platform. Presently 270 channels are permitted under uplinking or downlinking guidelines in the country. The transponder capacity on a satellite is limited and a direct to home operator can beam around 12 channels per transponder, depending on the compression technology used. The availability of transponder space would limit the number of channels offered by the DTH service providers. Insat 4A and Insat 4B have a capacity of 12 Ku band and 12 C-band transponders each. Therefore, it is not technically possible for a direct to home operator using an Insat satellite to offer all the 270 channels. The Hon'ble TDSAT had also

observed in its order dated the 31st March, 2007 in Petition No.189(C) Of 2006 in the case of Tata Sky Limited Versus Zee Turner Limited and others, that:-

“...It is relevant and important that a DTH operator may not like to take all the channels of a particular broadcaster and exhaust its transponder capacity by taking unwanted channels. After all, the DTH operator is in business and it has to watch its business interest...”

25. However, provision of channels on a-la-carte basis also necessitates the need for regulating the relationship between the prices of channels on a-la-carte basis and bouquet prices so as to ensure that the a-la-carte choice of channels does not become illusory on account of perverse pricing of channels and bouquets of channels. Accordingly, the formulation given by the Authority for co-relation between a-la-carte and bouquet prices for commercial subscribers of cable television services has been adopted for DTH Operators also.

26. The DTH Operators also sought the freedom to package channels of bouquets opted by them. They justified their demand by citing the need for packaging the content in such a manner that helped them in localising the content to suit the local tastes of different regions of the country. The Authority has decided to permit the same. At the same time, the interests of the broadcasters have been protected by mandating that the highest subscriber base for any channel in a bouquet shall be the basis for payment to the broadcaster for the entire bouquet.

27. Clause 7.6 of the terms and conditions of the DTH licence agreement requiring provision of access to various content providers/channels on a non-discriminatory basis is within the scope of the terms and conditions of the DTH licensing provisions for which the competent authority is Government of India (Ministry of Information & Broadcasting). Therefore, amendment of the said clause is outside the purview of this regulation on interconnection issues. Accordingly, this issue is not being discussed further in this Explanatory Memorandum.

28. While making The Telecommunication (Broadcasting and Cable Services) Interconnection (Fourth Amendment) Regulation, 2007, the Authority has made all

efforts to maintain equity amongst the interests of various stakeholders, namely, the broadcasters, the DTH operators and the direct to home subscribers and to promote growth in the direct to home service, being one of the telecommunication service.