

TELECOM REGULATORY AUTHORITY OF INDIA

NOTIFICATION

New Delhi the 31st December 2004

File no 5-29/2004- B&CS - In exercise of the powers conferred upon it under Section 36 read with clauses (iv), (vii) and (viii) of Sub-section 1(b) of Section 11 of the Telecom Regulatory Authority of India Act, 1997, the Telecom Regulatory Authority of India hereby makes the following regulation, namely:

1. Short title, extent and commencement

- i) This regulation shall be called "**The Register of Interconnect Agreements (Broadcasting and Cable Services) Regulation 2004**". (15of 2004) (hereinafter called regulation)
- ii) This regulation prescribes the modalities for the maintenance of the register of interconnect agreements entered into by broadcasters, multi system operators and cable operators.
- iii) This regulation shall be applicable to:
 - a. All broadcasters, direct to home operators, head ends in the sky operators, multi system operators and cable operators;
 - b. All interconnect agreements entered into by broadcasters, direct to home operators, head ends in the sky operators, multi system operators and cable operators throughout the territory of India; and
 - c. All interconnect agreements entered into by the broadcasters, direct to home operators, head ends in the sky operators, multi system operators and cable operators before or after coming into effect of this regulation.
- iv) This regulation shall come into effect from the date of its publication in the official Gazette.

2. Definitions

In the regulation, unless the context otherwise requires:

- i. "**Act**" means the Telecom Regulatory Authority of India Act, 1997;
- ii. "**Authority**" means the Telecom Regulatory Authority of India;
- iii. "**broadcaster**" means any person who/which is providing broadcasting service and includes his/her authorised distribution agencies;
- iv. "**broadcasting service**" means the dissemination of any form of communication like signs, signals, writing, pictures, images and sounds of all kinds by transmission of electro magnetic waves through

- space or through cables intended to be received by the general public either directly or indirectly and all its grammatical variations and cognate expressions shall be construed accordingly;
- v. **"cable operator"** means any person who provides cable service through a cable television network or otherwise controls or is responsible for the management and operation of a cable television network;
 - vi. **"cable service"** means the transmission by cables of programmes including re-transmission by cables of any broadcast television signals;
 - vii. **"cable television network"** means any system consisting of a set of closed transmission paths and associated signal generation, control and distribution equipment, designed to provide cable services for reception by multiple subscribers;
 - viii. **"consumer"** means any person, who is subscriber of any broadcasting service(s) in the country;
 - ix. **"direct to home operator"** means an operator licensed by the central government to distribute multi channel TV programmes in KU band by using a satellite system directly to subscriber's premises without passing through intermediary such as cable operator or any other distributor of TV channels;
 - x. **"fee"** means any charge(s) prescribed by the Authority from time to time for inspection of the register of interconnect agreements, or for copies thereof;
 - xi. **"head ends in the sky operator"** means any person permitted by the central government to distribute multi channels TV programmes in C band by using a satellite system to the intermediaries like cable operators and not directly to subscribers;
 - xii. **"interconnection"** means the technical arrangements under which service providers connect, including through electro-magnetic signals, their equipment, networks and services to enable their customers to have access to the customers, services and /or networks of other service providers;
 - xiii. **"interconnection agreement"** for the purpose of this regulation means agreements on interconnection including standard affiliation agreement/ service contract, memorandum of understanding and all its grammatical variations and cognate expressions providing, inter alia, also the commercial terms and conditions of business between the parties to the agreement;
 - xiv. **"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;
 - xv. **"Person" includes-**
 - (i) a firm whether registered or not;
 - (ii) a Hindu undivided family;
 - (iii) a cooperative society;
 - (iv) a company registered under the company's Act, 1956;

- (v) every other association of persons whether registered or not under Societies Registration Act, 1860 (21 of 1860)
- xvi. **"register"** means the register of interconnect agreements maintained by the Authority either in the print form as a Register and/ or maintained as a data base in electronic medium or in any other form as the Authority may prescribe from time to time.
- xvii. Words and expressions used in this regulation and not defined here shall bear the same meaning as assigned to them in the Act.

3. **Contents of the register**

The register shall be maintained in two parts. Part A will contain list of all interconnect agreements with the names of interconnecting service providers, service areas of their operation and the dates of execution of such agreements and such other information which are not declared confidential in terms of clause 4 of this regulation. Part B of the register will contain information which the Authority may direct to be kept confidential and it shall not be open to inspection by the public.

4. **Confidential portion of the register:**

- i) If the Authority on the request of any party to an interconnect agreement or suo motu, is satisfied that there are good grounds for so doing, it may direct that any part of such interconnect agreement be kept confidential.
- ii) If the Authority declines the request to keep any portion of the interconnect agreement confidential, it shall record its reason for doing so and furnish a copy of its order to the party making the request. In that event, such party will have the right to make a representation and/ or to be heard by the Authority against such order.
- iii) The Authority may at any time disseminate confidential information in part B of the register if in its opinion the disclosure of the information would be in public interest. Before making such disclosure, the Authority shall afford an opportunity of hearing to the party to the interconnect agreement at whose request such information had been kept confidential.
- iv) Where there is any request for keeping any part of the interconnect agreement confidential, such part of the agreement shall remain confidential until the Authority decides otherwise in accordance with the above provisions.

5. **Registration of interconnect agreements**

- (a) All broadcasters shall register with the Authority interconnect agreements entered into by them or modifications/amendments thereto with the Authority within the time frame specified under clause 5(b).
- (b) The time limit for registering the interconnect agreement and amendments /modifications thereto shall be:

(1) **First Reporting for existing broadcasters**

February 15, 2005 for all interconnect agreements, which had been entered into prior to the date of this notification including amendments and modifications made upto December 31, 2004.

(2) **First Reporting for new broadcasters**

Thirty days from the signing of the interconnect agreements.

(3) **Quarterly Updation**

30th April, 31st July, 31st October and 31st January of the calendar year for the modification/ amendments made in all interconnect agreements as well as new interconnect agreements during the preceding quarter of January to March, April to June, July to September and October to December, respectively.

6. The broadcasters shall furnish to the Authority, information relating to the interconnect agreement in two parts namely, part A and part B, in print form alongwith a soft copy of the same in electronic form with part A in Microsoft Word software and part B in Microsoft Excel software or in any other form as may be prescribed from time to time as detailed below:
- a. Part A containing the standard affiliation agreement /service contract /memorandum of understanding, duly authenticated in duplicate.
 - b. Part B containing in tabular form the details - of individual agreements, of contracting parties with addresses, of service area covered by the agreement, of integrated receiver decoder number and terms of hiring of integrated receiver decoder, of contract number, of date of entering contract, of date of expiry of contract, of number of channels, of details of channels, of subscriber base, of charges per subscriber per month, of discounts in the case of non- Conditional Access System (CAS) areas.
 - c. Part B for CAS areas shall additionally contain details of maximum retail price of each individual channel; of bouquet of channels; of minimum subscriber guarantee if any, besides what is required to be provided in non-CAS areas under clause 6(b) of the regulation above.

Provided the Authority may from time to time prescribe such formats for seeking disaggregated information on such parts of standard affiliation agreement /service contract / memorandum of understanding referred to as part A over and above and in addition

to what is required to be furnished as part B, as may be necessary, for maintaining the register as provided in clause 3 of this regulation.

Access to the register

7. Subject to the provisions contained in clauses 3 and 4 of this regulation, the register shall be open for inspection by any member of the public on payment of prescribed fee and on his fulfilling such other conditions as may be provided for in the regulation or as may be notified by the Authority from time to time.
8. Any person seeking inspection of the register shall apply to the officer designated for the purpose by the Authority, detailing therein the information he/ she seeks.
9. The designated officer shall allow inspection of the register and also make available extracts of the relevant portions of the register on payment of such fee as may be prescribed from time to time.
10. The Authority may also allow access to the register through the web-site maintained by the Authority on the same conditions and on payment of such fee as may be prescribed from time to time.

Levy of fees and other charges

11. (i) There shall be levied a fee of Rs. 50 per hour for inspection of the register.
(ii) A fee of Rs. 20 per page shall be charged for copies of extracts from the register.

General

12. In case of any doubt with regard to the interpretation of any of the provisions of the regulation, the decision of the Authority shall be final and binding.

(Rakesh Kacker)
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EXPLANATORY MEMORANDUM

1. The Telecom Regulatory Authority of India had notified The Register of Interconnect Agreement Regulation 1999 (2 of 1999) and it came into effect w.e.f. 1st Sept 1999. These regulations contain the modalities for the maintenance of the Register of Interconnect Agreements between service providers and matters connected therewith. Broadcasting and Cable Services was brought within the ambit of telecommunication services in terms of section 2(k) of the Telecom Regulatory Authority of India Act 1997, as amended. The principal regulations were amended on 3.2.2004 to include the Broadcasting and Cable services. In terms of the amended regulation, in respect of Broadcasting and Cable Services, the Broadcasters including their authorized distribution agencies and Multi-Service operators are required to register with the Authority any interconnect agreement to which they are parties. A number of definitions relating to the Broadcasting and Cable Services were also added to the principal regulations.

2. While processing cases of registration of the Interconnect Agreements, on the Broadcasting and Cable services side, it was found, that Broadcasters and MSOs use standard form of Interconnect Agreements for a particular type of arrangements entered into with a group of subscribers. These standard forms vary from group to group and between MSOs/Broadcasters depending upon the nature and type of arrangements. Besides the volume in terms of number of agreements expected to be registered is also likely to be very large if the MSOs/ Broadcasters were to submit agreements individually. Further most of the MSOs/ Broadcasters state that the information furnished particularly on the number of subscribers, subscription rate, number and details of channels, discounts schemes etc are commercially sensitive and therefore have to be kept confidential.

3. Besides it was noted that:

- i) The nature of Broadcasting and Cable Services Industry is different from that of the Telecom Sector.
- ii) The practices prevailing in the Industry relating to the nature and type of commercial and technical agreements entered into are such that the provisions of the existing regulations in general and in particular, on maintenance of Register of Interconnect Agreements and structure of formats in which the information is furnished, would not cater to the specific needs of this sector.
- iii) The desire on the part of service providers to keep almost the entire information confidential so as to keep their commercial interest protected and this confidential data being very specific the requirement of non-confidential summary as per the existing regulations was found to serve no useful purpose.

- iv) The volumes of agreements that would require to be handled if individual agreements entered into by Broadcaster and MSO where they are parties were to be registered.

4. The above experiences suggested that the existing regulations would require extensive amendments to suit the specific requirements of Broadcasting and Cable Services and it was also felt this could lead to lack of clarity in the interpretation of the provisions. In view of the above factors, it is viewed, as necessary, to formulate separate set of Register of Interconnect Agreements Regulations for Broadcasting and Cable Services instead of amending the existing principal regulations of 1999. This would be simpler and also avoid difficulties and confusion on interpreting the various provisions of the regulations.

5. The new Register of Interconnect Regulations requires all Broadcasters to register with the Authority all Interconnect Agreements entered into by them as against the provisions in the existing regulations which require the filing of interconnect agreements to which not only the Broadcasters but also multi service operator are parties. The changed provision is in line with the position spelt out in TRAI's recommendations on Broadcasting and Distribution of TV channels dated 1/10/04 stating that the agreements entered into between an MSO and an LCO shall be registered with the Authorised Officer and agreements entered into between broadcasters, MSOs, DTH operators and HITS operators shall be filed with the Authority. Broadcasters would therefore have to file all their interconnection agreements with the Authority of the following distributors:-

- (i) Cable Operators
- (ii) MSO's
- (iii) DTH Operators
- (iv) HITS Operators

6. The new Register of Interconnect Regulation stipulates that the amendments /modifications to the agreements as well as new agreements pertaining to a particular quarter need to be filed within one month of the end of the respective quarter. This has been done keeping in view the volume of agreements in the Broadcasting and Cable TV services.

7. The new regulation provides that Interconnect Agreements shall be filed in two parts. Part A containing the standard Affiliation Agreement /Service Contract /Memorandum of Understanding and Part B containing details in tabular form covering the details of individual agreements relating to contracting parties, service area, date of entering into contract etc. The term 'Interconnection Agreement' has been defined to cover the nature of agreements, which are generally in the form of 'Standard Affiliate Agreement'. The regulation also provides powers to the Authority to prescribe formats seeking disaggregated information. In view of the past experience on requests for keeping the majority of information to be provided in Part B as confidential for reasons of commercial interest and this information being very specific, the preparation of non-confidential summary of confidential information would not

serve any purpose and has therefore been dispensed with in the new regulations.

8. In view of the separate Register of Interconnect regulations for Broadcasting and Cable Services, The Register of Interconnect Agreement Regulations 1999 is being amended so as to restore the earlier position and undoing the amendment carried out on February 3, 2004. The separate repealing notification, however, provides that all acts done under the earlier regulations will be valid unless otherwise specifically provided in the new regulations.