STATUS OF DISPUTE SETTLEMENT MECHANISM

(FOR TELECOM & BROADCASTING SECTORS IN INDIA)

24/03/2007

By : A.Mohan

Executive Vice President

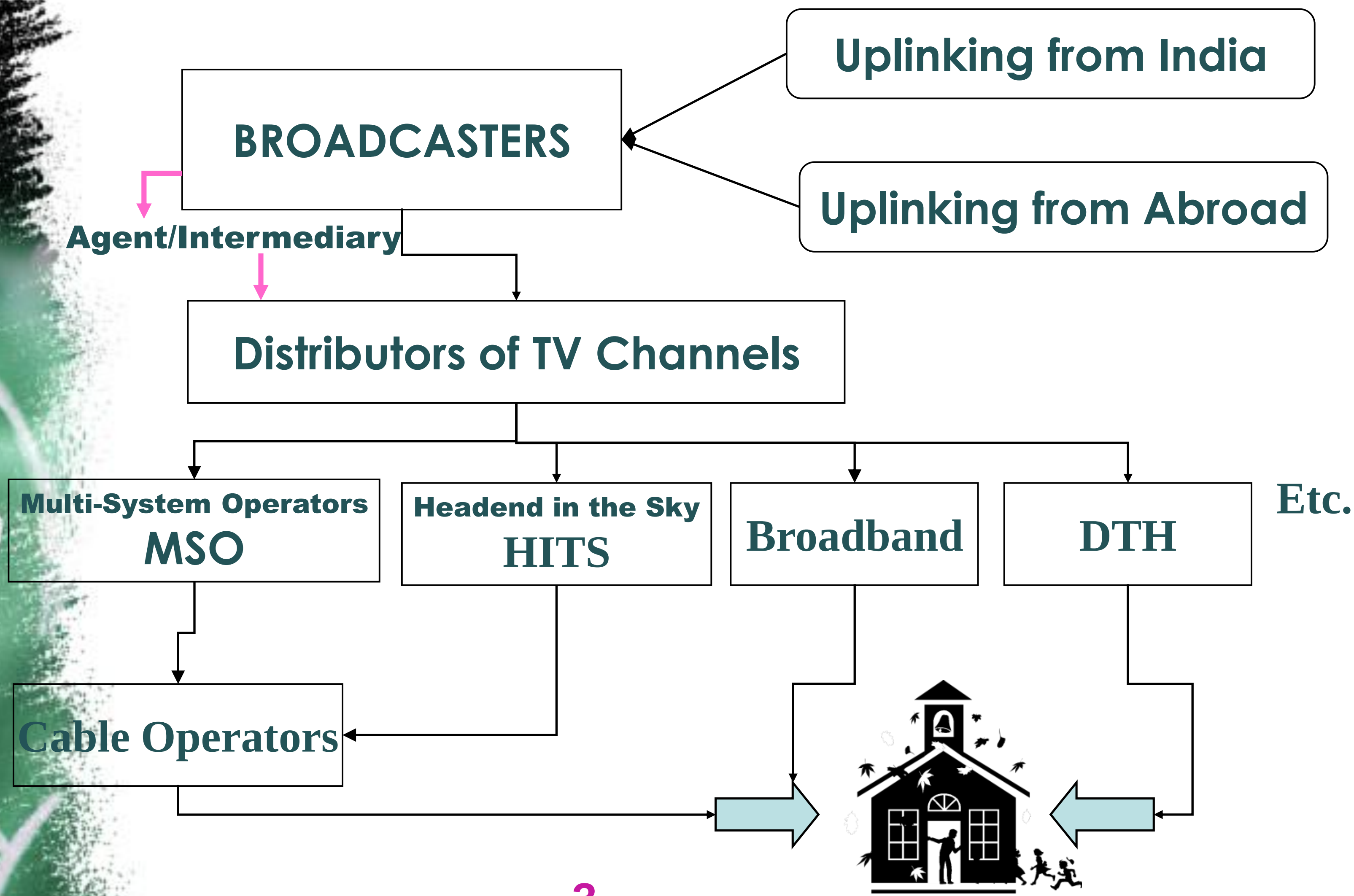
ZEE NETWORK

This presentation is the personal view of the speaker and should not be treated as the view of the broadcasting company/group.

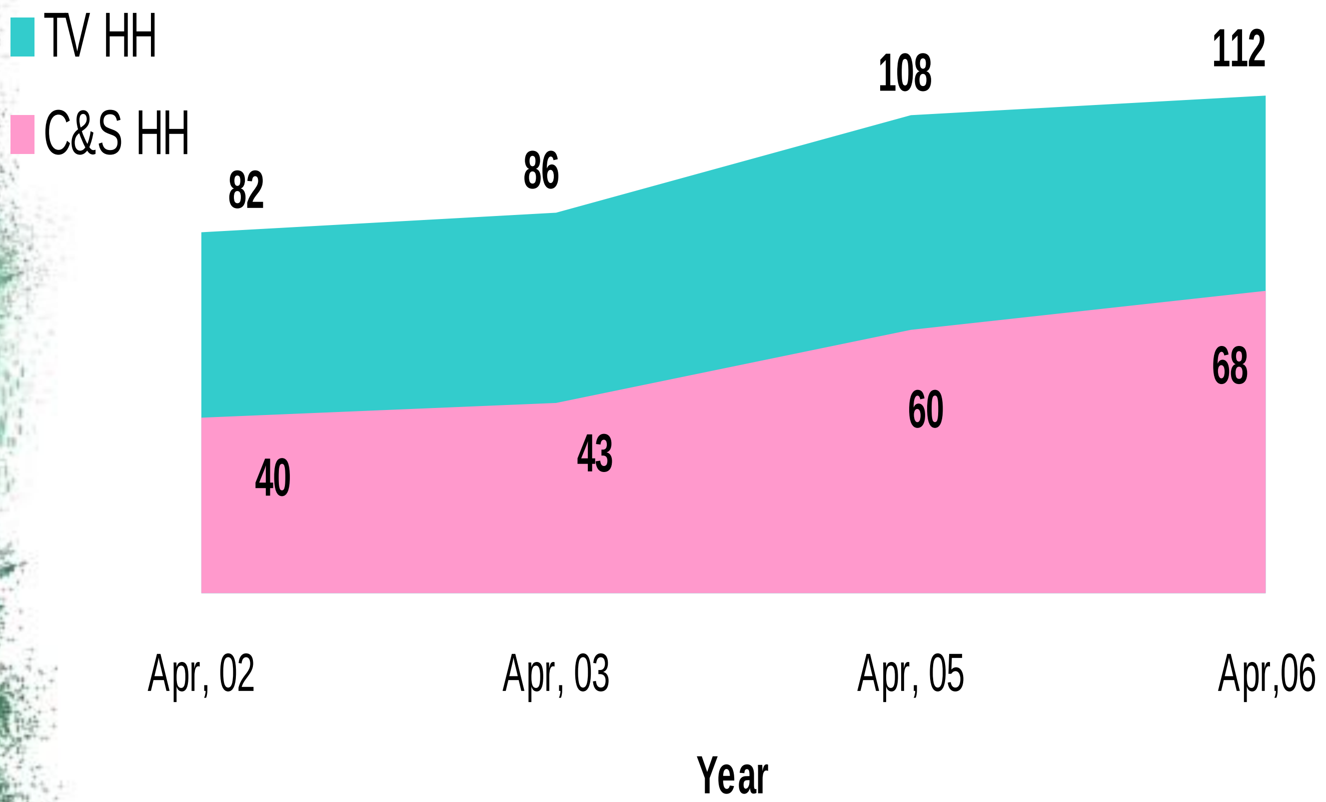
BROADCASTING INDUSTRY OVERVIEW

2.

Structure of Television Broadcasting Industry



TV and C&S growth (mn hh)



ARPU (Rs./sub/month)	101	120	150	150

Source :NRS, 06

What we provide

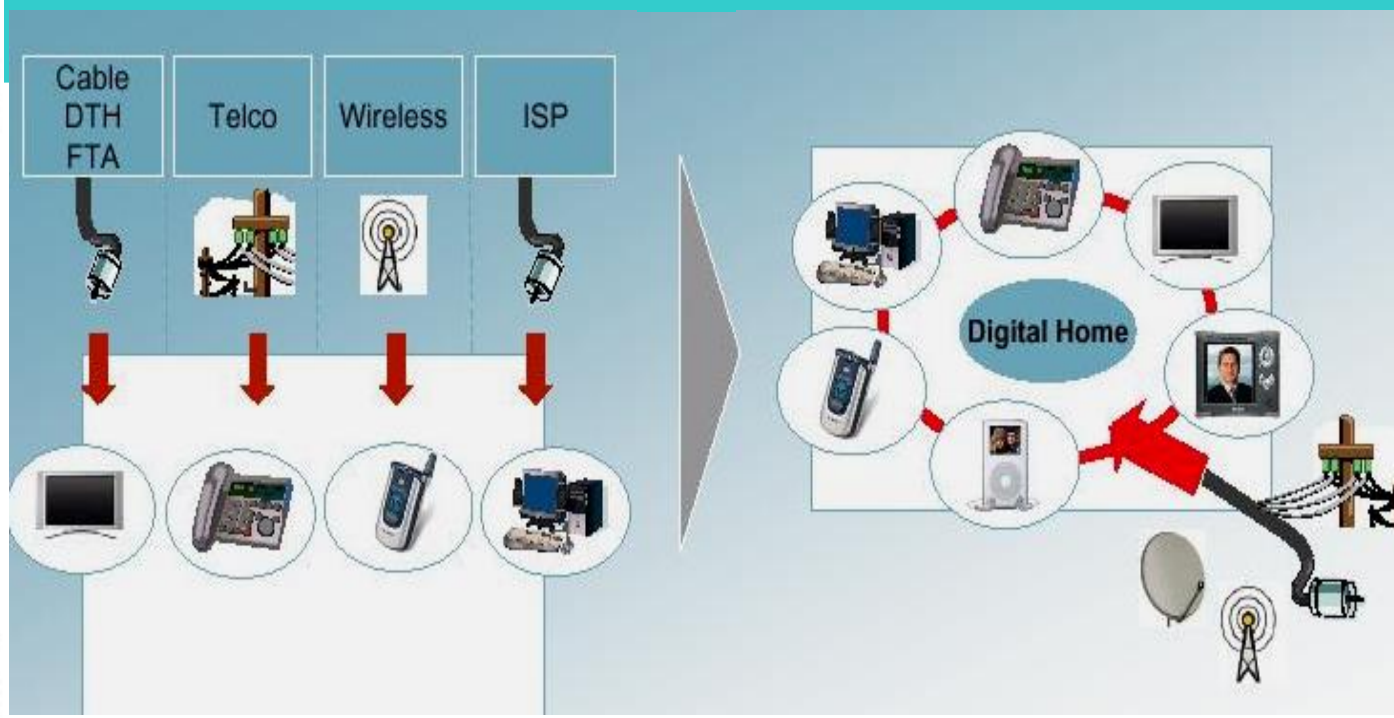
- We, provide you content on 365 days a year on 24X7 basis.
- Broadcasters are required to invest heavily in acquisition / procurement of content which inter-alia include:
  - News & Current Affairs content disseminating news, views & infotainment, business affairs.
  - Entertainment programmes such as serials, quiz shows, celebrity shows, talent hunts.
  - Movies rights.
  - Religious content.
  - Events Rights & Sports Broadcasting rights.
- Huge expenditure on setting-up broadcast centres, uplinking teleports & leasing transponder space on satellites to effect delivery of channels to distributors of channels.
- Rate regulation and price controls distort the market and lead to a misallocation of resources.
- Artificially low prices deter any further investment in new Channels and programming, affecting consumer choice and creating a shortage of quality channels and variety in programming.
- A Myth - Channel prices are quite high and need regulation.
- Regulator needs to balance "equity" and "consumer interest".
- Prices for Telecom Services have come down because of competition. In addition while fixing tariffs, IRR (internal rate of return) calculations were done by the Regulator in respect of these services. No such exercise initiated for Broadcasting & Cable Sector.

BROADCASTING INDUSTRY – FUTURE PROJECTIONS

6.

Future - Multiple layers of Convergence

YESTERDAY	TODAY
(Silos into the home)	*(Convergence of services, networks & devices)*



Future Projections

- The Broadcasting Sector in India is undergoing a process of sweeping changes driven by advent of new distribution technologies such as DTH, Broadband, CAS, HITS, IPTV, etc.

- A recent report by Price Water Cooper (PWC) has projected that the Indian entertainment & media industry is expected to grow at 18% compound annual growth rate (CAGR) and reach a projected size of Rs.1 lac Crore by 2011 from its present size of Rs.43,700 Crores. The Television industry is projected to grow 22% CAGR from Rs.19,100 Crores to Rs.51,900 Crores by 2011.

- One of the contemporary challenges at the moment is to evolve such a Legislative & Regulatory mechanism, which enables technological innovation, competition and consumer choices to drive these changes while maintaining the central policy objective of dissemination of diverse news, views, information and entertainment to all without any discrimination.

Extracts of Media Partners Asia (MPA) Report (March, 07) on Broadband Digital Networks – The Role of Cable in accelerating India's growth

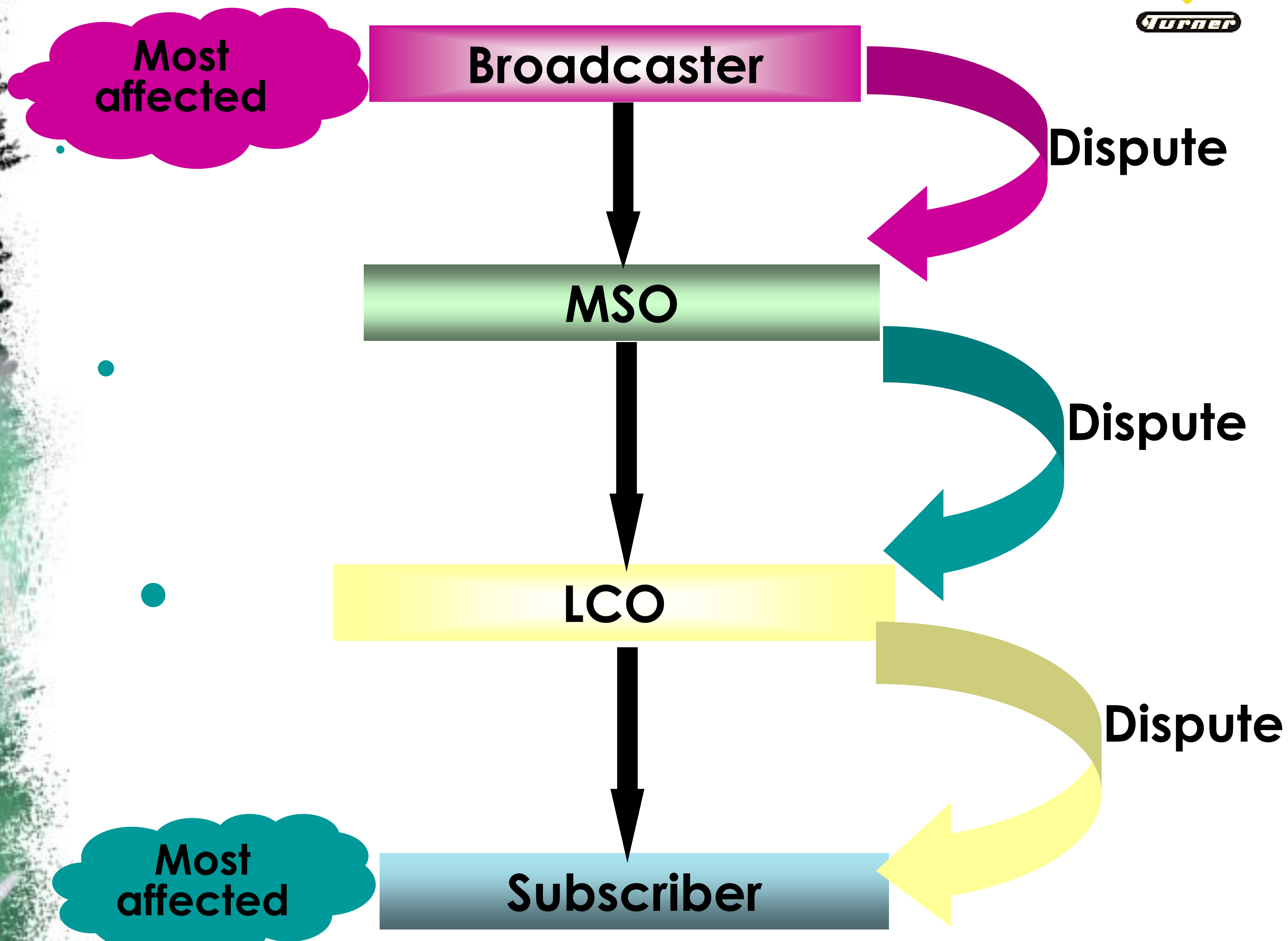
- "India's cable industry is on the "cusp of a new era" that could give the country a regional leadership role ahead of even China. But investor-unfriendly regulations and excessive government intervention in the cable environment are scaring away the money that could make it all happen."
- "India's infrastructure and distribution network is holding the country back. Cable upgrades and digital satellite services need to be ramped up significantly if the country is to play a leading role in Asia."
- "Cable has become one of India's most closely regulated industries. Key investor Groups remain wary about funding long-term broadband digital network upgrades when regulation **imposes strict controls on the pricing of new capital intensive services**."
- "The market is very attractive in terms of sheer size and growth potential but could be held back by 'over regulation' in key areas such as **channel rate regulation**, mandate revenue shares between **industry participants** and FDI caps."

Source – Content Asia – March 19 – April 1, 2007

LAYERS OF DISPUTES & THE AFFECTED PARTIES

Existing Scenario

- Over 250 Channels are available over Indian Sky.
- Most of the cable plants are analogue and have limited channel carrying capacity. At present 65-75 channels are being delivered by most of the cable operators.
- At present no addressability except in Chennai and notified CAS areas of Delhi, Mumbai & Kolkata. The channels are delivered as a bouquet on defacto choice of service providers (MSO/Cable Operators).
- Pay TV channels are encrypted till the MSO/Cable Operator head-end and then supplied on Free-To-Air (FTA) basis to the subscribers. Hence they are 'Pay' to the cable industry and 'FTA' to the customers.
- In non-CAS areas old pay channel prices stand frozen by a Tariff Order of TRAI w.e.f. January 15, 2004. New pay channels are partly controlled through October 1, 2004 Tariff Order.
- Lack of on ground competition at LCO level. Consumers do not have choice to choose their service provider.
- Frequent disputes on subscriber base between Broadcasters & MSOs and MSOs & Cable Operators as there is no technological mechanism to ascertain true subscriber base in non-addressable environment. Lack of transparency at various levels in the value chain. Results in frequent "switch off" causing consumer distress.
- Traditionally, the bulk of cable TV subscription is retained by local cable operators (LCOs) who only declare a negotiated amount of subscribers to the MSOs paying a portion of subscription fees. The distribution of revenue in non-addressable environment is highly skewed in favour of distributor of channels and the broadcaster get only a fraction.
- No effective consumer grievance redressal mechanism at local level.


Most affected
Broadcaster
Dispute
MSO
Dispute
LCO
Dispute
Most affected
Subscriber

DISPUTES BETWEEN SERVICE PROVIDERS

DISPUTES

LCO

- Service Quality
- Price discrimination
- Limited choice of channels
- Interruption in cable services
- Change in channel placements
- No effective consumer redressal system
- No value for money
- Non availability of channel guides

Subscriber

DISPUTES

MSO

- Non disclosure of complete subscriber base by LCO.
- Piracy of signals/Inserting advertisements.
- Non payment of subscription fees.
- Non renewal of service agreements.
- Frequent change in loyalty of the LCOs i.e. migration from one MSO to another leaving subscription dues/arrears.
- Resistance to adapt themselves to changing technology.

LCO

DISPUTES

Broadcaster

- Subscriber base.
- Territory issue – transmission in unauthorised areas.
  Non payment of subscription fees.
- Non renewal of service agreements.
- Alleged unreasonable clauses in service agreements.
  Piracy of signals/copyrights.
- Resistance to adapt to changing technology.
- Limited bandwidth capacity.
- Change in channel placements.
- Interruption of cable services at their own.
- Undue advantage of regulations.
- Compliance cost.

MSO

REGULATORY MECHANISM

Protection of service providers & consumers interest – TRAI Act, 1997

- The preamble of the Act reads as under:-

"An Act to provide for the establishment of Telecom Regulatory Authority of India and the Telecom Disputes Settlement and Appellate Tribunal to regulate the telecommunication services, **adjudicate disputes, dispose of appeals and to protect the interests of service providers and consumers** of the telecom sector, to promote and ensure orderly growth of the telecom sector, and for matters connected therewith or incidental thereto."

- All the Regulations / Recommendations / Orders of the TRAI have consumer oriented approach.

  Example : The Telecommunication (Broadcasting and Cable) Services Traiff Order, 2004, dated January 15, 2004 as amended by the Order dated October 1, 2004, whereby the charges payable by:-

  - Cable subscribers to cable operator;
  - Cable operators to multi system operators/broadcasters (including their authorised distribution agencies); and
  - Multi system operators to broadcaster (including their authorised distribution agencies)

  as prevalent on December 26, 2003 with respect to both free to air & pay channel have been freezed.

Broadcasters issues vis-à-vis Regulatory Mechanism

- Tariff Freeze Order dated 15/01/2004 as amended by 01/10/2004 was sought to be temporary, but the same is still continuing causing huge revenue losses to Broadcasters.
- TRAI itself in its recommendation dated 01/10/2004 has observed –

> "It must be emphasized that the regulation of prices as outlined above is only intended to be temporary and till such time as there is no effective competition. The best regulation of prices is done through effective competition. Therefore as soon as there is evidence that effective competition exists in a particular area price regulation will be withdrawn. TRAI will conduct reviews of the extent of competition and the need for price regulation in consultation with all stakeholders."

Broadcasters issues vis-à-vis Regulatory Mechanism

- Television content not a commodity which can be priced. Fixing/freezing prices of copyrighted material is akin to limiting creativity.
- The price freeze inconsistent with the current realities of the market place when pricing of other goods and services are being deregulated in favour of marketplace competition; energy, telecommunications; utilitities, to name a few.
- Extracts of Explanatory memorandum to tariff order dated 01/10/04 reads as under:-

> "Fixation of price charged for new pay channels to consumers is difficult because of large variations for these prices and of the difficulty in linking these to costs. Further, this is a localized issue which is not easily amenable to centralized regulations. Prices in different parts of the country are based on different systems using different methodologies for fixing the subscriber base. **Many of these problems will get resolved if addressability is introduced, giving consumers choice and making the interconnect agreements more transparent."**

The Telecommunication (Broadcasting And Cable Services) Interconnection Regulation, 2004

(Notified on 10/12/2004 as amended by notification dated 04/09/2006)

- Exclusive contracts and restricting competition prohibited.
- All Broadcasters/content providers to provide content to all the distributor of TV Channels on request within 60 days, on non-discriminatory basis.
- The above provision not to apply in the case of payment default by distributors of TV Channels.
- Imposition of unreasonable terms by Broadcasters / content providers shall constitute refusal.
- No disconnection of signals whether on account of non-payment or **on account of piracy** without giving 21 days notice.
- In the interest of consumers the information regarding disconnection is required to be given in 2 local newspapers/by way of scroll on particular TV Channel.

Specific amendments made in Interconnect Regulations on 04/09/06 to address causes of frequent disputes

- All Broadcaster/MSO or their agents to issue monthly invoices to the distributor of TV channels clearly specifying the arrears and current dues including due date for payment.
- Any distributor of TV channels (LCO) intending to change their service provider should produce along with its request to new service provider, a copy of latest monthly invoice issued by the existing service providers showing the dues/arrears.
- Negotiations for renewal of agreement to start 2 months before the expiry and must conclude latest within 3 months from the date of expiry. During the negotiations period the distributor of channels must pay the service provider as per the existing arrangements. Once the agreement is reached, the new commercial term to apply from the date of expiry of original agreement.
- If the parties fails to reach the agreement within 3 months from the date of expiry, the service provider is entitled to disconnect the signals after giving the statutory notice of three weeks. The commercial terms of original agreement to apply till the date of disconnection.

- Modalities for finalising subscriber base at the time of first agreement and at the time of renewal of the agreement between multi-system operators & cable operators and between multi-system operators & broadcasters prescribed. Subscriber line report (SLR) to form the basis of such agreement.
- Service provider seeking change in the subscriber base during the currency of the agreement to provide reasons and accompanying evidence including local survey for proposed change.
- In case of migration of cable operator from one MSO to another MSO, the basis of payment to the Broadcasters shall be equal to the subscriber base of the cable operator leaving or joining the network.
- **In non-addressable systems, the multi system operators to furnish the updated list of cable operators along with their subscriber base to the broadcasters on a monthly basis.**
- Reference Interconnect Offer describing the technical & commercial conditions for interconnection for non addressable systems to be issued by all broadcasters and a copy to be put up on their web sites. The RIO so published shall form the basis for all interconnection agreement to be executed thereafter.
- The Authority may intervene at any stage to direct amendment or deletion of any clause in RIO if they are in violation of Law, Regulation, Directions or Orders.

TRAI Recommendations of 1st October, 2004

- The objective of the regulation would be to 'promote and facilitate competition' amongst channels, operators and platforms.

- Consumers should have the 'freedom' to choose their content and their operator/platform.

- Other platform could be DTH or video through telephone lines. Both options are permitted even at present.

- Addressability must come on all TV channel distribution.

- **<u>As competition increases and the consumers have multiple choices, price regulation would gradually be withdrawn.</u>**

Other consumer centric recommendations of TRAI

- An authorized officer should be appointed under Cable Regulation Network Act at local level to sort out the grievance of consumers.
- The local cable operators to be registered with Authorised Officer as against the present system of registration with Post Office.
- The cable operators to submit information regarding the number of subscribers, subscription rate, rates of FTA (Basic tier) and pay channels to the authorized officer.
- The consumers and operators to have option to approach the authorized officer for implementation of TRAI regulations / Tariff Orders concerning the cable TV services. In case of violation of the regulations, the authorized officer should have power to file the complaints.
- The government may consider setting up an alternate dispute resolution mechanism for cable operators at local level.

Quality of Service

- TRAI has issued Quality of Services Regulations dated 23/08/2006 for CAS areas and its compliance is mandatory by all MSOs and cable operators.
- Similar Quality of Service Regulations are required to be issued for non CAS areas also providing, inter-alia, for detailed information to consumer at the installation of Cable TV connection such as :-
    - Product and services offered i.e number of channels and name of individual channels
    - Prices and options of programming services
    - Installation and service maintenance policies
    - Billing and complaint procedure including address and telephone number of Customer Service Centre.
- Prescribing complaint handling procedure and benchmarks to redress complaints.
- Rebate for deficient services to be given.
- Frequent change in positioning of channels to be avoided.

Disputes Resolution Mechanism TDSAT

- Sec 14(a) confers jurisdiction upon TDSAT to adjudicate disputes between two service providers and licensor & licensee. Sec 14(b) provides for disposal of appeal against any direction, decision or order of the TRAI.
- As per section 14 of TRAI Act the complaint of individual consumer which is maintainable before the Consumer Redressal Forum / Commission / National Commission can not be entertained by TDSAT.
- Section 14(a)(iii) provides that TDSAT has jurisdiction to adjudicate any dispute between **a service provider and a group of consumers**. Therefore a group of consumers can approach TDSAT and seek adjudication.

- Section 14A of TRAI Act provides as under:

1) The **Central Government** *or a* **State Government** *or a* **local authority** or **any person** may make an application to the Appellate Tribunal for adjudication of any dispute referred to in clause (a) of Section 14.

2) The **Central Government** or a **State Government** or a **local authority** or **any person** aggrieved by any direction, decision or order made by the Authority may prefer an appeal to the Appellate Tribunal.

Jurisdiction of Civil Courts Barred

- Section 15 of TRAI Act bars the jurisdiction of Civil Courts in respect of any matter that TDSAT is empowered to determine.

- Pursuant to TDSAT decision in *Aircel Digilink v Union of India*, arbitration mechanism provided under commercial and business agreement to resolve disputes between the parties no longer survives.

- As per the said judgement TDSAT has its exclusive jurisdiction under the TRAI Act to resolve the disputes overriding contrary mechanisms stipulated in arbitration agreements between parties.

SOLUTIONS OF DISPUTES

SOLUTIONS

LCO

- Written agreement in place between the LCO & consumer. (already implemented in CAS areas)
- Subscription fee receipts to be issued by the LCO.
- LCO providing technical support at the time of any cable breakdown (QSR).
- LCO providing complete channel guides (QSR).
- LCO upgrading their network & improving the quality of services.
- Local body to be authorized for settlement of disputes. (TRAI recommendations)
- Discourage monopoly and encourage healthy competition.

Subscriber

SOLUTIONS

MSO

- Maintaining contractual agreement with LCOs. (Interconnection Regulations/Agreements)
- MSO maintaining detailed records of subscriber base served by the LCO. (Interconnection Regulations – SLR)
- Appointing independent piracy check agencies.
- MSOs facilitating LCOs to help them in investing in better infrastructure.
- MSO coordinating with local bodies to shoulder the accountability of consumer complaints (QSR).

LCO

SOLUTIONS

Broadcaster

- MSO maintaining a record of number of franchisees served & their individual HH connections through a transparent system. (Interconnection Regulations – SLR)
- Timely payment & renewal of agreement. (Interconnection Regulations – SLR)
- Appointing independent piracy check agencies.
- Broadcaster providing a toll free customer care number at national level.
- Broadcaster providing relevant information.
- Joint public awareness campaigns on the channel list, new programmes etc.
- Both should encourage healthy competition.

MSO

And last but not the least each stakeholder needs to work together to maximise consumer satisfaction…

Thank You!