

Consultation Paper No. 2/ 2007



Telecom Regulatory Authority of India

Consultation Paper

on

**Revenue Sharing Formula for Service Providers in CAS
notified areas**

January 22, 2007

**Mahanagar Door Sanchar Bhawan, Jawahar Lal Nehru Marg,
Next to Dr. Zakir Hussain College, New Delhi – 110 002**

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Chapter 1: Background

1.1 Hon'ble High Court of Delhi on 10.3.2006 had directed that Conditional Access System (CAS) be implemented in the notified areas of three Metros of Mumbai, Kolkata and Delhi on a petition filed by a group of multi system operators (MSOs). During the consequent meetings that the Government of India had organized to discuss the manner of implementation of CAS, the Stakeholders had given a suggestion that there should be standard forms of interconnection agreement between broadcasters & multi system operators (MSOs) and between multi system operators (MSOs) & Cable Operators, and that the Authority should formulate the same in consultation with stakeholders. Accordingly, the Authority had placed on the website a draft Standard Agreement for Interconnection for CAS areas between broadcasters and multi system operators (MSOs) and between multi system operators (MSOs) and cable operators on 12.6.2006.

1.2 The Authority received responses from some of the stakeholders. Based on the comments received, the Authority held further discussions with stakeholders. In the meanwhile, the Hon'ble High Court of Delhi had passed an order on July 20, 2006 according to which CAS has been implemented in the notified areas of the three cities of Delhi, Mumbai and Kolkata by December 31, 2006. In accordance with these orders, the Government of India had issued a notification on 31.7.2006 according to which CAS was mandated in the notified areas of these 3 cities by December 31, 2006. Accordingly, the Authority finalized the standard interconnection agreements between broadcasters and multi system operators (MSOs) and between multi system operators (MSOs) and cable operators after considering the feedback received from the stakeholders. These standard interconnection agreements were mandated through an amendment to the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004 (13 of 2004) dated 10th December, 2004. The

objective of having standard interconnection agreements was to ensure that implementation of CAS did not get delayed on account of inability of service providers to enter into mutually acceptable interconnection agreements through negotiation. Therefore, the standard interconnection agreements were provided for the areas notified by the Central Government vide notification no. S.O. 1231(E) dated 31.7.2006 only.

1.3 The revenue share formula between broadcasters and multi system operators (MSOs) and between multi system operators (MSOs) and cable operators was also stipulated as part of Standard Interconnection Agreements for areas notified for implementation of CAS. However, the broadcasters and multi system operators (MSOs) as well as multi system operators (MSOs) and cable operators were free to negotiate and arrive at any other mutually acceptable interconnection agreements and revenue sharing formula. The Standard Interconnection Agreement was only a fall back option to ensure that the roll out of CAS did not get delayed on account of inability of service providers to arrive at mutually acceptable interconnection agreements.

1.4 The revenue share formula allocated the revenue from pay channels amongst broadcasters, multi system operators (MSOs) and cable operators in the ratio of 45%, 30% and 25% respectively. The revenue share formula further provided that the cable operators will keep 100% of the basic service tier charges collected by them and correspondingly the multi system operators (MSOs) will retain 100% of the carriage fee collected by them.

Chapter 2: The case in TDSAT

2.1 Aggrieved by the standard interconnection agreement between multi system operators (MSOs) and cable operators, M/s. Siti Cable Network Limited filed an appeal (Appeal No. 11(C) of 2006) before the Telecom Disputes Settlement and Appellate Tribunal, New Delhi against Telecom Regulatory Authority of India for the following relief: -

- (a) to quash and set aside the Regulation dated 24.8.2006 of the TRAI to the extent it provides/ stipulates that the entire Basic Service Tier fee is to be retained by the Cable operator and that no share from that fee is payable by the Cable operator to the multi system operator (MSO); and
- (b) to direct the Telecom Regulatory Authority of India to undertake a specific exercise of determining the ratio of revenue share for the Basic Service Tier Fee – to be divided/ shared between the MSO and the affiliate cable operators – having regard to the relevant factors such as infrastructural and running costs etc. being deployed by the MSOs for providing signals of Basic Tier Channels to the affiliate cable operators.

Apart from the relief mentioned above, the appellant also sought interim relief by way of an order staying the operation of the relevant portion of the Regulations/ direction dated 24.8.2006 during the pendency of the appeal. A copy of the appeal is attached.

2.2 The TDSAT passed an order in the matter on January 8, 2007. The TDSAT observed in the order as under-

“...The issue raised in the present Appeal in our view is of great importance and has wide repercussions on the MSOs as well as on the cable operators. We would, therefore, like that the cable operators be

also heard before the issue is decided. We feel that the TRAI should hear all the stake-holders in this behalf. Let the TRAI give a hearing to all concerned stake-holders and take at a decision on the issue. The TRAI will call all the stake holders before it and after giving them a proper opportunity of hearing, take a decision. The facts demand that the decision has to be taken expeditiously and, therefore, the TRAI is requested to complete the exercise within six weeks...”

2.3 The present consultation paper has been issued to give an opportunity of being heard to all the stakeholders in the matter.

Chapter 3: The Issues

3.1 The issues arising from the appeal relate to revenue sharing between multi system operators (MSOs) and cable operators in the CAS areas. The issue raised by the appellant is limited to sharing of basic service tier charges. However, there are three revenue streams available to multi system operators (MSOs) and Cable Operators, namely, subscription charges for pay channels, subscription charges for basic service tier and carriage fee. Any division of revenue between multi system operators (MSOs) and cable operators has to take into account all the three streams and it is not possible to look at any one revenue stream in isolation.

3.2 Accordingly, the issues for consultation are:-

- **What should be the share of multi system operators (MSOs) and cable operators out of subscription charges for basic service tier? The basis for arriving at the distribution proposed should also be given.**
- **What should be the share of multi system operators (MSOs) and cable operators out of 55% of subscription charges for pay channels available for distribution (45% of the subscription charges for pay channels are payable to broadcasters)? The basis for arriving at the distribution proposed should also be given.**
- **What should be the share of multi system operators (MSOs) and cable operators out of carriage fee? The basis for arriving at the distribution proposed should also be given.**

**BEFORE THE TELECOM DISPUTES SETTLEMENT AND APPELLATE
TRIBUNAL NEW DELHI**

APPELLATE JURISDICTION

APPEAL NO. _____ OF 2006

IN THE MATTER OF :-

Siti Cable Network Ltd
B-10, Lawrence Road
Industrial Area,
Delhi – 110 035

Appellant

VERSUS

Telecom Regulatory Authority of India
Through Secretary
A – 2/14, Safdurjung Enclave
New Delhi – 110 029
India

Respondent

APPEAL UNDER SECTION 14A(2) READ WITH SECTION 14(b) OF THE
TELECOM REGULATORY AUTHORITY OF INDIA ACT, 1997 (AS AMENDED).

MOST RESPECTFULLY SHOWETH:

- I. 1. At the threshold the appellant submits that the appellant has no grievance on the TRAI deciding to issue Reference Interconnect Offer for the subscription agreements for CAS areas i.e. the appellant is not challenging the jurisdiction of the TRAI to do so but is aggrieved with certain conditions which have been incorporated in the standard

agreement prescribed by the TRAI to be entered into between the MSOs and cable operators.

2. The present Appeal is being filed by the Appellants under section 14A(2) read with Section 14(b) of the TRAI Act, 1997, challenging the Telecommunication (Broadcasting & cable Services) Interconnection (Second amendment) Regulations, 2006 dated 24.8.2006 wherein the respondent-TRAI has prescribed standard Interconnection Agreements for the CAS notified areas between broadcaster and MSO in schedule-I to the regulation/direction and between MSO and Cable Operator in schedule-II to the regulation/direction.
3. It is submitted that standard Interconnection Agreements provided in Schedule I and II to the regulation dated 24.08.2006, interalia include revenue sharing amongst broadcasters & multi-system-operators and multi-system-operators & local operators. It is submitted that by way of the present appeal, the appellant is challenging that portion of the schedule II to the Telecommunication (Broadcasting & cable Services) Interconnection (Second amendment) Regulations, 2006, which provides that the Basic Service Tier fee to be retained by the Affiliate (Cable operator) and that no charges for the Basic Service Tier /Free to air channels shall be payable by the Affiliate (Cable Operator) to the multi-system-operator (MSO). Copies of the direction dated 24th August 2006 along with a copy of Notification dated 24th August 2006 amending the Telecommunication (Broadcasting & Cable Service) Interconnect

Regulation 2004 incorporating the above-mentioned offending/impugned direction are annexed as **ANNEXURE A-1 (Colly)**.

II. JURISDICTION OF THE APPELLATE TRIBUNAL:

The appellant declares that the subject matter of the impugned direction falls within the jurisdiction of this Hon'ble Tribunal.

III. LIMITATION:

The appellant further declares that the appeal is within the period specified in sub-section (3) of Section 14A of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997).

IV. FACTS OF THE CASE:

The facts of the case are given below:

1. The appellant is a multi-system-operator and is engaged in providing Cable Television Services in accordance with the Cable Television Network Regulation Act, 1995. Section 2(ee) of the Cable Television Networks Rules 1994 as amended define a multi-system-operator as:

“(ee): Multi-System Operator (MSO)” means a cable operator who receives a programming service from a broadcaster or his authorised agencies and re-transmit the same or transmits his own programming, service for simultaneous reception either by multiple subscribers directly or through one or more local cable operators (LCOs), and includes his authorised distribution agencies by whatever name called.”

2. It is submitted that Section 2 (m) of the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004 also defines the multi-system-operator as:

“multi-system-operator means any person who receives a broadcasting service from a broadcaster and /or their authorised 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.”

3. Thus, the function of the MSO is to receive the signals of TV Channels from various the broadcaster and retransmit the same to the consumers or one or more cable operators. For this purpose, MSOs have established control rooms wherein various technical equipments are installed with the help of which the signals of the broadcasters are received in these control rooms. After the receipt of the signals from the different broadcasters, they are combined into one single feed and thereafter, through the network of optical fibres/coaxial cables the signals are delivered to the cable operators and/ or directly to the subscribers as the case may be.
4. It is submitted that the network from MSO's control room to the cable operator's control room consists of optical fibres/coaxial cables, transmitters, amplifiers, connectors and other accessories through which the signal is transmitted. Thus, the entire infrastructure i.e. the control room at which the signals are received and the network through which the signals are retransmitted to the cable operators is owned by MSOs. It is also pertinent to point out that all the operating expenses such as

electricity, manpower, repair & maintenance etc. of the network are incurred and borne by MSOs only.

5. It is submitted that respondent no.2 – the Ministry of Information & Broadcasting, Govt. of India vide Notification dated 31st July 2006 notified 31st December 2006 as the date from which it shall be mandatory for every cable operator to transmit or retransmit programmes of every pay channel through an addressable system in the areas notified by the Govt. of India, Ministry of Information & Broadcasting vide No. S-O-792 (E) dated 10th July 2003. It is submitted that with the issuance of said Notification, the Conditional Access System (CAS) would be implemented in notified areas of Delhi, Mumbai & Kolkata w.e.f. 31st December 2006. Copies of the Notification dated 31st July 2006 and copy of Notification dated 10th July 2003 notifying the specified CAS areas are annexed as **ANNEXURE A-2(Colly)**.
6. It is submitted that as per Section 4A of the Cable Television Network Regulation Act 1995 (hereinafter referred to as Cable Act), in CAS areas only two kinds of services are contemplated: (i) pay channel service & (ii) Basic Service Tier. Whereas the pay channels are mandatorily required to be delivered through an addressable system, Basic Tier Service comprising of minimum 30 free to air channels (FTA) does not require any addressable system. As per explanation to Section 4A of the Cable Act both pay channels service and basic service tier have been defined. In

addition, the term addressable system as well as encryption have also been defined. The relevant definitions read as under:-

“Explanation.---For the purposes of this section,--

(a) "addressable system" means an electronic device or more than one electronic devices put in an integrated system through which signals of cable television network can be sent in encrypted or unencrypted form, which can be decoded by the device or devices at the premises of the subscriber within the limits of authorisation made, on the choice and request of such subscriber, by the cable operator to the subscriber;

(b) "basic service tier" means a package of free-to-air channels provided by a cable operator, for a single price to the subscribers of the area in which his cable television network is providing service and such channels are receivable for viewing by the subscribers on the receiver set of a type existing immediately before the commencement of the Cable Television Networks (Regulation) Amendment Act, 2002 without any addressable system attached to such receiver set in any manner;

c) "channel" means a set of frequencies used for transmission of a programme;

(d) "encrypted", in respect of a signal of cable television network, means the changing of such signal in a systematic way so that the signal would be unintelligible without a suitable receiving equipment and the expression "unencrypted" shall be construed accordingly;

(e) "free-to-air channel", in respect of a cable television network, means a channel, the reception of which would not require the use of any addressable system, to be attached with the receiver set of a subscriber;

(f) "pay channel", in respect of a cable television network, means a channel, the reception of which by the subscriber would require the use of an addressable system, to be attached to his receiver set.]

7. It is submitted that vide the Telecommunication (Broadcasting and Cable Services (Third) (CAS Areas) Tariff Order 2006, the tariff ceiling for "Basic Service Tier" has been fixed by TRAI. The relevant part of the Tariff Order reads as under:-

"The maximum amount which a cable operator/multi system operator may demand from a subscriber for receiving the programmes transmitted in the basic service tier provided by such cable operator/multi system operator shall not exceed Rs. 77/- per month exclusive of taxes, for a minimum of thirty free to air channels. Free to air channels over and above the basic service tier would also be made available to the subscribers within the maximum amount mentioned above. This ceiling shall be effective from 31st December, 2006 and shall remain in force until otherwise notified....."

8. It is submitted that all the leading MSOs including the Appellant herein have established state of art digital headends (Control rooms) wherein the latest Subscriber Management System (SMS), encryption system and

other related technical equipments have been installed for the implementation of CAS. Substantial investments running into hundreds of crores have already been made in establishing these systems and in addition several crores of investments are also likely to be made in next 3-4 months by the MSOs in procuring the addressable system including set top boxes & viewing cards, which are required to be installed for viewing the pay channels.

9. It is submitted that the above-mentioned infrastructure established by the Appellant herein comprising of various items and equipments as described below along with the network of optic fibers/cable would be used for delivery of both pay channels as well as basic service tier in CAS areas. The details of the main equipments used for CAS enabled digital headend comprise of:

Sl. No.	Items
1.	Professional IRD
2.	Empeg – 2 Encoder
3.	Multiplexer
4.	QAM Modulator
5.	ECM Injector
6.	EMM Injector
7.	Router
8.	BNC Connector

9.	RF Connector
10.	Subscriber Management System (SMS)
11.	Network Management System (NMS)
12.	Playout Server

It is submitted that through Subscriber Management System (SMS), it is possible to ascertain the number of subscribers receiving the cable services. Thus the number of subscribers receiving the cable services through addressable system (set top box) whether pay channel service or FTA service are transparently known through SMS.

10. It is submitted that the Hon'ble Delhi High Court had earlier vide their judgement dated 10th March 2006 in WP(c) No. 14464-66 of 2004 – Hathway Cable & Datacom Pvt. Ltd and Ors. Vs. Union of India ordered for implementation of CAS in the notified areas of Delhi, Mumbai & Kolkata within one month. It is submitted impugning the order dated 10.03.2006 the Ministry of Information & Broadcasting has filed LPA No 985 of 2006 with Division Bench of Delhi High Court. The Division Bench of Hon'ble Delhi High Court vide order dated 20.7.2006 has directed the Ministry of Information & Broadcasting , Govt of India to issue notification within 10 days for implementation of CAS in notified areas of Delhi, Mumbai & Kolkata w.e.f. 31st Dec 2006. However, Telecom Regulatory Authority of India in order to facilitate the implementation of CAS pursuant to the High Court judgement had already initiated the consultation process

on various issues pertaining to Conditional Access System (CAS) which inter alia included the Notification of Standard Interconnect Agreements and fixing of revenue share amongst service providers in CAS areas.

11. On 12th June 2006 TRAI floated a Consultation Paper for proposed Standard Form of Interconnect Agreements for CAS areas between broadcasters & MSOs and between MSOs & local cable operators. The Consultation Paper also invited the comments of the stakeholders on the draft of the Telecommunication (Broadcasting and Cable Services) Interconnect (2nd Amendment) Regulation 2006 which amendment intended to mandate the Standard forms of Interconnect agreements and revenue share arrangements amongst the service providers in the statutory Interconnect Regulations. It is submitted that in the said Consultation Paper three specific issues were raised:

- Should there be a uniform revenue share percentage between all Broadcasters & Multi System Operators and between Multi System Operators & Local Cable Operators? If yes, what should be the revenue share percentages between Broadcasters & Multi System Operators and between Multi System Operators & Local Cable Operators?
- Should the revenue share percentages for different broadcasters prevailing in Chennai be adopted in other CAS notified areas?
- Is there any other alternative method of arriving at the revenue share percentages between Broadcasters & Multi System Operators and between Multi System Operators & Local Cable Operators? The percentages should be indicated in the response

along with the methodology adopted for working out the percentages.

A copy of the said Consultation Paper of TRAI dated 12.06.2006 is annexed as **ANNEXURE A-3**.

12. That on 28.6.2006 the appellant submitted a comprehensive response to the issues raised by the TRAI in the consultation paper dated 12.6.2006. It is submitted that the Appellant in response to issue No. 1 had made the following suggestions:

Type of Channel / Bouquet	Broadcaster Share %	MSO Share %	LCO Share %
A-la-carte Bouquet	40	30	30
Value Added Services	50	30	20
FTA (Basic Service Tier)	Nil	40	60
Carriage Fee	--	100	--

It may be mentioned that MSO is also entitled for a percentage of revenue share in basic tier as the entire infrastructure is owned by them and lot of investment has also been made in creating the entire network as well as headends / control rooms for delivery of channels. Regarding the carriage fee, it may be mentioned that in CAS regime when the pay channels would be distributed through digital mode, lot of frequencies would be available to carry the FTA channels and as such the amount of carriage / placement fee is likely to be much lesser than the one prevalent in analogue distribution and as such it is

imperative that MSOs should also have share in basic service charges in CAS areas to cover up the operational cost and fixed overheads.

A copy of the Appellant response dated 28.6.2006 is attached herewith and marked as **ANNEXURE A-4**.

13. It is submitted that on 24th July 2006, Respondent -TRAI posted the gist of comments received from various stakeholders on Proposed Standard Form of Interconnect Agreements and revenue share for CAS areas on its website. The response of the three MSOs namely, M/s Siti Cable Network Ltd (Appellant herein), M/s IndusInd Media & Communications Ltd & M/s Hathway Cable & Data Com Pvt. Ltd. was also included on the website information of the TRAI. It is, however, most respectfully submitted that as explained hereinafter, MSOs had formed an association/alliance. Thereafter MSO alliance had submitted a common response to the TRAI on all the issues raised in the Consultation Paper thereby sorting out all their individual views on these issues including revenue share and had submitted a response by consensus to the TRAI on 31.07.2006.
14. It is submitted that on 31st July 2006 pursuant to the Notification for implementation of CAS w.e.f. 31st December 2006, various amendments were carried out in the Cable Television Network Rules 1994 framed under Cable TV Regulation Act, 1995. A copy of the Notification of Ministry of Information & Broadcasting, Govt. of India dated 31st July 2006

amending the Cable Television Network Rules is attached herewith and marked as **ANNEXURE A-5**.

15. It is submitted that by way of Notification dated 31st July 2006 as referred to above, Rule 9 & Rule 10 of the Cable Rules were amended and the amended Rules read as under:

“9. Standard interconnection agreements, tariffs and quality of service standards for the service providers in the areas notified under section 4A of the Act.- The Authority may, on issue of any notification under section 4 A of the Act by the Central Government, take appropriate decisions on the following aspects and duly notify the –

(a) standard interconnection agreement to be used for entering into commercial agreements for distribution in the notified areas, of pay or free-to-air channels among (i) broadcasters and multi – system operators; and (ii) multi-system operators and local cable operators;

(b) the maximum limits of security deposit and monthly rental for supply, maintenance and servicing of set top boxes of prescribed specifications to the subscribers on rental basis by multi-system operators in the notified areas;

(c) tariff for the basic service tier along with the minimum number of free-to-air channels to be provided by the multi-system operators or local cable operators to the subscribers in the notified areas;

(d) regulations for quality of service to be provided by the multi- system operators or local cable operators to the subscribers in the notified areas;

10. Nature and prices of channels.- (1) Every broadcaster shall declare the nature of each of its channels as 'pay' or 'free-to-air' channel as well as the maximum retail price of each of its 'pay' channels to be charged by the multi-system operators or local cable operators from the subscribers in each of the notified areas.

(2) Every broadcaster shall file his declaration of the nature and prices of channels under sub-rule (1) before the Authority and the Central Government within fifteen days of the date of notification by the Central Government under section 4 A of the Act.

(3) If in the opinion of the Authority, the price declared by the broadcaster in respect of any of its pay channels is too high, the Authority may, under section 11 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), fix and declare the maximum retail price of such a pay channel or fix a general maximum retail price for all pay channels within which the broadcasters may declare their individual prices for each pay channel, to be paid by the subscribers in any of the notified areas, and such an order of the Authority shall be binding on the broadcasters and the multi-system operators and local cable operators.

(4) Every broadcaster shall enter into interconnection agreements with multi-system operators in the notified areas as per the standard interconnection agreement, or with any mutually agreed modifications on a non-discriminatory basis, as per the regulations or directions or orders of the Authority.

(5) If a broadcaster fails to declare the price of any of its pay channels within the prescribed time limit under sub-rule (2) or refuses or fails to comply with the direction under sub-rule (3) or refuses or fails to enter into an interconnect agreement with a multi system operator permitted by the Central Government under sub-rule (3) of rule 11 within the time limit as prescribed by the Authority, then the Authority may, so as to protect the interests of the subscribers, take interim measures to ensure supply of signals.

(6) In the event of non-compliance by the broadcaster of the directions issued by the Authority under sub-rule (5), the Central Government may, on the recommendations of the Authority, suspend the permission granted to the broadcaster under uplinking or downlinking guidelines as the case may be, to broadcast that channel in the country or any part thereof.

(7) Every declaration filed by the broadcaster under sub-rule (1) or maximum retail price fixed by the Authority under sub-rule (3) shall normally remain valid for a period of one year from the date of such declaration or fixation, as the case may be, subject to the condition that every broadcaster will be free to revise the price of any channel or convert a pay channel to free-to-air or a free-to-air channel to a pay channel by giving one month's notice to the multi-system operator and subscribers:

Provided that no increase in price beyond the individual limit, if any, specified by the Authority, shall be valid without prior approval of the Authority:

Provided further that no such price increase shall be valid beyond the general maximum retail price for all channels fixed by the Authority.”

16. It is submitted that on 31st July 2006 MSO Alliance which is a Registered Society representing the interest of MSO of which, M/s Siti Cable, M/s Indusind and M/s Hathway are also the members, submitted a detailed common representation to the TRAI on various issues relating to CAS implementation which inter alia also included the response on revenue sharing which represented the views of the majority of MSOs. The relevant extract of the MSO Alliance’s letter reads as under:-

“

Type of Channel / Bouquet	Broadcaster Share %	MSO Share %	LCO Share %
A-la-carte	35	35	30
Bouquet	35	35	30
Value Added Services	50	30	20
FTA (Basic Service Tier)	Nil	40	60
Carriage Fee	--	100	--
Advertisement Revenue of Channels	100	Nil	Nil

- MSO is also entitled for a percentage of revenue share in basic tier as the entire infrastructure is owned by them and lot of investment has also been made in creating the entire network as well as headends / control rooms for delivery of channels.

- **Regarding the carriage fee, it may be mentioned that in CAS regime when the pay channels would be distributed through digital mode, lot of frequencies would be available to carry the FTA channels and as such the amount of carriage / placement fee is likely to be much lesser than the one prevalent in analogue distribution and as such it is imperative that MSOs should also have share in basic service charges in CAS areas to cover up their operational expenditure. Moreover, the LCOs also have option to set up their own FTA Headends for delivery of Free to Air (Basic Tier) channels to such subscribers who opt for only Basic Tier. In such a scenario the entire carriage fee as well as the Basic Tier subscription would be kept by LCO.**

- In addition, the revenue sharing suggested above in respect of basic tier, would in actual ground scenario result in the effective ratio of 15% to MSO & 85% to LCO because of prevalent declaration level. The same can be illustrated by way of the following example:-

Suppose the total number of subscriber in a particular area are 1000 and suppose 200 out of these 1000 opt for pay channels and deploy STB. The prevalent level of declaration at present is around 20-25%. For the balance 800 Basic tier subscribers the LCO would

declare only 20% i.e. 160 subscribers. The revenue share would be as follows:

Rate of Basic Services : - Rs. 77/- per subscriber per month

	No. of Subscriber	MSO (40%)	LCO (60%)	Total
Subscriber with STB	200	6160	9240	15400
Declared subscribers without STB (Basic Tier)	160	4928	7392	12320
Undeclared subscribers by LCO	640	--	49280 (100%)	49280
Total	1000	11088	65912	77000
Effective Ratio: (or say)		15%	85%	

- There may be another scenario where the LCO may only limit declaration to the number of subscribers going for STB or present

highest declaration (say 20%), whichever is higher. Then in that case only 20% of the subscriber base share will be there with MSOs, for total 1000 subscribers. The revenue share in a scenario would be as follows:

Rate of Basic Services : - Rs. 77/- per subscriber per month

	No. of Subscriber	MSO (40%)	LCO (60%)	Total
Subscriber with STB and /or declared	200	6160	9240	15400
Undeclared subscribers by LCO	800	--	61600 (100%)	61600
Total	1000	6160	70840	77000
Effective Ratio:		8%	92%	

Thus, 15% /8% as the case may be, is the bare minimum percentage to recover the return on huge infrastructure deployed by

MSO and also to recover operational expenditure. Since operator is also keeping 85% /92% of the total basic tier realisation, there cannot be any sharing of carriage revenue which in any case going to be much lesser in CAS environment as explained hereinabove.”

- The above-mentioned revenue sharing formula / model be notified initially for 12 months and thereafter based upon practical experience of CAS implementation and inputs from various stakeholders, if found necessary a review / revision of the same can be undertaken after consulting all the stakeholders.

A copy of the representation of MSO Alliance dated 31st July 2006 is annexed as **ANNEXURE A-6**.

17. It is submitted that in the impugned regulation dated 24th August 2006, the following revenue share has been stipulated:

Pay Channels:

i)	Broadcasters share	-	45% of MRP
ii)	MSO's share	-	30% of MRP
iii)	Cable Operator's share	-	25% of MRP
2.	<u>Basic Service Tier</u>	-	100% by Local Cable Operator (LCO)
3.	<u>Carriage Fee</u>	-	100% by MSO

18. The relevant clause No. 3.4 of Standard Technical & Commercial Interconnect Agreement between MSOs and Cable operators reads as under:

“3.4 No charges for the Basic Service Tier/ Free To Air channels shall be payable by the Affiliate to the multi system operator (MSO). Any amount collected by the Affiliate from his subscribers for the Basic Service Tier/ Free To Air channels shall be retained by the Affiliate. However, the Affiliate shall have no claim to get any share from the Carriage Fee, if any, received by the multi system operator (MSO) from any broadcaster and the entire amount so received by the multi system operator (MSO) shall be retained by the multi system operator (MSO).”

19. A perusal of the above mentioned clause reveals that whereas the subscription fee for Basic Service Tier is to be retained by local cable operator without any requirement of sharing the same with multi system operators, MSOs would be entitled to retain the 100% carriage fee, if any.

20. It is submitted that at present in an un-addressable analogue regime the channels are being distributed in cable through analogue networks. The analogue cable networks have capacity constraint and only limited frequency / bandwidth is available for carriage of channels. There are about 175 to 200 channels available over Indian sky and analogue networks can carry at the most 60-70 channels and that too at various frequency levels which has direct impact on the popularity of channels and number of subscribers viewing channels. It is a matter of common knowledge very well known in this Industry that it is only when a new channel is launched that the broadcaster launching the new channel

makes efforts for the carriage/placement of the channels on the analogue non-addressable system by making certain payments to the networks who carry those channels. It is respectfully submitted that there is no standard or yardstick for the charges which are paid by the broadcasters for carriage of their new channels by the cable networks.

It is submitted that on an average, at any given point of time it is only for a very few channels that the cable networks are paid carriage fee, on completely ad hoc basis and without any determined or laid down yardstick on any standard methodology in this regard. It can be easily said that any given point of time, say if there are more than 150 channels to be carried on analogue technology in a non-addressable system, it may only be for 15% to 20% of the new channels who make efforts for carriage of their channels by payment of ad hoc amounts. Further, there is neither any regularity nor any continuity in such ad hoc payments be made to the cable networks. Thus, this can never be an accepted criteria for bringing into existence any regulatory mechanism in this regard.

Having regard to the above-mentioned market position, when the TRAI itself was sure that even such ad hoc carriage fee is not paid by majority of broadcasters for majority of their channels, the TRAI has provided the words - **“if any”** in the offending/impugned clause of the regulations. When the above is the admitted position, it is completely and entirely inexplicable that how could the TRAI came to the conclusion that when it is satisfied that there may be or may not be any possibility of

payment of any ad hoc carriage fee to an MSO then how can it deprive the MSO of its legitimate share in the revenue for providing infrastructural and other facilities for re-transmission of free-to-air (FTA) channels by the cable operators affiliated to it.

21. It is submitted that in Conditional Access scenario, the channels would be delivered in a digital form and as such there would not be any capacity constraint/shortage of bandwidth. A typical digital headend can deliver as many as 600-700 channels and accordingly, in CAS, sufficient capacity would be available to carry the channels and there will not be any issue so far as the placement of channels are concerned. The different frequency levels as are prevalent in analogue distribution, would disappear in CAS, as in digital delivery all the channels would be carried at the same frequency level which will ensure proper visibility and excellent picture quality. Therefore there may not be any carriage fee in CAS areas because of digital delivery as pointed out above. A small component of carriage fee may be there only in case of section of subscribers who may opt for only Basic Service Tier i.e. only free to air package which does not require any addressable system (set top box) for delivery. For such subscribers the delivery of the channels would be still through analogue mode. However, because of the shifting of pay channels to the digital mode, sufficient capacity would be available to carry the Basic Service Tier (FTA channels) and an analogue cable network can easily carry upto

60-70 FTA channels. Therefore, if at all the negligible carriage fee would be there, it would only be restricted to the subscribers who have opted for analogue delivery and the quantum of carriage fee is likely to be much lesser/negligible than what is presently prevalent in analogue distribution where both pay channels as well as free to air channels are being delivered in analogue mode.

22. It is submitted that the stipulation of TRAI that MSOs are not entitled to any share in the Basic Service Tier is completely arbitrary, unreasonable and unjustified and is not based on any cogent material or data which stands proved by the uncertainty in the mind of the TRAI itself when being aware of the ground realities has itself, in the offending/impugned clause of the regulation, has admitted that carriage fee is not being paid by broadcasters for carriage of all of their channels, to the MSOs. It is reiterated that the entire network of MSO would be used for delivery of Basic Service also and it is clearly inequitable on the part of TRAI to deny any share to MSOs out of the revenue earned from the Basic Service Tier for usage of their infrastructure comprising of both control room as well as optical fibre /cable network. In addition, such a stipulation on the part of TRAI is manifestly unjust and also prejudicial to the commercial interest of multi system operators as the carriage revenue in CAS regime, (wherein the channels would be digitally delivered) is likely to be quite minimal for the reasons mentioned hereinabove.

23. It is submitted that provision of pay channels as well as the provision of basic tier (FTA channels) constitute `service' as contemplated by the Interconnect Regulations / agreements. Accordingly, it is imperative for the Authority to stipulate revenue sharing percentage for various stakeholders in the distribution chain, for providing pay channel services and also for providing Basic Tier Services (FTA) to the subscribers. The **carriage** revenue on the other hand arises only out of ad hoc arrangement between the MSO and the Broadcasters whenever a new broadcaster is launching channel because of the specific requirement of the Broadcaster to get the penetration and viewer ship as pointed out hereinabove. The carriage fee is thus not a part of interconnection arrangement amongst the service providers and therefore, it does not constitute any `service' as contemplated either by the Interconnect Regulations or by The Cable Network Regulation Act 1997. The carriage/placement fee is normally charged by the MSOs from broadcasters because of the capacity constraints in analogue distribution wherein limited carriage frequencies are available for delivery of channels. Few broadcasters mainly those launching new channel(s) who desire to place their channels in most viewable band /frequencies opt for the payment of ad hoc carriage fee so that their viewership increases which in turn would help them to increase their advertisement revenues. This is like any other promotional expenditure incurred by the broadcasters. Thus the

carriage revenue is out of the purview of Interconnection Agreements as well as of Section 4 A of The Cable Television Network (Regulation) Act,1995 & its rules notified there under and is purely a commercial contractual arrangement between two service providers for preferential placement of the channels. Thus, this can never be an accepted criteria for bringing into existence any regulatory mechanism in this regard as submitted hereinabove.

24. The attention in this regard is invited to the recently notified amended cable rules dated 31st July 2006 by Ministry of Information & Broadcasting, Govt. of India in the context of implementation of CAS. It is submitted that a bare perusal of the rule 9 & 10 rules clearly shows that only the pay channels service and the basic tier service have been contemplated for CAS areas and accordingly, the Authority has been granted the power to notify the Standard Interconnection Agreement, Revenue Share & Tariffs for these two services only. Clearly the Carriage/Placement Fee is not a service contemplated either by Interconnect Regulations/Agreements or by The Cable Television Networks (Regulation) Act,1995. Thus, the Authority is obliged to notify the sharing of Revenue Share in respect of Basic Service Tier between MSOs and LCOs as the infrastructure of both the service providers is being used for delivery of free-to-air channels. The decision / direction to allocate 100% revenue from Basic Service Tier to Cable Operators is patently inequitable, unjust, bad in law and accordingly is not sustainable.

25. It is submitted that as mentioned hereinabove, in CAS regime when the pay channels would be distributed through digital mode, lot of frequencies would be available to carry the FTA channels and as such the amount of carriage / placement fee is likely to be much lesser than the one prevalent in analogue distribution and as such it is imperative that MSOs should also have share in basic service charges in CAS areas to cover up their operational expenditure. Moreover, the LCOs also have option to set up their own FTA Headends for delivery of Free to Air (Basic Tier) channels to such subscribers who opt for only Basic Tier. In such a scenario the entire carriage fee as well as the Basic Tier subscription would be kept by LCO.
26. It is further submitted that the Authority has notified the Quality of Service Regulations for CAS areas on 23rd August 2006. As per these Regulations stringent norms have been stipulated in providing quality service to the subscribers. The attention is particularly invited to Clause 4 relating to complaint handling and redressal in respect of cable services in CAS areas. Clause 5 relating to billing procedure and billing related complaints in respect of cable services in CAS areas and Clause 6 pertaining to STB related issues and complaints. As per these Regulations it is obligatory upon MSOs to establish the state-of-art Subscriber Management System (SMS) and Call Centres and also to arrange for adequate manpower

(technicians etc.) in order to meet the standards of services stipulated by the Authority.

27. That in case of deficiency in service, the Regulation also provides for the subscription rebate to be given which is as much as Rs. 15/- per day for first 5 days and Rs. 10/- per day for a subsequent period. In addition, in case of deficiency of service, the subscribers are also entitled to invoke the jurisdiction of Consumer Courts. Thus, it is imperative for the MSOs to deploy the requisite infrastructure both in terms of the establishment of SMS, Call Centre etc. and also the sufficient technical manpower to take care of all quality issues. It would be appreciated that the provisions of all these facilities /infrastructure not only involve the capital expenditure, but it also entails the incurring of recurring expenditure as well. It is submitted that the stipulated revenue share of 30% for MSOs out of pay channel revenue is totally inadequate and insufficient to meet the recurring/variable cost associated with the provisions of above-mentioned services. In fact, there is a deficit as the variable cost for providing these services is more than the revenue earned out of pay channels margins. It is, therefore, necessary that MSO should be entitled to share specified percentage of the basic service tier revenues also.

28. The Appellant would like to illustrate the above mentioned proposition that the stipulated 30% of revenue share out of pay channel revenue for MSOs is not enough to meet even the

associated variable cost in the CAS regime with the help of the following example:

It is reasonably presumed that an average subscriber in the CAS areas would opt for about 15 pay channels.

Revenue:

Pay channel rate (As per ceiling stipulated by the Authority)	- Rs. 5/- per subscriber per month
Total pay channel revenue	- 5 x 15 = Rs.75/- per subs per month
MSO share @30%	- Rs.22.50 -- do --

Associated Variable Cost:

i) CAS provision	-Rs.8/- per subscriber per month
ii) Call Centre Cost	-Rs.6/- per subscriber per month
iii) Subscriber Management System (SMS) Charges	-Rs.7/- per subscriber per month
iv) Bill printing & dispatch	-Rs.10/- per subscriber per month

Total - Rs.31/- per subscriber per month

Deficit - Rs.31.00 --22.50 = Rs.8.50 per sub per month

From the above it would be appreciated that MSOs would be incurring a loss of Rs.8.50 per subscriber per month and as such it is necessary that there should be a sharing of basic tier revenue also with the MSOs to meet the deficit as pointed out above. The same would help MSOs to recover at least a part of the deficit.

29. It is submitted that no plausible reasons/explanation has been given by TRAI for not stipulating any revenue share for MSO out of Basic Service Tier. The only explanation sought to be given by TRAI is contained in clause 4.3 of the Explanatory Memorandum attached to the Notification dated 24th August 2006. The said clause 4.3 reads as under:

“4.3 Sharing of the basic service tier between the cable operators and the multi system operators (MSOs) could lead to frequent disputes since there is no transparent way of knowing the total subscriber base for subscribers who do not buy the set top boxes. Similarly, there could be disputes on the total carriage charges, the method of apportioning this amount to the areas notified for CAS, apart from the principles for sharing. Accordingly, it would be simpler to allow for no revenue sharing for both these components, i.e., basic service tier charges and the carriage charges. On this principle, the share for multi system operators (MSOs) in the pay channels should also be higher than the share of the cable operators and, therefore, this is being kept at 30% for the multi system operators (MSOs) and 25% for the cable operators.

30. The above-mentioned grounds /explanation furnished by the Authority in the Explanatory Memorandum for not stipulating the Basic Service Tier, revenue share for MSOs are wholly untenable and unsustainable in law. It is submitted that TRAI has presumed that sharing of Basic Service Tier between cable operators and MSOs may lead to frequent dispute since there is no transparent way of knowing the total subscriber base for the

subscribers who do not buy the set top box. This presumption of the Authority has no basis whatsoever. Moreover as admitted by TRAI itself that the dispute can be only related to the subscribers who do not buy set top box meaning thereby that in respect of those subscribers who buy set top box and avail both pay channels as well as the Basic Service Tier, there can be no dispute at all. Therefore, the share of Basic Service Tier in respect of such subscribers can be easily done without any problems/dispute.

31. It is submitted that the above-mentioned reasoning given by TRAI in clause 4.3 of the Explanatory Memorandum even in respect of subscribers who do not buy set top box, can not be sustained in view of clear-cut obligation imposed on cable operators by sub-section 9 of section 4A of the Cable Act. The relevant sub-section 9 of section 4A reads as under:-

9 “Every cable operator shall submit a report to the Central Government in the prescribed form and manner containing the information regarding—

- i. the number of total subscribers;
- ii. subscription rates;
- iii. **number of subscribers receiving programmes transmitted in basic service tier** or particular programmes transmitted on pay channel, in respect of cable services provided by such cable operator

through a cable television network, and such report shall be submitted periodically at such intervals as may be prescribed and shall also contain the rate of amount, if any, payable by the cable operator to any broadcaster.”

32. It is submitted that the number of subscribers receiving only the Basic Tier Services thus can be ascertainable from the records maintained by cable operator on the basis of which the reports as contemplated under section 4A (9) is to be submitted by the cable operator to the Central Government. It is submitted that in case of dispute regarding the number of subscribers receiving the Basic Tier Service specially in case of those subscribers who have not acquired set top box, these reports would form the basis for resolution. Therefore, the apprehension of the TRAI regarding the potential dispute is clearly unfounded.
33. It is submitted that the Appellant vide their letter dated 18th September 2006 has requested the TRAI to review the revenue sharing arrangement notified on 24/8/2006. In the said letter the Appellant has also suggested a formula for sharing the Basic Service Tier, which also takes care of the concerns expressed by the Authority in respect of the issues arising out of subscribers who do not buy set top box. It is submitted that at present in analogue non-addressable distribution of channels, the settlement between MSOs and cable operators takes place on “negotiated subscriber

basis". This industry practice of settlement through "negotiated subscriber basis" is explicitly recognized by Authority in its latest Notification dated 4/9/2006 vide which various amendments to The Telecommunication (Broadcasting and Cable Services) Interconnect Regulations have been notified. Accordingly, the Appellant herein has suggested the following model for sharing of Basic Service Tier:

	MSO	LCO
(i) Subscribers opting for both pay channels & Basic Service Tier (the numbers easily ascertainable from Subscriber Management System (SMS))	40%	60%
(ii) Number of subscribers opting for only Basic Service Tier.	40%	60%

Determination of number of subscribers for the purpose of (ii) above is to be done in the following manner:-

(a)+(b) where :

(a) The present declaration in the analogue distribution or (i) above whichever is higher.

(b) Negotiated subscriber number in respect of balance subscriber universe of Basic Service Tier.

However, the Appellant has not yet received any response from TRAI on this representation. A copy of the representation dated 18/9/2006 of the Appellant is enclosed herewith and marked as **ANNEXURE A-7.**

34. It is submitted that the TRAI is quite conscious of the fact that carriage fee is adhoc and arises purely out of the arrangements between broadcasters and MSOs and the same may not be there in Conditional Access (CAS) regime. The attention is specifically invited to clause 3.4 of the Standard Interconnection Agreement between MSOs and cable operators vide which the revenue share has been stipulated. The relevant part of clause 3.4 regarding the carriage fee reads as under:-

“.....However, the Affiliate shall have no claim to get any share from the carriage fee, if any, received by the multi system operator (MSO) from any broadcaster and the entire amount so received by the multi system operator (MSO) shall be retained by the multi system operator (MSO).”

The very fact that the words “ if any” have been used in clause 3.4 clearly reflects that TRAI is quite aware of the fact that there may not be any carriage fee revenue in the CAS regime because of digital delivery of channels. It is submitted that the carriage fee is not a part of any service as contemplated either by the Interconnect Regulations or by Cable Act and Rules made there under. As stipulated hereinabove the carriage fee is merely an ad hoc arrangement between broadcasters and MSOs and is prevalent mainly in non-addressable analogue delivery distribution. It is respectfully submitted that there is no standard or yardstick for the charges which are paid by the broadcasters for carriage of their new

channels by the cable networks. Once the digital delivery takes place in CAS, the capacity constraints will disappear. It is submitted that provision of channels whether pay or free to air (FTA) is different from placement of channel in a viewable band.

35. It is submitted that there may be a situation in the CAS regime, wherein a cable operator may himself set up free to air analogue headend (control room) and may ask for only pay channel service from the Appellant. In such an event the entire carriage fee, if any, would be kept by local cable operator itself along with Basic Service Tier fee and the MSOs would be left with only 30% revenue share out of pay channel revenue which is wholly inadequate to meet even operational expenditure in CAS regime. Accordingly, the stipulation of TRAI denying a share in the Basic Service Tier to MSO has no legal basis, and the same is in complete disregard to legitimate entitlement of the MSOs as their entire infrastructure is being used for delivery of free to air channels as well. Such a stipulation being patently unfair and discriminatory deserves to be set aside.

IV. GROUNDS:

The appellant is challenging the legality, validity and correctness of the impugned regulation, inter alia, on the following grounds which are taken in the alternative and without prejudice to each other:-

- A. Because the stipulation of TRAI that MSOs are not entitled to any share in the Basic Service Tier is arbitrary, discriminatory unreasonable and unjustified without there being any basis or material for the authority to come to such conclusion.
- B. Because the stipulation of TRAI is manifestly, discriminatory, unjust and prejudicial to the legitimate entitlements and commercial interest of multi system operators as the carriage revenue in CAS regime, (wherein the channels would be digitally delivered) is likely to be quite minimal for the reasons mentioned hereinabove.
- C. Because the respondent TRAI in the regulation dated 24.8.2006 has wrongly allowed the Cable Operators to retain entire the Basic Service Tier fee.
- D. Because the respondent TRAI in the regulation dated 24.8.2006 has wrongly disentitled the appellant of its rightful share in Basic Service Tier fee.
- E. Because the TRAI has failed to take into account relevant considerations and on the contrary has taken into account irrelevant consideration

- thereby the impugned/offending clause of the TRAI Regulation suffering from the vice of malice and law and therefore, invalid and unsustainable.
- F. Because the offending portion of the Regulation suffers from non-application of mind inasmuch as TRAI has failed to consider the communication dated 28.06.2006 of the appellant and communication dated 31.07.2006 of MSO Alliance representing the interest of member Multi System Operators.
 - G. Because the respondent TRAI failed to appreciate that the appellant has established control rooms for distribution of signals of TV Channels. It is submitted that to establish such control room which has various technical equipments to enable the appellant to receive signals of TV Channels of various Broadcasters, the appellant has made investments running Crores of Rupees.
 - H. Because the respondent TRAI failed to appreciate that the appellant has further laid network of optical fibres to provide signals of TV Channels to Cable Operators which also entails huge investments.
 - I. Because the respondent TRAI failed to appreciate that the network from MSO's control room to the cable operator's control room consists of optical fibres/coaxial cables, transmitters, amplifiers, connectors and other accessories through which the signal is transmitted. Thus, the entire infrastructure i.e. the control room at which the signals are received and the network through which the signals are retransmitted to the cable operators is owned by MSOs. It is also pertinent to point out that all the

operating expenses such as electricity, manpower, repair & maintenance etc. of the network are incurred and borne by MSOs only.

- J. Because the TRAI failed to appreciate that at present in an un-addressable analogue regime the channels are being distributed in cable through analogue networks. The analogue cable networks have capacity constraint and only limited frequency / bandwidth is available for carriage of channels. There are about 175 to 200 channels available over Indian sky and analogue networks can carry at the most 60-70 channels and that too at various frequency levels which has direct impact on the popularity of channels and number of subscribers viewing channels. It is a matter of common knowledge very well known in this Industry that it is only when a new channel is launched that the broadcaster launching the new channel makes efforts for the carriage/placement of the channels on the analogue non-addressable system by making certain payments to the networks who carry those channels. It is respectfully submitted that there is no standard or yardstick for the charges which are paid by the broadcasters for carriage of their new channels by the cable networks.

It is submitted that on an average, at any given point of time it is only for a very few channels that the cable networks are paid carriage fee, on completely ad hoc basis and without any determined or laid down yardstick on any standard methodology in this regard. It can be easily said that any given point of time, say if there are more than 150 channels to be carried on analogue technology in a non-addressable system, it may

only be for 15% to 20% of the new channels who make efforts for carriage of their channels by payment of ad hoc amounts. Further, there is neither any regularity nor any continuity in such ad hoc payments to be made to the cable networks. Thus, this can never be an accepted criteria for bringing into existence any regulatory mechanism in this regard.

- K. Because having regard to the prevalent market position, when the TRAI itself was sure that even such ad hoc carriage fee is not paid by majority of broadcasters for majority of their channels, the TRAI has provided the words - “**if any**” in the offending/impugned clause of the regulations. When the above is the admitted position, it is completely and entirely inexplicable that how could the TRAI come to the conclusion that when it is satisfied that there may be or may not be any possibility of payment of any ad hoc carriage fee to an MSO, then how can it deprive the MSO of its legitimate share in the revenue for providing infrastructural and other facilities for re-transmission of free-to-air (FTA) channels by the cable operators affiliated to it.
- L. Because the respondent TRAI failed to appreciate that in Conditional Access scenario, the channels would be delivered in a digital form and as such there would not be any capacity constraint/shortage of bandwidth. A typical digital headend can deliver as many as 600-700 channels and accordingly, in CAS, sufficient capacity would be available to carry the channels and there will not be any issue so far as the placement of channels are concerned.

- M. Because the respondent TRAI failed to appreciate that the different frequency levels as are prevalent in analogue distribution, would disappear in CAS, as in digital delivery all the channels would be carried at the same frequency level which will ensure proper visibility and excellent picture quality. Therefore there may not be any carriage fee at all in CAS areas because of digital delivery.
- N. Because the respondent TRAI failed to appreciate that provision of pay channels as well as the provision of basic tier (FTA channels) constitute '**service**' as contemplated by the Interconnect Regulations / agreements. Accordingly, it is imperative for the Authority to stipulate revenue sharing percentage for various stakeholders in the distribution chain, for providing pay channel services and also for providing Basic Tier Services (FTA) to the subscribers. The **carriage** revenue on the other hand arises only out of ad hoc arrangement between the MSO and the Broadcasters whenever a new broadcaster is launching channel because of the specific requirement of the Broadcaster to get the penetration and viewer ship. The carriage fee is thus not a part of interconnection arrangement amongst the service providers and therefore, it does not constitute any '**service**' as contemplated either by the Interconnect Regulations or by The Cable Network Regulation Act 1997. The carriage/placement fee is normally charged by the MSOs from broadcasters because of the capacity constraints in analogue distribution wherein limited carriage frequencies

are available for delivery of channels. Few broadcasters mainly those launching new channel(s) who desire to place their channels in most viewable band /frequencies opt for the payment of ad hoc carriage fee so that their viewership increases which in turn would help them to increase their advertisement revenues. This is like any other promotional expenditure incurred by the broadcasters. Thus the carriage revenue is out of the purview of Interconnection Agreements as well as of Section 4 A of The Cable Television Network (Regulation) Act,1995 & its rules notified there under and is purely a commercial contractual arrangement between two service providers for preferential placement of the channels. Thus, this can never be an accepted criteria for bringing into existence any regulatory mechanism in this regard .

- O. Because even as per the recently notified amended cable rules dated 31st July 2006 by Ministry of Information & Broadcasting, Govt. of India for effective implementation of CAS. The respondent TRAI has been conferred jurisdiction to take various steps in respect of only the pay channels service and the basic tier service have been contemplated for CAS areas and accordingly, the Authority has been granted the power to notify the Standard Interconnection Agreement, Revenue Share & Tariffs for these two services only. Clearly the Carriage/Placement Fee is not a service contemplated either by Interconnect Regulations/Agreements or by The Cable Television Networks (Regulation) Act,1995. Thus, the Authority is obliged to notify the Revenue Share in respect of Basic

Service Tier between MSOs and LCOs as the infrastructure of both the service providers is being used for delivery of free-to-air channels. The decision / direction to allocate 100% revenue from Basic Service Tier to Cable Operators is patently inequitable, unjust, bad in law and accordingly is not sustainable.

P. Because the TRAI failed to appreciate that in absence of any share in Basic Service Tier Fee, it will not be possible for MSOs including the Appellant to meet even their operational expenditure in respect of encryption, Subscriber Management System (SMS), call center, maintenance and other direct expenditure for provision of service to the subscribers solely out of pay channel revenue share.

Q. Because there is no plausible reasons/explanation has been given by TRAI for not stipulating any revenue share for MSO out of Basic Service Tier. The only explanation sought to be given by TRAI is contained in clause 4.3 of the Explanatory Memorandum attached to the Notification dated 24th August 2006. The explanation furnished by the Authority in the Explanatory Memorandum for not stipulating the Basic Service Tier, revenue share for MSOs are wholly untenable and unsustainable in law. It is submitted that TRAI has presumed that sharing of Basic Service Tier between cable operators and MSOs may lead to frequent dispute since there is no transparent way of knowing the total subscriber base for the

subscribers who do not buy the set top box. This presumption of the Authority has no basis whatsoever. Moreover as admitted by TRAI itself that the dispute can be only related to the subscribers who do not buy set top box meaning thereby that in respect of those subscribers who buy set top box and avail both pay channels as well as the Basic Service Tier, there can be no dispute at all. Therefore, the share of Basic Service Tier in respect of such subscribers can be easily done without any problems/dispute.

R. Because the reasoning given by TRAI in clause 4.3 of the Explanatory Memorandum even in respect of subscribers who do not buy set top box, can not be sustained in view of clear-cut obligation imposed on cable operators by sub-section 9 of section 4A of the Cable Act. The relevant sub-section 9 of section 4A reads as under:-

“9. Every cable operator shall submit a report to the Central Government in the prescribed form and manner containing the information regarding—

- i. the number of total subscribers;
- ii. subscription rates;
- iii.* **number of subscribers receiving programmes transmitted in basic service tier** or particular programmes transmitted on pay channel, in respect of cable services provided by such cable operator through a cable television network, and such report shall be submitted periodically at such intervals as may be prescribed and shall also

contain the rate of amount, if any, payable by the cable operator to any broadcaster.”

- S. Because the TRAI has failed to consider the submissions of the appellant dated 18th September 2006 vide which it has requested the TRAI to review the revenue sharing arrangement notified on 24/8/2006. In the said letter the Appellant has also suggested a formula for sharing the Basic Service Tier, which also takes care of the concerns expressed by the Authority in respect of the issues arising out of subscribers who do not buy set top box. It is submitted that at present in analogue non-addressable distribution of channels, the settlement between MSOs and cable operators takes place on “negotiated subscriber basis”. This industry practice of settlement through “negotiated subscriber basis” is explicitly recognized by Authority in its latest Notification dated 4/9/2006 vide which various amendments to The Telecommunication (Broadcasting and Cable Services) Interconnect Regulations have been notified.
- T. Because the TRAI has failed to appreciate that there may be a situation in the CAS regime, wherein a cable operator may himself set up free to air analogue headend (control room) and may ask for only pay channel service from the Appellant. In such an event the entire carriage fee, if any, would be kept by local cable operator itself along with Basic Service Tier fee and the MSOs would be left with only 30% revenue share out of pay channel revenue which is wholly inadequate to meet even operational expenditure in CAS regime. This is patently inequitable. Accordingly, the

stipulation of TRAI denying a share in the Basic Service Tier to MSO has no legal basis, and the same is in complete disregard to legitimate entitlement of the MSOs as their entire infrastructure is being used for delivery of free to air channels as well. Such a stipulation being patently unfair and discriminatory deserves to be set aside.

V. DETAILS OF THE REMEDIES EXHAUSTED:

The appellant declares that it has availed of all the remedies available to it under the Act, and is left with no other remedy except to approach this Hon'ble Tribunal by way of the present appeal.

VI. MATTERS NOT PREVIOUSLY FILED OR PENDING WITH ANY OTHER COURT.

The appellant further declares that it had not previously filed any writ petition or suit against the offending portion of TRAI Regulation dated 24.08.2006 nor any appeal has been made before any Court or any other authority nor any such writ petition or suit is pending.

VII. RELIEF:

In view of the facts stated in para 4 above, the appellant prays that this Hon'ble Tribunal may be pleased to:

- a) Quash and set aside the impugned regulation dated 24.8.2006 of the TRAI to the extent it provides/stipulate that the entire Basic Service Tier fee is to be retained by the Cable operator and that no share from that fee shall be payable by the Cable Operator to the multi-system-operator (MSO);**

- b) **Direct the TRAI to undertake a specific exercise of determining the ratio of revenue share for the Basic Service Tier Fee – to be divided/shared between the MSO and the affiliate cable operators – having regard to the relevant factors such as infrastructural and running costs etc. being deployed by the MSOs for providing signals of the Basic Tier Channels to the affiliate cable operators.**
- c) **Pass such other and further order(s) as this Hon’ble Tribunal may deem fit and proper on the facts and in the circumstances of the case.**

VIII. **PRAYER FOR INTERIM RELIEF:**

In view of the facts stated in para 4 above, the appellant prays that this Hon’ble Tribunal may be pleased to:

- a) **Pass an ex parte order staying the operation of the offending/impugned portion of the Regulations/direction dated 24.08.2006 issued by the TRAI during the pendency of the present appeal;**
- b) **Pass such other and further order(s) as this Hon’ble Tribunal may deem fit and proper in the facts and in the circumstances of the case.**

IX. **DETAILS OF INDEX:
As per INDEX annexed.**

X. **Particulars of Bank draft in favour of the Drawing and Disbursing Officer, Telecom Disputes Settlement in respect of the fee for appeal.**

XI. LIST OF ENCLOSURES:

1. **ANNEXURE A-1 (Colly)**

Copies of the direction dated 24th August 2006 along with a copy of Notification dated 24th August 2006 amending the Telecommunication (Broadcasting & Cable Service) Interconnect Regulation 2004

2. **ANNEXURE A-2(Colly)**

Copies of the Notification dated 31st July 2006 and copy of Notification dated 10th July 2003 notifying the specified CAS areas.

3. **ANNEXURE A-3**

A copy of the said Consultation Paper of TRAI dated 12.06.2006.

4. **ANNEXURE A-4**

A copy of the Appellant response dated 28.6.2006.

5. **ANNEXURE A-5**

A copy of the Notification of Ministry of Information & Broadcasting, Govt. of India dated 31st July 2006 amending the Cable Television Network Rules.

6. **ANNEXURE A-6**

A copy of the representation of MSO Alliance dated 31st July 2006.

7. **ANNEXURE A-7**

A copy of the representation dated 18/9/2006 of the Appellant

VERIFICATION:

I, V. Suresh Kumar, Senior Manager, Siti Cable Network Ltd, B-10, Lawrence Road, Industrial Area, Delhi-110035 do hereby verify that contents of para 1 to --- are true to my knowledge derived from the official records and para - ---- and ----- are believed to be true on the legal advice and that I have not suppressed any material facts.

Verified on this the 25th day of September, 2006 at New Delhi.

APPELLANT

Date : 25.09.2006

Place : New Delhi

**BEFORE THE TELECOM DISPUTES SETTLEMENT AND APPELLATE
TRIBUNAL NEW DELHI**

APPELLATE JURISDICTION

APPEAL NO. _____ OF 2006

IN THE MATTER OF :-

Siti Cable Network Ltd

Appellant

VERSUS

Telecom Regulatory Authority of India

Respondent

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(MANINDER SINGH)
Advocate for the Respondent no.2&3
F-12, Jangpura Extension,
New Delhi-110 014.

New Delhi
Dated : September, 2006