



Indian Broadcasting Foundation's ("IBF") preliminary brief comments on Draft (Second Amendment) to the Telecommunication (Broadcasting and Cable) Services Standards of Quality of Service and Consumer (Addressable System) Regulations 2017 ("Draft Amendment") issued by the Telecom Regulatory Authority of India ("TRAI") on 09-August-2019

IBF would like to thank TRAI for affording an opportunity to stakeholders to submit their comments to Draft Amendment as published by TRAI on its website on 09-August-2019.

At the outset, we would like to request TRAI to consider the timing and quorum for discussions on quality of service actions that impact the functioning of the Broadcasting Ecosystem and rely on certainty. It is humbly submitted that to enable stability and certainty and In light of recent consultations proposed on Issues related to the Broadcast and Cable Services, successively introduced after the Draft Amendment, proceeding without clarity would be to the detriment of the consumer who desires consistency, as also the remaining stakeholders, all of whom have undertaken considerable actions in order to meet the demands and rigours of a new regime.

Without prejudice to our rights, we herein set out some fundamental observations on the draft amendment and Proposed System, The Draft Amendment proposes to put in place an alternate channel selection mechanism through third-party applications / Apps and portals ("Apps") so as to facilitate easy channel selection by consumers ("Proposed System"). It is submitted that implementation of a proper system will help in standardizing channel selection process across different platforms.

While we appreciate TRAI's endeavour to provide consumers with alternate means to make informed decision after comparative analysis while choosing the channels and bouquets that they wish to watch on their television screens and we fully support this consumer facing initiatives proposed to be undertaken by TRAI, we would like to point out that the proposal in respect of the Proposed System in the present form suffers from several major infirmities, which needs to be looked into and rectified to make the same more robust and user friendly. Hence, we urge the Authority to take inputs from all the concerned stakeholders especially on the points stated herein..

We note that a number of deliberations on the issue have already taken place between TRAI and DPOs and that these deliberations eventually culminated in the Draft Amendment. However, it is humbly submitted that issue requires detailed analysis, deliberations with all stakeholders and consideration before the same is implemented. This is necessary so as to avoid unexpected consequences and fallouts, as further set out in this response.

It is submitted that the Proposed System in Draft Amendment, although well intended and aimed at improving level of transparency (both at consumer-DPO level as well as DPO-broadcaster level), does not however deal with or address certain critical aspects pertaining to Proposed System in the Draft Amendment.



As such, it is requested that the Proposed System / Draft Amendment in its present form ought not be implemented. It is submitted that there is a need for detailed consultation process in which all stakeholders are involved to evaluate all aspects pertaining to the Proposed System, failing which, the Proposed System may quite turn out to be counterproductive and may again result in consumer frustration, stakeholder angst or apathy. It is necessary to ensure that Proposed System in fact enables the ecosystem while it is also not designed to be misused by unscrupulous persons / entities. In this regard, we would like to make the following submissions.

1. We would like to submit that, even as on date, majority of DPOs are not in complete compliance of the provisions of the Telecommunication (Broadcasting and Cable) Services Standards of Quality of Service and Consumer (Addressable System) Regulations 2017 (as amended) ("QoS Regulations"). In this regard, majority of DPOs do not have operational website with a consumer corner, call centres, consumer care centre, etc. It is important to note that these are the basic prerequisites prescribed under QoS Regulations, which DPOs have to mandatorily comply before providing broadcasters' channels to consumers. TRAI will appreciate that it has itself issued directions to various DPOs citing non-compliance of the provisions of the QoS Regulations. It is submitted that Regulation 3(2) of QoS Regulations stipulate that every DPO shall adopt consumer friendly methods, including but not limited to website and telephonic call to customer care centre, for requesting subscription of broadcasting services related to television. Considering that despite the said stipulation, if majority of DPOs do not bother to have website or telephonic call centre, then how can they be expected to provide API integration for third-party Apps / portals with their systems. As such, we humbly submit that, before prescribing new provisions/amendments, TRAI should ensure complete compliance of the existing provisions of QoS Regulations (including those relating to channel / bouquet selection / deselection). Further, TRAI ought to take strict action in case any instances of non-compliance are found. The attempts should be first at truly implementing what is prescribed rather than introducing further regulations.
2. The Draft Amendment does not provide details pertaining to the number of third-party developers / providers ("App Providers") who would be allowed to make available Apps for channel selection process, or the number of Apps proposed to be developed by third parties or whether such third-party App Providers would be empanelled by TRAI through a well-defined process that takes care of interests of all stakeholders. The Draft Amendment also does not prescribe any qualification criteria for such third-party App Providers. From the Draft Amendment, there does not appear to be any restriction on number of Apps or App Providers. In fact, it is unclear whether the Draft Amendment proposes a single App or several different Apps, or a single TRAI App that interfaces with several DPO Apps, which would require specifications in order to be an interface accessible by the consumer, TRAI as well as provide the suggested anonymised access to the Broadcaster on the consumers choosing their respective TV Channels. We also



do not find any mention in Draft Amendment as to what steps will be taken to ensure that fly-by-night App Providers, or technically inefficient App providers, do not foray into the market, or if TRAI intends to introduce any eligibility criteria for App Providers. It is imperative that TRAI allows only finite, serious, technically qualified and financially sound players to develop Apps else, it will have an adverse impact for all stakeholders. Other aspects relating to Apps such as, permissible revenue sources, infrastructure requirements, stipulations regarding data storage in India also need to be assessed and prescribed. Additionally, it needs to be evaluated as to what regulations will govern such Apps i.e., whether under IT Act or some other Act or will they be unregulated, etc.

3. The Draft Amendment also does not provide details as to how third-party developers providing Apps for channel selection are expected to monetize their services / Apps or how they will derive their revenues. This is a critical aspect and ought not be ignored specially from the perspective of consumer's privacy protection. Additionally, critical aspects regarding measures to be undertaken both by TRAI as well as App Providers to ensure confidentiality and privacy of data generated on account of use of Apps has not been dealt with in the Draft Amendment. In this regard, it may be noted that Apps are generally capable of recording / storing all information that may be keyed-in while using Apps. It is submitted that in the absence of clearly laid down stipulations, App developers / providers may resort to gathering personal data of consumers and/or commercially sensitive data pertaining to channel uptake etc. before proceeding to monetizing the same by selling / licensing such data in open market or to other service providers.
4. The Draft Amendment and Proposed System suggests changes that purport to facilitate the ability to change channel /bouquet selection on the fly, which fundamentally means that the consumers can activate / deactivate channels on a daily basis. In the absence of clear reporting mechanism, the Proposed System is susceptible to be misused. To illustrate – the DPO will continue to be in a position to earn the subscription, while depriving the broadcasters of the subscription charges. As such, if any such change is to be implemented, it is essential to have subscriber reporting on a real-time basis (which will be a big infrastructural challenge for most DPOs from cost and implementation point of view). Furthermore, in order to avoid any circumvention of the Proposed System, there is a requirement to define a minimum subscription period / lock-in, e.g., subscription for at least thirty days' once a channel / bouquet is selected by the consumer. The changes so suggested would necessarily require an amendment of the interconnection regulations, etc.
5. The Draft Amendment does not deal with issues pertaining to redressal of grievance *inter-alia* amongst consumers and App/portal provider as well as App/portal provider and DPOs. It is not clear as to what recourse will stakeholders have against an App developer in case it fails to communicate choice pertaining to deselection of bouquet of channels to relevant DPO since, such failure would result in a situation where a consumer would refuse to make payments to DPO however, DPO will continue to remain liable to make payment to the relevant broadcaster. It is submitted that errors



in communication of information may not always be intentional and may be on account of technical issues such as, acceptance of request based on cached information that may have been subsequently updated, and consequent rejection of such request by DPO's system. In such a scenario, no mechanism is contemplated for record maintenance and communication of outcome of requests between stakeholders. It may also happen that even after the third-party developer communicates to DPO about the desired modifications sought by the consumer, the DPOs may not carry out the desired changes in its SMS with the ulterior motive of making unlawful gains. No mechanism seems to have been provided that may be used to overcome such actions, which have the potential of negating the purpose of creation of Apps. Further, it is also not clear as to what regulatory mechanism does TRAI intend to specify for App providers so that the Proposed System as well as all relevant stakeholders are governed by the provisions of the Telecom Regulatory Authority of India Act, 1997 (as amended).

6. It is submitted that the Draft Amendment contemplates that Proposed System through Apps will enable consumers to compare and optimize channel / bouquet selection to minimize costs or provide any other relevant optimization offerings. It is submitted that such open-ended stipulations are susceptible to misuse since, providers of Apps may be motivated to enter into commercial tie-ups for pushing unwanted channels to consumers and causing their selection by consumers. It is submitted that any such selection cannot be deemed to be natural choice of consumers. Further, providers of Apps may also resort to recommend deselection / substitution of channels / bouquets pursuant to their commercial tie-ups.

We remain committed to enabling a healthy and progressive broadcast and cable ecosystem. It is our sincere endeavour to provide timely inputs, as well as encourage the Authority to proceed following a fair and transparent deliberation of the considerations that are necessary. Request that the draft amendment be set aside until the conclusion of related activities and consultation and be pursued only after consideration of the consequences and requirements as deliberated and proposed by all stakeholders. Notwithstanding, it is requested that the Authority enable and ensure the compliance of the regulations by the stakeholders, as they currently stand.