

Cable Operators Federation of India

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Ref/COFI/TRAI/10/2014

28 July 2014

The Chairman
Telecom Regulatory Authority of India
New Delhi-110002

Kind Attention: Sh Agneshwar Sen, Advisor (B&CS)

Sub: Comments on TRAI Consultation Paper No 7 of 2014 on Regulatory Framework for Platform Services Issued on 23 June 2014

Sir,

Ref Consultation Paper No 07/2014 dated 23 June 2014 on Regulatory Framework for Platform Services.

We welcome TRAI's efforts in regulating the platform services initiating this consultation paper. However, we wish to submit that cable TV networks started in India with video channels when no one had heard of satellite television. These video channels are very generic to cable TV in India and hence should not be considered along with value added services that are part of the digital networks like Video-on-demand, interactive games, etc.

Contrary to what Para 3 of Consultation Paper mentions, Cable Television Act 1995 has already dealt with these video channels defining 'Programme' as below:

"2(b)'cable service' means the transmission by cables of programmes including re-transmission by cables of any broadcast television signals;

2(g) 'programme' means any television broadcast and includes—

- (i) exhibition of films, features, dramas, advertisements and serials through video cassette recorders or video cassette players;**
- (ii) any audio or visual or audio-visual live performance or presentation, and the expression 'programming service' shall be construed accordingly; "**

Thus the law recognizes video channel as a means to distribute cable TV programme and consider it as 'cable service'.

The law also mandates compliance with 'Programme Code' of any programme transmitted over a cable TV network as given in Section 5.

5. Programme code.—No person shall transmit or re-transmit through a cable service any programme unless such programme is in conformity with the prescribed programme code.”

In Chapter II, Para 11 of Cable Act, Authorised Officer has been deputed to ensure compliance of the Act and take action including seizure of equipment if any violation of the Act is taking place.

“11. Power to seize equipment used for operating the cable television network.—

(1) If any authorized officer has reason to believe that the provisions of section 3, [4A], 5, 6 or 8 have been or are being contravened by any cable operator, he may seize the equipment being used by such cable operator for operating the cable television network.]

(2) No such equipment shall be retained by the authorised officer for a period exceeding ten days from the date of its seizure unless the approval of the District Judge, within the local limits of whose jurisdiction such seizure has been made, has been obtained for such retention.”

Thus there are adequate provisions available in the law regulating a video channel in a cable TV network and we find no reason for TRAI to regulate the same.

Instead, it is the satellite based channels that entered the country in a clandestine manner as free to air channels, encroached upon the domain of local video channels introducing similar programmes like devotional content and Films. It is only in 2006 that the government brought them under the Downlinking Guidelines which are not statutory like the cable TV Act. Till date, there are no Quality of Service Regulations for the Broadcasters too. **Hence it wrong to say that Satellite Broadcaster like Guidelines do not exist for cable channels and they need to be regulated.**

TRAI's premise given in Para 4 of CP that these so called platform services act as USP of DPO is not correct. TRAI being a technical organisation must think in a broader perspective taking these DPOs as infrastructure for converged services rather than for distributing a few pay channels.

Broadcasting Services Bill that was to regulate broadcasters has never seen the light of the day under some excuse or the other and even now the government has shown all favours to these broadcasters by allowing them to self regulate them unlike the local video channels. We wonder how the I&B Ministry has sent its letter dated 17 January 2013 to TRAI and why TRAI did not take any action on this till date.

From the MIB letter of reference dated 17 January 2013 signed by Mr Uday Verma it appears that both MIB and TRAI are trying to safeguard the interest of only the pay broadcasters like they had done earlier while framing the mandatory DAS Rules and regulations. They have made the procedures so complicated, tedious and the methodology so costly to implement that out of more than 6000 MSOs and independent operators only 150 have registered for DAS services in the last two and a half years. Both TRAI and MIB are boasting it to be a great success. It is sad that both MIB and TRAI have not shown any farsightedness to ensure there is a gradual growth in the industry inclusive of all segments so that people are made to adopt a new technology willingly. Even no care has been taken of the majority of consumers who are still in dark as to what and why it is happening.

Further, Section 11(1) (a) (i) to (viii) of the TRAI Act do not authorize TRAI to make recommendations in respect of any matter that relates to regulation and/or monitoring of 'programming' services which are provided by the cable television networks, direct to home operators, head end in the sky operators, internet protocol television operators or any other distribution platform operator. TRAI's role is confined to making recommendations in respect of the technological and commercial aspects of the broadcasting and cable industry. Regulation / monitoring of programming service or content is the sole prerogative of the Ministry of Information and Broadcasting.

In view of the above, we feel that the Regulator should not be making any recommendations in respect of local video channels of LCOs/ LMOs to the Ministry of Information and Broadcasting considering that adequate regulations already exist in the Cable TV Act.

Notwithstanding the above, we have the following comments to offer on the issues raised in the consultation paper:

Each distribution platform has had its own genesis, which the TRAI seems to have ignored while making the CP. Paragraph 2 of the Introduction of the CP contemplates:

"These TV Channel distribution platforms primarily re-transmit TV channels permitted by the Ministry of Information & Broadcasting (MIB) under the Downlinking guidelines."

This indicates a preconceived notion of Cable TV regulation without a proper study of

the genesis and nature of distribution platforms, especially the cable TV operators (Independent MSOs and LCOs). Distinction should be made between the distribution platforms which emerged prior to the advent of satellite television channels and those that emerged post the satellite television channels' entry in India. The third category is of platform services that emerged post introduction of digital networks.

Like stated above, Cable TV was started in India during early eighties in metros when VCRs came in the scene. Also during this period, TV services were provided only by Doordarshan and due to limitation of its transmitters, cable operators received S-Band signals of Door Darshan and transmitted them to households on cable networks.

Satellite Television channels came to India only in the early 90s. It was only because the cable TV operators had already set up a system for delivery of programming services, that the Satellite television channels exploited the situation to their benefit and reached the subscribers through these networks. Therefore, it is wrong to say that the local cable channels are trespassing into the domain of satellite TV channels.

In view of the fact that programming services were offered by cable TV operators to its subscribers even before the satellite television channels came to India, it is not correct to classify these programming services as *value added services* or *Platform Services*.

Issue No.1: Do you agree with the definition for platform services proposed in paragraph 1.6? If not, please suggest an alternative definition. Please elaborate your response with full justification.

Comments:

We do not agree with the definition of the term 'Platform Services' as other than Doordarshan and channels permitted under Downlinking Guidelines. There may be a need to define the services offered by DTH, IPTV and internet based distribution platforms that have emerged post the advent of satellite television and digital networks and are significantly different from the basic cable TV services of video channels of Operators.

As far as Cable TV Operators are concerned, they are already well covered and governed by the Cable TV Networks (Regulation) Act, 1995 ('**Cable TV Act**') and the Cable TV Networks Rules, 1994 ('**Cable TV Rules**') as stated in the introductory paras. Cable channels were the first to be regulated and the only channels which are governed by Cable TV Act 1995.

TRAI and MIB have forgotten that need to frame Downlinking and Uplinking Guidelines for Broadcasters arose when broadcasters refused to obey any Indian law, respect Indian sensibilities and culture of its people as they claimed they were of foreign origin uplinking

from foreign lands and could not be forced to obey Indian laws. Even the Cable TV Act regulated only Cable Operators for carrying objectionable content beamed by these broadcasters as they remained out of government's reach. Whenever government tried to regulate Broadcasters, international lobbies backing these large broadcasters, mostly from the US destabilized the existing government and it fell. That is why from 1997 to date, Broadcasting Services Regulation Bill is still in draft form decorating the MIB website.

MIB in its reference and CP has ignored the definition of the term 'Cable Service' appearing under the Cable TV Act, which already defines the function of cable TV Operators. The CP has neither declared this definition as obsolete nor made out any case for deviating there from. In fact, the term Cable Service as defined in the Cable TV Act, makes it very clear that the primary function of the Cable TV Operators is to transmit programmes by cables and this function *is inclusive of* the transmission of any broadcast television signals. This is another reason why such programming services cannot be defined as *'value added services'* or *"platform services"*.

While framing the DAS regulations and Cable TV Rules 2012, The Ministry did not think it was necessary for Cable Operators to get licenced or registered with the Ministry, like it has done for MSOs. Ministry perhaps did not think the need of regulating the LCOs as they are already over regulated although, they are very small entities.

As far as DTH and other platforms are concerned, their scale of operation is very large, affecting a large population and thus, their services must be regulated.

Issue No.2: Kindly provide comments on the following aspects related to programs to be permitted on PS channels:

1. PS channels cannot transmit/ include

2.1.1. Any news and/or current affairs programs,

2.1.2. Coverage of political events of any nature,

2.1.3. Any program that is/ has been transmitted by any Doordarshan channels or TV channels permitted under uplinking/ downlinking guidelines, including serials and reality shows,

2.1.4. International, National and State level sport events/ tournament/ games like IPL, Ranji trophy, etc.

2. PS channels can transmit/ include

2.2.1. Movie/ Video on demand

2.2.2. Interactive games,

2.2.3. Coverage of local cultural events and festivals, traffic, weather, educational/ academic programs (such as coaching classes), information regarding examinations, results, admissions, career counselling, availability of employment opportunities, job placement.

2.2.4. Public announcements pertaining to civic amenities like electricity, water supply, natural calamities, health alerts etc. as provided by the local administration.

2.2.5. Information pertaining to sporting events excluding live coverage.

2.2.6. Live coverage of sporting events of local nature i.e. sport events played by district level (or below) teams and where no broadcasting rights are required.

Comments:

Any restrictions in respect of content / programming can only be laid down by the Ministry of Information and Broadcasting and not by the Telecom Regulatory Authority of India. Since, Trai is discharging its statutory function of giving recommendations to the MIB, TRAI is obliged to render recommendations on matters that are envisaged under Section 11(1)(a)(ii), (iii) and (iv) of the TRAI Act and not otherwise.

Notwithstanding the above, the restrictions in programming proposed by TRAI are unreasonable and unwarranted. Cable TV channels are already governed by Cable TV Rules and have to follow Programme Code and Advertisement Code. The logic behind proposing such restrictions is incomprehensible. As TRAI admits in the CP itself, that content / programming on local cable channel is disseminated in pull mode and not in push mode, the very idea of restricting content is self-contradictory. The subscribers too have a right to demand the content of their choice and the cable TV Operators are obliged to supply such content as long as the same is in conformity with the Programming Code and Advertising Code envisaged under the Cable TV Rules.

In fact, as stated above the Cable TV Act and the Cable TV Rules are not directly applicable to satellite television channels. They have been made applicable to satellite television channels by virtue of the Uplinking and the Downlinking guidelines notified by the MIB.

Further, any restrictions imposed on the content/programming of the local cable channels will be open to challenge on the grounds of being in violation of Article 14 and Article 19(1)(a) and 19(1)(g) of the Constitution of India. The CP has not made out any reasonable basis for distinction between the satellite television channel viewership and the local cable channel viewership in order to justify the restrictions proposed in respect of local cable channels.

Even if I&B Ministry is obsessed with broadcasters or the content industry, TRAI need to view TV channels only as one of the services of converging media. Infact with new technologies of video streaming, cloud based services and new media, conventional TV channels will become a very small part of the whole ecosystem of infotainment.

Cable TV Networks are a broadband infrastructure capable of transmitting not only a few video channels but a plethora of services like internet, e-education, e-governance, broadband based social media and new media services etc along with a few TV channels. Ministry does not control all these services and some of the services are out of regulatory regime at present.

Thus any restriction on the content transmitted on cable channels other than laid down in Programme Code and Advertisement Code in Cable Rules is a violation of fundamental right of freedom of speech

Issue No.3: What should be periodicity of review to ensure that the PS is not trespassing into the domain of regular TV broadcasters?

Comment:

As stated above, this exercise of consultation appears to protect the interest of satellite television channels at all costs for reasons best known to TRAI. As stated before, cable channels do not “trespass” into the domain of the satellite television channels. Local cable channels of LCOs and Independent MSOs fulfill the need of the local community in a very small geographical area as compared to the satellite channels that cover the whole country. What irreversible and grave illegality and/or unjust damage is inflicted on the satellite television channels, if the content on local cable channels overlap with the content of the satellite television channels? Further, the local cable channels made an entry into the Indian markets long before the advent of the satellite television channels. If cable TV networks and local cable channels came prior in time, how can they be considered as trespassers? It is the otherway round now when satellite channels are using technology to beam localized feeds and inject local ads in their channels.

Hence, there is no need for a review.

Issue No.4: Should it be mandatory for all DPOs to be registered as Companies under the Companies Act to be allowed to operate PS? If not, how to ensure uniform legal status for all DPOs?

Comments:

Any action to make it mandatory for the so-called DPOs to form Companies to run

their business will be arbitrary, without basis and against the constitutionally guaranteed right under Article 19(1)(g). There is no such need to have the kind of “Uniformity”, which the CP proposes. This is not done in a democratic country like India where most of the people are poor and struggling to earn their daily bread.

Making such conditions mandatory will drive most of the cable operators out of business leading to mass unemployment not desirable in a country like India. Already many arbitrary hurdles have been created by the combined team of MIB and TRAI in the path of cable operators who are now approaching the courts to resolve their problems as in bringing uniformity, both TRAI and MIB think that a national MSO and an LCO must be made to follow the same rules to do their business.

Until now, cable TV operators, have been running their business through different business vehicles and all of such vehicles are very legitimate. There should be no forced / coerced condition to form Companies, no matter how simple it might be to form them. The choice should be rightly left to the businessmen to decide the kind of vehicle that he/she proposes to adopt as per his/her specific needs, volume of operation and financial plans. In India there are still about 2000 MSOs who are providing cable service through analogue mode, since DAS III & IV is not yet implemented. These MSOs are very small and have been running their business since the last two decades as proprietary concerns and partnerships etc.

Issue No.5: Views, if any, on FDI limits?

Comments:

This calls for guidelines to be laid down by the Department of Industrial Promotion and Publicity.

The anomaly can be very easily rectified by inserting a clarificatory rule that no part of the FDI, over and above 26%, can be appropriated by an MSO towards running a news channel. Mandatory disclosures can plug this loophole. Also prior approval of MIB before inducting FDI could be made mandatory so that a check can be made on such transactions.

Issue No.6: Should there be any minimum net-worth requirement for offering PS channels? If yes, then what should it be?

Comments:

Any minimum net-worth requirement will be preposterous. Cable TV Operators, are not always large business conglomerates. Many a times, their network may even include 50-100 subscribers. How, then, can any minimum net worth requirement be put in place?

Further, cable TV Operators do not use any substantial natural resource like

spectrum or satellite transponder space to warrant such net worth requirement. The Cable TV operators do not have elaborate set ups or a huge number of employees like established satellite television channels.

Issue No.7: Do you agree that PS channels should also be subjected to same security clearances/conditions, as applicable for private satellite TV channels?

Comments:

It is ridiculous to make a street side grocery shop to follow the same rules as for a large shopping Mall. Security Clearance is not needed for the Channels, but for the Directors. The Cable TV Act already establishes a mechanism where criminal action may be taken against a Cable TV operator in case of any transgressions under the Cable TV Act.

Section 2 (a) of the Cable TV Act defines an Authorised Officer as under :

'authorised officer' means, within his local limits of jurisdiction;-

(i) a District Magistrate, or

(ii) a Sub-divisional Magistrate, or

(iii) a Commissioner of Police,

and includes any other officer notified in the Official Gazette, by the

Central Government or the State Government, to be an authorised

officer for such local limits of jurisdiction as may be determined by that

Government;

Section 11 and Section 12 allow an Authorized Officer to **seize and confiscate** equipments used for operating cable TV network if the Authorized Officer has a reason to believe that the provisions of Sections 3, 4A, 5, 6 or 8 have been or are being contravened by any cable operator.

Under **Section 16** of the Cable TV Act, a Cable TV Operator can be punished with **imprisonment of a term which may extend to two years** or with fine which may extend to one thousand rupees or with both and for every subsequent offence, with **imprisonment for a term which may extend to five years** and with fine which may extend to five thousand rupees.

Under **Section 19**, the Authorized Officer is already empowered to **prohibit the transmission of certain programmes in Public Interest**. Under **Section 20** of the Cable TV Act, the Authorized Officer even has the power to **prohibit the operation of cable TV network in public interest**.

These provisions of the Cable TV Act are applicable to the Cable TV Operators, but they are not applicable to satellite television channels. When such provisions are already in place, there is no real need for an additional security clearance just because the satellite television channels have to procure the same. TRAI should recommend that satellite channels should also be governed by the Authorized

Officers under Cable TV Act and should not be let off after a mere warning.

Issue No.8: For the PS channels to be registered with MIB through an online process, what should be the period of validity of registration and annual fee per channel?

Comments:

The process of registration of local cable channels and local cable network is already contained in the Cable TV Act and the Cable TV Rules.

The local cable channels do not generate revenues of the kind generated by the satellite television channels. Their area of coverage is also highly restricted. Such channels are more in the nature of random programming service which caters to the demands of the local cable subscribers. As the CP itself lays down, the content is provided on such channels in pull mode. As such having the same registered with MIB will not serve any apparent purpose.

Additionally, the mechanism which is contained in the Cable TV Act, is good enough to keep a tab on the local cable channels. The wide powers which are vested in the Authorized Officers can ensure compliance with the programming and advertising code guidelines and also ensure that nothing which is disseminated through the cable TV network is against public interest.

However, all registered MSOs may be asked to declare details of their local channels and based on their coverage, a registration fee may be levied.

Issue No.9: What is your proposal for renewal of permission?

Comments:

See comments to Issue No. 8 above.

Issue No.10: Should there be any limits in terms of geographical area for PS channels? If yes what should be these limits. Please elaborate your response with justifications.

Comments:

There should not be any stipulated limit in the geographical area of local cable channels. This aspect of the operation should be left to regulate itself. The market forces and peculiar conditions of cable industry will ensure that cable TV operators do not unduly impinge upon each other coverage area.

Further, since the content is more of a localised nature, the local cable channels are anyways constrained to restrict themselves to a particular defined geographical area.

Also in the times of internet, any local content can be picked up from thousands of websites and transmitted on a cable network. Hence geographic extent has no meaning in converged scenario.

Issue No.11: Should there be a limit on the number of PS channels which can be operated by a DPO? If yes, then what should be the limit?

Comments:

No. Any proposal to prescribe limits on the number of channels will be deemed arbitrary and open to challenge as being in violation *inter alia* of Article 14 and Article 19(1)(a) and 19(1)(g) of the Constitution of India.

Issue No.12: Do you have any comments on the following obligations/ restrictions on DPOs:

12.1 Non-transferability of registration for PS without prior approval of MIB;

12.2 Prohibition from interconnecting with other distribution networks for retransmission of PS i.e. cannot share or allow the re-transmission of the PS channel to another DPO; and

12.3 Compliance with the Programme & Advertisement Code and TRAI's Regulations pertaining to QoS and complaint redressal.

Comments:

All these issues have been tackled above. It is not possible to lay any such restrictions in the internet era.

Issue No.13: What other obligations/ restrictions need to be imposed on DPOs for offering PS?

Comments:

Restrictions in the form of Programming Code and Advertising Code are currently applicable to all satellite television channels as well as the programming services operated by the so called DPOs. There is no need for any further restrictions to be imposed thereon.

Issue No.14: Should DPO be permitted to re-transmit already permitted and operational FM radio channels under suitable arrangement with FM operator? If yes, then should there be any restrictions including on the number of FM radio channels that may be re-transmitted by a DPO?

Comments:

There should be no restrictions as long as legal permissions are there from the radio stations.

Issue No.15: Please suggest the mechanism for monitoring of PS channel

Comments:

Such mechanism is already in place under the Cable TV Act and Rules and should not be interfered with.

Issue No.16: Do you agree that similar penal provisions as imposed on TV Broadcasters for violation of the terms and conditions of their permissions may also be imposed on PS? If not, please suggest alternative provisions with full justification.

Comments:

The penal provisions which exist for the Cable TV Operators are far more serious in nature than the ones in place for the satellite television channels. TRAI should recommend to MIB that all satellite channels are also brought under these provisions if they violate any codes.

Issue No.17: What amendments and additional terms & conditions are required in the existing registration/ guidelines/ permission/ license agreements w.r.t. DPOs for regulating the PS channels?

Issue No.18: What should be the time limit that should be granted to DPOs for registration of the existing PS channels and bring them in conformity with the proposed regulatory framework once it is notified by MIB?

Issue No.19: Stakeholders may also provide their comments on any other issue relevant to the present consultation including any changes required in the existing regulatory framework.

Comments to issue No.17, 18 and 19:

Since, we see no need for the regulations that are sought to be put in place, there are no comments to offer in respect of Issue No. 17, 18 and 19.

Yours Faithfully,

Roop Sharma

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