

Date: August 24, 2022.

To,

Shri Anil Kumar Bharadwaj,
Advisor (B&CS)-II,
Telecom Regulatory Authority of India (TRAI)
Mahanagar Doorsanchar Bhawan
JLN Marg, Old Minto Road,
New Delhi - 110002, India

Subject: Comments on behalf of All India Digital Cable Federation ('AIDCF') on the Consultation Paper on "Renewal of Multi-System Operators (MSOs) Registration' dated 20.07.2022 ('CP').

Dear Sir,

We, AIDCF, would like to thank the Telecom Regulatory Authority of India (*hereinafter referred as 'Authority'*) for providing us with the opportunity to share our comments on the CP.

At the outset, we would like to put on record our sincere appreciation and gratitude for all the endeavours and measures that the Authority has been putting forth in the recent past to improve the functioning of the broadcasting and telecommunication sector by periodically introducing diverse regulations and processes with deep involvement of the concerned stakeholders. The captioned CP is likewise a welcome step towards establishing a robust mechanism for renewal of registration of MSOs.

It is further stated that while the Authority has already formulated and set up a vigorous mechanism for functioning and conduct of business operations by the MSOs vide the New Regulatory Framework which is in effect since April, 2019, however, even after the passage of considerable amount of time, several MSOs, till this date, do not even meet the basic and minimum technical parameters that have been specified by the Authority.

Similarly, 1760 entities have been granted registration to operate as MSOs by the Ministry of Information and Broadcasting as on the 31st of May, 2022, however, despite the audit process being in place from last 3 years, approximately 250 to 300 MSOs (per year) have only been audited in the process, which is less than 25% of overall MSOs and around 1300~1400 MSOs have still not undergone any audit process.

In view of the above, we would request TRAI to expedite and strengthen the audit process of the MSOs, which will help in implementing fair and transparent regulatory mechanism in the industry.

In continuation to above, please find below our question wise comments submission. We stand ready to be involved in further consultations, industry dialogues that may be undertaken by the Authority before finalizing any view on these issues.

ISSUES FOR CONSULTATION

Q3.1. What should be the period of extension/renewal, to be prescribed in the Cable Television Networks (Regulation) Act, 1995 /Cable Television Networks Rules, 1994, on the expiry of the initial period of permission of MSO registration? Please elaborate your response with justification.

Response: We submit that the license of all law-abiding and compliant MSOs (*regulatory compliances as have been appended under Annexure III to the CP*) shall be renewed for a period of ten years. This is suggested taking into consideration the fact that significant investments with regard to fixed costs like that of Digital Headend, Conditional Access System (CAS), Subscriber Management System (SMS), call-centers as well other infrastructure; and also, towards variable costs like set-top boxes, manpower, *et cetera*; are incurred by the MSOs for effectively commencing and provisioning their cable television services. A longer license duration for a period of ten years will incentivize their investments and provide certainty for expanding and upgrading their respective network infrastructure.

It is also pertinent to note in this context, that any entity and its respective directors/ concerned authorized personnel who are desirous of operating as MSOs, are obligated to obtain security clearance from the Ministry of Home Affairs (MHA) before the issuance/ grant of license by MIB. Such security clearance stands valid for a period of ten years.

Therefore, the validity of MSO license for a period of ten years will also ensure that the validity of license period stands co-terminus with the security clearance permission.

We also state that the Authority has itself recommended that DTH license shall be renewed for a period of ten years. Hence, to ensure parity amongst the Distribution Platform Operators (DPOs), the license issued to MSOs shall also be renewed and remain valid for a period of ten years.

It is further stated that while the MSO license shall remain valid for a period of ten years, the compliance parameters as have been prescribed by the Authority under Annexure III of the CP, shall be reviewed by the Authority on a bi-annual basis for each of the MSOs. The list of MSOs

that fall short of the prescribed framework shall be shared with MIB. Such MSOs should be subjected to a show-cause, and the MSOs, who fail to justify their stance or fail to remedy the situation within the time period as prescribed by MIB, should be subjected to forthwith termination of their license and cessation of cable television business operations. Further, the Authority should also strictly ensure that such entity/individual associated with the entity or any relative (*'relative' as defined under section 6 of the Companies Act, 2013*) shall not be allowed to operationalize a separate MSO business and shall not be issued an MSO registration.

Q3.2. Whether a one-time fee should be levied at the time of renewal of the MSO registration? If yes, please suggest amount of fee for such renewal to be prescribed in the Cable Television Networks (Regulation) Act, 1995 /Cable Television Networks Rules, 1994. Please provide detailed reasoning for your comment.

Response: The Authority would acknowledge that the business of MSOs, is capital intensive, and requires significant investments to create basic infrastructure. This coupled with the requirement of a substantial working/operating capital, for providing a good quality of service; the total capital required is quite substantive.

We suggest that Authority may consider levying Rs.1,00,000/- (One lakh) towards the renewal fee for MSO license, as such levy of renewal fees might assist in reducing the application requests from non-serious players.

Q.3.3 Should a time window be prescribed before the expiry of MSO registration, within which the MSO shall apply for renewal of the MSO registration?

Response: We state that at all times, the MSO license renewal process has to be a time-bound activity, by the concerned MSOs as well as by MHA, MIB and other statutory/regulatory bodies involved in the said process, strictly in the interests of the end consumers. It would, therefore, be reasonable on the part of any MSO to apply for the renewal process before the expiry of the subsisting registration which is valid for a period of ten years. We suggest that any MSO whose license is due for expiry, should submit its request for renewal, within a period of one-hundred and eighty days (180) with all the required and applicable documents.

Q.3.4. In case an MSO has applied for renewal, and the final decision on renewal is pending, what should be the provision to ensure continuity of service for the consumers on expiry of previous registration?

Response: We suggest that in case an existing service provider has applied for renewal and the decision stands pending at the end of the Ministry, then such MSOs should be allowed to provide their services on provisional basis till confirmation of registration by MIB, solely in the interests of the consumers, as per rule 11(E) of Cable TV rules, which allows central government to provide provisional license

Q 3.5 In case an MSO hasn't applied for renewal before the expiry of its registration:

Q3.5.1 What should be the status of services by such MSO after the expiry of registration? As per extant guidelines/ regulations an MSO with valid registration only can get the signals of a television channel. Should a broadcaster disconnect the television channels for such MSOs whose registration has expired?

Response: We state that the expiry of registration shall be deemed as cancellation of permission from the Ministry by virtue of which any MSO is allowed to provision its cable television services. The Ministry should publish a list of such MSOs whose registration stand expired, on a monthly basis, and correspondingly the broadcasters should be directed to strictly refrain from transmitting its signals to such MSOs. If any broadcaster is found to be in contravention of the same, strict action in terms of levying penalty/suspension of the concerned broadcaster's license, should be initiated by the Ministry.

Q3.5.2 Should existing registered operational MSOs be provided with an extended time beyond the original registration period for applying for renewal? What should be the maximum time after expiry up to which an application for renewal can be entertained by MIB?

Response: We state that if any MSO fails to file for renewal of his license before the expiry, he should be given a window of 1 month post expiry to file the same with an additional fine of Rs. 5 lakhs. The financial penalty will dissuade non-serious players to misuse government functionary.

Q3.5.3 Should there be an additional fee for such applications that are received after the expiry of registration period?

Response: As stated above, a window of 1 (one) month shall be give after expiry with a fine of Rs. 5 lakhs and if any request for renewal which is received by the Ministry beyond the prescribed time window, shall be construed as a fresh request for registration and accordingly, application fee which is prescribed by the Ministry for fresh MSO registrations shall be levied on such requests.

Q3.6. Should some qualifying conditions be prescribed for renewal of MSO registration, under which the MSO, along with the application for renewal, shall be required to submit its compliance status with the terms and conditions of registration and the extant regulatory framework? Please provide the details of:

- (i) List of necessary compliances that should be mandatory for considering renewal of MSO registration,
- (ii) List of documents, which may include, but may not be limited to, self-certifications, NOCs from TRAI/MIB/licensing authority, audit reports etc. that would be required to be submitted for verification of such compliances at the time of application,

- (iii) **Any other mandatory requirements for verification of status of compliances of the MSOs before grant of renewal of registration.**

Please elaborate your suggestions with reasons for the mandatory requirement of each compliance in tandem with ease of doing business in the television distribution network.

Response:

We state that the MSO applicant should be directed to submit/ upload the following details with respect to renewal:

1. Date of commencement of business operations (*which should not be beyond a period of six months from the grant of registration by MIB*)
2. Details of Digital Headend(s) which have been deployed for transmission of cable television services,
3. Certificates from Conditional Access System (CAS) & Subscriber Management System (SMS) vendors
4. Area of operations as on the date of renewal
5. Compliance and subscription audit report for each calendar year and the details of auditor which are empaneled by the Authority.
6. Last 3 (Three) financial year audit certificates from TRAI empaneled auditors.
7. Self-Affidavit must be filed by the MSO stating compliance to all applicable TRAI regulations during last 10 years and in case of false affidavit, MIB should not renew his license.
8. All documents that are mandated for MSO registration and are listed on the portal of Broadcast Seva, including declaration with respect to mandatory carriage of Doordarshan (DD) channels and corresponding verification thereof by DD authorities.

Q3.7. Should there be any additional terms and conditions for renewal of the permission for MSO registration? Please elaborate.

Response: We submit that the comprehensive list of documents and compliances as have been mentioned in the response to the aforesaid question shall suffice the processing and grant of renewal registration to the MSO concerned.

Q3.8. Stakeholders may also provide their comments on any other issue relevant to the present consultation.

Response: In addition to the aforementioned comments, we would also like to highlight the following.

1. **Non-compliance of TRAI regulations by MSOs:** Authority has already formulated and set up a vigorous mechanism for functioning and conduct of business operations by the MSOs vide the New Regulatory Framework which is in effect since April, 2019, however, even after the passage of considerable amount of time since then and despite

issuance of repetitive directions by the Authority to that effect, several MSOs, till this date, do not even meet the basic and minimum technical parameters that have been specified by the Authority.

We further seek to draw the kind attention of the Authority that approximately 1760 entities have been granted registration to operate as MSOs by the Ministry of Information and Broadcasting as on the 31st of May, 2022, however, the Authority would acknowledge that the number of MSOs which have actually commenced their business would be approximately 900 and those who are effectively operating their business in compliance with the Applicable Regulatory Framework would be less than 25% of the total number of MSOs that stand registered with the Ministry. We further state that presently, the MSOs after receiving the requisite registration from MIB, are required to report to the Ministry about the commencement of their operations along with the capacity of their network/headend. A standard clause in the letter of registration categorically states and establishes the following:

“You have to operationalize the service within 6 months of issue of this registration. If you operationalize the service in any part of the country, it would be treated as fulfilment of this condition on your part. However, you have to submit the details of the Headend, Subscriber Management System (SMS), Subscriber list and a self-certificate that you are carrying all the mandatory television channels, within six months from the date of MSO registration to the Ministry of Information & Broadcasting, failing which your MSO registration is liable to be cancelled/suspended.”

In this regard, it is stated that while the present CP restricts the scope of establishing a comprehensive framework for renewal of registration of the MSOs, however, in order to establish a healthy competitive framework with compliant MSOs and for ensuring that quality of broadcasting service and interest of consumers is not put to a setback, it becomes pertinent for the Authority to review the subsisting scenario in relation to the other registered MSOs as well, irrespective of them approaching/due for renewal of registration, or even otherwise.

There are a substantial number of MSOs who have either not started to operationalize their respective businesses or have not complied with the parameters of the Applicable Regulatory Framework in true letter and spirit, but they still continue to remain registered with MIB despite the clear obligation enshrined in the license for commencing their business operations within a period of six months of registration.

Therefore, considering the aforesaid scenario, it is suggested that the Authority should set up a separate body to co-ordinate with MIB and formulate a review mechanism for determining the actual number of MSOs that have commenced their business operations and are conducting their businesses in compliance with the statutory and technical

parameters enshrined under the applicable regulatory framework. List of non-operational and defiant MSOs as determined by such body should be referred to the Ministry and the license/registration of such MSOs should be forthwith terminated by the Ministry. This will ensure that only serious and competent MSO players are operational in the market which are provisioning retransmission of cable television services in strict adherence and compliance with the regulatory framework, ensuring protection and furtherance of interests of consumers.

- 2. Mandatory compliance and subscription audit by TRAI empaneled auditors:** Another aspect that we seek to highlight before the Authority is the obligation that is outlined under Regulation 15 of the Interconnection Regulations that subjects each and every DPO, including the MSOs, under the mandatory obligation to undertake compliance and subscription audit of its systems once in every calendar year. The said regulation has also been reproduced herewith for ready reference of the Authority:

“Every distributor of television channels shall, once in a calendar year, cause audit of its subscriber management system, conditional access system and other related systems by an auditor to verify that the monthly subscription reports made available by the distributor to the broadcasters are complete, true and correct, and issue an audit report to this effect to each broadcaster with whom it has entered into an interconnection agreement.”

Aside to this, the Authority has from time to time, issued several directions and correspondence to the DPOs to ensure compliance with the aforesaid mandate of the regulatory framework and to get their respective digital addressable systems audited through any of the empanelled auditors as appointed by the Authority for this purpose. However, several MSOs have paid no heed to either the regulatory framework or to the several directions/ reminders as issued by the Authority from time to time and thereby stand in absolute violation of the regulatory framework.

We further state that the objective with which the mandate has been imposed on the MSOs is to ensure that the systems of the MSOs who are transmitting signals either directly or indirectly, to the premises of the subscribers, are compliant with Schedule III of the Applicable Regulations on Interconnection. The only effective recourse to ascertain that all MSOs who are operational and are compliant to Schedule III of the Applicable Regulations on Interconnection is by ensuring that they have conducted the aforesaid audit of their systems.

Therefore, failure on part of the MSOs to conduct audit of its systems, defeats the purpose of the regulatory framework and evidently leads to a situation wherein we are deterred from having a level playing field as on one hand there are MSOs who have

incurred time, effort and expenses to make their systems compliant and on the other hand there are certain MSOs who are being allowed, not only to operate but also to flourish without even complying with the fundamental requirements. Moreover, some of these non-compliant MSOs are indulging in the illegal act of piracy and are operating and flourishing at the cost of the compliant MSOs.


It is also pertinent to mention in this context that even the broadcasters under the Interconnection Regulations, have been subjected to the obligation and the responsibility of providing their signals of television channels to only those MSOs whose Digital Addressable System (DAS) stand compliant with the technical parameters as enshrined under the existing regulatory framework. They have also been given the right to initiate audit of systems of such MSOs who do not adhere to the technical benchmarks prescribed by the Authority. However, even the broadcasters have been refraining from calling for a broadcaster caused subscription and compliance audit of the non-compliant MSOs and are continuing to supply their signals to them for protecting their own commercial and business interests. This evidently establishes that large number of non-compliant MSOs are being allowed to operate without any intervention/strict action, even on part of the broadcasters.

It is therefore urged to the Authority that the license of all the MSOs who have not complied with mandatory compliance and subscription audit requirement under clause 15 of the Interconnect Regulation, till date, i.e., for calendar years 2019, 2020, and 2021 should be forthwith terminated and such MSOs be ceased from carrying cable television businesses with immediate effect. The broadcasters should also be strictly directed to immediately and forthwith refrain from provisioning their signals to such MSOs who are unable to provide the compliance and subscription audit reports of their systems from an auditor empanelled by the Authority, for the corresponding years.

Thanking You

Yours Faithfully

For, **ALL INDIA DIGITAL CABLE FEDERATION**



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