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IBDF's preliminary submissions to the Draft Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) (Seventh Amendment) Regulations, 2025

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Sub.: IBDF's preliminary submissions to the Draft Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) (Seventh Amendment) Regulations, 2025

Ref.:

- 1. TRAI's Draft Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) (Seventh Amendment) Regulations, 2025;**
- 2. Consultation Paper on Audit related provisions of Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable System) Regulations 2017, and The Telecommunication (Broadcasting and Cable) Services Digital Addressable System Audit manual dated 9th August 2024;**
- 3. IBDF's response dated 11th September 2024 to TRAI Consultation paper dated 9th August 2024;**
- 4. IBDF's additional submissions dated 13th December 2024 post Open House Discussions conducted by TRAI on 5th December 2024;**
- 5. Representation dated 14th December 2023 by IBDF to TRAI on Audit related concerns.**

Dear Madam,

The Telecom Regulatory Authority of India ("TRAI/ Authority") has published the Draft Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) (Seventh Amendment) Regulations, 2025 ("**Draft Amendment**"), inviting comments from the stakeholders.

We, the Indian Broadcasting and Digital Foundation ("IBDF"), are writing to you as an apex industry body representing the interests of a diverse group of broadcasters with national and regional television channels, collectively comprising over 400 channels and representing more than 90 percent of the television viewership in the country.

At the outset, IBDF acknowledges and appreciates the efforts undertaken by the TRAI in formulating the Draft Amendment. However, we respectfully submit that the Draft Amendment does not take into account all relevant matters relating to the issue as well as the concerns and suggestions put forth by the IBDF *inter-alia* in response to the Consultation Paper on "Audit-related provisions of the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017 and the Telecommunication (Broadcasting and Cable) Services Digital Addressable System Audit Manual" dated 9 August 2024 ("**2024 Consultation Paper**"). These submissions were made to address persistent industry-level challenges in the audit framework, particularly with respect to transparency, accountability, and effective enforcement.

IBDF is respectfully submitting the below preliminary submissions and comments on the Draft Amendment for your consideration. These submissions and comments are being made in the alternative and without prejudice to one another.

A. Inadequacies of Draft Amendment and piecemeal exercise:

1. We respectfully submit that the current exercise ought not be conducted in the manner as is being conducted presently, both from the perspective of procedural concerns and substantive inadequacy. The Authority's approach to introduce changes in a piecemeal manner is inconsistent with the preceding 2024 Consultation Paper, which dealt with three aspects i.e., audit regulations, infrastructure sharing, and the audit manual, as interdependent and inter-related issues. IBDF provided feedback on all these three aspects.

2. However, the present Draft Amendment severs these components, creating significant regulatory uncertainty and preventing a meaningful assessment of the proposed changes and their practical implications. Specifically, all issues relating to infrastructure sharing have not been analyzed and that the Explanatory Memorandum of the Draft Amendment also defers crucial amendments to the Audit Manual to a later, unspecified date. An audit regulation ought not be analyzed in a vacuum, divorced from all aspects relating to infrastructure sharing and the procedural manual that governs execution for audits.

3. This fragmented approach is also little confusing in light of the meeting held on 25 February 2025, wherein the Authority itself proposed deferring this exercise, and that the same be considered as part of the holistic review of the regulatory framework exercise that TRAI intends to undertake. We had concurred with this proposal to avoid duplicative and disjointed regulatory interventions. The Authority's decision to now rush through this partial and incomplete amendment contradicts its own suggestion and the concurrence during the meeting. Further, it is counterintuitive to proceed with a piecemeal amendment when a more comprehensive review is imminent.

4. Therefore, in the interest of regulatory certainty, procedural propriety, and efficient consultation, we respectfully urge the Authority to withdraw the present Draft Amendment. We request that this entire exercise be subsumed into the forthcoming holistic review of the regulatory framework, as was previously proposed by the Authority and agreed to by us. This path will ensure that the changes / framework is transparent, comprehensive, and implemented in a manner that provides clarity and stability to the sector, and does not disrupt the sector.

B. Dilution of broadcaster's audit rights

5. The proposed amendment in Clause 15(2) fundamentally alters the broadcaster's right to audit. It repeals the existing direct right to conduct an audit under Regulation 15(2) and replaces it with a cumbersome, multi-stage "challenge" process that is mediated by TRAI. This effectively converts what has hitherto been a straightforward commercial right into a regulator-controlled mechanism, thereby restricting the broadcaster's autonomy to conduct audit and independently verify subscriber reports furnished by the distributor.

The Regulations as they stand unequivocally grant broadcasters the right to conduct their own audit if they are not satisfied with the Distribution Platform Owner's ("**DPO**" / "**Distributor**") report or system compliances. The Hon'ble TDSAT, in *Sony Pictures Networks India Pvt. Ltd. v. Digiana Projects Pvt. Ltd.* (B.P. No. 658 of 2020) ("**Sony v. Digiana**"), categorically held that a broadcaster's right to conduct an audit under Regulation 15(2) "*does not and should not require any contest or legal dispute for permitting the broadcaster to proceed with its right to hold an audit.*"

6. The Draft Amendment directly contradicts this established principle by forcing a broadcaster into a lengthy dispute and appeal process merely to exercise its right to verify its revenue.

7. In its response to the 2024 Consultation Paper, the IBDF, as its primary submission, emphasised the need for broadcaster's unfettered right to audit and the complete abolition of DPO-caused audits under Regulation 15(1). The Draft Amendment does the exact opposite namely, it retains the problematic DPO-caused audit and severely *fetters* the broadcaster's audit right, making it conditional and subject to TRAI's approval. This completely ignores the core feedback from the primary stakeholder affected by revenue leakage i.e., the broadcasters.

8. The 2024 Consultation Paper acknowledged the failures of the DPO-led audit regime. However, the Explanatory Memorandum of the Draft Amendment provides no rationale as to why replacing a direct audit right with a TRAI-gatekept process is a solution. TRAI's direct involvement introduces additional procedural complexity into what is essentially a B2B revenue assurance mechanism. The new / proposed process is unworkable and detrimental to say the least *inter-alia* for the following reasons:

(a) Introduces Extreme Delays: The proposed timeline of:

- (i) 6 months for DPO to conduct audit and provide audit report to broadcaster, +
- (ii) 30 days for broadcaster comment, +
- (iii) 7 days for DPO referral to auditor, +
- (iv) 30 days for auditor response, +
- (v) 7 days for DPO reply to broadcaster, +
- (vi) 30 days for broadcaster to report unresolved issues to TRAI, +
- (vii) **indefinite time** for TRAI to allow/ disallow broadcaster audit, +
- (viii) time taken by broadcaster to propose auditors for DPO's approval, +
- (ix) 15 days for DPO to respond on names of auditors, +

- (x) time taken for broadcaster to approach TRAI for selection of auditor, +
- (xi) **indefinite time** for TRAI to select auditor;

introduces more than a ten-stage process with a potential delay at each stage before a broadcaster can commence broadcaster-caused audit.

TRAI has failed to consider that there may be certain emergent situations requiring immediate audits, where waiting for 16-20 months or more would defeat the very purpose of an audit e.g., where DPOs report a sudden drop in subscriber numbers. Such a situation would warrant an immediate audit, especially when there is no corresponding increase in the number of subscribers of other DPOs operating in the relevant area of operation. In such cases, waiting for 16- 20 months would have a catastrophic effect not only on broadcasters but also on other DPOs operating in the relevant area of operation.

(i) **Weakening of Anti-Piracy Efforts**: The ability to conduct swift audits is a critical tool against piracy. These delays render that tool ineffective.

(j) **Removes Legal Recourse**: The new provision attempts to override the right of broadcasters to approach the Hon'ble TDSAT directly for audit-related disputes, and instead, mandates that they first go to DPO and later to TRAI that *inter-alia* lacks adjudicatory powers and capacity for prompt and efficient action.

(k) **Dilutes the robustness of the audit framework**: The changes proposed under the Draft Amendment such as continuing to allow DPO led audits in the absence of data justifying the need for the same, adding multiple stages for initiating broadcaster led audits, limiting scope of remedies available to broadcasters, completely dilutes the audit framework.

(l) **Creates Uncertainty**: The broadcaster's ability to audit is no longer a right but is subject to TRAI being convinced "on merits", which is *inter-alia* an ambiguous and subjective standard.

9. The 'proposed' circumscribed challenge audit and mechanism therefore under Clause 15(2) is procedurally unviable and strips broadcasters of their fundamental right to verify their revenue and protect their content. We strongly oppose its introduction and recommend recognising and allowing broadcaster-initiated audits.

C. Broadcasters should have an unfettered right to audit:

10. We urge that the Draft Amendment needs to be modified to grant broadcasters an unfettered right to audit and the DPO-caused audits under Regulation 15(1) be done away with. Broadcasters are the owners of TV channels and subscriber base forms the basis of broadcasters' revenues. Hence, broadcasters must be able to independently verify the veracity of the reported subscriber numbers and validity of the DPOs addressable systems to mitigate under-reporting and manipulation of the CAS and SMS systems, without relying on a DPO- caused audit / MSRs submitted by DPOs.

11. Currently, DPOs avoid broadcaster-caused audits, by asking broadcasters to provide strict proof of discrepancies found in the DPOs' audit report, and by delaying the broadcaster-caused audits on various pretexts. The very purpose of audits is to ensure transparency and verify MSR and validate addressable systems deployed by the DPOs to retransmit TV channels of broadcasters.

12. There are numerous other examples where Hon'ble TDSAT has allowed broadcaster-caused audits. Accordingly, the Draft Amendment by insisting upon observations with evidence relating to DPO caused audit, is contrary to the findings of the Hon'ble TDSAT and effectively dilutes / overrides various orders / position consistently held by Hon'ble TDSAT. Additionally, it interferes with the broadcaster's statutory right to take action under the TRAI Act as well as to independently verify subscriber data specially when the current regulations and tariff order permit only revenue-share between broadcasters and DPO.

13. Providing broadcasters the unfettered right to audit for all DPOs would not only safeguard broadcasters' commercial interests and ensure regulatory compliance but would also help in maintaining level playing field / ease of doing business amongst all DPOs by uniformly eliminating the claimed financial and administrative burden of bearing audit fees, associated obligations under Regulation 15(1) and multiple audits.

D. Shift from Rights to Permissions, Non-consideration of Stakeholder Inputs and Unbalanced Priorities.

14. The Draft Amendment, particularly the diluted audit rights for broadcasters, infrastructure sharing and audit exemptions appear to prioritize DPOs, reducing the perceived compliance burden on them at the direct expense of revenue security, transparency, and importantly, anti-piracy measures for

broadcasters. A healthy and robust ecosystem requires accountability from DPOs, not just convenience for DPOs.

15. The overarching theme of the Draft Amendment is the erosion of broadcasters' commercial audit rights and its replacement with multi-layered processes that require regulatory permission. This would not only increase compliance costs and cause delays but would also weaken the industry's ability to function on sound commercial principles.

16. Across multiple critical issues including audit rights, timelines, small DPO exemptions, and infrastructure sharing safeguards, the Draft Amendment consistently ignores and/or inadequately addresses the detailed, reasoned, and practical feedback provided by the IBDF. This indicates clear disconnect between the regulatory process and ground realities.

17. Instead of moving towards deregulation and forbearance, TRAI is heading in the opposite direction by attempting to micro-manage operational and commercial aspects of business, like audit. Such action creates unnecessary delays, impediments and also disrupts business.

E. Lack of Data / Justification for Dilution of Audit Rights:

18. We take this opportunity to express our deep concern over the Draft Amendment's proposal to substantially dilute the broadcasters' right to conduct an audit. The proposed shift from the existing right under Regulation 15(2) to a multi-step, permission-based 'special audit' represents a significant and detrimental regulatory change without any basis, which weakens a critical mechanism for ensuring revenue assurance and system integrity.

19. Further, the very description of a broadcaster-led audit as a "special audit" is conceptually misplaced. The word special connotes exceptionality—an extraordinary measure taken outside the normal course of affairs. In the broadcasting ecosystem, however, audits are a routine and indispensable mechanism for ensuring transparency in subscriber reporting, verification of addressable systems, and equitable revenue sharing between broadcasters and distributors. Because all operational and financial data resides with the distributor, verification through audit is the only means available to a broadcaster to validate accuracy and detect under-reporting or piracy. It is therefore a normal commercial practice and a necessary safeguard intrinsic to the functioning of a revenue-sharing regime, not a privilege to be invoked in rare or exceptional circumstances.

20. Treating a broadcaster's audit as "special" would invert the regulatory logic—making transparency an exception rather than an expectation. It would require a broadcaster to demonstrate suspicion or submit prima facie evidence before being permitted to verify its own revenue, which is self-defeating and inconsistent with the very object of the audit framework. Such an approach also undermines the deterrence against manipulation of subscriber data and renders the verification process unduly dependent on regulatory discretion. The Authority's role should be confined to prescribing uniform procedures, timelines, and qualifications for audits in the public interest, while the right to initiate them must remain unfettered and exercisable by broadcasters in the ordinary course of business as a matter of contractual and regulatory entitlement. Accordingly, IBDF urges that all references to TRAI's approval or permission for broadcaster-led or "special" audits be deleted, and that the regulations expressly affirm the broadcaster's continuing right to conduct audits as a normal, integral, and indispensable element of the interconnection regime.

21. A regulatory shift of this magnitude, which significantly curtails the rights of stakeholders, ought to be supported by transparent, evidence-based reasoning in consultation with stakeholders. The Authority, in its 2024 Consultation Paper, noted that '*many distributors are still not getting their system audited in a time-bound manner*' and that the '*number of DPO caused audits were very low*'. This observation implies the need for stronger oversight rather than weaker rights for broadcasters, as has been proposed by TRAI. For a meaningful consultation to occur, stakeholders ought to have access to the same evidence that is forming basis for Authority's proposed regulations, which is missing in the present case. Without access to the data gathered by TRAI, the decision to dilute broadcasters' challenge audit rights is contrary to the Authority's own findings on low DPO compliance. We respectfully submit that a decision that fundamentally alters the balance of rights ought not be made without full disclosure of the underlying data and a clear justification for the proposed changes coupled with the opportunity to deal with such data as part of the consultation process / exercise.

F. Objections to proposed amendments in Regulation 15 regarding discriminatory framework, auditor selection:

22. We also take this opportunity to convey our objections to the proposed amendments to Regulation 15 under the Draft Amendment concerning the selection procedure for auditors in case of broadcaster-caused audits. While we appreciate the Authority's intent to streamline processes, the

proposed framework is founded on a contradictory and inequitable logic that undermines the very purpose of audits as a tool for transparency and verification.

23. The Draft Amendment creates a discriminatory regime that inexplicably places immense trust in the party being audited (the DPO) while simultaneously displaying a profound lack of faith in the aggrieved party (the broadcaster) seeking to verify legitimate discrepancies. This approach is not only counter-intuitive but also detrimental to the health and fairness of the entire broadcasting distribution ecosystem especially considering that DPO-caused audits under existing Regulation 15(1) have historically not reflected any major discrepancies, which has not been the case for broadcaster-caused audits under existing Regulation 15(2).

24. The core flaw in the proposed amendments also lies in its paradoxical distribution of trust. The Draft Amendment grants DPOs the unilateral right to appoint an auditor for annual audit under the proposed Regulation 15(1). This is despite the well-known history of such audits failing to uncover significant discrepancies, creating a clear hazard where the auditee controls the audit process. In stark contrast, when a broadcaster seeks to initiate audit under the proposed Regulation 15(2), their rights are severely curtailed. This differential treatment is baffling since it rewards the party whose reporting is in question and penalizes the party seeking to uphold the integrity of the system.

25. The proposed structure also erodes the independence of the audit and is also contradictory to the proposal made by TRAI in Regulation 15(1) where in case of DPO caused audit there is no such requirement, and the only requirement is that auditor needs to provide self-certification. TRAI ought to maintain uniformity and provide for similar self-certification in case of broadcasters as well instead of providing an elongated and time-consuming audit selection process.

26. The very purpose of a broadcaster-led audit is to ensure independent verification of subscriber numbers when there are doubts about the distributor's reporting. Allowing the distributor—the very party under scrutiny—to select the auditor fundamentally undermines the object of the provision. This process will also be a logistical nightmare to coordinate on dates and get audit commenced since, multiple DPOs may select the same auditor.

27. As already highlighted in earlier submissions, distributors have repeatedly delayed or manipulated the audit process under Regulation 15(1), if the distributor is given choice even in a broadcaster-led special audit, there is a significant risk that the distributor will again resort to tactics such as delaying auditor confirmation, influencing empanelled auditors, or challenging the broadcaster's nominated names.

28. In view of the above, it is submitted that the proposed selection mechanism for a broadcaster-caused audit under Regulation 15(2)(a) of the Draft Amendment is unworkable and introduces an irreconcilable conflict of interest. Granting the DPO i.e., the very entity suspected of reporting inaccuracies, the power to select one of the three auditors proposed by the broadcaster or reject all of them by *inter-alia* not responding within 15 days' effectively neutralizes the audit's independence as well as defeating the objective of a rigorous and impartial investigation.

29. The subsequent provision, which allows TRAI to appoint an auditor should the DPO fail to choose, is equally problematic as it is opaque and devoid of any specified criteria for selection of auditor. This leaves the broadcaster, who bears the full cost of the broadcaster-caused audit, at the mercy of an arbitrary appointment process, fundamentally compromising its right to fair and meaningful verification.

30. Further, the Authority has proceeded to dilute the broadcasters' right to conduct audits without presenting any empirical data or evidence of its misuse. The recurring grievance regarding 'multiplicity of audits' / 'problem of multiple audits of DPO' cited by certain DPOs is unsubstantiated and not backed by any verifiable data. In the absence of such study and data, the proposed amendment is a solution in search of a problem, one that unjustifiably weakens the broadcasters' essential ability to protect their revenue and ensure contractual compliance.

31. It is submitted that the entire framework for broadcaster audit needs to be reconsidered *de novo*. The right to select an auditor for a broadcaster-caused audit ought to rest squarely with the broadcaster initiating it, like in the case of DPO-caused audits. The broadcaster, being the aggrieved party and the one financing the audit, should be free to appoint competent auditors from the Authority's empaneled list, and that a DPO should not have any veto-rights. Further, to address any concerns of partiality, the auditor concerned can be mandated to give a certificate on the lines envisaged in the fifth proviso to the proposed Regulation 15(1) in Draft Amendment. This is the only way to ensure the broadcaster-audit process is robust, independent and capable.

32. In view of the above, we submit that the proposed amendments to Regulation 15 under the Draft Amendment are inequitable, lack justification, and create a system that is biased against broadcasters and is devoid of transparency and accountability. They disempower the very

stakeholders (i.e., broadcasters) who rely on the audit mechanism to ensure a level playing field. We strongly urge the Authority to withdraw these amendments since the proposed amendments are not fair, robust, or transparent. Further, they are discriminatory and completely divorced from ground realities

Objection against preferential treatment to BECIL:

33. The Draft Amendment makes a specific reference to Broadcast Engineering Consultants India Limited (BECIL) in the context of audits. Such explicit reference is unnecessary and inappropriate, as it creates the impression of preferential treatment to one entity over others, despite BECIL being only one among several empanelled auditors. The regulatory framework already provides that audits under Regulation 15 must be conducted by TRAI-empanelled auditors. As such, making a separate reference to BECIL adds no substantive value, since BECIL is identified as a TRAI empanelled auditor and hence it can be deemed to be already covered within the scope of the regulation.

34. TRAI, as a regulator, must ensure neutrality and equal treatment of empanelled auditors. It is pertinent to note that highlighting one specific entity in the Draft Amendment, when others are similarly placed, violates this principle of non-discrimination and undermines confidence in the empanelment system.

35. This implicit endorsement of BECIL as a default auditor in case of broadcaster-caused audits is concerning. This approach reflects a clear departure from TRAI's previously consistent stance of treating BECIL at par with other empanelled auditors. This is also evident from the fact that all throughout the existing regulations as well as in Regulation 15(1) of proposed Draft Amendment, TRAI has consistently used the expression BECIL **"or"** empaneled auditors. However, surprisingly, in stark contrast to its consistent position, TRAI has proposed that panel of auditors being proposed by broadcasters should contain three names from amongst BECIL **"and"** empaneled auditors. The empaneled list of auditors should represent a pool of equally competent and independent firms, and no single entity should be granted a privileged status, particularly when its past performance during commercial audit does not instil much confidence. Further, TRAI has also not analyzed BECIL's capacity, resource availability, or operational bandwidth to handle multiple simultaneous audits (whether BECIL will be able to conduct timebound audits if all / majority of DPOs were to choose BECIL to conduct audits), which raises serious concerns about potential delays and inefficiencies. Further, in cases where a DPO-initiated audit has already been conducted by BECIL, allowing BECIL to again conduct a broadcaster-initiated audit would lead to a conflict of interest, as the same entity would be re-evaluating its own audit findings. It is submitted that focus ought to be on strengthening the empanelment criteria and the skills of all auditors to ensure they possess the requisite intent and capability to conduct thorough and effective audits, rather than creating a preferential hierarchy within the panel. We understand that empaneled auditors including BECIL sometimes engage third party auditors (who may otherwise not be empaneled with TRAI) while conducting audits. These practices need to be looked into by TRAI and suitable action may be taken to ensure that even if empaneled auditors require assistance in conducting audits, they engage only empaneled auditors and they do not outsource their work to any auditor who is not be empaneled with TRAI.

36. We reiterate that there should not be any referencing to BECIL in the Regulations. This is problematic for multiple reasons as mentioned above including:

(a) BECIL's role is limited to that of an empanelled auditor, therefore, a separate referencing creates the impression of preferential treatment and violates the principle of equal treatment among empanelled auditors.

(b) BECIL's primary expertise lies in technical/engineering audits, not commercial financial audits. For subscriber reporting and revenue verification, commercial audit expertise is critical. Referencing BECIL's name creates any impression that BECIL is TRAI favoured auditor. This also casts doubt about the capability and suitability of other auditors.

37. The auditor selection process must preserve neutrality and independence. This is only possible if the broadcaster, who is exercising its regulatory right under Clause 15(2), is allowed to appoint the auditor from among the empanelled auditors. Just the way TRAI has proposed that broadcasters and TRAI itself would have no role in the choice of auditor for DPO-caused audit, in the same manner, Distributors and TRAI too should have no role in the choice of auditor for broadcaster-led audits to ensure parity, transparency, and consistency in the audit process across both broadcaster led and DPO led audits.

38. In view of the above, IBDF respectfully submits that the reference to BECIL in Draft Amendment and all other similar references in the regulations should be amended to reflect only "empanelled auditors" (i.e., without any specific reference to BECIL). This will preserve the equality of the regulator, avoid perceptions of favoritism, and ensure a level playing field for all empanelled auditors, including BECIL. It is further submitted that even otherwise no special treatment ought to be bestowed on BECIL.

G. Non-consideration of *inter-alia* the submissions made by the IBDF including response to the 2024 Consultation Paper:

39. We had raised serious concerns *inter-alia* in relation to the misuse of the existing framework by distributor platform operator for avoiding / delaying broadcaster caused audits of its addressable systems and the DPO's audit report on numerous occasions have been found to be manipulated or incomplete.

40. In order to overcome the various audit related challenges, IBDF had proposed that the broadcasters should be given unfettered right to conduct audit and the DPO-caused audits under Regulation 15(1) should be done away with.

41. IBDF had also proposed that in order to ensure accuracy of the monthly subscription reports furnished by the DPO, it should be mandated that the DPO must also submit one week's raw data from its Subscriber Management System ("**SMS**") and Conditional Access System ("**CAS**") for any of the week ending on 7th/ 14th/ 21st/ 28th of such month along with the relevant Monthly Subscriber Reports ("**MSR**") and include names of CAS and SMS systems used. Further, it was proposed that along with MSR and one week's raw data, the DPO must also submit the names of all the CAS and SMS systems used to generate the MSR and the said data, so as to prevent under-reporting and enhancing transparency. These submissions are reiterated and TRAI is requested to make suitable provisions for the same.

42. Though the Draft Amendment notes few submissions of IBDF, it does not provide any reasons for not considering the said submissions. This omission and non-consideration of submissions is inconsistent with the statutory mandate under Section 11(4) of the TRAI Act, which incorporates the principles of transparency in the regulation-making process. It also runs contrary to the Judgment of the Hon'ble Supreme Court in *Cellular Operators Association of India v. TRAI*, (2016) 7 SCC 703 ("**COAI v. TRAI**"), wherein it has been held that the regulation-making power should be exercised after due consideration of all stakeholders' submissions, together with an explanatory memorandum which takes into account what they have said and the reasons for agreeing or disagreeing with them.

H. Insistence on evidence undermines the purpose and scope of audit

43. The Draft Amendment insists upon specific evidence to be provided by the broadcaster for seeking audit of the DPO's systems. This requirement is not only onerous and impractical but also defeats the very purpose of an audit. This proposed stipulation also severely narrows the scope of challenging an audit, rendering it effectively meaningless. To illustrate - if during broadcaster-caused audit any additional discrepancies are found, then in view of the proposed amendment, the auditor may not be able to look into them. Similarly, if the auditor wants to look into ancillary issues in relation to the discrepancies, then it may not be able to do so in view of the narrow scope envisaged in Third Proviso to 15(2)(a) of the Draft Amendment. To further illustrate – currently audit of 20% of sample weeks is conducted, if discrepancies are found in these 20% sample weeks then there is no provision in the Draft Amendment that allows complete audit i.e., of the remaining 80% of the weeks. As such, there should not be unnecessary constraints and/or restraints on broadcaster-caused audits. Similarly, it is not understood as to why should complete broadcaster-caused audit not be permitted in case any discrepancy has been found in DPO-caused audit report as well as if TRAI agrees that the broadcaster is entitled to audit the DPO.

44. Further, the proposed framework is easily exploitable since a DPO could collude with an auditor to undermine the integrity of the "20% random sample". For instance, the DPO could identify to the auditor, the weeks known to be free of discrepancies, which the auditor then purposefully selects during DPO-caused audit. This manipulation would leave the remaining 80% of the data unaudited, creating an opportunity for the DPO to alter the larger, unexamined dataset that would go without detection. These examples illustrate that the Authority has not fully considered the potential for misuse of the proposed amendments. This could probably be one of the reasons why no discrepancies get reflected in some DPO-caused audits, and that broadcaster-caused audits spanning over remaining weeks could be showing discrepancies. Therefore, we *inter-alia* request for removal of the 20% sampling limit. Broadcasters ought to have unfettered right to conduct a complete audit of 100% of a DPO's MSRs for the preceding three years.

45. The Draft Amendment creates a significant loophole where audits initiated by a DPO can be easily misused. The core issue is that an audit report can only be disputed if it contains internal inconsistencies. If not, it must be accepted as entirely accurate. For example, if a DPO were to collude with an auditor to produce a flawless-looking report, that report cannot be challenged, nor can the systems be re-audited, even if fraudulent activity had occurred. It is submitted that on few occasions audits were conducted basis market information / intelligence and anomalies at the ground level, and these audits did show discrepancies in the systems. It may not be out of place to state that in the extant Interconnection Regulations, while TRAI's intent behind introducing Clause 15(1) may have been to foster transparency and bring in accountability & fairness amongst stakeholders, however, in practice, the acts and omissions of DPOs (*purportedly in exercise of the rights available to them under Regulation 15(1)*) have effectively undermined and defeated these very objectives and have resulted in creating a state of mistrust,

distortion of fair competition, uneven playing field amongst compliant and non-compliant DPOs, and ultimately discouraging broadcasters from making further investments in content and channel development. Till date, delayed/denied audits by DPOs have caused major revenue losses for broadcasters and losses to the public exchequer.

46. Notably, DPOs themselves often approach broadcasters to request investigations and action against unscrupulous DPOs who may be involved in undercutting rates, piracy, subscriber under-declaration, poaching LCOs through unfair means, etc. Further, broadcasters also monitor the market for anomalies and initiate their own audits if and when necessary. It is submitted that under the Draft Amendment, taking such action would be challenging even if there is credible ground information through DPOs or on account of broadcaster's own intelligence.

47. What further complicates the problem is that many empaneled auditors still lack the expertise to conduct proper commercial audits. This is evident from the fact that as recently as of 6 August 2025, TRAI conducted workshop to train auditors on how to perform audits and prepare reports. Compelling broadcasters to accept the reports from such auditors at face value would be catastrophic. In fact, it is common knowledge that usually no discrepancies are found during DPO-caused commercial audits, and that discrepancies are usually found during broadcaster-caused audits. Yet, surprisingly, TRAI has proposed in the Draft Amendment that DPO caused commercial audit report should be accepted as is unless there are discrepancies found by the broadcaster in the said report. In cases where discrepancies are found by the broadcaster, the Draft Amendment permits the DPO's auditor to make corrections in the said report which is then shared with the broadcaster. Thereafter, in case the observations of the broadcaster are not addressed completely, then TRAI may after examining the case on merits and if found necessary, permit the broadcaster to get an audit conducted on limited aspects.

48. Further, TRAI does not seem to have evaluated how many auditors successfully identify discrepancies during commercial audits. The present amendments appear to be based only on a theoretical analysis of the issues, which is inappropriate given the adverse impact they would have. We humbly submit that there is no need to dilute broadcasters' audit rights, and on the contrary, there is an urgent need to strengthen them. The rationale for weakening these rights is not understood.

49. By design, the objective of an audit is to uncover discrepancies and irregularities in subscriber reporting and addressable systems, and accordingly, confining audits to discrepancies found in DPO audit reports and expecting a broadcaster to furnish "evidence" of such discrepancies creates a circular and self-defeating condition. This provision creates a shield for DPOs to deny or delay legitimate audit requests, thereby perpetuating the problems of under-reporting, opacity, and manipulation in subscriber data that IBDF has consistently highlighted. The irony of the situation would be that for a broadcaster to seek access to the DPO's systems for conducting a broadcaster audit, the broadcaster would need to present specific evidence; however, for getting such evidence to be collected (*if no discrepancy is found in the submitted audit reports, but the broadcaster's ground report suggests there being some foul play*), the broadcasters would need to have access to the DPO's addressable systems in the first place.

50. The Draft Amendment fails to address the structural deficiencies in the audit mechanism, and in fact, perpetuates, blesses and legitimises the very problems it seeks to remedy. By retaining the restrictive framework of Clause 15(1), the Draft Amendment leaves broadcasters vulnerable to continued under-reporting and manipulation of subscriber data, while simultaneously limiting their ability to exercise effective oversight over the functioning of SMS and CAS. This undermines the very objective of the audit provisions, namely, to promote transparency, accuracy, and accountability in subscriber reporting and revenue sharing between broadcasters and DPOs.

51. The Draft Amendment does not provide for heavier penalties in case of non-compliance by the DPO as recommended by IBDF in its previous submission. IBDF in its submission had recommended heavier penalties that can act as deterrent, along with cancellation of license to operate their respective distribution platform and blacklisting DPOs for a period of 3 years from operating any kind of distribution platform. The said recommendations were *inter-alia* based on the observation that the present penalties prescribed have been ineffective. In any event, we believe that TRAI has not taken action for regulatory violations with respect to audits by DPOs and has not imposed any penalties as envisaged in Regulation 15(1)(A) for the same. TRAI itself in the Explanatory Memorandum of the Draft Amendment has observed that "*...despite the provision of financial disincentive being in place and constant efforts made by TRAI and MIB, it has been observed that many distributors are still not getting their system audited in a time-bound manner.*" We would like to highlight that in the 2024 Consultation Paper, TRAI *inter-alia* observed the following:

"As per the data of audits received from BECIL and auditors empanelled by TRAI, the number of DPO caused audits were very low in the last four years"

"To improve the level of compliance, one may opine that TRAI may increase the cap on financial disincentive from two lakhs to a greater limit..."

"It has come to the notice of TRAI that sometimes there are certain qualifications /discrepancies observed by the Auditor during the Audit and despite these discrepancies no further action is taken by the DPO to address/remove such discrepancies."

It is reiterated that heavy penalties be provided in cases where the DPOs themselves fail to conduct audits and do not permit broadcaster led audits to be conducted. Further, provisions relating to cancellation of license and blacklisting of DPOs ought to be introduced.

52. It was also submitted by IBDF that no auditor should be permitted to conduct more than one consecutive audit of a DPO. Further, relaxations or flexibilities for auditors, even government entities, as requested by DPOs, should not be granted. These submissions are reiterated and TRAI is requested to make suitable provisions for the same.

53. IBDF reiterates its past submissions that the statutory period for retaining data should be increased from two (2) years to three (3) years keeping in mind the period of limitation, number of DPOs each broadcaster must provide signals to, complexity involved in auditing DPOs, delays in conducting audits, proposed timelines and to ensure that the broadcaster led audits can be meaningfully conducted. Further, a period of 3 years for retaining data in any event has already been mandated by TRAI in Schedule X.

I. Relevance of Audits in broadcasting and other industries:

54. Audit rights are a critical component of most revenue sharing agreements across industries and broadcasting distribution is not different. Audit rights serve as a contractual mechanism to ensure transparency, verify financial accuracy, and maintain trust between partners. The party receiving a share of the revenue (the payee) needs assurance that the party generating and reporting the revenue (the payor) is doing so completely and accurately. It is important to note that such rights are also standard across industries specially when there is revenue share involved.

55. We understand that within franchising, franchisors audit their franchisees to verify the full and accurate reporting of gross sales, which is essential because the franchisor's income is a direct percentage of those sales. Similarly, we understand that in technology, software companies (e.g., SaaS companies or marketplaces) have audit rights to validate reports on sales and subscriptions, ensuring they receive their proper revenue share after the platform's commission is deducted. Likewise, in case of brand licensing agreement, the licensor also usually has right to conduct audit *inter-alia* to ascertain that the use of brand is within the scope of the licensing agreement. We understand for commercial real estate, landlords with 'percentage rent' leases audit their retail tenants' sales records to ensure the tenant is accurately reporting sales above a certain threshold, upon which additional rent may become due. In the media and entertainment industry, content licensing agreements involving revenue sharing usually have audit rights to ensure correct reporting and compliance. We also understand that in the hospitality industry involving property management, audit rights are granted to verify that all hotel revenues are reported accurately, ensuring that the concerned party receives their correct share of the revenues based on the management agreement. There are numerous other examples where licensors are permitted to conduct audits, including in the telecom and oil and gas industries. Additionally, we understand that even in case of petrol pumps, variety of bodies (including government agencies and oil companies) can cause audit to ascertain accuracy of fuel dispensation, financial compliance, prevention of fraud or overcharging, and safety compliances, etc. Importantly, we understand that in all the above cases, primarily, it is the entity which is causing audits who has the right to decide on the auditor, and that what is being proposed by TRAI in case of DPO-caused audit as well as for broadcaster-caused audits is unprecedented and contrary to the well-established norm in broadcasting and other industries.

56. Importantly, even prior to introduction and implementation of new regulatory framework in 2017 and 2019 respectively, broadcasters always had the right to conduct audits.

J. Insufficient Consultation Period:

57. The Draft Amendment has been issued only on 22nd September 2025, which is 13 months after the release of the initial 2024 Consultation Paper. Further, the stakeholders have been granted only 15 days (with one additional week's extension) to provide their comments to the Draft Amendment and no provision has been made for providing counter-comments. Having taken more than a year to crystallise its proposals, it would be inequitable to expect stakeholders to not only examine and respond comprehensively within such short timeline.

58. It is submitted that the regulatory changes of this magnitude which have far-reaching implications should not be rushed. The IBDF in the earlier responses to the 2024 Consultation Paper, various submissions and meetings has repeatedly highlighted challenges in audit implementation under the existing framework, which have clearly not been considered.

K. Separation of Powers and conflict in roles:

59. We respectfully submit that the Draft Amendment overlooks the fundamental principle of separation of powers. The TRAI Act clearly defines the role of TRAI as a regulator (a legislative function) and the role of the Hon'ble TDSAT as an adjudicator (a judicial function). By granting itself the power to decide cases on their merits, TRAI is overstepping its legislative mandate and assuming a judicial role. This move not only undermines the distinct function of the Hon'ble TDSAT but also prejudices the right of stakeholders to have their disputes resolved by an expert adjudicatory body. Further, this is directly contradictory to TRAI's consistently stated intention to remove itself / absolve from granular, day-to-day regulatory matters, and allowing stakeholders to manage the same themselves. The Draft Amendment does the exact opposite by drawing TRAI directly into specific disputes and be the decision maker on various aspects that would *inter-alia* require judicial appreciation / interpretation of facts, law and agreements.

60. It is important to note that any dispute between broadcaster and DPO even with respect to audit reports would not entitle TRAI to look into such matters and/or to decide the case on merits since, such adjudicatory powers have been taken away from TRAI and bestowed upon Hon'ble TDSAT when the TRAI Act was amended in the year 2000. In this regard, TRAI itself acknowledges that^[*]:

"The TRAI Act was amended by an ordinance, effective from 24 January 2000, establishing a Telecommunications Dispute Settlement and Appellate Tribunal (TDSAT) to take over the adjudicatory and disputes functions from TRAI. TDSAT was set up to adjudicate any dispute between a licensor and a licensee, between two or more service providers, between a service provider and a group of consumers, and to hear and dispose of appeals against any direction, decision or order of TRAI."

The aforesaid view has also been affirmed by the Hon'ble Supreme Court in COAI v. TRAI wherein it has been held that:

"71. We have seen that the 2000 Amendment has taken away adjudicatory functions from TRAI, leaving it with administrative and legislative functions. By Section 14 of the Act, adjudicatory functions have been vested in an Appellate Tribunal, where disputes between a group of consumers and the service providers are to be adjudicated by the Appellate Tribunal."

In view of the above, it is most humbly submitted that there is no occasion for TRAI to decide whether or not special audit will be permitted in a particular case due to inherent lack of jurisdiction as is evident from the scheme of the TRAI Act.

61. The Draft Amendment provides that in case the observations raised by a broadcaster in relation to the audit report remain unaddressed by DPO, the broadcaster is required to submit its observations, along with supporting evidence, to the TRAI. Upon such submission, the TRAI shall examine the matter on merits and may, if deemed appropriate, permit the broadcaster to conduct a special audit.

62. With respect, we submit that while TRAI is statutorily empowered to frame regulations under Section 36 of the TRAI Act, it is not vested with adjudicatory powers to decide specific disputes between service providers. By introducing a mechanism under which TRAI itself examines whether a broadcaster should or should not be permitted to conduct a special audit, the Draft Amendment effectively confer upon TRAI a judicial function that encroaches upon the jurisdiction of Hon'ble TDSAT under the TRAI Act. This creates regulatory overreach, which is also not consistent with the TRAI Act, and undermines the statutory separation of powers contemplated by Parliament. Importantly, it also interferes with broadcaster's right to approach the Hon'ble TDSAT in terms of the provisions of the TRAI Act.

63. It is a direct conflict of interest for TRAI to both (a) create regulations that prescribe the framework for audits, and (b) adjudicate disputes on the merits of individual audits. The same authority cannot be both the rule-maker and the judge in disputes arising from those very rules. This dual role compromises fairness, neutrality, and due process in the broadcasting sector. Allowing TRAI to adjudicate on whether an audit should be permitted effectively makes TRAI the prosecutor, the rule-maker, and the judge, rolled into one.

64. The Hon'ble Supreme Court has consistently held that when an authority exercises both legislative and adjudicatory functions over the same subject matter, the risk of bias and lack of neutrality arises. The adjudication of disputes relating to audits such as, whether a broadcaster-led audit under Regulation 15(2) is permissible, squarely falls within the domain of Hon'ble TDSAT, not TRAI.

65. IBDF respectfully submits that adjudication of disputes on the merits of whether an audit is to be conducted should remain exclusively within the jurisdiction of Hon'ble TDSAT, thereby ensuring

L. Creation of unnecessary (litigation) loops:

66. The proposal that TRAI would look into matters and/or to decide the case on merits on issues relating to audit reports creates an additional and unnecessary layer of litigation / proceedings at TRAI's level. If TRAI were to assume adjudicatory powers over audits, its decisions will inevitably be challenged before the Hon'ble TDSAT, with further appeals to the Hon'ble Supreme Court. This creates an additional and avoidable layers of litigation, which is not envisaged in the TRAI Act and will delay resolution of audit disputes. Such delays will dilute the very purpose of audit under the regulations i.e., timely verification of subscriber numbers and protection against under-declaration / piracy.

67. Additionally, any party dissatisfied with TRAI's decision on the merits of a case will inevitably appeal to the Hon'ble TDSAT. This will create additional loops of proceedings for the following reasons:

(a) **Shift in Focus:** The appeal would force TRAI to act as a respondent, defending its own decision before the Hon'ble TDSAT. Consequently, the focus of the litigation would shift from conducting broadcaster audit on account of dispute between two service providers (i.e., between the broadcaster and the DPO) to an appeal against TRAI's decision allowing / disallowing broadcaster audit.

(b) **Further Appeals:** Decisions of the Hon'ble TDSAT can be further impugned before High Court or the Supreme Court either by the stakeholder involved or TRAI itself.

This entire process would not only delay the time sensitive audit exercise but also entangle TRAI in protracted litigations, forcing it to defend its decisions rather than focusing on its primary regulatory duties. This outcome is completely at odds with TRAI's stated goal of extricating itself from such granular matters.

M. Unconditional Exemption for Small DPOs Creates a Regulatory Loophole.

68. The fourth proviso in the proposed Clause 15(1) makes the annual audit optional for distributors with an active subscriber base not exceeding 30,000. The current regulations applied the audit mandate to 'every distributor of television channels', establishing a principle of universal accountability. The proposed exemption creates a two-tiered regulatory system that is inconsistent with this foundational principle.

69. IBDF conditionally agreed to a 30,000-subscriber threshold but only with critical safeguards, which TRAI has completely ignored. These safeguards were that the exemption shall not apply to a DPO sharing infrastructure unless the collective subscriber base of all sharing parties is below 30,000. Further, small DPOs must be mandated to submit weekly raw data from their SMS and CAS systems along with their monthly reports to allow for alternative verification. Also, broadcasters must retain an unfettered right to audit these exempted DPOs at their discretion.

70. The Draft Amendment adopts the 30,000-subscriber figure but provides no rationale for discarding the essential safeguards proposed by the industry. It fails to address how it will prevent this exemption from being exploited.

71. This provision, as drafted, creates a significant loophole for revenue leakage and piracy, which are often more rampant in smaller, less transparent networks. It could incentivize larger operators to structure their operations as multiple smaller entities to evade audits. Without the raw data submission requirement, broadcasters are left with no viable mechanism to verify subscriber reports from the relevant DPOs.

72. The audit exemption for small DPOs is unacceptable without the inclusion of the critical safeguards that were proposed by IBDF. The exemption ought to be conditional upon the aggregation of subscriber bases for infrastructure-sharing entities and the mandatory submission of weekly raw SMS/CAS data for verification purposes.

N. Obligation to share complete audit report with annexures:

73. Under Regulation 15(1) of the Draft Amendment, a distributor is required to share the audit report with broadcasters. However, the Draft Amendment does not obligate the distributor to also share all supporting observations, calculations and documents / material as the underlying annexures including data logs, raw CAS/SMS extracts, or working papers forming the basis of the audit ("**Annexures**"). Without access to such Annexures, broadcasters cannot meaningfully verify the accuracy and completeness of the audit report. As such, it is absolutely necessary for TRAI to

mandate that audit reports ought to be accompanied with all Annexures and failure to provide the same shall be deemed to non-furnishing of audit report.

O. Timeline Challenges:

74. The Draft Amendment prescribes that the broadcasters must respond within 30 days of receiving the distributor's audit report citing specific observations along with evidence, if the broadcaster finds any discrepancy in the audit report. This timeline is wholly inadequate, given that broadcasters usually have agreements with hundreds of DPOs, and DPOs may send their audit reports on or around the deadline for submission of audit report. A proper review of reports and analysis of annexures cannot be realistically completed within this compressed period of 30 days. As such, IBDF submits that such timeline should not be mandated upon broadcasters so as to enable adequate time for broadcasters to carry out comprehensive review of audit report and also encourage flow of communication for information / clarification and bilateral resolution of issues before triggering broadcaster-led audits.

75. In practice, many distributors delay sharing complete audit reports or related communications and do so only after inordinate delays and repeated requests of broadcasters. This would lead to expiration of the statutory period for retaining data, meaning there can be no verification of data for that particular period. If the 30-day period starts running from such delayed communication, broadcasters are placed in ambiguous enforcement situations where the deadline has technically lapsed before meaningful engagement has even begun. As such, this provision requiring broadcasters to respond within 30 days ought to be removed so as to *inter-alia* neutralize any dilatory tactics.

76. Regulation 15(2)(b) of the Draft Amendment provides that if a distributor fails to provide the audit report under Regulation 15(1), a broadcaster may conduct its own audit after informing the distributor, but only within four months. This limitation again is impractical and unworkable given the realities of industry operations. Broadcasters often deal with hundreds of distributors, and audit resources—both financial and logistical—cannot be marshalled across the entire ecosystem within such a compressed window of 4 months starting 1 October every year. We respectfully submit that the Draft Amendment should not mandate any fixed timeline for broadcasters to conduct audits in such cases, allowing flexibility to ensure thorough and accurate verification of subscriber data.

P. Improvisation of the audit report should not be permissible:

77. The Draft Amendment provides that if a broadcaster raises concerns in the audit report furnished by the DPO under Regulation 15(1), then the same shall be forwarded by DPO to the auditor within 7 days. Thereafter, the auditor shall address such observations and provide its updated report to the distributor within 30 days, which shall then be shared with the broadcaster within 7 days, with the whole process taking one and half months.

78. We respectfully submit that once an auditor has completed and signed an audit, neither the auditor nor the distributor should have any scope to revise, re-interpret, or dilute the findings. Allowing ex-post improvisations compromises the independence of the audit, undermines confidence in the process.

79. Under Clause 15(2)(a) of the Draft Amendment, broadcasters are required to report discrepancies in audit reports with specific observations and evidence. However, if auditors or distributors are permitted to improvise their own reports, broadcasters are left in a perpetual cycle of chasing moving targets, where the content of the audit report itself is unstable. Allowing such revisions or improvisations to audit reports once issued and shared with broadcasters makes the whole process / exercise a sham and undermines the credibility of such reports. Further, it prevents reports from attaining finality, thereby defeating the very purpose of the audit process.

80. IBDF respectfully submits that the Draft Amendment should explicitly provide that an audit report, once issued by an empanelled auditor, shall be final and not subject to modification by the auditor or the distributor; and any discrepancies noted by the broadcaster must be addressed through the regulatory mechanism, not by allowing distributors or auditors to alter their reports. This approach would preserve the integrity, transparency, and reliability of the audit process.

Q. Representation during DPO caused audit:

81. Under the Draft Amendment, the broadcaster is permitted to depute one representative to attend the DPO caused audit, and the presence of such representative has been confined to the limited purpose of sharing inputs, if any, for verification during the audit process.

82. We respectfully submit that there are several practical and operational concerns with the single-representative limitation. Further, it is highlighted that point 18(B)(5) of the Audit Manual permits a

broadcaster, in the case of a broadcaster-led audit, to depute two representatives to observe the audit proceedings. However, under the Draft Amendment, a broadcaster is allowed to depute only one representative to attend the audit and provide inputs. The rationale for this discrepancy is unclear, and it is not evident why TRAI has chosen to prescribe differing requirements for broadcaster led and DPO led audits, particularly when both processes seek to ensure transparency and accuracy in audit outcomes. In the interests of transparency, daily status update of audit can be recorded.

R. Regulation 15(2)(c) in relation to outcomes in case of discrepancies / non-compliance by DPOs:

83. Regulation 15(2)(c), in its current form in the Draft Amendment, is both restrictive and ambiguous. The wording suggests that it provides certain limited remedies to broadcasters in cases of discrepancies or non-compliance by DPOs with the requirements prescribed under Schedule III and/or Schedule X. However, the scope and applicability of these remedies remain unclear, potentially leading to interpretational uncertainty and inconsistent implementation.

84. It is submitted that the remedies available to a broadcaster necessarily depend on the nature and extent of non-compliance by DPOs or the discrepancies identified in subscriber numbers. Each case may warrant a distinct course of remedial action, including but not limited to rendition of accounts, payment of additional amounts with applicable interest, or disconnection of signals.

85. Accordingly it is recommended that Regulation 15 (2) (c) be reworded to reflect that in case of discrepancy in subscriber numbers and/or the addressable system being used by the distributor does not meet the requirements specified in the Schedule III or the Schedule X or both, broadcaster may take remedial measures in terms of applicable laws / agreement between the parties. Please see below the recommended language for Regulation 15 (2) (c):

"In case the audit conducted under sub-regulation (1) or (2)(a) or (2)(b) reveals that there is a discrepancy in subscriber numbers, and/or the addressable system being used by the distributor does not meet the requirements specified in the Schedule III or the Schedule X or both, it shall be permissible to the broadcaster to take suitable action as per applicable laws and the provisions of the interconnect agreement executed between broadcaster and the distributor."

86. In view of the fore-going submissions, IBDF respectfully submits that the proviso to Regulation 15 may be amended to:

- (a) Remove proposed regulation 15 (1) regarding DPO- caused audits;
- (b) Provide unfettered right to the broadcasters to conduct audit;
- (c) Remove the requirement that broadcasters need to approach the distributors for selection of auditors;
- (d) Remove the requirement for broadcasters to approach TRAI for appointment of auditor in case DPO does not send confirmation within 15 days;
- (e) Eliminate preferential reference to BECIL from the regulations;
- (f) Provide that in the case of broadcaster-led audits, the broadcaster should have the sole right to directly appoint any one auditor from the list of TRAI-empanelled auditors; and
- (g) Eliminate timelines applicable on broadcasters.

S. Infrastructure Sharing.

Absence of Analysis of all relevant aspects relating to Infrastructure Sharing Framework:

87. The Draft Amendment proposes to introduce a framework for infrastructure sharing without conducting any foundational analysis to justify its approach. The introduction of such a paradigm-shifting mechanism requires a robust, evidence-based foundation, which is absent from the consultation process thus far. The Authority has not disclosed or discussed a cost-benefit analysis of infrastructure sharing on the entire broadcasting ecosystem. Further, the current levels of audit and technical compliance among DPOs have not been analyzed or shared, which is a crucial prerequisite for evaluating the risks associated with allowing non-compliant or partially compliant DPOs to share systems.

88. A thorough analysis of potential misuse scenarios (such as, collusion between DPOs to under-report subscribers or unfairly attribute them to a targeted DPO sharing the infrastructure) has not been done. There is no evaluation of the checks and balances required to address the numerous anticipated challenges (including compromised content security, privacy violations, and complex enforcement issues). Formulating infrastructure sharing regulations of this nature in an empirical vacuum is a significant risk, to say the least. As we previously highlighted in our submissions, the lack of practical knowledge and empirical data on the challenges of infrastructure sharing makes it imperative to tread carefully on this issue. Proceeding without conducting and sharing these fundamental analyses is premature and is bound to inadvertently introduce systemic vulnerabilities that would be difficult to rectify post-implementation and could have a cascading effect. We urge the

Authority not to finalize these provisions until these foundational studies are conducted through regulatory sandboxing and shared with stakeholders for a meaningful consultation. Further, these also necessitate availability of robust audit rights to broadcasters, and failing to grant the same would be a double whammy for broadcasters since they would be completely blindsided on infrastructure sharing related issues/concerns with no audit/verification rights.

89. While the Draft Amendment provides that the CAS and SMS systems of DPOs willing to share infrastructure should have the capability to meet all the requirements prescribed in Schedule III and X, the said stipulation is insufficient in the context of DPOs sharing infrastructure. In this regard, it is submitted that in case of infrastructure sharing, it is necessary to *inter-alia* have additional stipulations relating to system capabilities. It is reiterated that any infrastructure sharing should only be permitted if the addressable systems of the parties proposing to share infrastructure meet all the technical requirements as specified in our submissions to the 2024 Consultation Paper in addition to the requirements prescribed in Schedule III and X. These include requirements such as setting up of portals that give individual broadcasters access to switch-off individual DPOs with whom they have agreements *inter-alia* due to non-payment of dues, piracy, etc.

90. TRAI, while framing the Draft Amendment, has omitted to consider IBDF's recommendation regarding joint and simultaneous audits of DPOs (both, at pre-infrastructure sharing stage as well as at the stage of causing commercial audits) by broadcasters. It is submitted that joint and simultaneous audits are crucial to ensure fairness, prevent revenue leakage, maintain technical compliance, and preserve and ascertain integrity of subscriber data. Accordingly, it is once again recommended that broadcasters should be allowed to conduct joint and simultaneous audits covering all elements of all the DPOs proposing to share infrastructure and/or sharing the infrastructure.

91. The Draft Amendment provides that "*preferably only two logos, that is, of only broadcaster and last mile distributor shall be visible at customer end*". However, it is imperative that the watermarking network logo of both the infrastructure provider and seeker should be visible in addition to the broadcaster's logo since the same are essential for identifying and tracing the source of the signal in case of piracy. Accordingly, it is recommended that the Draft Amendment be amended to include a provision making it mandatory for three watermarking logos to be visible on the screen i.e., one of the broadcaster, one of the DPO providing infrastructure from the encoder end, and one of the DPO taking services from the infrastructure provider distributor from the STB end. For clarity, the logos of both the DPOs should not overlap with each other or for that matter with the logo of the broadcaster.

T. Watermarking:

92. The proposed new provision F (2) in Schedule III and G (2) in Schedule X state that in infrastructure sharing, "*preferably only two logos, that is, of only broadcaster and last mile distributor shall be visible at customer end*". The existing regulations mandate clear watermarking as a key anti-piracy tool. The introduction of the word "*preferably*" as well as omission to mandate display of logo of infrastructure provider makes the new provision weak, which is inconsistent with the strict technical compliance required by Schedule III.

93. IBDF had raised severe concerns about infrastructure sharing, highlighting the immense risk of piracy and the difficulty in attributing signals to a specific DPO. It had sought display of the logos of broadcaster, infrastructure provider and infrastructure seeker in such a manner that none of the logos overlap each other. It had also sought a "*regulatory sandboxing*" approach to test solutions before implementation. Further, IBDF had proposed a specific technical dual-logo solution for DPOs to ensure clear identification i.e., infrastructure sharing provider watermarking network logo should be 50% transparent with 2cm X 2 cm and to be placed on the right lower side of the screen and each DPO taking services from infrastructure provider shall insert logo with 50% transparent 50% with 1.5cm X 1.5 cm on lower left side. The Draft Amendment ignores the call for logo of infrastructure provider, sandboxing and the detailed technical solution, which tremendously prejudices broadcasters.

94. TRAI's Explanatory Memorandum does not justify: (a) its decision to opt for vague / non-binding language ("*preferably*"), and (b) the requirement for logo of infrastructure provider; over the concrete and technically detailed proposal submitted by IBDF. It fails to explain how this ambiguous clause effectively mitigates the piracy risks inherent in infrastructure sharing.

95. The term "*preferably*" and absence of requirement for logo of infrastructure provider, would create massive ambiguity, and it fails to establish a clear, enforceable standard for watermarking in a shared environment, making it nearly impossible to trace the source of pirated signals. This directly threatens broadcaster revenue and undermines the entire anti-piracy framework.

We earnestly request the TRAI to take the above submissions into account and reconsider the Draft Amendment in order to prevent any potential regulatory inconsistencies or confusion within the sector. Further, we take this

opportunity to reemphasize that a transparent and enforceable framework is essential for the health of the entire broadcasting sector.

We remain available to the TRAI for an opportunity to discuss, in case the same is deemed necessary.

Yours sincerely,

Avinash Pandey
Secretary General

[*] <https://traigov.in/about-us/history>



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