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Consultation Paper on Inputs for formulation of National Broadcasting Policy

AVIA welcomes the opportunity to comment on the Telecom Regulatory Authority (TRAI) of India's consultation on Inputs for formulation of National Broadcasting Policy (NBP) 2024. AVIA is the trade association for the video industry and ecosystem in Asia Pacific. It serves to make the video industry stronger and healthier through promoting the common interests of its members. Our membership consists of a combination of local, regional and multi-national companies, many of which are substantial cross-border investors; creating and purchasing video content to meet rapidly expanding consumer demands and investing in India's communications and creative industries.

AVIA notes that this consultation is a follow-on from the earlier pre-consultation that TRAI issued on the same topic to which AVIA made a submission. However, since that pre-consultation was issued, AVIA also notes that the Ministry of Information and Broadcasting (MIB) subsequently issued a consultation on a Draft Broadcasting (Services) Bill. Undertaking two similar consultations, almost in parallel, has caused confusion in the industry as it is unclear how these two approaches should fit together.

AVIA believes it is important to keep in mind the goal of a National Broadcasting Policy – such a document should set a framework for Government of India policies and actions aimed at promoting and regulating the national broadcasting industries, both public and private. It should set out the objectives that government ministries and agencies should seek to achieve and provide directional guidance for policymakers and regulators. As such, it is a document providing an administrative and regulatory apparatus and high-level orientations on issues. We do not believe, however, that the National Broadcasting Policy should seek to provide an all-encompassing set of regulations, rules and guidelines for the broadcasting industry – rather, it should establish a framework and set the objectives that the administrators and regulators should seek to achieve, using that framework. Over time, it should be up to these official bodies to issue guidelines, licenses, policy statements, and other administrative decisions that implement the Broadcasting Policy's objectives and directional guidance.

Having a streamlined regulatory framework will bring clarity, consistency, and flexibility to regulations, while strengthening consumer protection and promoting ease of doing business. Only once the NBP is issued should the detailed regulatory framework and apparatus be examined in order to deliver the high level goals of an NBP. Creating clear, identifiable roadmaps, similar to those captured in the National Telecom Policy, will enable the evolution of the broadcasting sector. That is, a roadmap, identifying relevant steps needed to support the broadcast sector to grow and achieve its full potential, would deliver clarity of vision for both policy makers and regulators and identify relevant steps needed to achieve that vision.

AVIA understands the stated goals of the TRAI NBP i.e., to attract investment, foster innovation, facilitate job creation and nurture skill development, and to strengthen the public service broadcast service, enabling “planned development and further growth of the broadcasting sector in India”. As we stated in our earlier submission to the pre-consultation on an NBP, there already exist a number of regulations which govern the telecoms, broadcasting and digital media industries which we feel are adequate. Additionally, we would suggest that the Broadcasting sector suffers from over-regulation and that consideration should be given to de-regulation. Given the above facts, AVIA recommends that the NBP should be based on the principles of forbearance for all carriage in broadcast and support the self-regulation framework for all aspects of content.

Additionally, we would advocate that the **scope of any broadcast policy should be restricted to the broadcasting segment.**

The NBP extends its scope to Online Curated Content (OCC) services and other segments of the Media and Entertainment (M&E) landscape like gaming and music. OCC services are not a part of the broadcasting ecosystem since they are functionally distinct from TV and radio broadcasting that involves a combination of carriage and content. TV broadcasters transmit their content to consumers through Distribution Platform Operators (DPOs) and OCC services send data over IP networks, like any other information exchange over the internet.

Moreover, TRAI regulates carriage, and its remit extends to authorized entities under the Telecommunications Act, 2023 and registered cable networks under the Cable Television Networks (Regulation) Act, 1995 (CTN Act) as per Section 59 of the Telecommunications Act. OCC services do not fall under the definition of ‘telecommunication’ or ‘telecommunication services’ under the Telecommunications Act, 2023 and are not authorised entities under it. Neither do they require registration under the CTN Act. In this context, **the inclusion of OCC services as a whole, and Online Curated Content Providers (OCCPs) as a subset, is unwarranted.** Under the Allocation of Business Rules, 1961, the Ministry of Electronics and Information Technology (“MeitY”) administers the Information Technology Act, 2000 and other policy matters and laws related to information technology, the internet, and services they enable, including OTT services and gaming.¹ MeitY already has a vision, policies on software and electronics manufacturing, and has set a target of unlocking 1 trillion-dollar value from India’s digital economy by 2025.² There is no need for separate policy impetus under the NBP.

Imposing local quota requirements on TV or online streaming services could impede the growth of the sector.

Online streaming services are a very different style of content platform, offering consumers a push vs pull method to access their content. Consumers seek access to high quality, content both local and international. OCC platforms retain subscribers by offering a variety of high quality content, both local and international. Mandating a regulatory approach to encourage the growth of Indian regional content is unlikely to be successful. Rather, we would advocate an approach that encourages investment and development in local content production and facilities, creating high quality local content which can then be acquired by OCC platforms.

AVIA would suggest that policy-making which is focused on developing local content should be based on an analysis which identifies the needs and issues faced by the industry and which takes account of the

¹ Allocation of Business Rules, 1961.

² MeitY, India’s Trillion Dollar Opportunity, (February 2019), available at: https://www.meity.gov.in/writereaddata/files/india_trillion-dollar_digital_opportunity.pdf

effect of any potential rules on all stakeholders. Thus, prior to any legislative proposals an independent impact assessment should be undertaken, ensuring any proposals to be reality-based and do not have unintended consequences. In addition, we note that research³ has shown that protectionist policies, such as content quotas can work against the goal of increasing investment as it can instead lead to local content industries that are less innovative, producing lower-quality content. Research has also found that the more stringent the protectionist policy is, there may be a parallel reduction in export of audio-visual products.

In markets where local content has been successfully developed and exported globally, this has required considerable investment from the government. As noted in the CP, South Korea remains a market leader in this region, developing and exporting content globally. However, it should be noted that this has not been done in isolation or quickly. This approach has taken many years of sustained effort and encompassed all aspects of the creative economy, not just content. The government has prioritised the approach to developing soft power tools (food, culture, music, and content) and promoting it globally. In parallel, they also heavily invested in content development, encouraging local content producers to create often bold and experimental content. Additionally, Korean pop music and dramas are widely available and easily accessible. Even when the content is in Korean, there are few barriers to entry.

Regulation approaches

AVIA supports the Ease of Doing Business agenda and welcomes the sentiment that “A streamlined regulatory framework will bring clarity, consistency, and flexibility to regulations, while strengthening consumer protection and promoting ease of doing business.” However, as we have noted on previous occasions, OCC services are not the same as TV channels, nor has any evidence been provided which indicates a necessity to treat OCC services the same as other broadcasting types of services. Indeed, we would advocate that the existing IT Rules, 2021 have been working very effectively to foster economic growth of OCC services. Transposing legacy broadcasting regulations onto digital services would affect ease of doing business and hinder the segment’s growth.

We note the TRAI comments that “the technologies in broadcasting sector and telecommunication sector are moving towards the path of convergence, there are possibilities of utilizing the existing infrastructure of one by the other.” AVIA would suggest that convergence, with regards to networks or services, should not be assumed simply because service providers are able to bundle services together, yet the services themselves remain distinct. Indeed, the networks for broadcasting and telecommunications services remain distinct, even if the services are available in a bundled offering for consumers. Regardless, AVIA notes that content regulation is very different from carriage regulation and convergence of regulation of technologies can also bring other, unwelcome, and more complex, issues, especially for consumers. This could include issues such as a limitation of choice as services become more bundled and thus limited; a lack of pricing transparency; downgraded service quality; and concerns around data privacy as companies may have increased access to information about consumer usage patterns and preferences. Any of these could negatively impact the consumer’s rights and experience. We therefore recommend that the regulatory framework for content should remain distinct and separate from the regulatory framework for carriage.

The NBP should not prescribe any public service obligations on private broadcasters or OCCs.

³ https://www.mpa-apac.org/wp-content/uploads/2021/12/logos_India-Frontier-The-Economic-Impact-of-OCC-in-India.pdf

Content producers respond to consumer demand for plural and diverse content and fulfills its core social objectives organically. An inorganic requirement to mandatorily allocate and invest resources towards meeting the public broadcaster's objectives diminishes creative autonomy and the ability to cater to the diverse needs of consumers. Private content producers cannot stand in for the public broadcaster, which already receives statutory funding to produce content in public interest.

Public service broadcasting is the primary and exclusive remit of the public broadcaster, and Prasar Bharti-owned Doordarshan channels and All India Radio (AIR) should take the lead in public service broadcasting, achievement of social goals, and environmental responsibility. Section 12 of the Prasar Bharti Act lists the functions of the public broadcaster, and guiding objectives that it should follow. Social goals and other public related objectives in broadcasting fall squarely in the public broadcaster's domain, for which the lead and responsibility/ accountability ought to be shouldered by the public broadcaster.

The CP proposes an obligation on registered OCC services to carry DD channels to promote Indian content. MIB has also included this obligation under Section 6 (1) of the publicly available Draft Broadcasting Services (Regulation) Bill. Regulatory requirements to mandatorily allocate and invest resources for meeting public broadcasting objectives impact creative autonomy and the ability to cater to the diverse needs of OCCP consumers. Examples cited in the CP like Prasar Bharati's MoU to carry DD channels in foreign jurisdictions is an example of a voluntary licensing agreement. Similarly, any agreement between private services and the public broadcaster should follow negotiations and licensing on fair, reasonable, and non-discriminatory terms as is common practice around the world.

There is no need for a government prescribed audience measurement mechanism.

The CP proposes an expansion in the scope of TV audience measurement mechanisms to cross-platform audience measurement that also includes OCC audience measurement. The government's existing guidelines substantively address audience measurement for TV broadcast. The government accordingly monitors and reviews audience measurement frameworks under these guidelines.

Other content-based services already use a variety of methods to aggregate insights on user behaviour and evaluate content to meet preferences and demands. Some of these methods may include Monthly Active Users (MAU), Cost Per Minute (CPM), Cost Per View (CPV) or Cost Per Completed View (CPCV) etc. Given that there are a range of methods already being used by other content services, the need for homogenisation or cross reference with TV is unnecessary and not required.

Piracy

Finally, turning to the issue of piracy. The health of the broadcasting and content production industries, and achievement of the economic benefits sought through the globalisation of Indian content, will depend on whether the carriage and distribution systems for media content can be made sufficiently leakproof to guard against unauthorised distribution. Creating systems that impede and reduce piracy should be a top level goal of policy relating to the broadcasting industry and merits a prominent place in any legislation that aims to deliver a comprehensive National Broadcasting Policy. However, critically, any system that is implemented must be supported by robust enforcement.

Conclusion

In conclusion, any NBP should acknowledge the importance of creating a level playing field for all stakeholders, irrespective of their size or technology being used. The concept of a level playing field is often quoted, however, AVIA's view is that this shouldn't mean a strategy which seeks to bring parts of

the industry down, nor one that creates identical policies, regardless of medium of delivery. Rather, a level playing field should be one where appropriate legacy regulations should be relaxed in order to enable and encourage traditional, linear forms of tv to compete more equally. Supporting the development of all forms of content production and delivery, underpinning the strategy of a National Broadcast Policy, will ensure continued growth in the already vibrant India content industry.

AVIA therefore urges TRAI to use the opportunity of a National Broadcast Policy to take a strategic approach and outline a long-term vision and policy map for the broadcasting industry, laying out a framework for future regulatory changes.

About the Asia Video Industry Association (AVIA)

AVIA is the non-profit trade association for the video industry and ecosystem in Asia-Pacific. It serves to make the video industry stronger and healthier through promoting the common interests of its members. AVIA is the interlocutor for the industry with governments across the region, leads the fight against video piracy and provides insight into the video industry to support a vibrant industry ecosystem.

AVIA's leading members include: Amazon, AsiaSat, Astro, BBC Studios, The Walt Disney Company, Warner Bros Discovery, NBCUniversal, Netflix, now TV, Disney+Hotstar, TrueVisions, TV5MONDE, Viu, A&E Networks, Akamai, Authentic Online Brand Protection, beIN Asia Pacific, Bharucha & Partners, Bloomberg Television, Brightcove, Canal +, Cignal, France 24, FriendMTS, Globe Telecom, Index Exchange, Invidi, KC Global, Linknet, Microsoft HK, Motion Picture Association, NAGRA, NBA, NHK World, Nielsen, Paramount Global, Planetcast, Premier League, Publica, PubMatic, Singtel, Sony Pictures Television, SES, Synamedia, TV18, TVBI, Unifi, Vidio, Viaccess, Vision+, White Bullet and Zee TV