



TELECOM REGULATORY AUTHORITY OF INDIA



Consultation Paper

On

Regulatory Framework for Platform Services

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Written comments on the Consultation Paper are invited from the stakeholders by 14 July, 2014. Counter comments, if any, may be submitted by 21 July, 2014. The comments and counter comments may be sent, preferably in electronic form to Mr. Agneshwar Sen, Advisor (B&CS), Telecom Regulatory Authority of India, on the e-mail: asen@trai.gov.in or sapnatriai@gmail.com. For any clarification/information, Mr. Agneshwar Sen, Advisor (B&CS) may be contacted at Tel. No.: +91-11-23234367, Fax: +91-11-23220442. Comments and counter comments will be posted on TRAI's website www.trai.gov.in.

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Introduction

1. Over the past two decades, the broadcasting sector has undergone a paradigm shift from a single terrestrial TV channel to multi-channel multi-platform television services. Today, the TV channel distribution sector comprises of Multi System Operators (MSOs), Local Cable Operators (LCOs), Direct-to-Home (DTH) operators, Headend-in-the-Sky (HITS) and IPTV service providers. A broad overview of the legislative framework for the TV channel distribution sector is as follows:

a. Cable Television Distribution Sector

The Government enacted the Cable Television Networks (Regulation) Ordinance, 1994 on 29 September, 1994 that set down rules for registration of Cable TV Operators and introduced the Programming Code & the Advertisement Code. Subsequently this ordinance was converted into the Cable Television Networks (Regulation) Act 1995 (hereinafter referred to as “Cable TV Act”), on 25 March, 1995. Thereafter, based on the recommendations of TRAI, the Government amended the Cable TV Act, enabling the implementation of Digital Addressable Cable TV Systems (DAS) in India. A notification dated 11 November, 2011 (with amendment dated 21 June, 2012) laid down the roadmap for implementation of DAS in the country in four phases. The final phase is to be completed by 31 December, 2014. Full implementation of DAS will lead to the sunset of analogue Cable TV systems in the country.

b. DTH

DTH broadcasting service was opened up in the country in 2001. On 15 March, 2001, the Government issued the “Guidelines for obtaining licence for providing Direct-to-Home (DTH) broadcasting service in India”. Presently, there are six private DTH operators in the country.

c. HITS

The Government issued the policy guidelines for grant of permission to establish and operate “Headend-in-the-Sky (HITS)” broadcasting services from India on 26 November, 2009. As on date, two companies have been permitted to operate HITS service.

d. IPTV

As per IPTV guidelines, issued on 8 September, 2008 by the Ministry of Information & Broadcasting (MIB) - Telecom Service Providers (TSPs), having license to provide triple play services; Internet Service Providers (ISPs) with net worth more than Rs. 100 Crores and having permission from the licensor to provide IPTV or any other telecom service provider duly authorized by the Department of Telecom (DOT) can provide IPTV service under their licenses without requiring any further registration. Similarly, cable TV operators registered under Cable TV Act can provide IPTV services without any additional permission.

2. These TV channel distribution platforms primarily re-transmit TV channels permitted by Ministry of Information & Broadcasting (MIB) under the Downlinking guidelines. As on 30 April, 2014, MIB has permitted 795 private satellite TV channels, out of which, 393 channels are in the category of ‘news & current affairs’ and remaining 402 channels are ‘non-news & current affairs’ category¹.
3. In addition to the re-transmission of permitted TV channels, cable TV operators (MSOs and/ or LCOs) also operate their own local ground based channels which generally provide movies, music related programs, local community based programs, local news and current affairs to their own subscribers. These local ground based channels operated by cable TV operators are presently not subject to any specific guidelines unlike

¹ Source: <http://mib.nic.in>ShowhomeDocs.aspx>

private satellite TV channels permitted under the uplinking/downlinking guidelines of MIB.

4. Earlier, the Authority in its recommendations on 'Restructuring of cable TV Services' dated 25 July, 2008 had, *inter alia*, recommended that LCOs shall be permitted to transmit their ground based channels, which will be subjected to Programming code and Advertisement code as prescribed in the Cable Television Network (Regulation) Act, 1995 and any other instructions issued by MIB from time to time. As part of the recommendations, MIB was requested to issue detailed guidelines for provision of ground based channels by LCOs.
5. MIB, vide their letter dated 17 January, 2013 (Annexure I), has sought recommendations of TRAI under section 11 (1) (a) (ii), (iii) and (iv) of TRAI Act, 1997 (as amended) on the issues related to local ground based channels of cable TV operators.
6. In addition to re-transmission of programs of the TV channels obtained from the broadcasters, DTH operators also transmit certain other programs which are not obtained from the broadcasters and as such are not covered under uplinking/downlinking guidelines issued by MIB. Earlier MIB had sought TRAI recommendations regarding this kind of programming services being offered by the DTH service providers to their subscribers as well as on the issue of carriage of FM radio channels on the DTH platform. Due to the inherent similarities in the issues related to the re-transmission/ distribution of ground based channels by the cable TV and the DTH operators the scope of this consultation paper (CP) is extended to include both the issues. Further, it may also be noted that though IPTV and HITS operators presently serve only a small portion of the subscribers as compared to DTH and cable TV platform, the issues consulted in this paper are applicable to these platforms as well.

7. To summarise, all TV channel Distribution Platform Operators (DPOs), i.e. cable TV (MSOs in areas covered by DAS and MSOs and/ or LCOs elsewhere), DTH, IPTV and HITS operators, operate certain kind of programming services which are specific to each platform and are not obtained from broadcasters. Hereinafter, all these platform specific services being offered by DPOs but not obtained from broadcasters have been referred as Platform Services (PS). DPOs use PS to offer innovative services and product differentiation. It acts as unique selling proposition (USP) for DPOs and also helps them in meeting the specific needs of their subscribers. Provisioning of such services also results in an additional source of revenue for the DPOs as they earn revenue not only from their subscription but also from the advertisements transmitted along with such PS. Unlike TV channels broadcast by the authorized broadcasters, PS is largely unregulated at present. There is no requirement for registration of PS channels. Some concerns have been expressed about the programme content on PS, particularly those distributed through the cable. It is proposed to put in place a proper regulatory framework for PS channels being operated by various DPOs. The intention is to address the concerns and protect the interests of all stakeholders adequately.

8. The issues related to the regulatory framework for PS channels are discussed in the subsequent paragraphs. This regulatory framework will apply on all operators providing PS whatever be the mode of distribution.

Structure of this Consultation Paper

9. The Authority has issued this CP to solicit the comments/views of all the stakeholders on the issues related to PS, so that a proper regulatory framework for PS can be put in place. Chapter I discusses various issues related to regulatory framework for PS. Chapter II summarises the issues for consultation.

Chapter I

Issues related to platform services

- 1.1 Presently PS channels being offered by DPOs are not regulated under any specific guidelines of MIB. DPOs operate them as per their own understanding of the terms and conditions of their respective registrations/ licenses/ agreements. Some programs transmitted by DPOs through these PS channels are similar to the programs transmitted by regular TV channels.
- 1.2 MIB in its reference dated 17 January, 2013 (Annexure I) has expressed concern regarding transmission of local channels over a wide geographical area by sharing the same content with other cable operators on their networks. According to MIB, local channels are *de facto* operating as State/Regional/National channels, like permitted private satellite TV channels, without obtaining any permission from MIB. Therefore, a proper regulatory framework is required.
- 1.3 The Authority in its recommendations dated 25 July, 2008 had *inter alia* recommended that LCOs be permitted to transmit their own ground based channels. However, with the implementation of DAS, only MSOs and not LCOs can receive signals from the broadcasters. MSOs transmit encrypted signals to LCOs who further distribute it to the cable subscribers. The encrypted signals received from the MSOs are decrypted only at the subscriber's end. Thus, LCOs cannot extract or insert any channel in the feed received from their MSO. MIB in their reference has mentioned that the issue of transmission of local channels at LCO level in DAS regime needs to be looked into. Since in the DAS environment only encrypted signals generated at the MSO headends can be carried on cable networks, the LCOs will no longer be able to transmit their own local ground based channels.

- 1.4 There has been a debate as to whether PS channels should be categorized as a broadcast ‘channel’ in a conventional sense or whether they are to be categorized and treated as Value Added Services (VAS) tailored to the specific needs of consumers. It has also been argued that non-regulated supply of such services by DPOs is trespassing into the domain of regular TV channels. The moment DPOs trespass into the domain of authorised TV broadcasters, the distinction between broadcasters and distributors would vanish. Therefore, it is essential to distinguish such services as distinct from regular TV broadcasting.
- 1.5 Broadcast TV channels are normally characterized by continuous dissemination of content in a push mode with a linear time schedule and are uplinked for general distribution to all subscribers through DPOs. Whereas in many cases PS channels disseminate content in pull mode, triggered by a specific need or demand of consumers in an interactive fashion. PS channels are generally available to the subscribers of a particular DPO only. In many cases, the programs offered through PS channels are thematically distinct from regular TV channel programs.

Definition of Platform Services (PS)

- 1.6 When we talk of the regulatory framework for PS, the first issue for consideration is the definition of ‘PS’. Keeping in view the issues discussed above, one possible definition for ‘PS’ can be:

“Platform services (PS) are programs transmitted by Distribution Platform Operators (DPOs) exclusively to their own subscribers and does not include Doordarshan channels and TV channels permitted under downlinking guidelines.”

Issue for Consultation

- 1. Do you agree with the definition for platform services proposed in paragraph 1.6? If not, please suggest an alternative definition. Please elaborate your response with full justification.**

Programs permitted on PS channels

- 1.7 Before discussing the issue of what kinds of programs should be permitted under PS, let us look at the situation on the ground. At present PS channels are being operated at the level of cable operators. PS generally includes music, movies, news, devotional, entertainment, local news, live events, teleshopping, kids programs, serials, documentaries, regional programs, local plays, infotainment, market news, educational, and interactive games. Some of these programs are distinct from the programs offered on registered TV channels while many of them are similar. Digitization has paved the way for introduction of more specialized VAS on cable TV platform also.
- 1.8 DTH operators offer Movie on Demand (MoD) and Pay per View (PPV) kind of services to their own subscribers. Further, some DTH operators also offer certain distinct programming services, which are otherwise not offered on registered broadcasting linear channels, such as interactive games, audio music channels, interactive channels, job placement information services and e-shopping.
- 1.9 Coming to the issue of what kinds of programs should be permitted under PS, the first and foremost is the ‘news and current affairs’ category programs. One opinion is that PS channels being operated at the level of DPOs may not be permitted to transmit such programs as they are already available through registered TV channels and are sensitive in nature. However, the situation is similar to that of FM radio networks, i.e. it is useful for consumers to access local and current information on a local cable network. To bring clarity about what constitutes local news, reference may be made to the policy guidelines on expansion of FM radio broadcasting services through private agencies (Phase-III), which *inter alia* provides that:

“The broadcast pertaining to the following categories will be treated as non-news and current affairs broadcast and will therefore be permissible:

- (a) *Information pertaining to sporting events excluding live coverage. However live commentaries of sporting events of local nature may be permissible;*
- (b) *Information pertaining to Traffic and Weather;*
- (c) *Information pertaining to and coverage of cultural events, festivals;*
- (d) *Coverage of topics pertaining to examinations, results, admissions, career counseling;*
- (e) *Availability of employment opportunities;*
- (f) *Public announcements pertaining to civic amenities like electricity, water supply, natural calamities, health alerts etc. as provided by the local administration;*
- (g) *Such other categories not permitted at present, that may subsequently be specifically permitted by Ministry of Information and Broadcasting from time to time.”*

The above guidelines recognize that locally relevant information is a very useful component of the total contents package disseminated through media such as FM radio. This logic also applies to cable TV, and there is therefore, little reason for disallowing such a crucial component from the overall program mix allowed on local cable TV. Thus, an option that can be considered is that the above guidelines may be adopted for the PS channels as well. Besides channels on current and local affairs/information, PS may also include channels on - Movie/ Video on demand; Interactive games; and educational programmes.

- 1.10 To ensure that PS channels remains distinct from the registered TV channels permitted under uplinking/ downlinking guidelines and do not trespass the domain of broadcasters either overtly or covertly, certain provisions should be there regarding the composition of PS channels. Further, MIB and TRAI shall review the composition of PS channels from time to time.

Issues for Consultation

2. Kindly provide comments on the following aspects related to programs to be permitted on PS channels:

1. PS channels cannot transmit/ include

- 2.1.1. Any news and/or current affairs programs,**
- 2.1.2. Coverage of political events of any nature,**
- 2.1.3. Any program that is/ has been transmitted by any Doordarshan channels or TV channels permitted under uplinking/ downlinking guidelines, including serials and reality shows,**
- 2.1.4. International, National and State level sport events/ tournament/ games like IPL, Ranji trophy, etc.**

2. PS channels can transmit/ include

- 2.2.1. Movie/ Video on demand**
- 2.2.2. Interactive games,**
- 2.2.3. Coverage of local cultural events and festivals, traffic, weather, educational/ academic programs (such as coaching classes), information regarding examinations, results, admissions, career counseling, availability of employment opportunities, job placement.**
- 2.2.4. Public announcements pertaining to civic amenities like electricity, water supply, natural calamities, health alerts etc. as provided by the local administration.**
- 2.2.5. Information pertaining to sporting events excluding live coverage.**
- 2.2.6. Live coverage of sporting events of local nature i.e. sport events played by district level (or below) teams and where no broadcasting rights are required.**

3. What should be periodicity of review to ensure that the PS is not trespassing into the domain of regular TV broadcasters?

Eligibility criteria for registration of PS

- 1.11 Since for content transmitted through PS channels, the main responsibility of ensuring compliance to stipulated terms and conditions would vest on the DPOs, it becomes essential that the entity offering the PS channels is legally responsible and registered under an appropriate regulatory framework.
- 1.12 The permission to operate private satellite TV channel is granted to Companies registered in India under the Companies Act. However, a DPO may be a Company or an individual depending upon the eligibility criteria specified for each category of DPO. Presently, in DAS notified areas, PS may be operated by an MSO who as per the definition under the Cable TV Act can be an individual or an association of individuals or body of individuals whether incorporated or not or a Company registered under the Companies Act. PS are also being offered by DTH and HITS operators who are Companies registered under the Companies Act.
- 1.13 Regarding IPTV services, IPTV operator would be a Company if the services are offered by a TSP. When IPTV services are offered by a cable TV operator, it can be a company or an individual.
- 1.14 Thus, all categories of DPOs, other than MSOs, are already required to be registered as company under Companies Act. Even amongst MSOs registered with MIB, most of them are registered companies.
- 1.15 One way to ensure uniformity in the legal status of all the DPOs, is that the DPO offering PS must be a company registered in India under the Companies Act.
- 1.16 In this regard, it is noted that the process of incorporation as a Company has been simplified in India. Companies Act 2013, provides that a

Company can be formed for any lawful purpose even by one person only. Section 2(62) of the Companies Act defines one person company as “*a company which has only one person as a member*”. Procedural simplifications have also been made and with online system available for registration of Company through MCA website, the process has become very quick and simple. Thus, even small MSOs who are already registered with MIB as an individual can now register as a company under Companies Act, 2013 without having to fulfill onerous requirements.

Issue for consultation

- 4. Should it be mandatory for all DPOs to be registered as Companies under the Companies Act to be allowed to operate PS? If not, how to ensure uniform legal status for all DPOs?**

FDI limit for PS channels

- 1.17 For uplinking of TV channels of the ‘non - news and current affairs’ category and downlinking of channels, 100% FDI is permitted. The uplinking guidelines for ‘news & current affairs’ category of channels provides that:

“The total direct and indirect foreign investment including portfolio and foreign direct investments into the company shall not exceed 26% at the time of application and during the currency of the permission. The methodology of calculation of the direct and indirect foreign investments would be as per the extant policy of the Government. The Company, permitted to uplink the channel shall certify the continued compliance of this requirement through its Company Secretary, at the end of each financial year. Approval of Foreign Investment Promotion Board (FIPB) shall be required for any existing or proposed foreign investment in the company.”

- 1.18 In its recommendations on “Foreign Direct Investments (FDI) in Broadcasting Sector in India” dated August 22, 2013, the Authority has recommended enhancement of FDI limit to 49% for uplinking of ‘news &

current affairs' TV Channels. These recommendations are under consideration of the Government.

- 1.19 Vide their reference² dated 17 January 2013, MIB has informed that the foreign investment limits have been kept at 26% in private satellite News channels through automatic route keeping in view the sensitivity of the matter. However, MSOs registered under the Companies Act can access foreign investment limits up to 74% with 49% under automatic route under revised FDI norms of the Government of India. If such MSOs operate local news channels, the FDI limits in some cases might exceed the permissible limit of 26% leading to an anomalous situation which needs to be addressed.
- 1.20 However, in case 'news and current affairs' category of programs & coverage of political events is excluded from the programs permitted on PS, there may not be a need for putting further restrictions about foreign investment on DPOs for offering the PS. Exclusion of 'News & Current Affairs' category of programs from PS channels would address the anomalous situation discussed in the previous paragraph.

Issue for consultation

5. Views, if any, on FDI limits?

Net-worth of DPO

- 1.21 As per the Downlinking guidelines, the applicant company should have a minimum net-worth of Rs. 5 Crore for downlinking of first (Non-News or News & Current Affairs) television channel and Rs. 2.5 Crore for downlinking of each additional television channel. The requirement of net-worth is generally to ensure that only serious players enter into the sector. The issue is whether minimum net-worth condition is required for

² Placed at Annexure 1 to this CP

offering PS especially when these channels are being operated by the existing registered/ permitted DPOs.

Issue for consultation

6. Should there be any minimum net-worth requirement for offering PS channels? If yes, then what should it be?

Security clearance of PS channels

1.22 At present the PS channels of the DPOs do not require security clearance, whereas for the TV channels bring broadcast by authorized private broadcasters, security clearance is required. Without the security clearance, these TV channels cannot be registered with the MIB. For uniformity in addressing security requirements, it may be considered necessary that PS channels also be subjected to the same security clearances as are required for private satellite TV channels.

Issue for consultation

7. Do you agree that PS channels should also be subjected to same security clearances/conditions, as applicable for private satellite TV channels?

Registration of PS channels

1.23 MIB in their reference has asked the Authority to provide its recommendation in respect of who should be the registering authority for ground based channels and what kind of registration mechanism including eligibility requirements, fee, terms and conditions, etc. should be provided for local/ground based channels. Recommendations have also been sought regarding area of operation for such channels and limits in terms of geographical area.

1.24 Rule 6(6) of the Cable Television Network Rules, 1994 provides that no cable operator shall carry or include in his cable service any television

broadcast or channel, which has not been registered by the Central Government for being viewed within the territory of India.

- 1.25 As per the provision of abovementioned clause, a cable operator cannot transmit any television broadcast or channel, which has not been registered by the Central Government for being viewed within the territory of India. Thus, registration of any television broadcast or channel by the Central Government is mandatory before being transmitted by the cable operator. However, at present these channels/ programs are transmitted by cable operators without being registered by the Central Government and no specific regulatory framework is available for registration of these channels.
- 1.26 As per DTH license agreement also, no licensee shall carry or include in his DTH service any television broadcast or channel which has not been registered by the Central Government for being viewed within the territory of India. Therefore, PS channels which are being operated by DTH operators need to be registered.
- 1.27 Presently, the registration/ permission to DPOs for operating the TV channel distribution network is granted by the MIB. One of the options could be that all PS channels to be offered by DPOs should also be registered with MIB. Since DPOs are spread across India, therefore it is desirable that a time bound centralized online system for registration is introduced by MIB. This would be in line with the e-governance policy of Govt. of India.
- 1.28 At the time of registration of PS channel, DPO should declare the type of programs to be transmitted through such PS channel. These programs should be in conformity with the programs permitted over PS channels. Any change in the programme type should be informed to MIB 30 days before such a change.

Period of registration

1.29 As per downlinking guidelines, initially the permission for downlinking of channels is granted for a period of 10 years and renewal of permission may be considered for a period of 10 years at a time subject to certain conditions. On similar lines, for PS as well, the validity for initial registration can also be 10 years. Renewal of permission could be considered for a period of 10 years, subject to compliance with conditions as may be prescribed.

Geographical area of operation of PS channels

1.30 Another issue is whether there should be any restriction on the geographical area of operation of PS channel. In the present CP it has been proposed to permit specific kind of programs only for transmission through PS channels. These include the local level programs and movies on demand, educational programs etc., which are not local in nature. If that is agreed to, then one could argue that the market forces themselves would compel the DPOs to restrict the transmission of local level programs to a certain local geographical area, as these programs may not be of much interest countrywide. Since DPOs will be operating as per the provisions stipulated in their respective license/ registration/ permission and will offer PS only to their own subscribers, therefore, there could be a view that restrictions on the geographical coverage for PS channels is not required.

Permission/ Annual Fee

1.31 The downlinking guidelines also prescribe certain fee for private satellite TV channels. As per the downlinking guidelines, the Company seeking permission to downlink channels, uplinked from other countries, into India shall pay a permission fee of Rs 10 lakhs at the time of grant of

permission. In addition, the Company shall pay a permission fee for Registration of channels as follows:-

- Rs. 5 lakhs per channel per annum for Downlinking of Television Channel uplinked from India.
- Rs. 15 lakhs per channel per annum for Downlinking of Television Channel uplinked from abroad.

1.32 In case of broadcasters, the downlinked channels are available for distribution through all the DPOs to all the customers. However, in the present consultation, it has been proposed that PS channels may be restricted to subscribers of the concerned DPO only. PS channels do not attract the provisions related to 'must carry' and 'must provide' which are applicable to registered channels permitted under downlinking guidelines. Therefore, one may argue that the fee charged in the instant case for PS channels may not be the same or be lower as that for registered channels permitted under downlinking guidelines.

Issues for consultation

- 8. For the PS channels to be registered with MIB through an online process, what should be the period of validity of registration and annual fee per channel?**
- 9. What is your proposal for renewal of permission?**
- 10. Should there be any limits in terms of geographical area for PS channels? If yes what should be these limits. Please elaborate your response with justifications.**

Cap on total number of PS channels operated by DPO

1.33 Another issue for consideration is whether there is a need for limiting the total number of PS channels that can be operated by a single DPO. Since, the purpose of granting permission/ registration/ license to DPOs is distribution of TV channels covered under uplinking/ downlinking guidelines, it is essential that the major portion of the distribution

capacity of these platforms is used for the intended purpose. A small portion of this distribution capacity may be used for PS so as to meet the specific need of the subscribers of these DPOs. This also leaves room for innovation by any individual DPO.

- 1.34 Accordingly there is a need to limit the number of PS channels offered by the DPO. This limit may be specified as a % of total number of channels offered by that DPO or a fixed number (say 10 channels) or a combination of above i.e. a % of total number of channels offered or a fixed number (say 10 channels), whichever is lower.

Issue for consultation

- 11. Should there be a limit on the number of PS channels which can be operated by a DPO? If yes, then what should be the limit?**

Other obligations of DPO

- 1.35 Other obligations that may be imposed on the DPOs may include non-transferability of registration for PS without prior approval of MIB, prohibition from interconnecting with other distribution networks for re-transmission of PS i.e. cannot share or allow the re-transmission of the PS channel to another DPO, compliance with the Programme & Advertisement Code and TRAI's Regulations pertaining to QoS and complaint redressal, etc.

Issues for Consultation

- 12. Do you have any comments on the following obligations/ restrictions on DPOs:**

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

- 12.2 Prohibition from interconnecting with other distribution networks for re-transmission of PS i.e. cannot share or allow the re-transmission of the PS channel to another DPO; and**
- 12.3 Compliance with the Programme & Advertisement Code and TRAI's Regulations pertaining to QoS and complaint redressal.**

13. What other obligations/ restrictions need to be imposed on DPOs for offering PS?

Re-transmission of radio channels

1.36 The guidelines for DTH services do not, at present, specifically enable the carriage of radio channels. However some DTH operators are offering the same. Permission for operation of FM radio channels is granted city wise. With the advancement of the technology, it has been observed that some of the FM operators are re-transmitting their radio channels through internet as Over-the-Top (OTT) service. The availability of these channels on internet make them accessible to consumers at any time any where basis. The issue is whether radio channels should be allowed to be carried by DPO and what should be the regulatory framework for such services.

Issue for consultation

14. Should DPO be permitted to re-transmit already permitted and operational FM radio channels under suitable arrangement with FM operator? If yes, then should there be any restrictions including on the number of FM radio channels that may be re-transmitted by a DPO?

Monitoring

1.37 For violation of any regulations/ program code/ advertisement code/ guidelines/ rules in respect of PS channel the concerned DPO should be made fully responsible.

- 1.38 There are mechanisms to centrally monitor the content of private satellite television channels. As per the downlinking guidelines, the applicant company shall keep a record of programs downlinked for a period of 90 days and to produce the same before any agency of the Government as and when required. Also, the applicant company shall provide the necessary monitoring facility at its own cost for monitoring of programs or content by the representatives of MIB or any other Government agency as and when required. However, no such mechanism is in place in case of PS. Hence the main issue for consideration is as to what should be the mechanism for monitoring content on such channels.
- 1.39 As per information available at MIB's website, the monitoring committee for private television channels exists at the State and District levels and the scope of the committee is as follows:
- i) To provide a forum where the public may lodge a complaint regarding content aired over cable television and take action on the same as per procedure prescribed herein.
 - ii) To review the action taken by Authorized Officers for enforcement of Cable Television Networks (Regulation) Act, 1995.
 - iii) To immediately bring to the notice of State and Central Government if any program is affecting public order or wide spread resentment in any community.
 - iv) To keep a watch on content carried by cable television channels at local level and to ensure, through Authorized Officers, that no unauthorized or pirated channels are carried and local news if aired by the cable television operator is restricted to information about local events and is presented in a manner which is balanced impartial and not likely to offend or incite any community.
 - v) To monitor the availability of free to air channels and channels notified for mandatory carriage on the cable network.

1.40 For monitoring of PS channel a similar mechanism may be considered, i.e., DPO may also be mandated to keep a record of programs for a period of 90 days and produce the same before any agency of the Government as and when required. For monitoring of content on PS channel on day to day basis, MIB may constitute monitoring committee(s)/body(ies) at suitable level.

Issue for consultation

15. Please suggest the mechanism for monitoring of PS channel.

Penal provisions

1.41 The issue for consideration is the penal provisions that need to be imposed in the event DPOs are found to be in violation of any terms and conditions for offering PS channels. MIB's policy guidelines for downlinking of television channels provides for the following penal provisions:

"6.1 In the event of a channel found to have been/being used for transmitting any objectionable unauthorized content, messages, or communication inconsistent with public interest or national security or failing to comply with the directions as per Para 5.8 or Para 5.16, the permission granted shall be revoked and the company shall be disqualified to hold any such permission for a period of five years, apart from liability for punishment under other applicable laws. Further, the registration of the channel shall be revoked and the channel shall be disqualified from being considered for fresh registration for a period of five years.

6.2. Subject to the provisions contained in Para 6.1 of these guidelines, in the event of a permission holder and/ or channel violating any of the terms and conditions of permission, or any other provisions of the guidelines, the Ministry of Information and Broadcasting shall have the right to impose the following penalties: -

6.2.1 In the event of first violation, suspension of the permission of the company and/or registration of the channel and prohibition of broadcast up to a period of 30 days.

6.2.2. In the event of second violation, suspension of the permission of the company and/or registration of the channel and prohibition of broadcast up to a period of 90 days.

6.2.3. In the event of third violation, revocation of the permission of the company and/or registration of the channel and prohibition of broadcast up to the remaining period of permission.

6.2.4. In the event of failure of the permission holder to comply with the penalties imposed within the prescribed time, revocation of permission and /or registration and prohibition to broadcast for the remaining period of the permission and disqualification to hold any fresh permission and /or registration in future for a period of five years.

6.2.5. In the event of suspension of permission as mentioned in Para 5.8, 5.16 or 6.2, the permission holder will continue to discharge its obligations under the Grant of Permission Agreement including the payment of fee.

6.2.6 In the event of revocation of permission and /or registration the fees paid will be forfeited.

6.2.7. All the penalties mentioned above shall be imposed only after giving a written notice to the permission holder.”

An option may be to impose similar penal provisions on DPOs offering PS channels if they violate any terms and conditions of their registration.

Issue for consultation

16. Do you agree that similar penal provisions as imposed on TV Broadcasters for violation of the terms and conditions of their permissions may also be imposed on PS? If not, please suggest alternative provisions with full justification.

Amendments in the existing provisions

1.42 In the existing permissions/ registration/ license agreement/ guidelines of existing DPOs there are certain provisions which are relevant in the context of the regulatory framework for PS under consultation in this paper. These provisions are at Annexure II. Some of these provisions are enabling while some others are restrictive. The issue for consideration is what amendments and additional terms & conditions are required in the existing registration/ guidelines/ permission/ license agreements w.r.t. DPOs for regulating the PS channels.

Issues for consultation

- 17. What amendments and additional terms & conditions are required in the existing registration/ guidelines/ permission/ license agreements w.r.t. DPOs for regulating the PS channels?**

Time for adoption of new regulatory Framework

1.43 This CP discusses various issues related to regulatory framework for PS. Once guidelines are issued and implemented by MIB, these rules will have to be complied by new entrants into the sector as well as by existing players. The issue for consideration is in case guidelines/ rules for PS are laid down in the country, how much time should be given for complying with the prescribed rules to existing DPOs.

Issue for consultation

- 18. What should be the time limit that should be granted to DPOs for registration of the existing PS channels and bring them in conformity with the proposed regulatory framework once it is notified by MIB?**

Any other issue

- 19. Stakeholders may also provide their comments on any other issue relevant to the present consultation including any changes required in the existing regulatory framework.**

Chapter II

Summary of issues for consultation

Please elaborate your response with full and proper justification.

1. Do you agree with the following definition for Platform Services (PS)?
If not, please suggest an alternative definition:
"Platform services (PS) are programs transmitted by Distribution Platform Operators (DPOs) exclusively to their own subscribers and does not include Doordarshan channels and TV channels permitted under downlinking guidelines."
2. Kindly provide comments on the following aspects related to programs to be permitted on PS channels:
 1. PS channels cannot transmit/ include
 - 2.1.1 Any news and/or current affairs programs,
 - 2.1.2 Coverage of political events of any nature,
 - 2.1.3 Any program that is/ has been transmitted by any Doordarshan channels or TV channels permitted under uplinking/ downlinking guidelines, including serials and reality shows,
 - 2.1.4 International, National and State level sport events/ tournament/ games like IPL, Ranji trophy, etc.
 2. PS channels can transmit/ include
 - 2.2.1 Movie/ Video on demand
 - 2.2.2 Interactive games,
 - 2.2.3 Coverage of local cultural events and festivals, traffic, weather, educational/ academic programs (such as coaching classes), information regarding examinations, results, admissions, career counseling, availability of employment opportunities, job placement.

- 2.2.4 Public announcements pertaining to civic amenities like electricity, water supply, natural calamities, health alerts etc. as provided by the local administration.**
 - 2.2.5 Information pertaining to sporting events excluding live coverage.**
 - 2.2.6 Live coverage of sporting events of local nature i.e. sport events played by district level (or below) teams and where no broadcasting rights are required.**
- 3. What should be periodicity of review to ensure that the PS is not trespassing into the domain of regular TV broadcasters?**
- 4. Should it be mandatory for all DPOs to be registered as Companies under the Companies Act to be allowed to operate PS? If not, how to ensure uniform legal status for all DPOs?**
- 5. Views, if any, on FDI limits?**
- 6. Should there be any minimum net-worth requirement for offering PS channels? If yes, then what should it be?**
- 7. Do you agree that PS channels should also be subjected to same security clearances/ conditions, as applicable for private satellite TV channels?**
- 8. For the PS channels to be registered with MIB through an online process, what should be the period of validity of registration and annual fee per channel?**
- 9. What is your proposal for renewal of permission?**
- 10. Should there be any limits in terms of geographical area for PS channels? If yes what should be these limits.**
- 11. Should there be a limit on the number of PS channels which can be operated by a DPO? If yes, then what should be the limit?**
- 12. Do you have any comments on the following obligations/ restrictions on DPOs:**
 - 12.1. Non-transferability of registration for PS without prior approval of MIB;**

- 12.2. Prohibition from interconnecting with other distribution networks for re-transmission of PS i.e. cannot share or allow the re-transmission of the PS channel to another DPO; and**
- 12.3. Compliance with the Programme & Advertisement Code and TRAI's Regulations pertaining to QoS and complaint redressal.**
- 13. What other obligations/ restrictions need to be imposed on DPOs for offering PS?**
- 14. Should DPO be permitted to re-transmit already permitted and operational FM radio channels under suitable arrangement with FM operator? If yes, then should there be any restrictions including on the number of FM radio channels that may be re-transmitted by a DPO?**
- 15. Please suggest the mechanism for monitoring of PS channel.**
- 16. Do you agree that similar penal provisions as imposed on TV Broadcasters for violation of the terms and conditions of their permissions may also be imposed on PS? If not, please suggest alternative provisions.**
- 17. What amendments and additional terms & conditions are required in the existing registration/ guidelines/ permission/ license agreements w.r.t. DPOs for regulating the PS channels?**
- 18. What should be the time limit that should be granted to DPOs for registration of the existing PS channels and bring them in conformity with the proposed regulatory framework once it is notified by MIB?**
- 19. Stakeholders may also provide their comments on any other issue relevant to the present consultation including any changes required in the existing regulatory framework.**

List of Acronyms

Abbreviation	Description
CP	Consultation Paper
DAS	Digital Addressable Systems
DPO	Distribution Platform Operators
DTH	Direct-to-Home
FDI	Foreign Direct Investments
FIPB	Foreign Investment Promotion Board
HITS	Headend-in-the-Sky
IPTV	Internet Protocol Television
LCO	Local Cable Operators
MIB	Ministry of Information & Broadcasting
MoD	Movie-on-Demand,
MSO	Multi System Operators
OTT	Over the Top
PPV	Pay per View
PS	Platform Service
RIO	Reference Interconnect Offer
TRAI	Telecom Regulatory Authority of India
TSP	Telecom Service Provider
USP	Unique Selling Proposition
VoD	Video on Demand

Annexure I

Reference from MIB dated 17 January, 2014

उदय कुमार वर्मा

सचिव

UDAY KUMAR VARMA

SECRETARY

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D.O.No.9/16/2013-BP&L



सत्यमेव जयते

भारत सरकार

सूचना एवं प्रसारण मंत्रालय

शास्त्री भवन, नई दिल्ली-110001

GOVERNMENT OF INDIA

MINISTRY OF INFORMATION & BROADCASTING

SHASTRI BHAWAN, NEW DELHI - 110001

17th January, 2013

Dear Dr. Khullar,

The issue of putting in place a regulatory framework for ground based channels being operated at the level of Cable TV operators is under the consideration of the Ministry for quite some time. This has assumed significance in view of Digitization of the cable TV sector being implemented in India in a phased manner. These channels, popularly known as local channels, are presently not subject to a regulatory framework unlike private satellite TV channels permitted under the uplinking/downlinking guidelines of the Ministry.

2. The Authority, in its recommendations on "**Restructuring of Cable TV Services**" dated 25th July, 2008 had recognized the need for transmission of local content through registered cable operators. It has been mentioned that these channels are very effective in showing functions of schools, various local bodies and important messages from district administration during natural calamities like floods, earthquakes, tsunami etc. Accordingly, the Authority had, *inter-alia*, recommended that local cable operators should be permitted to transmit their ground based channels, which will be subjected to Program code and Advertisement code as prescribed in the Cable Television Network (Regulation) Act, 1995 and any other instructions issued by Ministry of I&B from time to time. However, the Authority did not suggest any modifications/mechanisms for regulating the transmission of these channels. The Ministry also did not bring local channels under the ambit of any regulatory regime as result of which these channels continue to mushroom all over the country without having registration /license.

3. The Cable Act defines cable service as "transmission by cables of programmes, including re-transmission by cables of any broadcast television signals. Thus, cable operators/MSOs are transmitting local news, videos, and other locally developed content as separate television channels on their network in addition to satellite TV channels obtained from various broadcasters. Rule 6(6) of the Cable Television Networks Rules, 1994 provides that no cable operator shall carry or include in his cable service any television broadcast or channel, which has not been registered by the Central Government for being viewed within the territory of India. However, the word "channel" or "television broadcast" has not been defined either in the Cable Act or in the Cable Rules. Local channels therefore have continued to operate without obtaining any registration.

4. The Cable Act is also silent on the area/jurisdiction within which the programme generated at the level of cable operators can be transmitted. Therefore it is possible for LCOs/MSOs operating at the local levels to broadcast local channels over a larger geographical area i.e at Regional/State/National level by transmitting the same content over their entire network. Instances have been brought to the notice of the Ministry that some cable operators are also venturing into transmission of local channels over wider geographical area which includes inter-state and intra state transmission by sharing the same content with others on their network. In such a scenario, local channels are basically operating as State/Regional/National channels like permitted private satellite TV channels without getting any permission. The intent of allowing cable operators to generate and transmit local programme is to keep the local people informed of relevant local issues. However this intent is not fulfilled when LCOs and MSOs start networking of the content to cover a larger geographical area. Given the present state of technological advancement, the tendency to network content at a larger geographical area has gained strength.

5. All satellite TV channels are governed by Rules and Regulations under the extant Guidelines whereas no such regulations apply to local channels. While permission to operate private satellite TV channel is granted only to Companies registered under the Companies Act, 1956, a local channel can be run by a cable operator/MSO who, as per the definition under the Cable Act could be an individual or an association of individuals or body of individuals whether incorporated or not or a Company registered under the Companies Act, 1956. Satellite TV Channels have to fulfill the Net Worth criteria, pay fees and comply with other eligibility conditions throughout the currency of permission continuing their operations in India. However no such criteria or fee is mandated for local channels.

6. In case of satellite News and Current Affairs TV channels, the total direct and indirect foreign investment including portfolio and foreign direct investment into the company shall not exceed 26% at the time of application and during the currency of permission. The foreign investment limits have been kept at 26% in private satellite News channels through Government route keeping in view the sensitivity of the matter.

7. MSOs registered under the Companies Act can access foreign investment limits upto 74% with 49% under automatic route under revised FDI norms of the Government of India. If such MSOs operate local news channels, the FDI limits in such cases exceeds the permissible limit of 26% leading to an anomalous situation which needs to be addressed. Similarly MSOs who are operating in non DAS areas and LCOs operating anywhere in the country (DAS and Non Das areas) can operate a local News Channel and can still have Foreign Investment limit upto 49% under automatic route.

8. Operators of local channels also do not require Security Clearance as against the private satellite TV channels where the security clearance is mandatory. Moreover the private satellite TV channels have to follow several other norms and requirements as mandated under the uplinking /Downlinking Guidelines which are not applicable to local channels.

9. The Ministry is presently implementing Digital Addressable System (DAS) in the cable TV sector throughout the country in a phased manner. In DAS regime only encrypted channels could be transmitted in the cable service. The facility to create encryption of channels could be done by MSOs only. In such a scenario it is essential to clarify as to how a local channel could be transmitted in the DAS regime through a local cable operator.

10. In the light of above facts the Authority may look into the entire aspect of transmission of local channels or ground based channels by cable operators/MSOs and recommend as to whether any change is required to be carried out in the extant rules and regulations to address the concerns mentioned above including the following issues;

- a. Need for putting in place a comprehensive set of provisions for Local Channels including definitions of "**local**" or '**ground based channels**' and their area of operation? The limits in terms of geographical area for such channels and how it should be operated. Who should be the registering authority for ground based channels? What kind of registration mechanism including eligibility requirements, fee, terms and conditions, etc to be provided for such channels? Action to be taken in case of violation of terms and conditions of registration including appeal provisions may be clearly defined? Comprehensive recommendations on each of the above is requested.
- b. The Authority in its recommendations dated 25th July, 2008 had inter-alia recommended that Local Cable Operators (LCOs) shall be permitted to transmit their ground based channels. However in DAS regime only digital addressable signals could be carried on the cable network which is generated at the MSO headends. Therefore LCOs will not be able to transmit local ground based channels through digital networks in DAS regime. Therefore the issue of transmission of ground based channels at LCO level in DAS regime needs to be addressed.
- c. Whether there is a case for putting a cap on the total number of ground base channels operated by a single MSO/cable operator? If yes, how many local channels may be allowed to be run by a MSO/cable operator?

- d. The need for prescribing eligibility criteria, terms and conditions including foreign investment levels, net worth criteria, composition of the Board of Directors where applicable, requirement of security clearance etc. for cable operators transmitting local News and Current affairs channels.
- e. There are mechanisms to centrally monitor the content of private satellite television channels. However, no such mechanism is in place in case of local channels. Hence the recommendations may also be made with regard to the mechanism for monitoring content on such channels.

11. It is requested that the Authority may kindly consider the above issues and furnish their recommendations under section under Section 11(1) (a) (ii) (iii) and (iv) of the TRAI Act, 1997.

Regards,

Yours sincerely,

Uday Kumar Varma
(Uday Kumar Varma)

Shri Rahul Khullar
Chairman,
Telecom Regulatory Authority of India,
Mahanagar Doorsanchar Bhawan,
Jawaharlal Nehru Marg, Old Minto Road, New Delhi.

Annexure II

Existing Provisions Relevant to Platform Services

MSOs

1. As per Cable TV rules, “*Multi-System Operator*” means a cable operator who has been granted registration under rule 11C and who receives a programming service from a broadcaster or its authorized agencies and re-transmits the same or transmits his own programming service for simultaneous reception either by multiple subscribers directly or through one or more local cable operators and includes his authorized distribution agencies, by whatever name called. .
2. The Cable Act defines cable service as “*transmission by cables of programs, including re-transmission by cables of any broadcast television signals*”.
3. As per Rule 6(6) of the Cable Television Network Rules, 1994:
“*No cable operator shall carry or include in his cable service any television broadcast or channel, which has not been registered by the Central Government for being viewed within the territory of India...*”.

IPTV GUIDELINES

4. As per guidelines for provisioning of Internet Protocol Television (IPTV) services:

“*(vi) Telecom licensees while providing TV channels through IPTV shall transmit only such broadcast satellite television channels in exactly same form (unaltered) which are registered with or are otherwise permitted by the Ministry of Information and Broadcasting....*

“*(viii) Telecom service providers providing IPTV will show only those News and Current Affairs television channels which have been registered with Ministry of Information and Broadcasting. They will not produce or provide any other broadcast or non-broadcast channel having any element of News and Current Affairs.*

“(ix) The provisions of Programme code and Advertisement code as provided in Cable Television Network (Regulation) Act 1995 and Rules thereunder shall be applicable even in the case of contents other than TV Channels from broadcast provided by the Telecom IPTV service provider. Since it is the telecom licensee who will be providing this content, therefore, he shall be responsible for ensuring compliance to the codes with respect to such content. In addition to this, such licensees will also be bound by various Acts, instructions, directions, guidelines issued by the Central Government from time to time to regulate the contents.

(x) If the contents are being sourced from content providers other than telecom service provider, then it will be the responsibility of telecom service provider to ensure that their agreements with such content providers contain appropriate clauses to ensure prior compliance with the Programme and Advertisement Codes and other relevant Indian laws, civil and criminal, regarding content. ..”

HITS GUIDELINES

5. Also as per guidelines for providing Headend-in-the-sky (HITS)broadcasting service in India :

“No permission holder shall carry or include in his HITS Service any television broadcast or channel which has not been registered by Ministry of Information and Broadcasting for being viewed within the territory of India. Notwithstanding any agreement entered into between the permission holder and broadcaster(s)/ TV channel owner(s), the permission holder shall stop from carrying/including in its HITS service, TV channels, whenever such registration/ permission is withdrawn.”

DTH LICENSE AGREEMENT

6. As per the provisions of DTH license agreement:

- i. Article 6.7 of the schedule to the DTH license agreement “.... no licensee shall carry or include in his DTH service any television broadcast or channel which has not been registered by the Central Government for being viewed within the territory of India.....”
- ii. Article 7.6 of the DTH license agreement on Non-discriminatory access states “.... The licensee shall provide access to various content providers/ channels on a non-discriminatory basis....”.
- iii. Article 10 of the Schedule to the DTH license agreement states “..... the DTH facility shall not be used for other modes of communication, including voice, fax, data, communication, Internet etc. unless specific license for these value-added services has been obtained from the competent authority.....”
- iv. Article 5.1 also lays down that a DTH operator shall ensure adherence to the Programme Code (PC) and Advertisement Code (AC) laid down by the Ministry of Information & Broadcasting from time to time.
- v. Article 1.4 of the DTH license agreement imposes a restriction on cross holding : “..... The Licensee shall not allow Broadcasting companies and/or Cable Network Companies to collectively hold or own more than 20% of the total paid up equity in its company at any time during the license period.....”
- vi. Article 1.5 of the DTH license agreement also imposes a restriction on cross holding in the following manner :
“..... The Licensee company not to hold or own more than 20% equity share in a broadcasting and/or Cable Network Company.....”.