

(By Email)

21st December, 2020

To,

Mr. Anil Kumar Bharadwaj,

Advisor (B & CS),

Ministry of Information and Broadcasting,

Shastri Bhawan, Dr. Rajendra Prasad Marg,

New Delhi-110001

Sub: Comments on behalf of GTPL Hathway Limited on Ministry of Information and Broadcasting (MIB) back reference on TRAI's Recommendations dated 19.11.2014 on “Regulatory Framework for Platform Services” and MIB reference on TRAI's Recommendations on “Platform Services offered by DTH Operators” dated 13.11.2019 “**Consultation Paper**”.

Dear Sir,

We, GTPL Hathway Limited (“**GTPL**”) are grateful to the Authority for granting us the opportunity to share our comments/response on the Consultation Paper. Please find attached our comments/response to the Consultation Paper herein below, for your kind consideration.

Thanking You

Yours Sincerely

For, GTPL Hathway Limited

Chintan Dixit

PART A

PRELIMINARY OBSERVATIONS ON THE CONSULTATION PAPER

At the advent, we state that we are surprised to find that the Authority has issued the present Consultation Paper for further regulating programming services offered by MSO(s)/LCO(s), which are already being adequately regulated under a robust regulatory framework i.e. Cable Television Networks Act, 1995 (“**CTN Act**”) and the Cable TV Networks Rules, 1994 (“**CTN Rules**”). The Authority will acknowledge that the cable industry is a heavily regulated sector with mandates and restrictions placed on all its facets including carriage fee, network capacity fee, subscription fee, distribution fee *et cetera* and that any further intervention will only cause severe impairment of the cable industry.

The Authority has also failed to mention or even consider that the platform services being offered by MSO(s)/LCO(s) have always been an integral part of their cable services and have accordingly been adequately defined in the CTN Act, where “Cable Services” has been defined as “the transmission by cables of programmes including re-transmission by cables of any broadcast television signals”. Since, the platform services offered by MSO(s)/LCO(s) have been appropriately regulated with requisite checks and balances in place, placing any further restrictions and constraining the DPO(s), could prove injurious for the cable TV industry as customers would be driven away to competing platforms including OTT platforms which is completely unregulated.

In the present Consultation Paper, the Authority has made an errant observation that “Given that a very large number of platform channels are possible, the issue of oversight on information spread through such channels is important” and that “Platform Channels can quickly and widely spread information/misinformation”. It is surprising that the Authority has shown concern regarding the probability of spread of misinformation on a platform which is abundantly regulated, and has enough provisions that may be utilised by the Authority for keeping a check on the content available on such platform. On the other hand, it is disappointing to note that despite numerous requests made by several stakeholders, the Authority has still left OTT platforms out of the scope of any form of regulations. While the platform services are already bound by the Advertising Code and the Programming Code under the CTN Act and the CTN Rules, it is pertinent to note that the

OTT platforms are not governed by any specific programming or advertising code and hence, obscene content, uncensored content, pornographic/objectionable content, content detrimental to the national security are frequently getting transmitted through such OTT platforms.

As per media reports, there are approximately 800 million monthly average users and 70 million paid OTT subscribers and the number is growing fast. The main reason for the exponential growth in OTT users and paid subscribers is on account of no parity instilled by the government (between the regulated platforms like MSO(s) and the OTT platforms) due to which the traditional broadcast business is increasingly becoming unviable. As per the report published by Business Today on August 09, 2019, the cable universe has seen a wipeout of over 15% in the last few years. A large part of dip in the viewership has happened in the urban markets due to factors such as easy access to data and advent of OTT platforms. The report also states that a couple of years ago most broadcasters spent huge amounts of money promoting their TV shows, but today most of them are spending crores on promoting their original shows that are being streamed on OTT platforms.¹

Furthermore, the Authority is aware that these unregistered and unregulated OTT platforms (*several of them being operated by the Broadcasters directly as well as through their sister concerns*) are also providing Satellite channels as catch up content/live tv to the subscribers. It is important to note that the Broadcasters, who have obtained the permission from the MIB, to uplink/downlink channels to DPO(s) only as per the Downlinking Guidelines, have unlawfully been using the OTT platforms to make their content/channel available either free of cost or at much lower rates as compared to the regulated DPO(s). Through these OTT platforms, the broadcasters are indulging in and openly flouting terms and conditions under the MIB's licensing regime and TRAI regulatory regime. Therefore the Authority needs to take this commercial imbalance faced by the regulated DPO(s) into consideration as against the OTT platforms who are being allowed to reap huge and unjustified benefits, due to absence of any form of regulatory framework governing them.

¹ <https://www.businesstoday.in/technology/news/are-netflix-hotstar-zee5-other-ott-platforms-causing-decline-television-viewership/story/371079.html>

PART B
COMMENTS/SUGGESTIONS ON THE CONSULTATION PAPER

As stated hereinabove, platform services offered by MSO(s)/LCO(s) are adequately regulated under the CTN Act and the CTN Rules and therefore require no further intervention by the MIB/Authority. Be that as it may, we have herein below provided our comments on each of the recommendations point wise:

1. Para 2.39 of the TRAI's Recommendations dated 19.11.2014 -

Authority's Recommendation – “In view of above, TRAI has no objection to accept Ministry's view provided that Ministry of Information and Broadcasting is able to specify compliance structure to ensure that those providing platform services make full disclosure on ownership status and comply to content code and advertisement code while providing platform services.”

GTPL Comments - We agree with the Authority's recommendation that those providing platform services should make full disclosure on the ownership status and comply with the programme code and advertisement code while providing platform services. However, we reiterate that the programming services offered by MSOs are already covered adequately under the CTN Act, 1995 and are therefore already mandated to comply to Programme Code and Advertisement Code while providing programming services. Further, it is already part of the regulatory framework that the MSOs *inter alia* are also required to maintain logs of their programming services for a 90 days' period. This sufficiently covers the concerns of the Authority as well as the MIB with respect to transparency of programming services being transmitted by the MSO(s) on their platform.

2. Para 2.45 of the TRAI's Recommendations dated 19.11.2014 -

Authority's Recommendation – The Authority has reiterated its earlier recommendations which are as follows:

“The Authority recommends that a maximum number of 5 PS channels could be offered by the cable operators in non-DAS areas. In DAS areas and for all other

platforms, a maximum of 15 PS channels could be offered by the DPOs. These numbers are the number of PS channels to be made available at the subscribers' end."

GTPL Comments - In this regard, we state that we are in agreement with MIB's view that it is not in the interest of the evolving and dynamic market like cable TV to restrict the number of PS channels and that regulation may only intervene to the point of upholding consumer interests, ethical business practices, ease of doing business and safeguard against violation of programming and advertisement code. The Authority on the other hand has noted that the ability to provide a large number of PS channels will present an arbitrage opportunity for the DPO(s) as they may circumvent the regulations on broadcasting. However, the Authority has failed to recognize that platform services being offered by MSO(s) or LCO(s) are already within a robust regulatory framework of the CTN Act and the CTN Rules, which sufficiently addresses the aforesaid concerns raised by the MIB. Any further interventions would only impeditment and hinder the business of MSO(s) or LCO(s).

Further, with regard to offering of platform services by DTH operators, we reiterate the contents of our response to your earlier Consultation Paper titled "Platform Services offered by DTH operators" and state that the platform services being offered by the DTH operators are satellite based and therefore, the provisions as applicable to satellite-based channels should be applicable to such platform services in entirety. This suggestion had been made considering the fact that just as the broadcasters providing registered TV channels, the DTH operators also utilize the satellite spectrum (*which is a public property*), for offering their platform services and retransmission of registered satellite channels, unlike cable TV operators who invest in their own infrastructure for providing programming services as well as retransmission of satellite channels and are not dependent on any form of spectrum.

Moreover, in terms of the DTH Guidelines issued by the MIB, the DTH operators are prohibited from offering any platform services. The relevant clause of the DTH Guidelines are reproduced herein below for your kind reference:

Clause 6.7 – “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.

Provided that the licensee may continue to carry or include in his DTH Service any television broadcast or channel, which has made an application for registration to the Central Government on or before the date of issue of this Order, for a period of six months from the date of such Order or till such registration has been granted or refused, whichever is earlier.

Provided further that TV Channels uplinking from India, in accordance with permission for uplinking granted before 2nd December 2005, shall be treated as “registered” Television channels and can be carried or included in the DTH Service. (Added by Order No. 8/ 3/2004-BP&L dated 11th May 2006).”

Even though the DTH operators have not been permitted from providing any platform services, they continue to provide paid platform services which are as high as 42 in number, resulting in huge losses to the ex chequer on account of non-payment of any fee for such platform services, which is otherwise required to be paid by registered satellite channel owner(s). For instance, a DTH operator providing 42 platform services utilising the spectrum, which was otherwise not permitted, has resulted in a loss of Rs 294 lacs per year to the ex-chequer, calculated as 42 platform services x Rupees 7 lacs.

Accordingly, the DTH operators and MSO(s), being inherently distinct, should not and cannot be brought within the same regulatory framework with respect to platform services.

Furthermore, we would like to draw the kind attention of the Authority that just as the platform services are covered under the CTN Act, the Satellite channels are also governed

by the same regime. Hence, we state that there should not be any limit on the number of platform services when there are no such restrictions imposed on the Satellite channels.

Moreover, the Authority needs to take into consideration the fact that ‘cable channels’ originated much prior to the launch of Satellite channels and the origin and purpose of ‘cable channels’ should not be ignored. It is pertinent to note that the programme services being offered by MSO(s)/LCO(s) are only available on a regional level to their own subscribers. In fact, the Authority has itself acknowledged that the impact of platform channel may be more as they are more local and may be more relevant for the public in a particular area. The subscribers need to benefit with more content having a local element, which can otherwise not be made available to them by DTH operators as they provide services on a PAN India basis and cannot effectively cater to the need/requirement of the regional consumers. The consumers have a right to demand the content of their choice and the MSO(s)/LCO(s) are obliged to supply such content as long as the same is in conformity with the Programming Code and Advertising Code envisaged under the CTN Act and the CTN Rules. Therefore, we strongly believe that the number of platform services offered by the MSO(s)/LCO(s) should be decided by the market forces & the economic sustainability should ultimately determine whether to restrict or expand this number. Further, to avoid any unnecessary confusion, the MIB should categorically exclude the Ground based channels from the definition of Platform Services. The said difference between the platform services and the Ground based channels has also been recommended by TRAI in its recommendation titled “Regulatory Framework for Platform Services” which has been duly accepted by the MIB and also has been acknowledged by the MIB in its consultation paper on the CTN Amendment Act which clearly distinguishes between the satellite channels, platform services and ground-based channels.

3. Para 2.52 of the TRAI’s Recommendations dated 19.11.2014

Authority’s Recommendation - The Authority has agreed with the suggestion given by MIB which are as follows:

“.....To extend TRAI recommendation for security clearance of MSOs/LCOs in non-DAS areas, to all MSOs/LCOs who are not security cleared and wish to offer PS to their subscribers. MIB will obtain security clearance of all MSOs/LCOs, who wish to offer PS and were not MHA security cleared at the time of registration, while they run their PS. However, if at any time before the MIB obtains the security clearance, it is determined that the programming service offered on PS and which has been registered on the online system is inimical to India’s national security or to the public interest, MIB may require the MSO/LCO to withdraw from distribution of the PS Channel or the programming service and/or cancel the registration.”

GTPL Comments – We agree with the Authority’s recommendation that the MIB will obtain security clearance of all MSO(s)/LCO(s), who wish to offer PS and were not MHA security cleared at the time of registration, while they run their PS and such MSO(s)/LCO(s) should be mandated to obtain security clearance(s) in a time bound manner. However, the responsibility of all regulatory compliances including obtaining security clearance and/or registration should be of the respective MSO or LCO, as the case may be.

We reiterate that the CTN Act and the CTN Rules are already applicable to the MSO(s)/LCO(s) which establishes a mechanism where *inter alia* criminal action may be taken against a Cable TV operator in case of any transgressions under the CTN Act. Further, under Section 19 of the CTN Act, the Authorized Officer is already empowered to prohibit the transmission of certain programmes in Public Interest. Under Section 20 of the CTN Act, the Authorized Officer even has the power to prohibit the operation of cable TV network in public interest. Hence, the concerns of the Authority/MIB are sufficiently dealt with in the present regulatory framework of the CTN Act and the CTN Rules.

We once again urge the MIB and the Authority to forthwith put in place such a comprehensive regulatory framework for the OTT platforms as well, since they are also providing platform services as well as illegal retransmission of registered satellite channels.

4. Para 2.7 of the TRAI's Recommendations dated 13.11.2019

Authority's Recommendation - Authority, therefore, agrees with the views of MIB.

The definition of Platform Services (PS) shall be:

“Platform services (PS) are programs transmitted by Distribution Platform Operators (DPOs) exclusively to their own subscribers and does not include Doordarshan channels and registered TV channels. PS shall not include foreign TV channels that are not registered in India.”

Registered TV channels or television channels means a channel, which has been granted downlinking permission by the Central Government under the policy guidelines issued or amended by it from time to time and reference to the term ‘channel’ shall be constructed as a reference to ‘television channel’.

GTPL Comments – In this regard, we reiterate the definition proposed by us in our comments to the CTN Amendment Act and state that the word ‘programme’ should be replaced with the term ‘programme services’. Accordingly, the definition proposed by us would read as below:

“Platform Service” – are programme services transmitted in the form of channel through the addressable systems of Distribution Platform Operators (DPOs) exclusively to their own subscribers and does not include Doordarshan channels, ground-based channels and satellite TV channels.

5. Para 2.16 of the TRAI's Recommendations dated 13.11.2019

Authority's Recommendation - The Authority agrees with the views of MIB. The authority recommends that:

(i) The programme transmitted by the Direct To Home (DTH) operator/ Multi Systems Operators (MSOs)/ Internet Protocol Television (IPTV)/ Head-End Into The Sky (HITS) operator as a platform service shall be exclusive and the same shall not be permitted to be shared directly or indirectly with any other Distribution Platform Operator (DPO).

(ii) Programme transmitted by the DTH operator/ MSOs/ IPTV/ HITS operator as a platform service shall not directly or indirectly include any registered TV channel or Doordarshan channel or foreign TV channel. Time-shift feed of registered TV channels (such as +1 services) shall not be allowed as a platform service.

(iii) DTH operator/ MSOs/ IPTV/ HITS operator shall ensure and provide an undertaking to the Ministry in the format prescribed by the Ministry that the programme transmitted is exclusive to their platform and not shared directly or indirectly with any other DPO.'

(iv) In case the same programme is found available on the PS of any other DPO, MIB/TRAI may issue direction to immediately stop the transmission of such programme. MIB also reserves the right for cancellation of registration of such PS of the DTH operator/ MSOs/ IPTV/ HITS operator.

GTPL Comments – We understand that the Authority has proposed the above recommendations with the sole objective of ensuring uniformity of guidelines to DTH operators and MSOs. However, the Authority while proposing its views in favour of a common regulatory regime, has failed to comprehend that both distribution platforms are significantly distinct from one another in various manners. We reiterate that the DTH operators are not permitted to provide platform services unlike MSO(s) who provide platform services in terms of the CTN Act read with the CTN Rules and to that extent are prima facie incomparable. Equating DTH with MSO(s)/LCO(s) is also fundamentally incorrect as they are incredibly different in terms of their licensing conditions, subscriber base, organization structure, mode of transmission et cetera. Hence, prescribing a uniform regulatory regime is highly erroneous, unfair and unequal.

Also, as stated herein above, platform services (*being offered illegally as on date*) by the DTH operators are satellite based and therefore, the provisions as applicable to satellite-based channels should be applicable to the platform services offered by the DTH operators including applicable fees, eligibility criteria and other conditions, without any exception.

6. Para 2.37 of the TRAI's Recommendations dated 13.11.2019

Authority's Recommendation - The Authority agrees with the views of MIB. The authority recommends that the DTH operator/ MSOs/ IPTV/ HITS operator shall provide an option of activation/deactivation of platform services as prescribed in the orders/directions/regulations issued by TRAI from time-to-time.

GTPL Comments – In this regard, we state that we agree with the Authority's recommendation and are already providing this option of activation/deactivation of platform services to the subscribers/consumers.

7. Para 2.45 of the TRAI's Recommendations dated 13.11.2019

Authority's Recommendation - The Authority agrees with the views of MIB. The Authority recommends that for the DTH operator/ MSOs/ IPTV/ HITS operator:

(a) The platform services channels shall be categorized under the genre 'Platform Services' in the Electronic Programmable Guide (EPG) subject to orders/directions/regulations issued by TRAI from time-to-time.

(b) The respective maximum retail price (MRP) of the platform service shall be displayed in the EPG against each platform service subject to orders/directions/regulations issued by TRAI from time-to-time.

(c) A provision for putting a caption as 'Platform Services' may be required to distinguish the platform services from the linear channels. Government may decide the caption in a size which is visually readable by the consumers.

GTPL Comments - In this regard, we state that we are broadly in agreement with the recommendations given by TRAI in point (b) and (c) above. With regard to point (a), we wish to state that it should not be mandatory for the MSO(s) to have a separate genre in the EPG named "PS" and it should be open for them to place the platform services in the respective genres, so as to give a better viewing experience and choice within the genre, to the subscribers.