



21st Dec 2020

To,

Advisor (B&CS) -II
Telecom Regulatory Authority of India (TRAI)
Mahanagar Door Sanchar Bhawan,
J.L. Nehru Marg, (Old Minto Road)
New Delhi - 110002, India

Sub: Response to TRAI Consultation Paper on "Consultation Paper 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"

Dear Sir,

This is with reference to the aforementioned consultation paper issued by TRAI with reference to in the various issues raised by MIB pertaining to programming services .

In this regard, we are detailing issues wise response(s)/comments for your kind consideration.

We hope that our comments/response will be considered to have the merits for drafting and releasing of recommendation in this regard.

Thanking You

Yours Faithfully

For **Hathway Digital Limited**

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Non-Executive Director



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PART I

Preliminary Observation

India has made significant strides in economic growth and development of its markets for business owing to its policies focussing on ease of doing business, thus emerging as one of the fastest growing economies in the world.

The International Monetary Fund (IMF) has branded India as one of the brightest emerging spot in the Global economy owing to its strategies directed towards easing the curbs of policies and regulations on businesses.

It is expected that enabling policies and determination to continue with economic reforms, various initiatives taken by the Government such as Make in India, Smart City Mission, Skill India Mission, Digital India, etc. would further spur the growth of the economy.

It may be noted that a business-friendly environment is a pre-requisite for the growth of a nation and evolution of a business/industry. It not only leads to employment generation but also helps in the growth and development of an economy. The economic liberalization measures initiated in the early 1990's has focused on reduction of regulatory burden on enterprises as an underlying objective of the reform process. The ambitious program of regulatory reforms by Government of India aimed at making it easier to do business in India which aimed to pinpoint the logjams and ease them to create a more business-friendly environment have yielded astonishing results wherein India has been ranked at 63rd as per the World Banks' Doing Business report 2020.

However, it is quite surprising that while the national policies is focussed towards freeing up the businesses from the curbs and shackles of regulatory intrusions, the regulations and checks being mulled by Hon'ble Telecom Regulatory Authority of India ((TRAI) to further microscopically control the already heavily guarded Cable Industry is a shocking contrast to the same.

It may be noted that as on date MIB has granted a total of 1471 MSO licenses out of which only 1143 are currently operational. The percentage of non-operational MSOs which was 20% in 2017 has risen to 22.3 % in 2018. The aforementioned figures present a grim picture of the growth of a sector which is still striving to evolve even after more than three decades of its advent due to heavy restrictions.

The Cable TV business which started taking shape in late seventies with the import and manufacture of video cassette recorders permitted domestically and got fuelled with the launch of the news channel CNN has come a long way. But unfortunately the pinnacles which could have been achieved during all these long years have not been realized as is apparent from the aforementioned figures.

It may be noted that during all these long years wherein TRAI stepped in as a Regulator of Broadcasting and Cable Sector, level playing field and parity has been the sole motive of TRAI while enacting all regulations.

However, the regulatory provisions being discussed through the subject consultation paper apparently also seems to be contrary to the basic intentions of TRAI.

Unlike OTT which is yet to be regulated the programming service is already being regulated by the provisions of the Cable Television Networks Act, 1995 ("**CTN Act**") and the Cable TV Networks Rules, 1994 ("**CTN Rules**").

It may be noted that the programming services of MSO which has evolved with time, proves as an incentive for the subscribers. It has a limited reach and comprises more of local content which evidently is being retransmitted within the parameters of law.

Kindly take note that the Cable TV industry is a sunrise sector for the economy and is on the cusp of a strong phase of growth and putting further curbs in any form will dampen the growth which is still to take the way it should have been.

The Cable TV Industry is already under heavy restrictions by way of various regulations pertaining to Network Capacity Fee, Distribution Fee, Carriage Fee etc. and regulating it further will additionally fuel the decline which is already waning due to excessive regulations of the Sector and the sector is becoming unviable and this over regulation will ultimately kill the Cable TV industry as a whole.

It may be noted that Hon'ble TRAI has disconnectedly ignored the advent of numerous unregulated social media platforms which has an unlimited reach in comparison to the programming services of MSOs which is restricted to a limited area.

The intentions of TRAI to restrict the spread of misinformation and false news cannot be achieved unless the content on social media is controlled.

We are of the opinion that bringing law and /or regulations for a sector which is already under restraints of various regulations ,there is no further requirement of regulations/intervention by the MIB/Authority and which has also been acknowledged by MIB.

PART II

COMMENTS/SUGGESTIONS ON THE CONSULTATION PAPER

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."

Our Response: We stand by the recommendation of Hon'ble TRAI that the MSOs/LCOs providing platform/programming services must make full disclosure on the ownership status and should comply with the program and advertisement code featured in the CTN Act and Rules while providing platform services.

It is an established law and well within the cognizance of Hon'ble TRAI and MIB that the programming services offered by MSOs are already guided by the provisions of the CTN Act, 1995 wherein any violation of the provisions of the CTN Act specifically section 3, 4A, 5, 6, 8, 9 and 10 calls for a seizure of the equipment being used by such cable operator for operating the cable television network by the Authorized Officer under Section 11 of Act.

The relevant provisions from CTN Act and Rules are reproduced herein for ready reference:

Rule 5A (C) of the Cable Television Network Rules, 1994 clearly stipulate that: -

"5A (c) such person shall not carry programming service provided on the channel generated at the level of such cable operator which is in violation of Programme code specified under rule 6 and the Advertising code specified in rule 7."

Similarly, for registration as MSO Rule 11D (d) of the Cable Television Network Rules, 1994 clearly stipulate that: -

"(d) such person shall not carry programming service provided on the channel generated at the level of such Multi-System operator which is in violation of the Programme Code specified in rule 6 and the Advertising Code specified in rule 7."

"11. Power to seize equipment used for operating cable television network—If any authorised officer has reason to believe that the provisions of section 3, section 4A, section 5, section 6, section 8, section 9 or section 10 have been or are being contravened by any cable operator, he may seize the

equipment being used by such cable operator for operating the cable television network:

Provided that the seizure of equipment in case of contravention of sections 5 and 6 shall be limited to the programming service provided on the channel generated at the level of the cable operator."

The aforementioned provisions adequately put a check on content /program being transmitted through the platform of MSOs.

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."

Our Response - We are in consonance with MIB's view that putting restriction on the number of programming services channels in an evolving and dynamic market like cable TV will not be in its interest and that any regulation may only be surfaced for upholding consumer interests, ethical business practices, ease of doing business and safeguard against violation of programming and advertisement code. Hon'ble TRAI 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, Hon'ble TRAI has supposedly failed to appreciate that platform services being provided by MSO(s) or LCO(s) is already guided by a dynamic regulatory framework unleashed by way of CTN Act and Rules, which adequately addresses the aforesaid concerns raised by the MIB. Any further regulatory checks will only impair and hamper the growth and business of MSO(s) and/or LCO(s).

It may be further noted that the offering of platform services by DTH operators is technically and conceptually different from the platform services being offered by the MSOs. The platform services being offered by the DTH operators are satellite based and therefore, the provisions as applicable to satellite-based channels should be made applicable to the platform services being provided by the DTH operator in entirety, instead of restricting the number of Platform Services of the MSO's.

Kindly take note that as like the broadcasters providing registered satellite 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 have to invest in their own infrastructure for provision/transmission of programming services as well as retransmission of satellite channels and the same is not dependent on any form of spectrum.

Further, the DTH Guidelines issued by the MIB, also specifically prohibits the DTH operators from offering any platform services. The relevant provision of the DTH Guidelines is 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 as high as 42 platform services, 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 any registered satellite channel owner. 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.

The DTH operators and MSO(s), being inherently distinct, should not be adjudged in the same parlance and accordingly, cannot have a common regulatory framework with respect to platform services.

It may be noted that just as the platform services are governed by the CTN Act, the Satellite channels are also governed by the same regulatory provisions. Hence, there should be no curb/restriction on the number of platform services as there is none for Satellite channels.

Further Hon'ble TRAI also needs to appreciate the fact that 'cable channels' originated much prior to the introduction of Satellite channels and the origin and relevance 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 programming services provided by MSOs have the local connect , which can otherwise not be made available to them by DTH operators as the services

provided by DTH operators are not restricted to a particular area and is provided on a PAN India basis and cannot be restricted to the requirement/necessities of the regional consumers. The choice and demands of subscribers/customers cannot be restricted/curbed as consumers have a right to demand the content of their choice and the MSO(s)/LCO(s) are obliged to supply such content within the parameters and in conformity with the Programming and Advertising Code detailed under the CTN Act and Rules.

Accordingly, the number of platform services offered by the MSO(s)/LCO(s) should be left and guided by the market forces & the financial sustainability and feasibility should ultimately be the guiding force to restrict or expand the number.

The programming services has proved to be an effective medium in the current pandemic situation, where owing to the requirement of social distancing and restrictions on subscribers to visit and /or participate in any such local events including religious programs, the local channels (PS channels) has proved to be a peeping window to such events by delivering the content related thereto. As every MSO has numerous LCOs and they also demand their PS channel to be carried, there should not be any restrictions on the number of PS channels.

It is also brought to the kind attention of the Hon'ble TRAI that that by proposing to restrict number of Platform services by inclusion of the local channels being inserted by LCO's in MSO headend, it is restricting the LCO to provide local services to its subscribers. This would unleash another wave of discontent among LCO's, which further hamper the growth of the Cable sector, which has already seen massive discontent/agitation by LCOs. Hence it is important that looking at the very nature of difference between an MSO and DTH, the concept of "One Size Fits All" shall not be pushed for regulating the industry. Therefore, it is requested that there should not be any restriction on number of Platform Services being provided by MSO's.

We would like to draw the kind attention of Hon'ble authority to insertion in Regulation 4 of the new proviso, after the proviso and before the Explanation to sub-regulation (3) through the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) (Second Amendment) Regulations, 2020 (1 of 2020), which provides as under:

"Provided further that for a multi-system operator or Internet Protocol Television Operator or Headend-in-the-Sky (HITS) operator the target market shall in no case be larger than a State or a Union Territory."

As per para 32 of the explanatory memorandum, the reason for such insertion was as given as below:

"The Authority also considered the current stipulation of declaring target market areas with a view to consider target market on the basis of spoken language-wise regions or states. However, almost all DTH service providers have made submissions against such stipulation. DTH service providers have averred that it is due to the technology choice that they cover whole of the country with one feed. In line with

this technological restraint, they have declared all India as their target market. Large MSOs, however, in-principal agreed to declare target market on the basis of linguistic regions/ state during the consultations. Many of them cited that the target markets declared by them are already aligned to a state or to an area having similar linguistic and cultural essence. Considering that there are many channels, specially New and GEC channels that are aligned to states, it seems prudent to define target market area on the basis of a state. Therefore, the Authority is of the view that in case of MSO, IPTV operator or a HITS operator the target market shall be a State or a Union Territory or any area within a State or a Union Territory covered by the head-end."

In terms of above explanation it is admitted and evident position of the Authority, that DTH is a completely different delivery platform from MSO and accordingly it is allowed it to have all India as Target Market but MSO has been directed restrict their target market to a state or union territory only.

Hence it is important for Hon'ble TRAI to lookback at its own interpretation and ensure that DTH and MSO are not treated as similar for purpose the restricting the number of Platform services.

As specified above since target market in case of MSO is based on ***similar linguistic and cultural essence*** and accordingly barring few, most of the Platform Services would be different in different target market, in line with linguistic and cultural requirement. For example, Platform Services in Kannada might have relevance in Karnataka but the same would not be relevant in Odisha and vice versa. Hence by outlining a limit for the Platform Services for MSO's, the Hon'ble Authority would be depriving the subscribers of their local content, which they have been enjoying for decades.

It may be noted that the satellite channels do not address the linguistic and cultural essence as closely as the cable services through its platform services and therefore, it's still surviving despite of huge competition from other regulated and unregulated platform.

The Cable Services is already reeling under huge checks in comparison to other platforms and already facing non- level playing field and any further proposed restriction on number of services/channels will only add to the woes of Cable TV Services which is already cascading towards downfall. The Platform services has proved to be one of the medium by way of which MSOs have been able to atleast give some effective competition in the market and any restriction will further create non- level playing field.

Hence it is imperative for the authority to have a fresh look at its recommendation, there should be no restriction on the number of Platform services in case of MSO's.

It is suggested that MIB should categorically exclude the Ground based channels from the definition of Platform services. The difference between the platform services and the Ground based channels has also 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."

Our Response—We are in consonance with Authority's recommendation that the MIB should obtain security clearance of all MSO(s)/LCO(s), who wish to offer PS and security clearance has not been obtained at the time of registration, and if they run their PS 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. To avoid disruption of PS services, a time period of one-year may be provided to the existing PS providers to obtain security clearance from the date of notification of the regulations along with guidelines to obtain the security clearance.

We reiterate that the CTN Act and Rules being already applicable to the MSO(s)/LCO(s) provides for a mechanism/provision for criminal action against a Cable TV operator in case of any transgressions/violation under/of 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 put in place such a comprehensive regulatory framework for the OTT platforms as well, since they are also providing platform services and 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'.

Our Response –We state that the word 'programme' should be replaced with the term 'programme services'. Accordingly, the definition proposed 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:

- a. 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).**
- b. 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.**
- c. 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.**
- d. 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.**

Comments – We understand that the Authority has proposed the above recommendations with the sole objective of ensuring uniformity of guidelines for DTH operators and MSOs. However, the Authority while mulling/proposing its views for a common regulatory regime, has failed to appreciate that both distribution platforms are structurally different from one another in various manners.

It is further reiterated that the DTH operators are not allowed 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. It may be noted that likening DTH with MSO(s)/LCO(s) is also basically not correct being extremely 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.

As recorded above, since the platform services by the DTH operators are satellite based and therefore, the provisions as applicable to satellite-based channels should be made applicable to the platform services offered by the DTH operators including fees, eligibility criteria and other conditions.

We profoundly differ with the recommendation recorded by way of paras (a) (c) and (d) of the Authority to the extent that, they are hampering and interfering the basic operational structure of Cable TV industry. While on the one hand, the Authority has recommended for implementation of Infrastructure sharing in the industry, and on other hand, Authority's and MIB's intervention in the basic operational tenets of the industry will significantly increase its cost.

- Live Channels - Channels telecasting live content from religiously famous temples etc. should not be considered as platform channels. By telecasting the live content, most of the MSO's are doing community service. Also, DPO's are investing heavily to record and telecast the content. So Live channels should not be considered as Platform Channel.
- Local City Channels - Most of the MSO's are telecasting channels localized to the cities. The content consists of City happening, Government Initiatives for public, problems faced by City residents etc. No national or even Regional broadcaster focuses on a single City. These channels play a very important role and are running for years. In many cases, subscribers know the MSO by its City channel name. As all major MSO's are covering multiple states and cities from one headend, so number of channels telecasted by them are high.
- NVOD channels - In case of NVOD channels, a single movie is telecasted on multiple LCN's. This helps the subscriber to watch the content without missing it. This is created for subscriber who cannot afford Broadband and OTT because of their exorbitant cost. NVOD content can be called as poor man's OTT. So multiple LCN's telecasting same NVOD content is necessarily to be considered as one platform channel.
- Sharing of platform channels – As mentioned above, sharing of platform channels should be permitted as this helps MSO's in saving cost. Also, advocating non sharing of PC channels is in contrast to the TRAI's vision of infrastructure sharing. Some entertainment programs, music, movies for which DPO has copyrights for cable network may also be available with other DPOs with valid rights with rights and should not be viewed as a violation of same program by multiple PS channels

- Ownership of content - TRAI and MIB should register the Platform Channel operators and should go for security clearance. But content of Platform Channel should be responsibility of the PC operator and not DPO.

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.

Comments—The facility of activation/deactivation of platform services are already being provided to the subscribers/consumers. However, if the platform service is being provided as a free service and part of the DPO bouquet chosen by the subscriber such deactivation of a particular channel should not be made compulsory.

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.**

Our Response -We state that we are in consonance with the aforementioned recommendations given by TRAI.

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