



COMMENTS OF INDIAN BROADCASTING FOUNDATION (“IBF”) TO TRAI’s CONSULTATION PAPER DATED 07.12.2020

At the outset, we would like to thank the Telecom Regulatory Authority of India (“TRAI” / “Authority”) for giving us an opportunity to express our views on the issues raised in the Consultation Paper dated 07.12.2020 in connection with the platform services (“Platform Services” / “PS”) offered by distribution platform operators (“DPO”). In this regard, please see below our brief submission on the specific issues raised by the Authority.

1. Issue-I: Legal Status of DPOs offering Platform Services (Para 2.39 of the TRAI’s Recommendations dated 19.11.2014)

IBF Comment: It is important to assist the industry participants to have operational freedom so that they can organise their operating structure which is available to entities across various sectors. A blanket imposition may not be warranted and would also be against the principles of ease of doing business which is an important principle adopted by the Government of India towards reforming the way businesses are required to operate. However, any DPO providing Platform Services should be subjected to a compliance structure that ensures transparency and hygiene, including disclosure on ownership status, channel carrying capacity and compliance to content code and advertisement code.

Therefore, we agree with the viewpoint of MIB and the Authority i.e., any DPO wishing to offer PS needs to obtain MIB registration (DAS license). As correctly emphasized by the Authority, the MIB would benefit from specifying a compliance structure to ensure that those providing PS make full disclosure of its ownership status, capital structure, details of the Key Managerial Personnel and at the same time mandated to comply with the programme and advertising codes prescribed under the Cable Television Network Rules, 1994 while providing PS. For example, in order to promote greater transparency and better control over the content available on these PS, DPOs may be advised to register themselves at least as a “One Person Company” (if not as a Company) under the Companies Act 2013 wherein the process has been greatly simplified and expedited.

2. Issue-II: Capping on the number of PS channels that can be offered by DPOs (Para 2.45 of the TRAI’s Recommendations dated 19.11.2014)

IBF Comment: The number of PS should be scientifically and objectively ascertained keeping in mind the subscriber base and the channel carrying capacity of the DPO to avoid any untoward situation where platform services could become a roadblock for dissemination of content by the broadcasters, which are the mainstay of the television content industry. The guiding principle is important to facilitate the appropriate



utilisation of the Platform's distribution capacity for retransmission of MIB TV channels on whose commercial and operational basis the Regulatory authority premises the corresponding economic regulation of the broadcast Pay TV industry.

Allowing any larger number of PS channels would mean that in the event a broadcaster wants the DPO to carry its newly launched/existing channel, the subscribers of the DPO will not be able to exercise their option to subscribe to the channel since, the DPO will not be left with any capacity to carry the channel. Since the purpose of granting permission to DPOs is distribution of channels covered under uplink /downlink guidelines, it is important that the distribution capacity of the DPOs be used for the said purpose.

Some measure of guidance on number of PS channels per DPO is necessary with a view that sufficient channel carrying capacity is required for registered TV channels. Each DPO carrying less than 500 permitted satellite channels should be allowed a maximum of 10 PS. Whereas, DPOs carrying more than 500 permitted satellite channels should be allowed a maximum of 15 PS. A large number or unrestricted number of PS services would interfere with the television watching experience of the subscribers and hence may not be desirable. Allowing unlimited PS channels would mean that the subscribers of the DPOs will not have the option of viewing any newly launched channel as the DPO may not be left with any capacity to carry the newly launched channel. It is also critical that provisions relating to PS should not be used by DPOs to give priority to launch their own PS on their networks thereby, bypassing DPO's 'must carry' obligations as contemplated in Regulation 5 of TRAI's Interconnection Regulations dated 03.03.2017.

In view of the large number of local cable operators ("LCO"), they should not be permitted to operate the Platform Services as with more than 60,000 LCOs present, it would be almost unreasonable to monitor the content from the point of view of Program and Advertising Code. Further, this may not also be technologically feasible in DAS environment where the content is inserted at the headend level.

Further, it is absolutely essential that all PS are inserted directly and solely from DPO's headend and that frequencies (whether for inserting PS or otherwise) should not be permitted to be left unencrypted else, it may lead to misuse of such frequencies (*inter-alia* for making available pay channels).

3. Issue-III: Security Clearance of DPOs offering PS (Para 2.52 of the TRAI's Recommendations dated 19.11.2014)

IBF Comment: While we agree with TRAI and MIB's suggestion that every DPO offering PS should undergo the process of security clearance by Ministry of Home Affairs ("MHA"). It is extremely important that each entity providing PS should be completely transparent in its operation and existence.



We note TRAI had *inter-alia* recommended that 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 as a Registering Authority may require the DPO to withdraw from distribution the PS Channel or the programming service and/ or cancel the registration. We would like to highlight that any restriction on freedom of speech and expression needs to come within the eight listed grounds under Article 19(2) of the Constitution of India and 'public interest' is not a ground available thereunder. Considering the above, we would like to submit that cardinal principles of the Constitution of India must be applied in letter and spirit while deciding the issues which relate to dissemination of content through PS.

We concur with the view that MIB obtain the security clearance of all MSOs / LCOs, who wish to offer PS but were not MHA security cleared at the time of registration, in order to run their respective PS.

To address the issues of DPOs running news channels as PS which may impact national security or public interest, adequate safeguard measures be in place for ensuring evaluation of content and whether it is detrimental to the public interest or national security of the Country, and this should be undertaken against the constitutional safeguards to speech enshrined in Article 19(2). Following which, the said DPO can be instructed to withdraw the same from its PS Channel and suitable action to be initiated against the concerned DPO, including but not limited to cancellation of its registration.

4. Issue-IV: Definition of PS (Para 2.7 of the TRAI's Recommendations dated 13.11.2019)

IBF Comment:

- (a) We agree with the extension of the PS definition to all forms of DPOs viz. DTH, HITS, IPTV and MSO.
- (b) It is suggested that the definition of Platform Services, ought not allude to exclusivity since, content on platform service channels, like any other TV channel, is copyright protected. Access to creative content is facilitated through commercial negotiation followed by licensing on fair and reasonable terms. Any regulation on platform services ought to be mindful of this. It is urged that issues such as, exclusivity of content on PS channels must be decided by market forces, following principles recognised under the Copyright Act.



5. **Issue-V: Restrictions on programmes that can be transmitted on PS (Para 2.16 of the TRAI's Recommendations dated 13.11.2019)**

IBF Comment: As submitted in the preceding section, there is no basis to demand exclusivity of programmes / content on PS, and neither does any such exclusivity prevail for the content and programming on MIB TV Channels. The 'exclusivity of content' is a matter concerning licensing / sub-licensing of content, which issues are clearly subject to and governed by the Copyright Act.

Aside from the Copyright Act, which *inter-alia* provides for the licensing / sub-licensing of content, there is no statute or law grounded in any reasonable rationale that empowers the authority or the MIB to, prescribe terms or conditions that impact the licensing of content, or unreasonably restrict the business, trade or profession of the content licensor or the content licensee.

Therefore, the only primary condition that needs to be adhered to / addressed (if at all) is that PS of a DPO should be exclusive to its own network / subscribers, and that such PS should not be shared with / made available to other DPOs. To illustrate – while two DPOs may seek license to include same movie / cinematograph film in their respective platform services however, PS of one DPO should not be made available to other DPO and *vice versa*.

6. **Issue-VI: Activation / deactivation of PS offered by DPOs (Para 2.37 of the TRAI's Recommendations dated 13.11.2019)**

IBF Comment: We concur with MIB's recommendation. However, it is noted that TRAI's recommendation dated 13.11.2019 refers to *orders / directions / regulations issued by TRAI from time-to-time* to be extended to Platform Services. It becomes important to underscore that TRAI doesn't have legislative basis to bring platform services under its regulatory ambit specially with respect to content on PS (e.g., exclusivity of content).

Like Broadcasters' channels these individual Platform Services ought to be subject to activations and deactivations based on consumer choice and demand and if the subscriber wishes to unsubscribe the PS services, that option should be provided by the DPOs. In case the PS services are offered free of cost by the DPO, then it may be provided in default to the viewer, however if the viewer specifically chooses to unsubscribe even such free Platform service, it should be provided with an option for unsubscribing without condition. Further, the PS channels should not be counted for the purpose of network capacity fee by DPOs.



7. **Issue-VII: Separate categorisation of PS in the EPG (Para 2.45 of the TRAI's Recommendations dated 13.11.2019)**

IBF Comment: We concur that there should be separate categorization of PS in the EPG under new / separate genre "Platform Services". In this regard, it is necessary to mandate provision for displaying name and sequence number of PS channels in a font size under the heading 'PS' on TV screen so as to distinguish them from the regular TV channels. This would enable the subscribers to identify PS channels of the DPOs easily *vis-à-vis* channels of the Broadcasters and would avoid confusion between these two. While this stipulation would be made for DPOs to arrange EPG.
