

19th February, 2018

To,
Mr. S.K. Singhal, Advisor (B&CS),
Telecom Regulatory Authority of India
MahanagarDoorsancharBhawan
Jawahar Lal Nehru Marg,
New Delhi – 110002

Sub:Counter comment to the Consultation Paper on empanelment of Auditors (“Consultation paper”).

Respected Sir,

Thank you for providing me the opportunity to share my counter-comment on the Consultation Paper.

While the current Consultation Paper *inter-alia* deals with the scope of audit (both technical and/or subscription) under the TRAI Regulations dated March 3, 2017, it is pertinent to mention that the proposed audit has a confined/limited scope. In my opinion, it should include the entire ecosystem of broadcasting services(including broadcasters, as they have a very vital role in providing these services to the consumers, who may be at a disadvantage because of the irregularities and quality of broadcasting services).

Therefore, as the broadcasters are a crucial constituent in the value chain, it is important to audit the systems of broadcasters to ensure that the broadcasters are in compliance with applicable laws.

Thank you for your time and consideration.

Yours faithfully,

Prashant Kumar

Consumer and Independent practitioner

Bar council of Delhi

Counter-Comment on Empanelment of Auditors

Question 14. Any Suggestion relating the audit framework.

Answer 14. I fully disagree with the comments of various stakeholders for the parameters and benchmarks suggested by them. The stakeholders (especially distributor(s) and broadcaster(s)) have raised their concerns for the prevailing issues and complex situations being faced by them. However, none of the concerned stakeholders emphasized on **consumers**, who are the end beneficiaries of the broadcasting services provided by the broadcasters and/or distributed by the MSO's.

Further, keeping in mind the prevailing issues being faced by the consumers, I would like to highlight one of the main objectives of TRAI i.e. protecting the interest of consumers and addressing general consumer concerns relating to availability, pricing and quality of services. Hence the services provided by the broadcasters through DPOs cannot be at their disadvantage.

Further, the rights of consumers are ensured by Consumer Protection Act, 1986 and section 2 (g) of the said Act defines deficiency as reproduced herein below:

“deficiency” means any fault, imperfection, shortcoming or inadequacy in the **quality, nature and manner of performance** which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.

The above mentioned definition amply focuses and exerts on *quality, nature and manner of performance*, which are in direct control/direction of the broadcasters and vests a detrimental right with them which might be at the disadvantage of the end consumers. For example, the transmission quality of channel(s) may vary from place to place and/or time to time, due to such discrepancy and with no check, the consumers feel cheated for the representations/assurances made to them.

Furthermore, with regard to the up-linking and downlinking licenses, I would like to state that MIB must take preventive measures to ensure the *quality, nature and manner of performance* of Services. In absence of any statutory provisions, even the governing authority i.e TRAI is not in a position to meet the aforesaid objective. Therefore, it is suggested that *preventive measures* must be defined by TRAI in cooperation with MIB, so that there is a check on the broadcasters. This can be achieved by including the services rendered by the Broadcasters within the scope of audit to be done by the auditors.

Basis the abovementioned and keeping in mind the rights available to consumers along with TRAI's objectives, there is a need for comprehensive audit of all broadcasters for the services rendered. Some areas of audit of the broadcasters may be (a) provisions relating to up-linking

and downlinking licenses (b) digital quality of signals of all the channel(s) from the broadcaster(s) to ensure seamless digital retransmission of the channel(s) through the distribution platform to the subscribers (c) provision of relevant equipment's from the broadcasters at their cost (d) other technical requirements as issued by the applicable regulatory authorities from time to time.

It is further recommended that in case the empanelment of auditors as suggested in the Consultation Paper is not complied with and/or such right to check broadcaster(s) compatibility is not brought into the purview of the empaneled auditors, then such right to audit the broadcasters must be conferred on **BECIL**, for the interest of consumers. This will ensure transparency and create a level playing field in the entire eco-system of broadcasting services.