

**COMMENTS ON BEHALF OF ABP NETWORK PVT LTD TO TRAI**  
**CONSULTATION PAPER ON “ISSUES RELATED TO NEW REGULATORY**  
**FRAMEWORK FOR BROADCASTING AND CABLE SERVICES”**

At the outset, we at ABP Network Pvt. Ltd. (“ABP”) welcome this initiative by the TRAI for having come up with a Consultation Paper on “*Issues relating to New Regulatory Framework for Broadcasting and Cable Services*”. It is however being noticed that the issues posed for consultation are only limited and confined to the issues that directly arose as a result of the challenge to NTO 1.0 & 2.0 and also the Interconnect Regulations dated 3<sup>rd</sup> March 2017. The Consultation process does not address or pose any questions on several other aspects which were also part and parcel of the very same Regulations and which essentially pertained to the issues faced by Free To Air (FTA)/Low priced Channels and concerns of these broadcasters especially the news broadcasters and the issues pertaining to “Carriage Fee”, “Target Market” and the non-implementation of the TRAI Regulations dated 3<sup>rd</sup> March 2017 & 1<sup>st</sup> January 2020, etc.

On a perusal of the Consultation Paper, it can be seen that the New Framework was promulgated with the objective of bringing a paradigm shift to the TV distribution value chain and to ensure transparency and revenue assurance as basic principles. The Consultation Paper also notes that the new dispensation/Framework could not be implemented due to legal challenges. It is however a matter to be noted that even the undisputed provisions of the Regulations have also not seen the light of the day and the Regulations have not been implemented in letter and spirit when it comes to provisions pertaining to “Carriage Fee” and “Target Market”. In fact, even the RIOs have not been updated or even uploaded in most cases.

In our submission, one of the approach which needs to change when it comes to the exercise of choice by a consumer should be that the rule of exercise of choice should only be made applicable in the case of a “Pay channel” and there should not be any requirement to do so in the case of “FTA channel” and the same must become and should be compulsorily made available as a part of the NCF charged by the DPO to the Subscriber. The NCF (which is paid for by the Consumer) on its own has “no value” per se unless and until there are channels being made available on it and when it comes to a FTA channel, the rule of exercising a choice by a Consumer need not be made applicable and the same has to be offered on a compulsory basis by the DPO. In fact, the FTA channel must be opted out in writing by the Consumer and unless the same gets done, it has to be made compulsorily available to the Consumer for the charges collected towards NCF which otherwise will have no meaning.

In fact, doing so would also address the concerns raised by LCOs in para 1.19 i.e. the adverse impact on subscription of linear TV with reduction in number of Subscribers and declining TV viewership due to the increasing popularity of Free Dish (at no cost to Consumers except installation charges) and the popularity of SVOD and AVOD services. One of the attractive features of an OTT service is the availability of free content and the option to make a choice of multiple options of content. In order to promote their services, the OTT platforms offer a lot of free content or alternatively make it available as an AVOD content. LCO/MSO/DPO on the other hand charges a Network Capacity Fee on a monthly basis from the Consumer and makes available very unpopular channels on the Landing Page by charging an exorbitant Landing Page fee to the said Broadcaster and even for filling up the capacity offered an exorbitant Carriage Fee/Placement Fee/Marketing Fee gets charged to the Broadcaster who wants to

secure a place in the Network Capacity Fee offered. The amount of Carriage Fee/Placement Fee/Marketing Fee forms the basis for securing a place in the NCF and it is not the nature of content which is the determinative factor. In fact the higher Carriage Fee/Placement Fee/Marketing Fee paid by Broadcaster would secure him a premium placement even though the content offered is of sub-standard quality. Any Broadcaster who must have invested hugely on content but is not in a position to pay for the Carriage/Placement/Marketing Fees, would not be able to secure and would be made available in the Network Capacity of DPOs. In other words, the said DPOs are themselves creating bottlenecks for themselves by charging NCF and offering an unattractive content, which is also paid for and made available at a humongous cost by the content provider. The least which could be done by a DPO is not to act as a gatekeeper or to unjustly enrich by charging unreasonable and unfair Carriage Fee coupled with Placement & Marketing fee, etc. This would directly address the concern of the DPOs and the challenge posed to the traditional Cable/DTH Services since such a practice would directly address the concerns highlighted in para 1.23 i.e. easy availability of TV content on OTT platforms.

It is also been noted that a Committee was formed as has been stated under para 1.27 consisting members from IBDF, AIDCF and DTH Associations, with certain terms of reference. Apparently, no member of NBDA was invited to be a part of the said Committee and which seems to be the reason why the concerns of News Broadcasters have not been taken up in the current consultation process. It is our considered view that the issues should not be taken up in isolation and a comprehensive viewpoint must be taken from all stakeholders of the industry and all the concerns which have an impact on different stakeholders which arise as a result of 2017 & 2020 Regulations, must be taken up. We hope that the said issues get addressed as well by taking up additional questions or in the alternative a separate Consultation Process gets initiated. It may also be noted that it would not be accurate to suggest that the New Regulatory Framework 2020 made effective from 1<sup>st</sup> Jan 2020 and is law as on the date, is implemented in letter and spirit or the due benefits have accrued (as stated in para 2.1) atleast not in the case of News Broadcasters.

It is also been noted that there is a heading on the issue of “Ceiling on MRP Channels provided as a part of Bouquet”. TRAI has addressed the aspects of cost of production and the revenue generated by the Program in the nature of Subscription as also the Advertisement. It is important to appreciate that the cost of production is also a common factor when it comes to News & Current Affairs. It is a different matter that on account of the nature of genre being niche, they are constrained to offer them as FTA or at negligible prices. Over and above the same, by creating its dependency on advertisement revenue alone, it is further constrained to incur the cost of Carriage on any distribution network. The TRAI must also therefore address the concerns of FTA channels and ensure strict implementation of the Carriage Fee regime and also revisit the provisions thereof in the light of changed market scenarios resulting from pandemic, emerging technologies like OTTs, etc. The role of News Broadcasters during the pandemic and the treatment of them as an “essential service”, necessitates of them being treated differently even for the purpose of implementation of TRAI Regulations and Tariff Order. They deserve a preferential treatment over other Broadcasters and thus should be the beneficiaries of lesser or no Carriage Fee costs and must be treated at par with a notified Channels under Sec 8 of the Cable TV Networks Act 1995 which are to be mandatorily carried.

We thus take this opportunity to take up the above issues and also the issues discussed hereinafter under the head of Q7 as “Any other matter related to the issue”. In our considered

view, these aspects also need equal attention of TRAI and deserves to be consulted and deliberated upon either in the present consultation process or by way of a separate consultation process which should immediately proceed or should be simultaneously taken up and dealt with.

In our view various other issues are also to be considered in order to ensure a sustainable business model and to further the survival of the news broadcasting industry. It is important that the consultation also takes up the following issues under the head of “Any other matter related to the issue” namely:

- i. Increasing the capacity offered in the Network Capacity Fee (NCF) charged to the Consumers especially keeping in mind that there is no dearth of capacity in the modern age and networks to ensure that FTA Channels and especially the News Channels are compulsorily carried by the Distributors. In the New Regulatory Framework of 2020, the NCF of INR 130/- was prescribed for 200 SD Channels and all mandatory channels and a maximum of INR 160/- was prescribed for more than 200 SD Channels. It is our submission that in the ceiling of INR 130/- the number of SD channels offered must increase to 400 from prevailing 200 channels;
- ii. Flexibility was also offered to the DPOs to declare different NCF for different geographical regions/areas. The Distributors catering to any particular region or State or who have a significant or major Market Share in any State, must ensure compulsory carriage of Regional Channels/Regional News Channels and the same should be offered without any additional cost to the Broadcasters, since the Customer has already paid and has been charged the Network Capacity Fee. All FTA Channels catering the News & Current Affairs Services (which were also considered as “essential services” during the pandemic times) must be made available “free of cost” or in the alternative “as a part of the Network Capacity Fee charged by the DPO” from the Consumer. The Regional Broadcaster should not have any burden to pay a “Carriage Fee” to the DPO since he has already been benefitted for having charged the end consumer by having collected the Network Capacity Fee. In other words, all FTA Channels and especially the FTA News Channels must be compulsorily carried and it must apply with more emphasis in the case of a Distributor who holds a majority Market Share in any particular State when it comes to carrying the Channel of the Regional Broadcaster/Regional News Broadcaster;
- iii. The evils of Landing page misuse by news broadcasters to be addressed especially keeping in mind the resumption of BARC ratings for News Channels and the usage of Landing Page resulting in “Viewership Malpractice”. This is especially since the Landing Page directly impediments the viewing experience and also results in militating against the freedom of choice contemplated by the Regulations, since a Consumer is forced to view a particular channel which is not of his/her choice. What is more tragic is the unpleasantness created at the end of Viewer as a result of forced viewing of any channel in the Landing Page which is not a Channel of his/her choice and to add to the misery of the extent of unfairness/illegitimacy is that the said channel on Landing Page also ends up scoring for the purpose of BARC ratings and qualifies as a popular channel. ABP has made several representations to BARC which has shown and established that “Landing Outlier” of BARC has been totally ineffective since the channel if takes up the service of Landing Page from a locally catering MSO/LCO, a

huge gain has been seen in the reach for the said channel in the said particular State. Such practices is mostly adopted by newly introduced Channels to suddenly gain unprecedented popularity through BARC ratings by adopting such unfair and unreasonable measures which qualify as “Viewership Malpractice”. This can be illustrated when the popularity of a Hindi News Channel in a regional distribution network is seen being dominated by viewers of local/regional speaking languages say Bengal or Punjab, which is inexplicable and not understandable. The current Regulations therefore must regulate “Landing Page” to the extent that the same is not misused or abused resulting in impacting the viewer’s choice which is a cardinal principle enshrined in the TRAI Regulations of 2017 & 2020. The Landing Page on the contrary must be an information tool and should act as a page which can address upon creating awareness amongst the viewers of the channels that are available and for which an effective choice can be exercised and also to create awareness of various packages available with the Distributors. We feel such issues can be taken up along with this consultation since the said issue directly impacts the exercise of Subscriber choice and also gives a premium to not only to the Distributor who facilitated the same but also to the Broadcaster who gains by way of topping the charts of BARC ratings by use of unfair means and acts of “Viewership Malpractice”;

- iv. The “Perpetuity LCN rule” which has been struck down by the Hon’ble Kerala High Court, makes us fall back to the situation of earlier Regime which provided and guaranteed LCN for 1 year. It is our respectful submission that the LCN rule needs to be reconsidered to the extent that if not for perpetuity which has not found favour with Hon’ble Kerala HC, the same should atleast be available and continue for a period of 3 years. In fact the DPOs should also be mandated to publicly display and create awareness about the date from which the LCN is granted to any particular Channel;
- v. TRAI at one place (para 1.3) has noted that the available flexibilities under the Regulations are getting mis-utilised and/or “exploited” to suit one’s advantage. The said proposition gets fortified when it comes to the implementation about the Carriage Fee regime. In the 2020 TRAI Regulations (dated 1<sup>st</sup> Jan 2020) provided for:
  - a) ‘Target Market’ in no case to be larger than a State or Union Territory;
  - b) The Regulations also provided that total Carriage Fee payable for a TV Channel per month by a Broadcaster to the Distributor of a TV channel, shall in no case exceed INR 4 Lacs (SD Channel and INR 8 Lacs for HD Channel);
  - c) Distributor was required to place all TV channels available on its platform in EPG in such a manner that all TV channels of a particular language in a genre are displayed together consecutively and one TV channel shall appear at one place only;

It is submitted that most of the provisions of TRAI Regulations remain un-implemented and have been able to survive on papers without getting implemented on ground and to sail along with various other provisions of the said Regulations which were sub-judice.

With respect to point no. (c), it may be clarified that when it comes to Hindi language news genre, the HSM Market being big, to include various States like UP, Uttarakhand, Rajasthan, Madhya Pradesh, etc. the EPG must also display the Hindi genre State-wise and to collate and combine all Regional News Channels at one place in the EPG.

- vi. The TRAI has acknowledged in the Consultation process the completion of DAS implementation in Para 1.2. With this therefore, it is also necessary that the exact no of Active Subscriber Base is publicly displayed in a transparent manner by the Distributor on its website. The same should be done atleast on a monthly basis along with other set of compliances which the TRAI has prescribed in the Regulations.

The entire issue now needs to be re-looked and especially keeping in mind the changed market scenario post pandemic and advent of emerging technologies and new habits of viewing namely OTTs, etc. We expect and hope that the issues raised hereinabove would be raised as a part of consultation or by way of a separate consultation process.