



19 August, 2019

To,
Advisor (B&CS)
Telecom Regulatory Authority of India,
Mahanagar Doorsanchar Bhawan,
Jawahar Lal Nehru Marg,
Old Minto Road,
New Delhi – 110 002

Dear Sir,

Re: Submissions to Telecom Regulatory Authority of India (“TRAI”) in response to the Consultation Paper on “KYC of DTH Set Top Boxes”.

At the outset, we would like to thank the Authority for giving us an opportunity to tender our views on the issues related to “KYC of DTH Set Top Boxes”.

In regard to the present consultation process, we submit that we have perused the said paper carefully. We hereby submit our comments attached as Annexure. The said comments are submitted without prejudice to our rights and contentions, including but not limited to our right to appeal and/ or any such legal recourse or remedy available under the law.

The same are for your kind perusal and consideration.

Yours Sincerely,

For ABP News Network Pvt. Ltd.



Kishan Singh Rawat

AVP – Administration and Regulatory Affairs



ABP News Network Pvt. Ltd.

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**SUBMISSIONS TO TELECOM REGULATORY AUTHORITY OF INDIA
("TRAI/REGULATOR") IN RESPONSE TO THE CONSULTATION PAPER ON
KYC OF DTH SET TOP BOXES**

At the outset, ABP News Network Limited (hereinafter referred to as "ANN") would like to state that TRAI's decision to examine the KYC of DTH Set Top Boxes is a welcome one. Such exercise ensures that the Regulator is willing to take into consideration a new or amended methodology in respect to KYC of DTH Set Top Boxes.

The present reference stems from the Ministry of Information & Broadcasting (MIB) vide its letter no 8/10/2018-BP&L dated 27th December 2018 wherein TRAI has been requested to give its considered recommendations on desirability or otherwise of Know Your Customer (KYC) for Set Top Boxes, in DTH Services and, if desirable, then the process for the same.

In view of the same, the TRAI has released the following issues for consultation which have been responded to and dealt with by ANN individually as envisaged by TRAI on its release of the present consultation. ANN's responses to the issues are given herein below-

- 1. Is there a need for KYC or e-KYC of DTH Set Top Boxes to address the concern raised by MIB in their letter mentioned in paragraph 1.5 of this consultation paper? Give your answer with justification.**

In their letter dated 08.10.2019 BP&L, MIB has expressed concern over the need for KYC and the relevant extract of the same is reproduced herein for the sake of ready reference-

"The DTH equipment may be sold to the customers only after filling of KYC form by them and verification done according to Aadhaar Card.

As in mobiles, the location-based services (LBS) needs to be made active in DTH set top boxes to check their location in accordance with customer ID/ Card ID."

Firstly, ANN strongly feels that there is a need for KYC or e-KYC of Set Top Boxes to address the concerns raised by MIB in their letter in order to prevent illegal use of such Set Top Boxes

The block contains a handwritten signature in blue ink and a circular blue stamp. The stamp contains the text "ABP News Network Pvt. Ltd." around the perimeter.

in India and outside their rightful and designated jurisdictions. On that account, ANN strongly agrees with the suggestion put forth by MIB wherein Filling of KYC form and verification of Aadhar Card may be mandatory for any customer purchasing DTH equipment. In order to check location in accordance with customer ID /Card ID, location based services need to be made active in DTH Set-Top-Boxes.

Secondly, such a rule must require passing the test of Constitutionality which has been laid down by a Constitutional Bench of the Hon'ble Supreme Court. On 26th September, 2018, in its Judgment in **Justice K.S.Puttaswamy(Retd) & Anr. vs Union Of India & Ors (hereinafter referred to as the "Aadhar Judgment")**.¹ The Supreme Court declared the portion of Section 57 of the Aadhaar Act that enabled private companies to use Aadhaar for establishing the identity of an individual, "unconstitutional". At present, this aspect of the judgment is being interpreted in at least three ways by financial services companies. One, private companies cannot use Aadhaar for KYC at all. Two, private companies can use Aadhaar for KYC if an individual shares it voluntarily. Three, private companies cannot take the 12-digit Aadhaar number from the customer, but can instead use the Aadhaar QR code or Aadhaar virtual ID, which is a 16-digit temporary number that masks the Aadhaar number.

A mechanism has to be developed so that KYC of DTH Set Top Boxes may be confirmed for customers without falling foul of the abovesaid Aadhar Judgment. For instance, SEBI had allowed mutual fund companies to let new retail investors invest up to Rs 50,000 instantly after they produce PAN and undergo an Aadhaar plus OTP-based e-KYC without sharing of Aadhaar number. Thus, while linking the Aadhaar card of the customer seems a plausible method in order to create unique KYC details for each customer, the same have to be implemented by masking the Aadhar number in case of e-KYC or by using Aadhar QR Code alongwith some other Customer Identity Card. That is because in a case where DTH Operators have to move from an online authentication model to an offline one which would be both expensive and time consuming than the e-KYC model. An offline model will also increase the risk of Penalty to operators and also create hurdles in crime detection.

2. If your answer to Q1 is in affirmative, then what process is to be followed?

¹ WRIT PETITION (CIVIL) NO. 494 OF 2012 & all connected matters before THE SUPREME COURT OF INDIA



With reference to ANN's answer to the first Question, the process to be followed could be as follows-

- a. Filling of KYC form and verification of Aadhar Card QR Code or Aadhar virtual ID alongwith use of an alternate ID may be mandatory for any customer purchasing DTH equipment.
- b. The form to include basic credentials of the customer such as –
 - Name
 - Date of birth
 - Address
 - Identification number in the ID Card presented
- c. In order to check location in accordance with customer ID /Card ID, location-based services need to be made active in DTH Set-Top-Boxes with verification during installation.
- d. Periodic check in's which may range to a yearly basis to be done on small sample sizes to ensure location compliance of STB.

The Authority may contemplate using a methodology similar to DoT which has now issued an Order dated 03.04.2019 for Alternate Digital KYC Process for issuing new mobile connections to subscribers.

3. Whether one-time KYC is enough at the time of installation or verification is required to be done on periodic basis to ensure its actual location? If yes, what should be the periodicity of such verification?

OTP to verify e-KYCs has become norm for authentication for so many services including critical services such as banking, insurance etc. Therefore, same can be used for DTH STBs also.

The periodicity of such verification should be done on a yearly basis.

4. Whether KYC of the existing DTH STBs is also required to be done along with the new DTH STBs? If yes, how much time should be given for verifying the existing STBs for DTH?



The KYC of existing DTH STBs must be treated at par with new subscriptions. Given the number of DTH (reportedly at 72.44 million as on March 2019) subscribers in India; ANN suggests a time of 150 days may be given to DTH Operators for verifying the existing STBs for DTH.

5. Whether the location-based services (LBS) needs to be incorporated in the DTH set top boxes to track its location? Will there be any cost implication? Give your response with supporting data and justification.

Since mobile a connection is provided with PoI and POA verification only, this can work to fulfil the purpose of suggested KYC. They also stated that if subscription is verified through OTP and Set Top Boxes is being installed at the address provided by the subscriber in an electronic Customer Application Form (hereinafter referred to as "CAF"), it should be sufficient, and no additional measure may be required for traceability of the user.

6. Any other relevant issue with KYC of DTH Set Top Boxes?

While affirming the constitutional validity of Aadhaar, the apex court had said Aadhaar can only be used for welfare schemes and for delivering state subsidies. It had barred private companies from using Aadhaar data for authenticating customers. Also, in order to address privacy concerns, the court said it was not mandatory to link Aadhaar with private companies or mobile phone numbers. In another judgment on Right to Privacy titled **Justice K.S Puttaswamy (Retd.) v. Union of India and Ors.**², a 9 judge bench of the Hon'ble Supreme Court ("**Privacy Bench**") finally determined that there existed a fundamental right to privacy.

In the wake of the same, while the Hon'ble Supreme Court has suggested a Data Protection Law to be created by the Parliament, ANN strongly believes that any new law, regulation, direction which entails the personal data of individuals such as KYC must take into account the complex relationship between Data Protection and KYC Compliances due to which the Regulator must ensure clarity on the following-




² WP (C) No. 494 of 2012 before the Hon'ble Supreme Court of India

- DTH Operators must be subject to measures are taken to ensure that KYC Details of customers aren't vulnerable to hackers or sold to marketers in the open market given their Identity Cards or Mobile Numbers are in their possession.
- DTH Operators need clarity on what documents need to be destroyed once a customer subscription is over given that DTH Operators store the KYC details which have the subscriber's address and identity proof and linked to Aadhaar or other ID for easier verification.
- Clarification is also needed on the methods that can be used to destroy the data.
- There is every apprehension that the subscribers may ask to delink their Aadhaar number with the mobile numbers in the days ahead and thereafter, even existing customers may request their Aadhaar number to be removed from their DTH KYCs and thus, a mechanism must be put in place for the same.


