AROI Comments in response to Regulating Converged Digital Technologies and Services - Enabling Convergence of Carriage of Broadcasting and Telecommunication services.

Dear Sirs,

We write on behalf of the Association of Radio Operators in India (AROI), to provide comment and suggestions in response to the Telecom Regulatory Authority of India (TRAI) Consultation Paper on Regulating Converged Digital Technologies and Services – Enabling Convergence of Carriage of Broadcasting and Telecommunication services ('Consultation Paper/CP'). We thank your good offices for issuing the Consultation Paper and allowing stakeholders to present their suggestions and concerns.

As you are aware, AROI is the association of radio operators in India. It is registered as a society under the Societies Registration Act, 1860, with the aim of promoting the interests of Radio Media sector and its Member Operator. The association seeks to promote cooperation on matters affecting the common business interests of its Radio Operator members who operate 384 FM Radio Stations in India.

It is in light of AROI's role to protect, promote and address the concerns of the private FM radio industry that AROI is making the present suggestions to the Consultation Paper. In consideration of the comments that have been sought towards the Consultation Paper, we submit as under:

1. We agree with the TRAI's view that convergence has been "defined and interpreted in many ways". For instance, a content creator or a Digital Service Provider (DSP) would have a different perspective on convergence, compared to a Telecom Service Provider (TSP) or a broadcast carriage service provider like Direct to Home (DTH), Headend-In-The-Sky (HITS) or Cable Operators.

To explain convergence, the CP states that "***various technological developments in digital markets have resulted in the convergence of devices, services, and networks***". The CP also delves into a broad range of issues from convergence in ***telecom and broadcasting services***, ***convergence between telecom and the IT sector due to convergence in IP based networks***, and ***convergence between telecom and space sector***. The CP then highlights the challenges caused by such convergence at the statutory, licensing, regulatory (*including content regulation*), administrative and institutional levels. Consequently, it seeks stakeholder responses on how India should respond to these emerging trends.

These are important and relevant questions. But unfortunately, TRAI has given stakeholders a very short time to respond. Responses to these questions would require stakeholders to evaluate the current carriage regulatory frameworks for broadcasting and telecom services, adequacy of the current administrative set up, current and best international practices, and feasibility of replicating best practices in the Indian context. Such exercises require time, and the TRAI should have given at least six months for stakeholders to respond. We have already asked for further extension of last date for comments, and failing which the following comments are being sent to TRAI and more details will be shared as the details are available to us.

2. **Telecommunication and Broadcasting Services (including FM radio broadcasting) are distinct services, and they should remain so from a regulator's point of view.**

The CP states that "*various technological developments in digital markets have resulted in the convergence of devices, services, and networks*" and explains device convergence, service convergence and network convergence.

We have questions around the CP's explanation of "convergence".

i. **Device convergence**: To support its description of device convergence, the CP also refers to "smart devices" and describes smart TVs in detail. However, latest available data suggests that only around 22 million homes have internet-enabled smart TVs, making up around roughly 10% of all television households in the country. Is 10% penetration sufficient to conclude device convergence for a 1.4 billion people? **Clearly not.**

ii. **Service convergence**: The CP in para 1.3(ii) states that broadcasting services and telecommunication services have converged into one service.

"*In the media and telecommunications business, it may mean the tendency for services to merge into one offering that combines the features of the original services. Convergence of services allows operators to offer bundles of services to the end-users. Converged services include at least two different types of services, for example, double-play, triple-play, quadruple play bundled services*."

The CP uses examples of *double-play*, *triple-play*, and *quad-play* to draw this conclusion. The CP ***mistakes*** the bundling of telecommunication services with broadcasting services by a single service provider as convergence of services. It is important to note that bundling of different services (*like TV, broadband and voice*) into one offering does not mean that these services have converged. It only enables a service provider to provide multiple services as a bundled offering and each service within the bundle remains distinct. The fact that they are offered as a bundle or provided by one service provider does not mean that these distinct services have converged.

The most pressing need of the hour is to check the Vertical Integration issue to prevent telcos from owning and controlling broadcasting content and carriage.

We can clearly see that the Big Telcos are dominating the market by owning controlling stakes in Carriage across many platforms whether MSOs or broadband as well as content. This vertical integration of pipe and content and telcos' ownership of broadcasting content and carriage that's pushed through it is creating a great imbalance and monopolistic situation in the market.

We are already witnessing big telcos owning and controlling the entire chain i.e.(i) mobile communication networks (ii) the data pipe i.e. acting as ISPs, (iii) own controlling stakes in large MSOs/ OTT platforms thereby controlling the distribution of own as well as competitors' content and also (iv) creation of content by owning TV channels, (v) big content entities supplying content to all aforementioned platforms studios (v) advertising platforms, etc.

They are hence able to dictate terms for pricing as well as sabotaging any competition in the market with free offerings, threats of discontinuation of competitor's channels though

MSOs, loading smartphones with their own OTT apps etc. This will make it impossible for smaller and/or new players to sustain or even enter the market.

Current examples of this extreme malpractice which is ongoing, are highlighted in recent news articles:

Article dated March 23, 2023 published on the website of Financial Express: https://www.financialexpress.com/industry/ril-cable-firms-remove-star-channels-20-mn-users-may-be-affected/3019202/

Article dated March 22, 2023 published on the website of LiveMint: https://www.livemint.com/companies/news/rils-cable-firms-spar-with-star-before-ipl-11679424248077.html

- As per EY FICCI 2022 report, India is the world's second largest smartphone market behind China with 954 million users. India has a user base of 1.18 billion telecom subscriptions and of this, approximately 68% subscribers use 4G technology, which is an indicator of how easy, access to digital content on mobile phones has become. These numbers show just how strong the telecom service providers are when it comes to distribution of news and general content. No traditional media platform reaches as many people. In fact, telecom companies are amongst the biggest media players today.

- If telecom service providers are provided unfettered rights to own and also distribute content, then this could become a huge problem. It is generally acknowledged that companies that own "pipelines" (distribution platforms) should not be allowed to own the content that is ploughed into these pipelines. Earlier experience in India itself in the Cable TV business has shown that this leads to abuse of power. This situation must be prevented on the Digital platforms as well. However, what is worse, is that telcos have ALSO been allowed to also own broadcasting TV channels as well as carriage including MSOs –this is thus a double whammy for citizens as it allows telcos to own and control content as well as carriage across multiple platforms.

- Further enhancing the risk of domination is the fact that there are only three telecom service providers nationally (compared to hundreds and thousands of media providers in traditional media). Each one has more than 250 million subscribers. Such user numbers are vastly higher than what any most traditional media companies have in any single sector put together.

Infact, it is the threat of monopolies by one or two telcos that the above scenario by TRAI flags and hence we recommend that the only regulatory intervention which is required today is to extend the current 20% vertical integration rule* for broadcasters to telcos, so that telcos cannot misuse the above. Hence, telcos should not be allowed to own and control more than 20% stake in broadcasting entities whether content or carriage, and vice versa.

*The I&B Ministry (MIB) had already imposed certain restrictions on vertical integration in broadcasting: **The DTH Guidelines restrict broadcasters and/or cable network companies from owning more than 20% of the total equity of the DTH company and vice versa. Likewise, the HITS Guidelines restrict broadcasting companies and/or DTH companies**

from owning more than 20% of the total equity of the HITS company and vice versa. However, there are no such restrictions on telecom companies and in order to ensure a level playing field and prevent monopolies, TRAI must recommend that no telecom company can directly/indirectly hold/own more than 20% in any broadcasting and OTT companies whether content or carriage, and vice versa.

As rightly pointed out in para 1.17 of the CP, telecommunication has a private nature of communication and its markets are ruled by economic and technical issues, including network access. As a result, regulators' role, inter-alia, included ensuring access. On the other hand, broadcasting is communication to the public and regulatory concerns in broadcasting are mainly to do with free of speech and expression.

Therefore, we recommend TRAI to create a clear distinction in the regulation of Telecommunication services from that of Broadcasting Services as is currently the case. Further, the only regulatory intervention which is required today –ie— extending the current 20% vertical integration rule for broadcasters to telcos, so that telcos cannot misuse the above. Hence, telcos should not be allowed to own and control more than 20% stake in broadcasting entities whether content or carriage, and vice versa.

iii. **"Carriage convergence" (or "network convergence")**: The CP gives the example of "*integrated delivery, via a single delivery channel, of voice and other services, through a single network infrastructure that handles and distributes multiple types of media*" to explain network convergence. However, the networks for broadcasting and telecommunication services remain distinct, even if the services are available in a bundled offering for consumers. The CP itself notes that technologies "*are being developed* to enable convergence of broadcast and unicast infrastructure…" (emphasis added). It cites Direct-to-Mobile, 5G Broadcast, and satellite networks for broadcast and telecom services as examples of this, *but what it describes are systems that could theoretically support convergence, rather than actual convergence taking place*.

The CP appears to be basing the need for regulatory changes entirely on a few stray trends. However, trends in very few urban pockets of the country like triple play and quad-play or anticipated developments like direct to mobile broadcasting, which have not been realised on anything even approaching significant scale in India, cannot form the basis of policy changes that will impact 210 million TV home (*or about 850 million TV viewers*) and 1.2 billion mobile users in India.

Again, all that this scenario flags, is the threat of monopolies and hence the only regulatory intervention which is required today is to extend the current 20% vertical integration rule for broadcasters to telcos, so that telcos cannot misuse the above. Hence, telcos should not be allowed to own and control more than 20% stake in broadcasting entities whether content or carriage, and vice versa.

3. **The regulation of content should be kept separate from the regulation of carriage and should be outside the scope of the CP**

The Department of Telecommunication's reference to TRAI dated August 12, 2021, is limited to "convergence of carriage of broadcasting and telecommunication services". However, the CP analyses the regulatory framework for content for OTT (news and non-news), Radio, TV (news and non-news), Films and Print and concludes** that "*the existing regulatory oversight framework for content regulation, which is patchy and inadequate at its best, may need a complete overhaul in a converged era in line with many other nations, where a converged regulator regulates carriage and content*". These references to content as well as IT sector are overreach by TRAI and needlessly goes far beyond the DoT's aforementioned reference to TRAI –as well as being outside its own ambit under the TRAI Act.

We reject such conclusive **statements about the regulatory framework for content across different platforms. **Such remarks completely disregard institutional learnings from the time of Independence across different arms of Government** including Ministry of Information and Broadcasting (MIB) and the Ministry of Electronics and Information Technology (MEITY), the role of self-regulatory bodies like the News Broadcasting Standards Authority (NBSA) and the Broadcasting Content Complaints Council (BCCC) in television and the Digital Publisher Content Grievances Council (DPCGC) and the Digital Media Content Regulatory Council (DMCRC) for OTT, as well as the 2021 amendment to the IT Rules to address the issues and challenges posed by digital platforms.

Moreover, it is also but obvious that content regulation is very different from carriage regulation. Content regulation deals with freedom of speech and expression as guaranteed by Article 19(1)(a) of the Indian Constitution, subject to restrictions under Article 19(2). As illustrated in pages 28-29 of the CP, the regulatory framework for content has evolved from judicial interpretation of Article 19(1)(a) of the Indian Constitution for different media platforms.

We therefore recommend that the regulatory framework for content must be distinct and separate from the regulatory framework for carriage. In fact, TRAI in its 2006 Recommendations on "Issues Relating to Convergence and Competition in Broadcasting and Telecommunications" acknowledges this distinction and recommended that the "*Regulation of carriage and content should be separated, as the skill sets required for the two are significantly different. Regulation of carriage is more or less concerned with technical and economical aspects/ repercussions of policies. Content regulation has to take into account the impact of content on sensibilities, morals and value system of the society. Artistic and creative persons from the fields of fine arts, drama, films etc. may be more suited for content regulation than technocrats or economists."* The MIB adopts a similar view in its response to the DoT and TRAI on the issue; its letter dated 4th October 2022 echoes the TRAI's 2006 recommendations.[1] **The Ministry also says that existing mechanisms for content regulation are effective, and there is no need to disturb established practices or re-engineer business processes.**

The premise for such distinction and separation of the regulatory frameworks for content and carriage still holds in today's digitalised carriage eco-system.

Further, it should be apparent that "content" in different media industries are totally different from each other given that Print, TV, Radio, OTT, Films, etc are entirely different industries and are created by totally different teams of specialist content creators and journalists only for the very specific industries they work in. Hence, with the content being vastly different across these different industries, the codes and practices for content are totally different in in TV as compared to Print as compared to Radio or OTT and so on. There is no "one size fits all" regulation possible whether in news or non-news.

Moreover, the principles for regulating content across different platforms are different for theatres, TV, and OTT because of fundamental differences in how content is consumed via these platforms. For example, content shown in theatres is being publicly exhibited, viewed by a wide range of viewers at the same time, and hence is governed by the Cinematograph Act & Rules and a Self-Regulatory Framework. Television, by comparison, is relatively private and characterised co-viewing with schedule programs (*push content*) and hence governed by the Cable Television Networks Regulation Act and Rules. OTT on the other hand, is a characterised with private viewing in India with consumers making informed choice (*pull content*) about every content that they watch, and hence content OTT on governed by Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 and the Self-Regulatory Framework including the certification process for identification of content and calibration of access.

The viewer's ability to exercise choice in how they view the content, or indeed whether they view it at all, factors into the potential risks of providing content via a particular platform. Therefore, a converged or "one size fits all" framework for content regulation cannot be applied for all platforms –let alone any strange notion of a "converged" regulator who would attempt to regulate both content and carriage.

4. **Internet-based Services or Digital Services are different from Telecommunication Services and should be regulated by specialised legislation like the Information Technology Act, 2000**

Telecommunication services are services provided by Telecommunication Service Providers (TSPs) and include fixed and mobile telephone services (including internet connectivity), carrier services, call management services, private network services and data transmission services.

TSPs provide these services through a license granted by the Government which confers to them an exclusive right to acquire and exploit scarce natural resources like telecommunication spectrum, the right to obtain telecom numbering resources, and the right of way to set up infrastructure. TSPs also have access to a Public Switched Telephone Network (PSTN) (*or switched or non-switched networks in the case of mobile services*) for the transmission of voice, data and video to and from national and international destinations, and hence their service is primarily concerned with the transmission of voice and data. They are also often provided with crucial infrastructural assets, essential facilities, subsidies, concessions and territories necessary for their operations.

These exclusive privileges give TSPs economic advantages like high entry barriers, reduced competition and exclusivity in business operations, and are the premise for regulations in the form of net neutrality, revenue share, contributions to universal service obligations, investment mandates, tariff regulation and must carry obligations.

Internet-based services or digital services, as the name suggests, are services that are provided over the internet. The EU defines these as services sent and received by electronic equipment for data processing.[2]
Digital services include buying and selling, OTT communication and messaging services, OTT video streaming services, digital news, search services, navigation services, ride hailing services, dating services, delivery and logistics services delivered over the internet. On the supply side, new data networks, digital computing tools, and internet platforms enable service providers to digitalise their services and transform their modes of delivery. On the demand side, internet

platforms and digital technology reduce transaction costs and allow access to a variety of goods and services. They also provide convenience and the ability to customise services. Such "digital markets" are built on top of telecommunication services and characterised by hyper competition and low entry barriers.

Therefore, it is important to note that these digital services are absolutely and totally different from the telecom services mentioned above.

Of late, there have been several attempts to equate voice and messaging services of TSPs with services of DSPs. They allege that voice and messaging services provided by TSPs are substitutable with *internet-based communication services* and *OTT communication services* of DSPs and that these services be brought under the same rules that regulate TSPs' voice and messaging services.

It is crucial to understand that *internet-based communication services* and *OTT communication services* are not a substitute for TSPs' voice and messaging services. Terming the services as substitutable ignores the differences in the features offered by the two services.[3]

i. TSPs provide internet connectivity and facilitate the provision of services through the internet. As all internet access is controlled by TSPs, which DSPs need to build and provide their services, they are a dependent industry and not equal.
ii. The Australian Competition and Consumer Commission (ACCC) found that a technical shortfall of OTT communication is that it only facilitates communication within a particular app's ecosystem (*e.g., call only possible from WhatsApp to WhatsApp*), whereas a TSP enables communication between different operators (*e.g., call from Airtel to Singtel*). This limitation of OTT communication limits the substitutability of traditional communications and OTT communications.[4] The ACCC report also concluded that there is "no basis for requiring equivalent regulatory treatment".
iii. Digital, or internet-based services cannot be treated on par with telecom services as their dependence is not equivalently mutual, i.e., while DSPs require the services provided by TSPs, the reverse is not true.
iv. TSPs are gatekeepers of internet access, and hence gatekeepers to all digital services. To be considered as equal, the first requirement is for the services to be independent or mutually dependent. Neither is true and hence TSPs' voice and messaging services are not the same service as that of DSPs' *internet-based communication services* or *OTT communication services.*

Given this distinction, digital services require specialised legislation like the Information Technology Act, 2000 (*which, according to Minister of State for MEITY, is currently being revamped to a Digital India Act*) and a separate regulatory framework distinct from the regulatory principles that govern and regulate telecommunication services. The CP's claim in paragraph 1.33 that "The objective of promoting innovation, competition and growth of India's Digital Economy may not be fully achieved by just amending the India's Information Technology Act, 2000" overlooks the clear intent of the government to refine and further develop specialized legislation for digital services.

India has a unique institutional set-up that favours specialisation to better manage administrative affairs. The intent to maintain distinctions between different areas of expertise is apparent in the fact that there are separate ministries for Communication, Information & Broadcasting, and Electronics & Information Technology and in the different responsibilities they have been

allocated/entrusted with. Accordingly, separate but coordinated licensing and regulatory frameworks are most appropriate for the Indian context. The CP has not shown that there is any need for a new overarching regulation covering the many totally diverse sectors like broadcasting (which in itself needs different specialised legislations to cater to the many different industries under it as at present), IT and telecom.

5. **Recommendations**

We would like to take this opportunity to reiterate that we do not agree with the CP's observation that there is convergence in services between telecommunication services and broadcasting services. Additionally, the CP does not provide sufficient data to conclude that carriage of broadcasting services and telecommunication services have converged. **Therefore, we recommend that the regulation of broadcasting services and telecommunication services MUST remain separate and distinct to ensure there is no regulatory chaos**.

A. **Guiding principles to regulate telecommunications services and broadcasting services:**

Based on these observations and conclusions, we recommend the following principles to guide the regulation of telecommunications services and broadcasting services:

1. **Distinct and separate regulatory frameworks for carriage and content:** As elaborated in point 4 above, the principles for regulating carriage and content are different, as are the skill sets required to implement and oversee such regulation. Similarly, within content regulation, there are different principles for regulating content on different platforms. The distinction in regulation of carriage and content must be clearly established in any rules for the telecommunications and broadcasting sectors.

2. **Scenario of telco monopolies and misuse of dominance via presence in both broadcasting and telecom and hence the only regulatory intervention which is required today is to extend the current 20% vertical integration cap for broadcasting entities to telcos, so that telcos cannot misuse their ownership of content via TV, mobile, Internet, etc, as well as carriage across multiple platforms like MSOs and other broadcasting frameworks as well as broadband and mobile. Hence, TRAI must recommend that telcos should not be allowed to own and control more than 20% stake in broadcasting entities whether content or carriage, and vice versa.**

3. CP cites the growth of the telecommunications and broadcasting sectors, as well promotion of innovation, competition, and growth of India's digital economy as objectives. The only issue the CP highlights is the issue of overlap between different ministries, which can easily be solved through better coordination between different authorities or amending existing regulations that overlap. Examples of such coordination include the division of roles between MIB and MEITY in the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, under which provisions relating to digital media are administered by MIB and social intermediaries by MEITY. The only instance of a market harm cited by the CP is from a 2012 paper, which predates the telecom boom[5].

Convergence, in the form the CP suggests, will require overhauling the legal, regulatory, licensing, administrative and institutional setup for both telecommunication and broadcasting

services. This will disrupt the current equilibrium and would severely impact the growth of the telecommunication and broadcasting sectors.

4. **Activity-based regulation and NOT "same service same rules":** It is crucial to understand the service as a whole, including its function and technological underpinnings, before determining if it is the "same" as another service. As stated above, the availability of different services through the same platform does not mean that there has been convergence of services. *For example, telecommunication services are primarily private in function, and broadcasting services are primarily public in function, and must be treated as distinct for regulatory purposes*. Similarly, all internet-based services run on top and are dependent on established telecom networks, and therefore cannot be considered substitutes or the "same service" as telecommunication services.

B. **Regulation of carriage for telecommunication and broadcasting services:**

The CP in several places mentions the need for a *converged carriage regulator* for telecom and broadcasting services, and that such a converged regulator will "benefit" the stakeholders. But the CP fails to mention what these benefits would be.

We would like to highlight that *India already has a common regulator, TRAI, for the carriage of telecom services and broadcasting services*. TRAI was established with effect from 1997 by an Act of Parliament to regulate telecom services, including fixation and revision of tariffs for telecom services which were earlier vested in the Central Government. TRAI was then entrusted with the regulation of the broadcasting sector in 2004. However, this should not work to the detriment of the much smaller broadcasting industry, given the monopolistic presence of telcos into broadcasting as well and no measures from TRAI to recommend the same.

The CP also highlights the needs for *convergence of licensing frameworks* for telecom and broadcasting services and calls for *convergence between administrative* government units overseeing the policy and statutory frameworks for telecom and broadcasting services.

We do not agree with such a proposition.

As mentioned above, telecom services and broadcasting services are distinct services and hence the *licensing frameworks must be kept separate*. **Well apart from the issue of each of these telecom and broadcasting industries and sub-industries having entirely different conditions and conditionalities, it must be understood that any attempt to converge licensing frameworks would be a huge loss of revenues to Government, especially when we take the example of FM radio which pays Government a One Time Entry Fee as well as Annual License Fees which would be lost of it is bundled into a converged license with any other entity.**

Moreover, to maintain this distinction, we also *recommend the administrative government units overseeing the licensing and statutory frameworks be kept separate as below*.

Carriage services	Legislation / policy/ guidelines	Authorization Type	Administrative government unit
Telecommunication services[6]	License under Telegraph Act	License	DoT
Broadcasting services	Guidelines for Uplinking and downlinking of TV channels	Permission	MIB
	Cable Television Networks (Regulation) Act & Rules	Registration	
	FM Radio policy	FM Radio License	
	HITS Guidelines	Permission	
	DTH/IPTV Guidelines	DTH/IPTV License	

We note that the MIB in its letter to TRAI dated 4th October 2022 mentioned that it is in the process of amending the Cable Television Networks (Regulation) Act "*to bring all broadcasting carriage platforms under its ambit in order to holistically address all institutional regulatory and legal aspects of broadcasting services under a unified Act.*"

Such a unified act must clearly segregate the principles for the regulation of content from that of carriage and must avoid using licensing/registration/permission conditions to impose content regulations, particularly those that restrict freedom of speech and expression and a copyright holder's ability to monetize content as per copyright principles.

We now respond to the specific questions in the CP as follows:

Q1.: Whether the present laws are adequate to deal with convergence of carriage of broadcasting services and telecommunication services? If yes, please explain how?

OR

Whether the existing laws need to be amended to bring in synergies amongst different acts to deal with convergence of carriage of broadcasting services and telecommunication services? If yes, please explain with reasons and what amendments are required?

OR

Whether there is a need for having a comprehensive/converged legal framework (separate Comprehensive Code) to deal with convergence of carriage of broadcasting services and telecommunication services? If yes, provide details of the suggested comprehensive code.

AROI Response:

We do not think there is a need for having a comprehensive/converged legal framework (separate Comprehensive Code) to deal with any so-called "convergence" of carriage of broadcasting services and telecommunication services. In our considered view, there is neither a need to

amend existing laws to bring in synergies amongst different statutes nor a need to have a converged legal framework (in the form of a comprehensive code).

As mentioned above, telecom services and broadcasting services are distinct services and hence the laws to deal with the carriage of broadcasting services must be kept sperate from laws that govern the carriage of telecommunication services.

However, many of the existing carriage regulations impinge on the content that is being broadcasted. We recommend that these policies and guidelines are amended so as to keep carriage regulation distinct from content regulation in broadcasting.

Specific regulation required: However, there is the scenario of telco monopolies and misuse of dominance via presence in both broadcasting and telecom and hence the only regulatory intervention which is required today is to extend the current 20% vertical integration cap for broadcasting entities to telcos, so that telcos cannot misuse their ownership of content via TV, mobile, Internet, etc, as well as carriage across multiple platforms like MSOs and other broadcasting frameworks as well as broadband and mobile. Hence, TRAI must recommend that telcos should not be allowed to own and control more than 20% stake in broadcasting and OTT entities (whether content like TV channels or carriage like MSOs), and vice versa.

*The I&B Ministry (MIB) had already imposed certain restrictions on vertical integration in broadcasting: **The DTH Guidelines restrict broadcasters and/or cable network companies from owning more than 20% of the total equity of the DTH company and vice versa. Likewise, the HITS Guidelines restrict broadcasting companies and/or DTH companies from owning more than 20% of the total equity of the HITS company and vice versa. However, there are no such restrictions on telecom companies and in order to ensure a level playing field and prevent monopolies, TRAI must recommend that no telecom company can directly/indirectly hold/own more than 20% in any broadcasting and OTT companies whether content or carriage, and vice versa**.

***Sector-specific reforms already underway**:*

i. There are sector specific reforms that are already underway at highly advanced stages of deliberations and consultations between relevant stakeholders for addressing existing regulatory gaps. The Central Government has been acting expeditiously to bring into the public domain principle-based frameworks to improve upon existing regulatory mechanisms to regulate certain technologies and/or effectively regulate previously unregulated technologies. Such an endeavor by the Central Government is taking the form of either consolidation of statutes or overhauling of existing sectoral legislations. These proactive measures undertaken by the Central Government, in our view, are likely to sufficiently address any challenges that may arise. Examples of such reforms being undertaken include:

- The draft of the Indian Telecommunications Bill, 2022 ("**Telecom Bill**"), which was placed in the public domain for stakeholder inputs, is designed to replace older legislations governing the telecommunications sector (such as the Indian Telegraph Act, 1885). Further, based on publicly available information, the Central

Government proposes to introduce – *inter alia* – light-touch regulatory approach for OTT communication services/applications.

- The Ministry of Information and Broadcasting ("**MIB**") has also highlighted in a letter to the TRAI on the reference made by the Department of Telecommunications ("**DoT**") that it is – *inter alia* – proposing reforms for bringing together all broadcasting carriage platforms and their institutional, legal and regulatory aspects under a unified legislative framework.

- The Central Government is also seeking to introduce a new Digital India Act ("**DIA**") to replace the Information Technology Act, 2000 and which from publicly available information is likely to include within its regulatory purview different actors operating within the Information Technology ("**IT**") and Information Technology enabled Services sector ("**ITeS**") [such as, cloud service providers ("**CSPs**")], as well as new and emerging technologies (such as metaverse, artificial intelligence, augmented reality/virtual reality, etc.) through the principles of openness, user safety, consumer trust and accountability for the online ecosystem.

ii. It is our considered view that the above-mentioned sector-specific reforms will adequately address what appears to be the primary concern expressed by the TRAI in the CP – of certain technologies and technology innovations not being subject to regulatory oversight. Furthermore, these sectoral reforms (as opposed to a converged regulatory framework) will be important steps for promoting innovation at scale and enabling technology-driven businesses (both domestic and global) to navigate the Indian regulatory ecosystem with ease and efficiency because:

- Such reforms seek to provide a set of updated regulatory toolkits (such as carefully crafted principles) to enable regulators to address sector and technology specific challenges – instead, of having to regulate different technologies using the old tools and frameworks available.

- They are in the form of targeted amendments and seek to preserve the sector-specific approach/framework of regulations, wherever necessary – while keeping pace with the rapid advancements in technology without overhauling the regulatory system at large. This is important because a new regulatory approach (such as, a so-called converged one) would lead to utter chaos as it would regulate many diverse industries as opposed to sector-specific reforms. This would invariably mean a prolonged policy cycle through a complete overhaul of the legislative regime and a total set of legal uncertainties and disruptions for businesses at a time when India can ill afford to have bottlenecks in key business areas.

- We note that above cited sector-specific reforms being undertaken by the Central Government, such as the Telecom Bill and the DIA, are at several stages of consultations (including at the highest ministerial/departmental levels) to take into account both industry concerns and the interest of individual users in equal measure. Therefore, in the interest of facilitating the ease of doing business in India, we believe that there is no requirement to initiate another similar process of reform (either in the form of amendments or introducing of a comprehensive code) to disrupt the present process already underway and progressing rapidly (at a highly advanced stage).

Need to explore solutions other than converged regulations/converged regulator

We believe that there is a need to find regulatory solutions outside of a convergence because of the following reasons:

i. The specific functions carried out by specialized regulators cannot be converged – and introducing a converged regulatory framework/converged regulator (for telecom and broadcasting) may cause jurisdictional overlaps with such specialized regulators. For instance, the Competition Commission of India ("**CCI**") is one such specialized cross-sectoral regulator specifically empowered to investigate issues related to anti-trust and anti-competitive behavior. Please note that the CCI has had jurisdictional conflicts with other sectoral regulators in the past, like the TRAI, requiring the intervention of the Supreme Court ("**SC**").[3] Notably, the SC, in its wisdom referred to the need for sectoral regulators to operate effectively in their respective domains (specifically, the TRAI and the CCI). In our view, bringing in a converged regulator may not merely lead to the emergence of further jurisdictional conflict between regulators but may also result in business/industry-wide uncertainty as such conflicts would likely have to be settled through long drawn litigations in constitutional courts (in a manner similar to the dispute between the TRAI and CCI). Therefore, to prevent any negative impact to the global perception of the ease of doing business in India and to ensure the healthy growth of the industry (including for facilitating new entrants from overseas markets), convergence in the form of a unified code/regulatory should be avoided.

Variations in global 'converged' regulatory approaches

i. We note that the TRAI in the CP has referred to certain examples in other jurisdictions where there has been a convergence of regulatory frameworks for broadcasting and telecommunication services. However, we believe that such frameworks cited by TRAI are unique, in terms of structure and organization. In this respect, please note that it appears even converged regulators are further divided into departments based on the technology being regulated. For instance, the Federal Communications Commission ("**FCC**") in the USA, which regulates telecommunication and broadcasting services, is further segregated into different bureaus, namely, 'Media', 'Wireless Telecommunication' and 'Wireline Competition' – with each bureau having different functions/exercising regulatory supervision over different technologies.

ii. Furthermore, we note that the majority of countries with a converged regulator/unified code cited by the TRAI in the CP are advanced economies with much higher average income levels (as compared to India) and with more widespread adoption/penetration of new and emerging technologies. Given this context, it is clear that relevant stakeholders (industry and consumers) in India will not be able to easily adapt to large-scale changes in regulatory frameworks.

From the above-mentioned points, it appears that each country/jurisdiction charts its own regulatory strategy for converged technologies based on what it believes is most well-suited for them (considering per-capita incomes, institutional capacities, ability of industry and consumers to adapt, etc.). Therefore, we believe that convergence cannot be the one-size-fits-all solution to deal with pre-existing sector-specific challenges and issues, including any gaps or deficiencies in regulations. Instead, in our view, the primary policy focus in/for India should be on creating an enabling environment for market-players/new

entrants in the telecommunications and broadcasting sectors through responsive and effective regulatory approaches to situations where telcos are creating monopolies via unregulated entry into broadcasting content and carriage, leasing to misuse of dominance.

Regulation of content not within the ambit of the CP

i. We would like to reiterate that CP has weighed in on issues relating to both the IT sector, as well those subject-matters that are unrelated to carriage, including the co-regulation of carriage and content in broadcasting. For instance, the TRAI appears to suggest that a 'fully converged Information and Communications Technology (ICT) regulator' performing 'data privacy and cyber-security functions' would be beneficial for a digitalized economy. However, in this context, it is crucial to underline that in the Terms of Reference ('**ToR**') for this CP dated August 08, 2022, the DoT had requested the TRAI to *inter alia* examine only issues related to the convergence of broadcasting and telecommunication services – and accompanying measures that may be considered for licensing, spectrum management, etc. Hence, content and IT sector cannot be included in the scope of this CP.

ii. We have given a detailed set of arguments in Note prior to these Answers as to why it is impossible to have co-regulation of content and carriage by a converged regulator. We would also like to add further reasons, including the very significant peculiarities of content regulation, which include as follows:

- The regulation of content (as opposed to that of carriage) requires very specific and nuanced, multi-dimensional craft and expertise, which takes into consideration values such as creativity and expression in framing regulatory approaches. In this context, we believe that the sectoral regulators operating within the MIB are well-equipped to undertake the task of content regulation in relation to broadcasting.

- In addition to the above, there are different facets of content regulation that are presently regulated under dedicated legislative frameworks (i.e., IPR laws like the Copyright Act, 1957, jurisprudence developed in common law for the adjudication of copyright disputes, etc.). It is not possible to encompass such facets within a unified converged code, or in any event, regulate such facets through a converged regulatory authority.

To conclude, in our view, the sector specific reforms initiated by the Central Government through a consultative process (including continuous engagement with stakeholders) adequately addresses the challenges posed by the so-called "convergence" of technologies and it is in any case, not possible to have a one size fits all treatment for different forms of content, let alone content and carriage. Hence, there is no logic in a comprehensive, unified regulatory code or a converged regulator for the carriage of telecommunication and broadcasting services. Further, for all the reasons mentioned earlier, TRAI must limit CP's scope to issues pertaining to carriage and not extend the same to content regulation.

Q2.: Whether the present regime of separate licenses and distinct administrative establishments under different ministries for processing and taking decisions on licensing issues, are able to adequately handle convergence of carriage of broadcasting services and telecommunication services?

If yes, please explain how?

If no, what should be the suggested alternative licensing and administrative framework/architecture/establishment that facilitates the orderly growth of telecom and broadcasting sectors while handling challenges being posed by convergence? Please provide details.

Response:

The CP highlights the need for the *convergence of licensing frameworks* for telecom and broadcasting services and calls for *convergence between administrative* government units overseeing the policy and statutory frameworks for telecom and broadcasting services. *We do not agree with such a proposition as explained in detail as above*.

As explained by us, telecom services and broadcasting services are distinct services and hence the *licensing frameworks must be kept separate*. Similarly, to maintain this distinction, we also *recommend the administrative government units overseeing the licensing and statutory frameworks be kept separate*.

Insofar there is a requirement to streamline business processes for licensing etc., we also believe that such streamlining can be implemented without overhauling and restructuring the regime.

A. ***Refining existing practices, procedures and methods:*** Any infirmities are largely due to the weakness of the business processes related to the issuance of licenses/permissions etc., by various administrative authorities (such as, ministries). These can easily be made more efficient and effective without restructuring the existing regime of separate licenses for broadcasting and telecommunication issued by the MIB and DoT respectively. In any event, a unified licensing regime does not guarantee that existing system-wide inefficiencies will not remain. What is required, instead, is to ensure adequate coordination in the making of administrative decisions (through clear rules of business, etc.). The inherent value in retaining the existing regime (including the important role of administrative authorities) and fine-tuning the related business processes is as follows:

i. the administrative authorities have developed the requisite expertise to administer and issue licenses specific to their domains due to the fact that they been functioning as the sole licensing authorities in their respective sectors over a long period of time; and
ii. such administrative authorities have also created standard-operating-practices and procedures for effectively carrying out the task of issuing coveted license/authorizations to carriage service providers.

B. ***Bolster the National Single Window System to further streamline decision-making*:** As per publicly available information, the Central Government is likely to include within the existing National Single Window System[4] ("**NSWS**") all license/authorizations issued by its ministries/departments (including those by the MIB and the DoT). Such streamlining will not only be likely to ensure that sectoral regulators are able to operate independently within their respective domains – but also serve as an important progressive step for undertaking a collaborative approach between government and industry (especially, given the critical nature of the telecom and broadcasting sector). This streamlining of businesses process could potentially be implemented in the following ways:

i. A complete on-boarding of the MIB and DoT onto the NSWS. Practically, this would mean that there is a full integration of all licenses/authorization on the NSWS (including those operated by the MIB and DoT through the "Broadcast Seva" and "the Gatishakti Sanchar" portal, respectively);

ii. implementing strict timeframes/deadlines for each ministry/department to process the applications for such licenses/authorizations;

iii. creating an independent nodal coordination body/office having diverse subject matter expertise/representation to serve as an institutional mechanism to facilitate co-operation between ministries/departments for effective resolution of outstanding issues; and

iv. establishing a forum for ministries/departments to communicate and engage with stakeholders consistently and continually.

In fact TRAI in its recommendation in 2006 stated that "Regulation of carriage and content should be separated, as the skill sets required for the two are significantly different. Regulation of carriage is more or less concerned with technical and economical aspects/ repercussions of policies. Content regulation has to take into account the impact of content on sensibilities, morals and value system of the society. Artistic and creative persons from the fields of fine arts, drama, films etc. may be more suited for content regulation than technocrats or economists."

It is important to note that TSPs enjoy a special and exclusive position in the telecommunication industry by virtue of having exclusive rights to commercialize a limited public resource, i.e., spectrum. The licensing regime for TSPs is crucial to ensure that this limited public resource is distributed and used efficiently and in an appropriate manner. TSPs also own and control what is considered to be critical infrastructure and resources in the country. The Government's National Digital Communications Policy, 2018 – which seeks to enable a competitive telecom market in India by the establishment of resilient and affordable digital communication infrastructure and services – recognizes telecommunication infrastructure / systems and services as essential connectivity infrastructure at par with roadways, railways, waterways, airlines, etc. for the development of India. Therefore, any adverse effect on the network that TSPs administer could cripple the communication network in the country.

On the other hand, broadcasters and digital content entities including OTT providers do not have any control over, nor do they contribute to such critical infrastructure as they merely provide their services on the application layer facilitated by such infrastructure. Thus, the accountability that TSPs may be required to ensure cannot be equated with the responsibility of other service providers that offer services that are not similarly critical or essential. The inherent lifecycle of services provided by TSPs compared to digital content entities is quite distinct. TSPs enjoy license terms from the DoT which span approximately 20 years. Such license terms are beneficial for the services operated by TSPs as the technologies underpinning such services take significant amounts of time to develop. However, the services offered by digital content entities are more dynamic in nature and constantly evolve.

The MIB and the TRAI, recognizing the issue of Vertial Integration, have already imposed certain restrictions on vertical integration. The DTH Guidelines restricts broadcasting companies and/or cable network companies to own more than 20% of the total equity of the DTH company and vice versa. Likewise, the HITS Guidelines restricts broadcasting companies and/or DTH companies to own more than 20% of the total equity of the HITS company and vice versa. However, there are no such restrictions on telecom companies and in order to ensure level playing field. Hence the new framework must ensure that the telecom companies are subjected to similar restrictions.

In order to ensure level playing field, new framework/law must ensure no telecom company can hold/own more than 20% in any Media & Entertainment business especially broadcasting and OTT companies whether content or carriage, and vice versa.

Q3: How various institutional establishments dealing with –

(a) Standardization, testing and certification.
(b) Training and Skilling.
(c) Research & Development; and
(d) Promotion of industries
under different ministries can be synergized effectively to serve in the converged era. Please provide institution wise details along with justification.

Response:
For answering the question, we would restrict our comments to institutions responsible for standardization, testing, and certification only.

Currently, multiple institutions/bodies have been established under various Ministries for setting up standards, testing of equipment and for their certification. There exist overlaps between the activities being performed by the multiple institutions, there is a need to build synergies amongst all such institutions/bodies. For instance, BIS has published an Indian Standard that specifies the requirements for digital set-top box (STB) used for DTH services. On the other hand, TEC has also released essential requirements for hybrid STBs.

We recommended that a single platform should be established where all institutions/bodies are integrated and collaborate for introducing standards. Additionally, there should be a single institution/body that should be responsible for all testing and certification of equipment. This would be in line with ease of doing business initiative and lead to improved consistency, efficiency, certainty, and quality offered across the sectors and industries.

Q4.: What steps are required to be taken for establishing a unified policy framework and spectrum management regime for the carriage of broadcasting services and telecommunication services? Kindly provide details with justification.

Response:

There is no need for establishing a unified policy framework and spectrum management regime for the carriage of broadcasting services and telecommunication services. The current spectrum management regime adequately deals with carriage services offered in both broadcasting and

telecom industry. "Saral Sarchar Poral" established by Department of Telecommunication (DoT) is a portal that simplifies the process for frequency allocation through Wireless Planning and Coordination Wing (WPC). For the broadcasting sector, MIB has established a single platform for the broadcasting sector in the form of "Broadcast Seva Portal" which also integrates DoT's "Saral Sarchar Poral" for administrative allocation of spectrum.

Instead of introducing a new framework and spectrum management regime, we recommend that attempts should be made to strengthen this platform for all the processes/approvals pertaining to allocation of spectrum in a time bound manner through better coordination among different Government department.

As mentioned above, telecommunication and broadcasting services are distinct services, and, therefore, the spectrum management principles that apply to carriage of broadcasting services should be distinct from telecommunication services.

Fundamentally, satellite spectrum used for broadcasting services allows multiple satellite service provides to operate in the same geographic area – so there is no constraint on satellite spectrum availability. On the other hand, telecom services offered over terrestrial spectrum blocks frequency band in such a way that it can only be used by a single operator and cannot be shared. This fundamental difference results in satellite spectrum never exclusively assigned --as opposed to terrestrial spectrum. This has been the prevailing standard for the allocation of satellite spectrum in India and worldwide. The very few countries that have tried auctioning of satellite spectrum found major problems and later discontinued the process.

We recommend that the current process of administrative allocation of satellite spectrum for broadcasting services and auction for telecommunication services should continue and would be in line with international practice.

Q5. : Beyond restructuring of legal, licensing, and regulatory frameworks of carriage of broadcasting services and telecommunication services, whether other issues also need to be addressed for reaping the benefits of convergence holistically? What other issues would need addressing? Please provide full details with suggested changes, if any.

Response:

i. **There are existing instances of misuse of majority ownership of both broadcasting content and carriage by telcos who have had unfettered entry into broadcasting even though there is a 20% vertical integration limit within the broadcasting space. Hence, given the scenario, the regulatory intervention required today is to extend the current 20% vertical integration rule for broadcasters to telcos, so that telcos cannot misuse the above. Hence, telcos should not be allowed to own and control more than 20% stake in broadcasting entities (whether content or carriage), and vice versa.**

The reason for the aforesaid suggestion is that:

a. there is lack of parity in the regulations and laws specifically in the distribution segment. This is evident from the fact that telecom sector is not subject to regulations such as the Interconnect Regulations, Tariff Orders, etc.

b. that it is clear that telcos' unrestricted transgression into the media content and distribution space has encouraged complete vertically integrated ownership where the entire chain of content creation and delivery/distribution across multiple platforms is controlled by the same entities using their own infrastructure and platforms. This aspect needs specific attention from the sector regulators (TRAI/ MIB/ MEITY) as it clearly poses a threat to a fair and level playing market for all constituents. There are no regulations at present to put a check on such vertical integration by telcos and it is vital that TRAI look at this challenge that poses a serious threat to the media broadcasting segment. In fact, by not including or considering the impact of the telecom sector on media distribution, the TRAI is pre-supposing that media distribution will not be affected by the telecom companies, which is a totally wrong premise, as elaborated above.

c. That therefore, the need of the hour is to ensure strict adherence to fair and reasonable restrictions and guidelines within the vertically integrated media value chain and to extend this to telcos as described above --while allowing free operation of media entities across horizontal media sectors. In the absence of such an approach, the media sector and specifically the broadcast media sector, is being unfairly singled out to bear the brunt of unreasonable cross media restrictions (on the basis of purported control and dominance concerns), if they are at all recommended. Exclusionary market power concentrated with telecom companies that dominate the reach and distribution of content would be detrimental to the aim of plurality and diversity of content and outlets in the media market –and especially when the same distribution companies own the same content. It may also be not out of context here to mention that there are only a handful of players in the telecom sector and the public sector presence has been reduced to a great extent –and hence, this aspect is all the more cause for concern.

d. That while it is appreciated and understood that with evolution of technology there can be a gradual churn and shift in the mode of consumption or distribution/carriage of content as has also happened in the past, however, the same should happen on account of market dynamics and not because of any unwarranted regulatory regimes, which creates a non-level playing field. Sudden and drastic regulatory changes should not be introduced which would result in creating an economically unviable environment for the broadcasters to survive and this would also adversely affect the other stakeholders.

ii. Further, it is verily believed that since it is not the Government's intention to converge the broadcasting regime with the telecommunication regime, **TRAI should wait for the revised draft Telecommunication Bill before undertaking the present consultation**. In this regard, it may be relevant to note herein that while holding a discussion on the draft Telecommunication Bill, the Telecom Minister clarified that the intention of the Bill was to provide light touch regulation for communication OTT services like WhatsApp, Facetime, Telegram, Signal, etc. and it did not intend to include broadcasting services within the ambit of the Bill. Further, different Government departments have already written to TRAI expressing their concerns about the Consultation Paper. In this regard, it is relevant to note that in its letter dated 4.10.2022 MoI&B has stated that MoI&B and TRAI have so far effectively handled all legal, policy and regulatory requirements arising out of technological changes. In respect of content regulation, MoI&B stated that separate skill sets of creative and artistic persons who can factor the impact of content on sensibilities, morals and values of society and not that of technocrats and economists were required for regulation of content.

Therefore, it reiterated that content policy and regulation should continue to be regulated by it. In the letter, MoI&B also noted that while there are multiple agencies involved in the process of clearance in the broadcasting sector like Ministry of Home Affairs for security; DoT for wireless and spectrum clearance; DOS for satellite allocation; Ministry of External Afairs, Department for Promotion of Industry and Internal Trade for FDI and foreign executives working in broadcast entities; Ministry of Electronics and Information Technology Y for digital use and OCC and Ministry of Corporate Affairs for company matters; however, it effectively coordinates with each one of them and thus shifting of licensing to DoT would not only be counterproductive but would also impact the Ease of Doing Business (EoDB)

iii. As stated earlier, the IT and ITeS sector would fall within the regulatory ambit of the upcoming Digital India Act along with the internet ecosystem as a whole (with the DIA also likely to include provisions to regulate cybersecurity, different types of intermediaries, etc) and does not fall under TRAI. As per media reports, the Central Government is likely to, via the DIA, create a new regulator empowered to enforce penalties. Accordingly, and given the fact that: (a) the IT and ITeS (such as CSPs) sector is likely to be regulated under the DIA; (b) the Central Government is currently already having extensive stakeholder consultations, the TRAI through the CP (or in the recommendations that it issues pursuant to the CP) should not deal with issues related to IT and ITeS sector –in the same way as it should not deal with the content sector for reasons outlined in previous answer and Note.

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AROI