

27th March, 2023

To,
Shri Anil Kumar Bhardwaj,
Advisor (B&CS)
Telecom Regulatory Authority of India ('TRAI')
Mahanagar Doorsanchar Bhawan,
Jawaharlal Lal Nehru Marg,
New Delhi – 110002

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Sub.: Consultation Paper dated 30/01/2023 on Regulating Converged Digital Technologies and Services – Enabling Convergence of Carriage of Broadcasting and Telecommunication services

Dear Sir,

We write to you in response to the Consultation Paper promulgated by TRAI on 30/01/2023 on 'Regulating Converged Digital Technologies and Services – Enabling Convergence of Carriage of Broadcasting and Telecommunication services' ("**Consultation Paper**").

At the outset, we would like to thank TRAI for providing us the opportunity to participate in this consultation process. Please find enclosed herewith our response to the issues raised by the Authority in the Consultation Paper.

We hope that our submissions shall be considered favorably by TRAI while evaluating changes to be carried out.

Thanking you,

Yours Sincerely,

**For Culver Max Entertainment Private Limited
(formerly Sony Pictures Networks India Private Limited)**



Gururaja Rao
Principal Legal Counsel – Distribution and Litigation

Encl: Comments on the Consultation paper.

Culver Max Entertainment Private Limited

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COMMENTS OF CULVER MAX ENTERTAINMENT PRIVATE LIMITED TO THE ISSUES RAISED IN THE CONSULTATION PAPER ON REGULATING CONVERGED DIGITAL TECHNOLOGIES AND SERVICES – ENABLING CONVERGENCE OF CARRIAGE OF BROADCASTING AND TELECOMMUNICATION SERVICES

RESPONSES TO ISSUES FOR CONSULTATION:

Issue-1: 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.

Response:

- (a) At the outset we would like to highlight that the telecommunication services and broadcasting services are separate and distinct services. The fact that there is bundling of different services (like TV, broadband and voice) into one offering does not necessarily imply that both the services have converged. Such offering only facilitates a service provider to provide multiple services as a bundled offering and each service within the said bundle remains distinct and unique.
- (b) Further, it is pertinent to note that regulatory framework for content should be kept distinct and separate from regulatory framework of carriage as the principles for regulating carriage and content are different, and the skill sets required to implement and oversee regulation of each of them are also separate.
- (c) We would like to state that there is no convergence in services between telecommunication services and broadcasting services. Upon review of the Consultation Paper, it is observed that there is lack of adequate data therein that indicates convergence of carriage of broadcasting services and telecommunication services. Accordingly, we firmly believe that regulation of broadcasting services and telecommunication services should remain separate.

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- (d) Internet-based services or digital services are services that are provided over the internet whereas telecommunication services are services provided by Telecommunication Service Providers (TSPs) and include fixed and mobile telephone services (including internet connectivity), call management services, data transmission services, carrier services etc. Internet-based Services or Digital Services are distinct from telecommunication services. Hence, Internet-based Services or Digital Services should be regulated by specialised legislation and should have a separate regulatory framework distinct from the regulatory framework prescribed for telecommunication services.
- (e) Considering the development in the technologies, there are various industries which are evolving for eg, digital and Over-the-Top (OTT), E-Commerce which are based on the internet, satellite services. Media and Entertainment (M&E) services and telecommunication services are independent sectors and the important business verticals in the present environment. The M&E sector has grown leaps and bounds from print, movies, magazines, terrestrial television channels to private television channels and their OTT's/digital hubs. There are various stakeholders of broadcasting industries such as content providers/producers/creators, technology service providers, broadcasting channels, distribution platforms, rating agencies, self-regulatory bodies. Likewise there are various specialised Acts enacted for regulating the broadcasting sector such as Cable TV Act, Telecom Regulatory Authority of India (TRAI) Act, Copyright, Information Technology Act, various regulations notified by TRAI, various self-regulatory guidelines/advisories issued by the sector regulator/self-regulatory bodies etc. Just because the M&E sector uses certain common services such as internet bandwidth and making the content available on mobile phones, it cannot be the only reason for combining the regulations of two different business sectors such as Broadcasting and Telecommunication into one.
- (f) Presently, broadcasting of TV channels is governed by the Ministry of Information & Broadcasting's (MIB) regulations including the "Guidelines for Uplinking and Downlinking of Satellite Television Channels in India, 2022", the Cable Television Networks(Regulation) Act, 1995, The Cable Television Network Rules, 1994, etc., while FM Radio broadcasting is governed by the Grant of Permission Agreement guidelines and AIR Broadcast Code issued by MIB. Digital publishers are governed by the provisions of the Ministry of Electronics and Information Technology's (MEITY), Information Technology Act, 2011 ("IT Act") and the Information Technology (Guidelines for Intermediaries and Digital Media Ethics Code) Rules 2021 ("Digital Media Rules") as administered by MIB.
- (g) If Convergence, as contemplated in the Consultation Paper were to happen, the same would amount to re-examination of the legal, regulatory, licensing, administrative and institutional setup for both telecommunication services and broadcasting services which will not only disrupt the current ecosystem but may also have an adverse impact on the growth of both the telecom and broadcasting sectors. Hence at this stage we feel that there is no need for the Authority to intervene in this regard.
- (h) The fact that different services are being made available through the same platform does not imply that the services have converged and hence cannot be treated as same for regulatory purposes.



- (i) Since telecommunication services and broadcasting services are distinct therefore the licensing frameworks must be kept separate and the administrative government units overseeing the licensing and statutory frameworks should also be kept separate as is presently prevalent i.e. DoT for Telecommunications and Ministry of Information and Broadcasting (MIB) for Broadcasting.
- (j) All these broadcasting services, digital publishers and OTT services are not only totally distinct from telecommunication services but are also totally different sectors of the broadcast/digital media in themselves. Hence, it would be wrong to club these content entities with carriage and other forms of telecom services apart from many other reasons including overlap and overreach of regulations.
- (k) It must be kept in mind that no such conditions should be imposed which makes the broadcasting/media & entertainment (M&E) sector unviable or unsustainable or which amounts to an unreasonable restriction on freedom of speech and expression.
- (l) We would like to submit that the 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) and hence is very different from carriage regulation. We therefore recommend that the regulatory framework for content should 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.”

Therefore, we recommend that there should be clear distinction in the regulation of Telecommunication services from that of broadcasting services.

Telecommunication services and broadcasting services are distinct services and hence the laws to deal with the carriage of broadcasting services must be kept separate from laws that govern the carriage of telecommunication services.

In view of the foregoing, we do not think 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.



Issue-2: 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:

We do not believe that there is a need for convergence of licensing frameworks for telecommunication and broadcasting services and between administrative government units overseeing policy and statutory frameworks for both.

It may be noted that even MIB in its communication dated 04.10.2022 to TRAI (Refer page 142 of the Consultation Paper) has, in the context of broadcasting services, stated that –

“... multiple agencies are involved for the purposes of company clearances like MHA for security clearance, DoT for wireless and spectrum clearance, DoS for satellite allocation to various licensees, Ministry of External Affairs, Department for Promotion of Industry and Internal Trade for Foreign Direct Investment and foreign executives working in broadcasting entities, Ministry of Corporate Affairs for company matters, Ministry of Electronics and Information Technology, for digital news and online curated content etc. and the MIB has established systems and processes to effectively coordinate with all these agencies”.

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 Consultation Paper 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”.

In this regard, the IB ministry’s observations dated October 4, 2022 (which also find mention in the TRAI Consultation) would become extremely relevant and pertinent wherein it has categorically stated that both carriage policy and regulation for broadcasting should continue with the IB ministry, including the spectrum allocation.

As per the CP, the “key considerations” for developing a single code may involve consolidating laws governing broadcasting, network and communication services and cover services such: (i) Linear/ Live Linear Television Channels through various OTT platforms and (ii) OTT Communication/Broadcasting Services.

In our view, there may not be a need for a unified licensing regime for OTT services, especially for the services highlighted above. It is also prudent to have specialised ministries with competence in their own sector.



From an OTT standpoint, any additional regulatory or licensing regime (whether unified or otherwise) will only be detrimental to the end-users, in terms of increase in cost of access to content and degradation of user-experience. With additional regulations and licenses, it will make it expensive for these services to reach out to their users, eventually leading to higher pricing and undesirable levels of advertising - which is not only against public interest but also very counter-productive.

Also, the TRAI seems to believe that lack of regulations and regulatory clarity (about which ministry will regulate the OTT sector) impacts innovation, completely ignoring the fact that much of the innovation online has been because of the lack of needless regulatory control in the sector. We would also like to clarify that, contrary to what is mentioned in the CP, there is no imbalance in the regulatory environment in the operation of OTT players given that the existing IT Rules framework is a very powerful tool which is specifically crafted to regulate them.

With regards to linear re-distribution through OTT platforms, broadcasters have the right to exploit content through multiple platforms under Section 37 of the Copyright Act (which is also known as "Broadcast Reproduction Right"). Hence, such services should not be subject to any licensing conditions under law. OTT platforms are anyway beyond the scope of TRAI Act, Interconnection Regulations and Downlinking guidelines.

OTT, is a characterised with private viewing in India with consumers making informed choice (pull content) about every content that they watch as opposed to push content. Further, OTT content is now governed by Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, along with Self-Regulatory Framework mechanism.

The Net Neutrality principles have enabled the technologies to flourish and evolve and whereby the Internet Service Providers (ISP) are bound to facilitate access of all contents and application in a non-discriminatory manner, which is regardless of the source. Thus, the proposal to bring everything under one head of telecommunications merely because these OTT services / broadcasting services have become substitutable or for that matter are using administratively allocated spectrum could be a disaster.

We do not agree that there is a need for a converged regulatory framework for content across different platforms since it does not take into account institutional learnings from the Ministry of Information and Broadcasting, the role of self-regulatory bodies like Broadcasting Content Complaints Council in television, the News Broadcasting Standards Authority, Digital Publisher Content Grievances Council and the Digital Media Content Regulatory Council for OTT, as well as the 2021 amendment to the IT Rules to address the issues and challenges posed by digital platforms.

As mentioned, telecommunication 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. The present regime of separate licenses and distinct administrative establishments under different ministries for processing and taking decisions on licensing issues, are working very well and hence we firmly believe that there is no requirement to disturb the same at this stage.



It is pertinent to note that during the discussions on the Telecommunication Bill, the broadcasters have strongly advocated to avoid “*one size fits all*” approach policy while dealing with broadcast spectrum. Even in the past, while the 5G auction discussions and consultation were going on, the broadcasters had raised the concern of interference. Therefore, a converged or “one size fits all” framework for content regulation cannot be applied for all platforms.

This Consultation Papers seems to be pre-mature especially since we are yet to see the outcome of three major legislations namely the Telecommunication Bill, the Digital Personal Data Protection Bill and recently announced Digital India Act. The need of the hour is not the convergence of ministries and law but a harmonization of the law.

Issue-3: How various institutional establishment 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:

We recommended that a single platform should be established where all institutions/bodies are integrated and collaborate for introducing standards. Currently, multiple institutions/bodies have been established under various Ministries for setting up standards, testing of equipment and for their certification. For example, Bureau of Indian Standards has published an Indian Standard that specifies the requirements for digital set-top box (STB) used for DTH services. On the other hand, Telecommunication Engineering Centre has also released essential requirements for hybrid STBs.

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 taken by the government.

Issue-4: 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:

As stated herein 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.



There is no need for establishing a unified policy framework and spectrum management regime for the carriage of broadcasting services and telecommunication services. The telecom services primarily uses the terrestrial horizontal spectrum whereas the television services uses the vertical space spectrum. The services are not similar and hence placing different services under a common policy will severely hamper the broadcasting services in the Country.

The current spectrum management regime adequately deals with carriage services offered in both broadcasting and telecom industry. For the broadcasting sector, MIB has established a single platform for the broadcasting sector in the form of “Broadcast Seva Portal” which also integrates Department of Telecommunication’s “Saral Sanchar Portal” for administrative allocation of spectrum.

Instead of introducing a new framework and spectrum management regime, focus should be 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.

Issue-5: 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:

Presently there are over 300 broadcasting companies, 4 private DTH players, over 1000 multi-system operators and over thousands of Local Cable Operators. While the sector appears to be highly diversified, the ownership and control of major DPOs is concentrated amongst a few players. Some of these players also operate in the telecom sector where the situation is similar with three or four Telcos now controlling the entire voice and data ecosystem. If broadcasting services are converged, these few players will gain dominance in the market come in the way of a level playing field and free and fair competition. Consequently, consumer interest could be compromised.

Hence, we feel that there is an urgent need to address these issues.

