

NXTDIGITAL LIMITED's Response to TRAI on the Consultation Paper on Ministry of Information & Broadcasting (MIB) back reference on TRAI's Recommendations date 19/11/2014 on "Regulatory Framework for Platform Services" and MIB reference on TRAI's Recommendations on "Platform Services offered by DTH Operators" date 13/11/2019

As NXTDIGITAL LIMITED we offer both MSO Digital cable services as well as the Headend-In-The-Sky (HITS) platform, and we strongly feel that the regulations should be clear across each DPO, even if the rules may be different for each due to their unique licensing regimes and architectures. Please find below our comments on the points raised by the TRAI in this Consultation Paper.

2. 1 Response to back references dated 23rd October 2020 received from Ministry of Information and Broadcasting (MIB) on TRAI's Recommendations dated 19th November 2014

As both a HITS platform and an MSO, NXTDigital works closely with thousands of LCOs across the country all of whom have varying structures including some private limited companies, some proprietorships, partnerships, etc. It would not be feasible to request each of our LCOs to register as a company, with the respective burdens on reporting etc., particularly when many of them cover small areas with <500 subscribers. The impact to them of hiring chartered accountants to keep their books etc, could potentially not justify the value in maintaining their distribution businesses going forward resulting in loss of employment and revenues. **We therefore agree with the MIB view that LCOs, should not be forced to be incorporated as a company under the Indian Companies Act, 2013. However, we strongly believe the MSOs and IPTV operators should be incorporated as a company under the Indian Companies Act, 2013 to make it in line with HITS and DTH requirements.**

The TRAI comments that the "DAS Implementation ensures that PS can only be inserted at the headend of the MSO", however under the HITS architecture the PS can be inserted directly into the mini-headends used by the LCOs to receive the HITS signals as well as FTA satellite services and PS. As per the consultation paper of TRAI of 06th April 2010 regarding "Interconnection and Tariff Issues Related to HITS services", where at point 2.5 it states that "Depending upon the business model, the Free-to-Air (FTA) channels can be incorporated at the level of the HITS operator or at the level of the cable operator." Therefore, it is clear that TRAI understands that in a HITS environment, the Platform Services could be added at the level of the cable operator and not at the Earth Station. It is impossible for a HITS platform to have oversight of the content that is being inserted in each of these mini-headends, which in the case of NXTDigital is already over 1400 such mini-headends. However, the HITS platform does ensure that all content (FTA and PS) are encrypted in the mini-headends, by connecting each mini-headend to a CAS server stored at the HITS data centre which ensures encryption of each channel before transmission into the LCO's network. This does not require the video signal to be transmitted to the data centre as the scrambling itself is done in the multiplexer in the LCO's own mini-headend or COPE (Cable Operator Premise Equipment).

We agree that the TRAI and MIB should work out a model by which all LCO's ownership can be fully disclosed and obligating LCOs to comply with the content code and advertisement code whilst providing platform service. Currently in the event of the any breach of these codes as well as any copyright issues are being put on the respective MSO or HITS platform, even when these channels are not originating from their headends. This results in MSO or HITS platforms being penalised legally by content providers as well as regulatory authorities for breaches by their LCOs which they are not responsible for. Under a HITS architecture PS and FTA channels can be inserted locally at the LCO's mini-headend and therefore HITS operators can only block the activation of these channels and/or deactivate the entitlements to these channels to LCO's subscribers using the digital addressable platform as soon as it is informed of any breaches of relevant regulations/laws by interested parties.

Para 2.45 of the TRAI's Recommendations dated 19.11/2014

NXTDigital believes that there should be no upper limits to the PS inserted either by the MSO/HITS player at their headend, or by the local cable operator at their end. Limiting the number of PS channels to just 1% of the total pay channels transmitted would result in typically LCOs only being able to insert 4-6 channels which would not be promoting Ease of Doing Business with LCOs. For many LCOs this is a second and important revenue stream to help them maintain the cable network business. **If there should be limits, we believe these should be increased to 80 PS services for the HITS platform, up to 50 for MSOs and at least up to 20 for the LCO. The rationale for these numbers is that HITS platforms offer a pan-India service and must cater to multiple regions, languages and genres to meet the requirements of their subscribers. Even if only 3 channels were provided per state/language, this quickly adds up in the number of PS services that may require to be offered to subscribers. MSOs can have a lower upper limit of PS services per headend as each headend will typically focus on a smaller region of the country.**

NXTDigital is one of the biggest platforms by number of channels offered to its subscribers both on its MSO and HITS platforms. We do not therefore believe that having the limits proposed above would limit the capability to broadcast the necessary channels of broadcasters as may be required by their subscribers.

The TRAI and MIB need to recognise that, particularly for the LCO, these PS services represent a way to promote local and regional content that is specific to their direct neighbourhoods which is not provided by national broadcasters. For example, in Goa where the local language is Konkani, there is not a single channel approved by the MIB in that language and that supports that entire state. The cost of uplinking/downlinking for a small broadcaster who is targeting just that state is too costly. Denying the capability for the LCO to insert at his end local Konkani/Portuguese content would result in an entire state not having any regional content that is relevant to it. The same would apply to many smaller states. A service like HITS which offers cable operators service across the entire width and breadth of the country was designed specifically to enable insertion of up to 20 PS by each cable operator to support their local communities and regional content.

The TRAI raises the point that a local platform channel can register itself as a broadcaster. However, the implications of this are many:

1. A broadcaster needs to be an incorporated company under the Companies Act.
2. Broadcaster must apply for uplinking/downlinking licenses at a cost of INR5L.

3. Broadcaster must apply for transponder space which is typically INR5L per month.
4. Broadcaster key management personnel must be security cleared by the MIB and MHA.
5. Broadcaster must also show certain net-worth: Non-news channels require a minimum net-worth of INR 5 Crores for the First Channel and INR 2.5 Crores for each subsequent channel. For News and Current Affairs Channel a minimum net-worth of INR 20 Crores for the First Channel and INR 5 Crores for each subsequent channel is a pre-condition.
6. Broadcaster is also required to furnish a Performance Bank Guarantee of INR 1 Crore for Non-News Channel and INR 2 Crores for News and Current Affairs Channels.

The typical process for registering as a television channel can also take upwards of 6 months. Further, the cost of running a satellite channel is very high which is not feasible for a small regional LCO or broadcaster.

Increasing the number of channels being available on satellite simply spreads the advertising pie over a larger number of players, resulting in lesser income for each but the most popular channels. This can be seen by the fact that even many well-funded broadcasters are shutting down channels. In 2020 itself, the following channels have shut down, to name just a few:

1. HBO
2. HBO HD
3. WB

Therefore, registering as a broadcaster is not necessarily a feasible option for small regional LCO or broadcaster.

NXTDigital agrees with TRAI's statement that **"The Authority is also of the view that it is not desirable to separately specify the limit on number of PS channels that may be offered by the MSOs and LCOs"**.

TRAI's comments that **"An MSO may remain responsible for all the platform services channels being offered on its platform"** does not hold true for HITS players where content is inserted at each LCO's own mini-headend. The HITS platform only maintains control to be able to activate/deactivate these channels centrally, but what is running on these channels would be impossible to monitor. NXTDigital has over 1400 mini-headends across the country. If each mini-headend is inserting 20 channels, this would result in 28,000 PS to be monitored. Many of these mini-headends are installed locations where even getting stable 1Mbps broadband connection is not possible. Therefore streaming 28,000 channels back to the NXTDigital datacentre would be impossible.

What is important here, is that the MSO/HITS operator should always maintain the facility to deactivate PS services from any local cable operator who is inserting any content that is objectionable or unsuitable and for which some entity/person has raised an objection. Without this capability to deactivate PS services using the CAS, then PS inserted at the LCO level should not be permitted both by MSOs and HITS platforms.

The individual LCO should always be responsible for any PS that they are inserting themselves, particularly in a HITS architecture. This cannot be the responsibility of the MSO or HITS operator who are simply offering a facility to the LCO to use the transmission capability under certain terms and conditions. If these are breached by the LCO through insertion of objectionable content, then it should be the LCO who is penalised for the same rather than the MSO or HITS operator, who is simply providing the capability to the LCO to insert their PS. This situation would be like penalising an ISP for

any pornography uploaded by one of its subscribers. The MSO or HITS platform is simply providing a transmission mechanism to the LCO to transmit their PS services. The LCO must always be responsible for any and all content that they are inserting as PS. In the case of a HITS platform, that content is also running only from the LCO's mini-headend into his own network. At no point is this content running through any network operated or owned by the HITS platform, so how can the HITS DPO be responsible for that PS content in any way.

Para 2.52 of the TRAI's Recommendations dated 19.11.2014

NXTDigital is in agreement with both TRAI and MIB that both MSO/HITS platforms and all LCOs should be security cleared in order to be able to insert PS into their networks. This ensures that all DPOs (MSOs, HITS, and LCOs) understand that responsibility of the PS insertion at their respective levels is their responsibility and that any distribution of anti-national or objectionable content will result in the removal of the capability to insert PS services.

MSO and HITS platforms must therefore ensure that they can control the PS inserted by the LCOs and be able to add/remove the capability for the LCO to insert these into his network from their own headends. MIB/TRAI should provide a portal for MSOs/HITS platforms to be able to see which LCOs are security cleared and who has had their security clearance cancelled so that necessary changes can quickly be made to their systems to stop the capability of PS being inserted by the respective LCO.

One thing to note is that security clearing all MSOs and LCOs will be a daunting task, and MIB/TRAI will need to provide some fast online method for applying for such a security clearance and have appropriate resourcing for this to be done within a sensible timeframe. Whilst the security clearance is in progress, LCOs should continue to be able to insert PS to avoid impacts on their business due to potential delays in waiting for their security clearances to come through, particularly considering there are more than 60,000 LCOs to be security cleared which may include one or more people per LCO requiring clearance.

NXTDigital also believes that the TRAI or MIB should come out with a general Standards & Practices definition for content that ensures that all content transmitted conforms to certain standards and that any anti-national or objectionable content is banned.

Further NXTDigital believes that there need to be clear definitions on what can be considered a Platform Service. We believe that a Platform Service should be that content that is developed into a linear channel by a content provider (3rd party on behalf of DPO or DPO themselves) that is made up of content created or syndicated by the provider. A Platform Service should not include any channel that is streamed live from an Internet website but may include content that is received by the DPO over the Internet as a transmission mechanism. Many DPOs use content that is created by 3rd party PS service providers that create the value-added content on their behalf, including Shemaroo, One Take Media and others. The responsibility for ensuring that the content meets all standards and practices and programming/advertising codes must fall directly on the content providers themselves.

2.2 Draft Response to the back reference dated 23rd October 2020 received from Ministry of Information and Broadcasting (MIB) on TRAI's Recommendations dated 13th November 2019.

Para 2.7 of the TRAI's Recommendations dated 13.11.2019

Unlike MSOs, a HITS operator can permit for the insertion of Platform Services directly at the mini-headend of the LCO, so therefore responsibility for the content transmitted must lie directly with the LCO and not with the HITS platform. In the case of an IPTV operator, this should be similar to that proposed for DTH and MSO platforms.

Therefore, we believe that the definition proposed should be changed to the following:

“Platform services (PS) are programmes transmitted by Distribution Platform Operators (DPOs) **and/or their linked LCOs in the case of HITS operators**, exclusively to their own subscribers and does not include Doordarshan channels and registered TV channels. PS shall not include foreign TV channels that are not registered in India.”

Para 2.16 of the TRAI's Recommendations dated 13.11.2019

NXTDigital does not agree with all the recommendations proposed here by TRAI or MIB.

In the first instance, MIB and TRAI recommend that a programme cannot be transmitted by a DTH operator or MSO that is being used by another DPO. **NXTDigital believes that the same PS should not be transmitted rather than the limitation being set for the individual programmes. Most content/programmes are purchased from content distributors who sell the rights to multiple DPOs/broadcasters.** How will one DPO know whether that content/programme has been sold to other DPOs also? Even amongst normal regulated television channels, we see the same programmes being played out at different times on different channels. Take a movie, for which the rights have been sold to various movie channels. You can see the same movie at different times on different TV channels. It is not clear, therefore, why the TRAI/MIB are proposing that a specific programme cannot be shown on multiple DPO platforms. This would suggest then that all content for PS services must be created exclusively for that DPO. This is unreasonable and would be excessively expensive (which DPO/LCO is going to be able to afford to commission so much new content?). At most the same platform services/channels cannot be shared, but usage of the same “programme” in multiple different platform services/channels should be allowed.

It is not clear why running “+1” services are not being permitted, when this is now normal practice everywhere across the world. Popular channels with content that is of interest to customers should be available in broadcast format at different times. This seems a very backward-looking strategy and does not take into account new technologies and capabilities, nor customer choice.

The requirement for the DPO to provide an undertaking to the Ministry that the programme transmitted is exclusive to their platform is impossible to implement unless the DPO is commissioning the production of this content themselves. If a DPO chooses to purchase the rights to content from content owners, how can they know whether this has been sold to others. Also, this would limit content owners to only sell to one DPO in the whole country, thereby increasing the cost of that content as they can no longer recover their content creation costs by selling the rights to their content

to multiple DPOs. This again seems a retrograde approach that does not support “ease-of-business” approach proposed by the Government both for DPOs as well as for content owners who rely on DPOs and broadcasters buying the rights to use their content.

It is not clear how the MIB would be able to monitor whether the same programme was used on multiple DPOs across the length and breadth of the country. It is clear then that the focus would be to monitor only the larger DPOs putting them under the scanner, whilst thousands of smaller DPOs would effectively be able to continue running their PS without any real oversight. This would create an unlevel and unfair playing field for the larger DPOs.

It would not be possible for a HITS operator to provide an undertaking as proposed to the Ministry, when the facility to insert the PS is provided for at the LCOs’ own mini-headend as per TRAI’s own understanding of how the HITS platform should work. The HITS operator cannot give such an undertaking and take responsibility for things that are outside of its direct control. Even if a back-to-back undertaking was taken by LCO and HITS, this would still make HITS operator responsible for something they have no control over and could lose their license for an action taken by a single LCO unknowingly to the HITS operator.

Para 2.37 of the TRAI’s Recommendations dated 13.11.2019

We are in agreement with TRAI/MIB that any PS should be fully addressable and the option to activate/deactivate these services should be there at all times both with the MSO/HITS operators as well as with the LCOs.

Para 2.45 of the TRAI’s Recommendations dated 13.11.2019

We are in agreement with TRAI/MIB that all PS should be placed in their own genre. However, we propose that in the case of HITS/MSOs, there should be a differentiation to shows those PS that are inserted by the MSO/HITS operator and those that are inserted by the LCOs. This allows it also to be clear on whom the responsibility falls for any breach of the regulations. This is of particular importance to HITS platforms where the LCO can insert the content directly in his own mini-headend and such content cannot be controlled by the HITS operator. The HITS operator can only control the capability for customers to activate/deactivate that PS inserted by the LCO at their own mini-headend.