SAURASHTRA KUCTH LOCAL CABLE OPERATOR ASSOCIATION

(Non Recognized)

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By Courier/ Speedpost/ Email

Kind Attention: Mr. Agneshwar Sen,
Advisor (B&CS),
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Mahanagar Doorsanchar Bhawan,
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New Delhi – 110002.

Comments to the Consultation Paper No.07/2014 dated 23rd June, 2014

The captioned Consultation Paper ('**CP**') declares that it has been issued by the Telecom Regulatory Authority of India ('**Trai**') in furtherance of the Reference Letter dated 17th January 2013 issued by the Ministry of Information and Broadcasting. It is further declared that the CP has purportedly been issued by Trai in discharge of its statutory recommendatory functions set out under Section 11(1)(a)(ii), (iii) and (iv) of the Telecom Regulatory Authority of India Act, 1997 ('**Trai Act**').

It is a well-settled rule in legal jurisprudence that any body/authority exercising statutory power/s and/or discharging statutory function/s should do so strictly within the four walls of the domain/jurisdiction envisaged in the statute. Otherwise, the exercise of such power/s and the discharge of such function/s would be marred as a colourable exercise of statutory powers or discharge of statutory functions and would be open to challenge as being *ultra vires* the statutory provision.

It is our humble but very firm submission that Trai has committed an error of judgment in issuing the CP in purported discharge of its functions envisaged under Section 11(1)(a)(ii), (iii) and (iv) of the Trai Act. The scope of Trai's recommendatory functions has been well defined and circumscribed by the Section 11(1)(a) (i) to (viii) of the Trai Act.

Section 11(1) (a) (i) to (viii) does not authorize Trai to make recommendations in respect of any matter that relates to regulation and/or monitoring of programming services (also known and referred to as 'content') which are provided by the cable television networks, direct to home operators, head end in the sky operators, internet protocol television operators or any other distribution platform operator. Trai's role is confined to making recommendations in respect of the technological and commercial aspects of the broadcasting and cable industry. Regulation / monitoring of programming service or content is the sole prerogative of the Ministry of Information and Broadcasting. The division of powers, functions and roles must be respected by every government authority.

In fact, the Ministry of Information and Broadcasting has also been of the opinion that Trai should be divested of its role even as a techno-commercial regulator. Reference can be made to the following statement issued by Shri Manish Tewari as the then Minister of Information and Broadcasting reported in the Press on April 5, 2013[1]:

> *"The telecom space is huge and the telecom regulator TRAI has a lot on its plate. The broadcasting sector has also grown exponentially and has several issues….whether its TRPs (television rating points), media cross-holdings. I have myself made three-four references to TRAI…**maybe it's time to have a separate techno-commercial regulator for the sector**," **he said, adding that the proposed authority should not look into content issues.***

To the extent the CP deals with regulation / monitoring of content / programming services, the process of discharge of recommendatory functions by the Trai would be

a colourable discharge and, hence, open to challenge in the courts of law. The Trai should, therefore, cease from making any recommendations in respect thereof to the Ministry of Information and Broadcasting's Reference Letter dated January 17, 2013. The Trai may be well-advised to write to the Ministry of Information and Broadcasting expressing its inability to make content regulatory recommendations in view of absence of any specific function to that effect under the Trai Act.

Without prejudice to our objection to the jurisdiction of Trai to issue a consultation paper which primarily deals with and contains content regulatory issues and matters, we have the following comments to offer:

The CP seeks to club all the distribution platforms under one umbrella of regulation as far as programming services are concerned. This is highly erroneous, unfair, unequal and will result in several difficulties. Each distribution platform has had its own genesis, which the Trai seems to have ignored while making the CP.

Paragraph 2 of the Introduction of the CP contemplates:

"These TV Channel distribution platforms primarily re-transmit TV channels permitted by the Ministry of Information & Broadcasting (MIB) under the Downlinking guidelines."

This statement itself shows that the CP has been prepared without a proper study of the genesis and nature of distribution platforms, especially the cable TV operators (MSOs and LCOs). Distinction should be made between the distribution platforms

which emerged prior to the advent of satellite television channels and those that emerged post the satellite television channels' entry in India.

Cable TV was started in India during seventies mainly in metros. During this period, the TV services were provided only by Door Darshan and the customers were looking for variety of programmes. When the video cassette recorders were available freely in India, many enterprising individuals in metros started cable services from their apartment homes and garages, telecasting through cable network English and Hindi movies, music and game shows which were in great demand.[2]

Satellite Television channels came to India only in the early 90s. It was only because the cable TV operators had already set up a system for delivery of programming services, that the Satellite television channels could penetrate in India. In fact, dedicated film based satellite television channels were mostly inspired by the dedicated local film based channels run by the cable TV operators on their cable TV networks. To say, therefore, that the local cable channels are trespassing into the kind of content run by satellite TV channels is perverse and smacks of bias.

In view of the fact that programming services were offered by cable TV operators to its subscribers even before the satellite television channels came to India, to classify these programming services as ***value added services*** or ***Platform Services***, is in complete disregard to the nature and origin of cable TV operators in India.

Issue No.1: Do you agree with the definition for platform services proposed in paragraph 1.6? If not, please suggest an alternative definition. Please elaborate your response with full justification.

Comments:

We do not agree with the definition of the term 'Platform Services'. There may be a need to define the services offered by DTH, IPTV and other distribution platforms that have mushroomed post the advent of satellite television channels and are significantly different from the cable TV Operators.

As far as Cable TV Operators are concerned, they are already well covered and governed by the Cable TV Networks (Regulation) Act, 1995 ('**Cable TV Act**') and the Cable TV Networks Rules, 1994 ('**Cable TV Rules**').

The word '**Cable Service**' has been defined under clause (b) of Section 2 of the Cable TV Act in the following manner:

"'Cable Service' means the transmission by cables of programmes including retransmission by cables of any broadcast television signals"

It is surprising that the CP has not made any reference to the definition of the term Cable Service appearing under the Cable TV Act, which already defines the function of cable TV Operators. The CP has neither set out the deficiency of this definition nor made out any case for deviating therefrom. In fact, the term Cable Service as defined in the Cable TV Act, makes it very clear that the primary function of the Cable TV Operators is to transmit programmes by cables and this function *is inclusive of* the transmission of any broadcast television signals. This is another reason why such

programming services cannot be defined as *'value added services"* or *"platform services"*.

Issue No.2: Kindly provide comments on the following aspects related to programs to be permitted on PS channels:

1. PS channels cannot transmit/ include

2.1.1. Any news and/or current affairs programs,

2.1.2. Coverage of political events of any nature,

2.1.3. Any program that is/ has been transmitted by any Doordarshan channels or TV channels permitted under uplinking/ downlinking guidelines, including serials and reality shows,

2.1.4. International, National and State level sport events/ tournament/ games like IPL, Ranji trophy, etc.

2. PS channels can transmit/ include

2.2.1. Movie/ Video on demand

2.2.2. Interactive games,

2.2.3. Coverage of local cultural events and festivals, traffic, weather, educational/ academic programs (such as coaching classes), information regarding examinations, results, admissions, career counselling, availability of employment opportunities, job placement.

2.2.4. Public announcements pertaining to civic amenities like electricity, water supply, natural calamities, health alerts etc. as provided by the local administration.

2.2.5. Information pertaining to sporting events excluding live coverage.

2.2.6. Live coverage of sporting events of local nature i.e. sport events played by district level (or below) teams and where no broadcasting rights are required.

3. PS channels cannot transmit/ include

1.National news channels are not prohibited from transmitting any local news which is on cable channels. Talking of domain, it is seen that some national news channel transmit more entertainment related information.

Going by the same argument it is sufficient to keep only DD channels and there is no need for any other news channels as the same news is being covered on all channels

Comments:

Any restrictions in respect of content / programming can only be laid down by the Ministry of Information and Broadcasting and not by the Telecom Regulatory Authority of India. Since, Trai is discharging its statutory function of giving recommendations to the MIB, Trai is obliged to render recommendations on matters that are envisaged under Section 11(1)(a)(ii), (iii) and (iv) of the TRAI Act and not otherwise.

Notwithstanding the above, the restrictions in programming proposed by Trai are unreasonable and unwarranted. The logic behind proposing such restrictions is incomprehensible. As Trai admits in the CP itself, that content / programming on local cable channel is disseminated in pull mode and not in push mode, the very idea of restricting content is self-contradictory. The subscribers too have a right to demand the content of their choice and the cable TV Operators are obliged to supply such content as long as the same is in conformity with the Programming Code and Advertising Code envisaged under the Cable TV Rules.

The Cable TV Act and the Cable TV Rules are already applicable to the cable TV Operators. In fact, the Cable TV Act and the Cable TV Rules are not directly

applicable to satellite television channels. They have been made applicable to satellite television channels by virtue of the Uplinking and the Downlinking guidelines notified by the MIB. Even the Broadcasting Bill has remained pending for a long

period of time and the satellite television channels have been apprehensive in supporting the Broadcasting Bill.

Further, any restrictions imposed on the content/programming of the local cable channels will be open to challenge on the grounds of being in violation of Article 14 and Article 19(1)(a) and 19(1)(g) of the Constitution of India. The CP has not made out any reasonable basis for distinction between the satellite television channel viewership and the local cable channel viewership in order to justify the restrictions proposed in respect of local cable channels.

Issue No.3: What should be periodicity of review to ensure that the PS is not trespassing into the domain of regular TV broadcasters?

Comment:

It appears that Trai is desirous of protecting the satellite television channels at all cost for reasons best known to Trai. What is the basis behind the rhetoric of Trai that local cable channels should not be allowed to “trespass” into the domain of the satellite television channels. What irreversible and grave illegality and/or unjust damage is inflicted on the satellite television channels, if the content on local cable channels overlap with the content of the satellite television channels?

Nevertheless, the question of trespassing into the domain of the satellite television channels does not arise, since there are just two categories of satellite television channels viz. News and Non-News. Beyond this there is no further categorization. How, then, can we determine domain of a satellite television channel. Any content, which is not “News”, will automatically qualify as “Non-news” and hence any content

will still constitute so called trespass into the domain of the satellite television channels.

Further, the local cable channels made an entry into the Indian markets long before the advent of the satellite television channels. If cable TV networks and local cable channels came prior in time, how can they be considered as trespassers?

More importantly, on the one hand the CP has proposed restricting the content of the local cable channels to include only highly localised content. HOWEVER, WHY ARE SATELLITE TELEVISION CHANNELS FREE, THEN, TO TELECAST ANY KIND OF CONTENT, EVEN IF THE SAME IS OF A LOCAL NATURE? IF THE LOCAL CABLE CHANNELS ARE TRESSPASSING INTO THE DOMAIN OF THE SATELLITE TELEVISION CHANNELS, SO SHOULD THERE BE A PROPOSAL TO RESTRICT THE TELECAST OF LOCAL EVENTS ON SATELLITE TELEVISION CHANNELS.

Issue No.4: Should it be mandatory for all DPOs to be registered as Companies under the Companies Act to be allowed to operate PS? If not, how to ensure uniform legal status for all DPOs?

Comments:

Any action to make it mandatory for the so-called DPOs to form Companies to run their business will be arbitrary, without basis and against the constitutionally guaranteed right under Article 19(1)(g). There is no such need to have the kind of “Uniformity”, which the CP proposes.

Until now, cable TV operators, have been running their business through different business vehicles and all of such vehicles are very legitimate. There should be no forced / coerced condition to form Companies, no matter how simple it might be to form them. The choice should be rightly left to the businessmen to decide the kind of vehicle that he/she proposes to adopt as per his/her specific needs, volume of operation and financial plans. In India there are still about 2000 MSOs who are providing cable service through analogue mode, since DAS III & IV is not yet implemented. These MSOs are very small and have been running their business since the last two decades as proprietary concerns and partnerships etc.

Issue No.5: Views, if any, on FDI limits?

Comments:

Views, if any, on FDI limits?

FDI limit should be made applicable as per the Cable TV Network regulation act 1995

This calls for guidelines to be laid down by the Department of Industrial Promotion and Publicity.

The anomaly can be very easily rectified by inserting a clarificatory rule that no part of the FDI, over and above 26%, can be appropriated by an MSO towards running a news channel. Mandatory disclosures can plug this loophole.

Issue No.6: Should there be any minimum net-worth requirement for offering PS channels? If yes, then what should it be?

Comments:

Any minimum net-worth requirement will be preposterous. Cable TV Operators, are not always large business conglomerates. Many a times, their network may even

include 50-100 subscribers. How, then, can any minimum net worth requirement be put in place?

Further, cable TV Operators do not use any substantial natural resource like spectrum or satellite transponder space to warrant such net worth requirement. The Cable TV operators do not have elaborate set ups or a huge number of employees like established satellite television channels.

Issue No.7: Do you agree that PS channels should also be subjected to same security clearances/conditions, as applicable for private satellite TV channels?

Comments:

Security Clearance is not needed for the Channels, but for the Directors. The Cable TV Act already establishes a mechanism where criminal action may be taken against a Cable TV operator in case of any transgressions under the Cable TV Act.

Section 2 (a) of the Cable TV Act defines an Authorised Officer as under :

'authorised officer' means, within his local limits of jurisdiction;-

(i) a District Magistrate, or

(ii) a Sub-divisional Magistrate, or

(iii) a Commissioner of Police,

and includes any other officer notified in the Official Gazette, by the Central Government or the State Government, to be an authorised officer for such local limits of jurisdiction as may be determined by that Government;

Section 11 of the Cable TV Act allows the Authorized Officer to **seize** equipments used for operating cable TV network if the Authorized Officer has a reason to believe that the provisions of Sections 3, 4A, 5, 6 or 8 have been or are being contravened by any cable operator. **Section 12** allows the Authorized Officer to **confiscate** such equipment.

Under **Section 16** of the Cable TV Act, a Cable TV Operator can be punished with **imprisonment of a term which may extend to two years** or with fine which may extend to one thousand rupees or with both and for every subsequent offence, with **imprisonment for a term which may extend to five years** and with fine which may extend to five thousand rupees.

Under **Section 19**, the Authorized Officer is already empowered to **prohibit the transmission of certain programmes in Public Interest**. **Under Section 20** of the Cable TV Act, the Authorized Officer even has the power to **prohibit the operation of cable TV network in public interest**.

These provisions of the Cable TV Act are applicable to the Cable TV Operators, but they are not applicable to satellite television channels. When such provisions are already in place, there is no real need for an additional security clearance just because the satellite television channels have to procure the same. TRAI should recommend that satellite channels should also be governed by the Authorized Officers under Cable TV Act and should not be let off after a mere warning.

Issue No.8: For the PS channels to be registered with MIB through an online process, what should be the period of validity of registration and annual fee per channel?

Comments:

The process of registration of local cable channels and local cable network is already contained in the Cable TV Act and the Cable TV Rules.

The local cable channels do not generate revenues of the kind generated by the satellite television channels. Their area of coverage is also highly restricted. Such channels are more in the nature of random programming service which caters to the demands of the local cable subscribers. As the CP itself lays down, the content is provided on such channels in pull mode. As such having the same registered with MIB will not serve any apparent purpose.

Additionally, the mechanism which is contained in the Cable TV Act, is good enough to keep a tab on the local cable channels. The wide powers which are vested in the Authorized Officers can ensure compliance with the programming and advertising code guidelines and also ensure that nothing which is disseminated through the cable TV network is against public interest.

Issue No.9: What is your proposal for renewal of permission?

Comments:

See comments to Issue No. 8 above.

Issue No.10: Should there be any limits in terms of geographical area for PS channels? If yes what should be these limits. Please elaborate your response with justifications.

Comments:

There should not be any stipulated limit in the geographical area of local cable channels. This aspect of the operation should be left to regulate itself. The market forces and peculiar conditions of cable industry will ensure that cable TV operators do not unduly impinge upon each other coverage area.

Further, since the content is more of a localised nature, the local cable channels are anyways constrained to restrict themselves to a particular defined geographical area.

Issue No.11: Should there be a limit on the number of PS channels which can be operated by a DPO? If yes, then what should be the limit?

Comments:

No. Any proposal to prescribe limits on the number of channels will be deemed arbitrary and open to challenge as being in violation *inter alia* of Article 14 and Article 19(1)(a) and 19(1)(g) of the Constitution of India.

Issue No.12: Do you have any comments on the following obligations/ restrictions on DPOs:

12.1 Non-transferability of registration for PS without prior approval of MIB;

12.2 Prohibition from interconnecting with other distribution networks for re-transmission of PS i.e. cannot share or allow the re-transmission of the PS channel to another DPO; and

12.3 Compliance with the Programme & Advertisement Code and TRAI's Regulations pertaining to QoS and complaint redressal.

Comments:

See our Comments to the above Issues.

Issue No.13: What other obligations/ restrictions need to be imposed on DPOs for offering PS?

Comments:

Restrictions in the form of Programming Code and Advertising Code are currently applicable to all satellite television channels as well as the programming services operated by the so called DPOs. There is no need for any further restrictions to be imposed thereon.

Issue No.14: Should DPO be permitted to re-transmit already permitted and operational FM radio channels under suitable arrangement with FM operator? If yes, then should there be any restrictions including on the number of FM radio channels that may be re-transmitted by a DPO?

Comments:

No comments

Issue No.15: Please suggest the mechanism for monitoring of PS channel

Comments:

See our Comments to Issue No. 7 above.

Such mechanism is already in place under the Cable TV Act and Rules and should not be interfered with.

Issue No.16: Do you agree that similar penal provisions as imposed on TV Broadcasters for violation of the terms and conditions of their permissions may also be imposed on PS? If not, please suggest alternative provisions with full justification.

Comments:

See our Comments to Issue No. 7 above.

The penal provisions which exist for the Cable TV Operators are far more serious in nature than the ones in place for the satellite television channels.

Issue No.17: What amendments and additional terms & conditions are required in the existing registration/ guidelines/ permission/ license agreements w.r.t. DPOs for regulating the PS channels?

Issue No.18: What should be the time limit that should be granted to DPOs for registration of the existing PS channels and bring them in conformity with the proposed regulatory framework once it is notified by MIB?

Issue No.19: Stakeholders may also provide their comments on any other issue relevant to the present consultation including any changes required in the existing regulatory framework.

Comments to issue No.17, 18 and 19:

Since, we see no need for the regulations that are sought to be put in place, there are no comments to offer in respect of Issue No. 17, 18 and 19.

Thanking you,

Yours faithfully,

Dilipsinh Gohil (President)