CONSULTATION PAPER ON "ENTRY LEVEL REQUIREMENT OF MULTI-SYSTEM OPERATORS IN CABLE TV SERVICES" ISSUED BY THE TELECOM REGULATORY AUTHORITY OF INDIA DATED APRIL 09, 2019

TO
THE TELECOM REGULATORY AUTHORITY OF INDIA

COMMENTS OF
SONY PICTURES NETWORKS INDIA PVT. LTD.

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INTRODUCTION

The cable television industry in India has witnessed a technological evolution in the last few years from an opaque analogue system to digital addressable system. The industry has also witnessed substantial regulatory changes with the amendments to the Cable Television Networks (Regulation) Act, 1995 **("CTN Act")** to accelerate digitization and the introduction of the MRP model by Telecom Regulatory Authority of India (TRAI). The number of channels have grown exponentially to over 830 and the number of households watching television is closer to 200 million. In light of all of the changes, it has become necessary to have regulations in place to ensure that the quality of services provided by MSOs and the obligations cast on them are at par with that of other service providers in the industry being, HITS operators, DTH operators and broadcasters (who are required to comply with net-worth and/or entry level thresholds). This would ensure that only serious players, who are interested in the business of satellite TV channels and capable of rendering adequate quality of services, apply for MSO registration.

As has been observed by TRAI, the cable television industry is highly fragmented and existing regulatory policy framework is inadequate in certain aspects such as proper maintenance of records, which should ideally be easily accessible, lack of effective control mechanism and provisions for penalties for defaulters. TRAI, in 2008, had issued its recommendations of 'Restructuring of Cable TV Services' *inter-alia* prescribing a minimum net-worth criteria for registration of MSOs depending upon the area of operation being – Rs. 5 lakhs at district level, Rs. 10 lakhs at state level and Rs. 25 lakhs at country level. The Ministry of Information and Broadcasting (MIB) however prescribed an entry fee of just Rs. 1 lakh for MSO registration for operating on pan-India basis/parts thereof. This absence of robust financial entry criteria resulted in many MSOs with suspect business models (mostly at individual level) cropping up. Their dubious business practices included: non-maintenance of adequate books of accounts, non-submission of subscriber reports/submission of doctored subscriber reports/under-declaration, signal piracy, not allowing audit by broadcasters, non-payment of license fee to broadcasters, absence of adequate level of infrastructure, poor quality of consumer services, high-handedness, etc.

The present consultation paper on entry level net-worth requirement of MSOs in Cable TV services **("CP")** issued by TRAI is need of the hour. The genesis for consultation is a letter dated May 16, 2018 received from the MIB seeking recommendations of TRAI on the appropriate levels for fixation of entry-level net-worth of the MSOs for operationalizing cable TV digitization across the country.

It is pertinent to note that Rule 11(3) of Cable Television Network Rules, 1994 **("CTN Rules")** mentions about the financial strength of an applicant for grant of MSO registration but does not explicitly specify any thresholds thereof. Further, the prescribed entry-fee of Rs. 1,00,000/- only is fairly low given the capex and opex required to operate and run digital headends compliant with a digital addressable system. Hence, the objective of the CP in principle is to deliberate upon the net-worth level requirements for MSOs which would eradicate unethical and non-serious players from the sector.

We have provided our specific inputs on each of the issues raised for consultation herein below.

- **ISSUES**

Query 1:

Do the present rules and provisions as regards eligibility and net worth for MSO require a review or modification? Give your answer with justification?

Response 1:

MSOs came into existence as a mid-point in the hierarchy of cable services sector. MSOs established head-ends in metros and major towns to receive analogue TV signals from different TV broadcasters, aggregated and distributed these signals further to LCOs. MSOs have the capability to downlink the signals of various broadcasters' channels from the satellite and provide bundled and encrypted feed comprising of multiple channels to the LCOs who further re-transmit it to subscribers through cables. However, digitisation, the tremendous growth in the number of satellite television channels and the demands of the new MRP Tariff regime, now requires a far higher level of sophistication and technical expertise from cable operators than in the past. This, in turn, means access to funding as well as managerial and financial capability of a far higher level. Cable operators without adequate financial resources and managerial skills will not find it easy.

For the very reasons mentioned above, that led to the introduction of MSOs, now need to be re-visited for introducing entry-level net-worth for MSOs.

In order to re-transmit signals of broadcasters' channels and to ensure adherence to the requisite quality parameters, MSOs are required to make substantial investment in infrastructure and its constant upgradation. Additionally, as mentioned in the CP, MSOs also need to invest in marketing, sales and value-added-services to gain new customers and retain existing customers. They are also facing stiff competition with quality services being provided by DTH operators and OTT service providers. Hence, 'net-worth' becomes the key for determining the financial standing of MSOs and their capability to provide services at par with the other service providers in the industry.

Presently, under the CTN Rules, an applicant seeking license to operate as an MSO either in the nature of an individual, an association of individuals or body of individuals, whether incorporated or not or a company, that meets the eligibility criteria specified in Rule 11 (B) of the CTN Rules, is permitted to operate by the MIB.

Further as per MSO registration procedure followed by MIB, in case of individuals, the eligibility criterion in terms of net worth states that he/she should have a positive net worth. In case of association of individuals or body of individuals or a company, there is no criterion in terms of net worth requirements. Further, the entry-fee of Rs. 1,00,000/- as mentioned above is not sufficient.

Presently, in order to ensure that only serious players apply for a television broadcast permission and to ensure that the level of technology deployed is as per international standards, following costs have been imposed on broadcasters:

A. Separate net-worth requirements are imposed on broadcasters for downlinking/uplinking of television channels as follows:

Type	Item	Required Net Worth
Non-news and current affairs channels	First television channel	Rs. 5 crore
	Each additional television channel	Rs. 2.50 crore
News and current affairs channels	First News and Current Affairs television channel	Rs. 20 crore
	Each additional television channel	Rs. 5 crore

B. For downlinking of satellite channels, uplinked from foreign countries, an amount of Rs. 10 lakhs is required to be paid at the time of grant of permission. In addition to this, license fee of Rs. 15 lakhs is also required to be paid per channel per annum for downlinking of television channels uplinked from abroad. In case of channels uplinked from India, while the entry fee has been presently kept nil, license fee of Rs. 2 lakhs per annum per channel is required to be paid. For downlinking of such channels uplinked from India, an amount of Rs. 5 lakhs per annum per channel is also required to be paid.

C. In addition to the aforementioned fees, there is also a requirement for furnishing Performance Bank Guarantee ("**PBG")** of Rs. 1 crore in case of Non-News and Current Affairs Channels and Rs. 2 crore PBG for News and Current Affairs Channels for operationalization of new channels.

D. Further, vide order dated December 13, 2017 passed by the MIB [1404/15(T)/2015-TV(I)], the following processing fees per channel per day for temporary uplinking of a live event have been levied:

Type of channel	Processing Fee (in INR)
National channels	100,000/-
Regional channels	50,000/-

While the cost burden on broadcasters are sufficiently high, the qualitative transmission benefits of broadcast channels are not being passed down to end consumers on account of lack of capital/infrastructure on part of MSOs. Presently, there are 906 satellite television channels in India[1]. Whether MSOs have the band-width for making these channels available to consumer is a larger question that needs to be looked into.

Further, with introduction of -Telecommunications (Broadcasting & Cable) Services Interconnection (Addressable Systems) Regulations, 2017 **("Regulations")**, The Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff Order, 2017 and the Telecommunication (Broadcasting and Cable) Services Standards of Quality of Service and Consumer Protection (Addressable Systems) Regulations, 2017 (**"QOS")**, (collectively "**MRP Regime"),** broadcasters' revenues are entirely dependent on the subscriber reports of the MSOs. In our experience thus far, most MSOs are unable to upgrade their existing technologies to ensure that their Subscriber Management Systems (SMSs) and Conditional Access Systems (CASs) are as per the Regulations. In most cases, we have witnessed receipt of manual subscriber reports from MSOs, significant under-declaration of subscriber bases, incorrect subscriber reports, etc. We are given to understand that

[1] https://www.mib.gov.in/satellite-tv-channel?nid=292391

service providers who have the requisite technical skills are unwilling to provide services to such MSOs for fear of non-payment. The result of a lack of financial support, poor technical infrastructure and an absence of technical skills. The lack of financial support is a direct consequence of not having an adequate net worth requirement that would ensure financial stability for the MSO. Further, in the absence of net-worth requirement, MSOs especially – at individual/proprietorship and partnership level are not in the position to have infrastructure in the form of customer care centres, establishment of websites, supply of customer premise-equipments, etc. in place to be able to meet the requirements of the QOS/MRP Regime. TRAI has time and again been issuing directions to various MSOs to comply with the MRP Regime which they have failed to do.

We therefore propose corporatisation of MSOs and higher entry-level net-worth (discussed in further detail in the queries below) for the longer-term health of the industry.

In the event the same is not immediately evaluated and implemented, loss of revenues for broadcasters as well as the exchequer, poor-quality of services to consumers and non-compliance of the MRP Regime by MSOs will have longer term detrimental implications for the industry.

Query 2:

If yes, should there be provisions specifying eligibility only for registered proprietorship / partnership firms or it should continue to include individuals or group of individuals as at present? Please elaborate your comments with reasons and facts.

Response 2:

In our experience, we have noticed that, MSOs especially at individual, proprietorship and partnership levels do not have the basic understanding of the MRP Regime to be able to comply with the same. Neither do they have the wherewithal to employ persons with the requisite expertise. This coupled with lack of adequate financial strength while operating in a technology dependant, capital-intensive, dynamic sector, has resulted in a proliferation of small ill equipped cable operators.

We strongly believe that net-worth requirement in the manner proposed in our Response 3 below should be the way forward for tightening all loose ends.

Considering net-worth conceptually is understood under the provisions of the Companies Act, 2013 in context of companies, we propose corporatization of MSOs be implemented. Further, as rightly mentioned in the CP, if an individual proprietor or a partnership applies for an MSO license, the absence of a corporate structure means there is no way to confirm his/her actual net worth because an individual is not required to make any statutory submissions to any public authority that specifies the net-worth. Similarly, issues will arise in case of the group of individuals. Hence, corporatization whether as a company or an LLP is the best way forward for MSOs in terms of compliance and from transparency standpoint.

The cable TV sector has so far been highly fragmented on account of different types of entities operating in the field with complete lack of synergy. Corporatisation will bring all MSOs on the same pedestal and will result in benefits in terms of maintenance of proper records which are easily accessible, effective control mechanism, penalties for defaulters (as envisaged under the

Companies Act, 2013) being made applicable to the cable TV industry. Further, this would also complement the non-discriminatory vision of TRAI since broadcasters, DTH operators and HITS operators are mandated to be registered as companies.

As per the extant policy framework, a broadcaster seeking permission for uplinking or downlinking of TV channel is required to be a company registered in India under the Indian Companies Act, 1956 per the Uplinking/Downlinking Guidelines. Similarly, a HITS operator is required to be registered as a company under the Companies Act, 1956[2]. As regards DTH operators, they also required to be registered as a company under the Companies Act, 1956[3].

In light of the above, corporatisation in the television distribution sector should be immediately implemented in a uniform manner. Statutory compliances under the Companies Act, 2013 would ensure transparency and enhance credibility for the sector.

Query 3:

Is there a need for prescribing an entry-level minimum net worth for the MSOs? Please justify your comments.

Response 3:

It is strange that thus far no net-worth requirement has been specified for MSOs. As mentioned above, per MSO registration procedure followed by MIB, in case of individuals, the eligibility criterion in terms of net worth states that he/she should have a positive net worth. In case of association of individuals or body of individuals or a company, there is no criterion in terms of net worth requirements. Further, the entry-fee of Rs. 1,00,00/- is required to be paid.

If we evaluate the investments required to be made by other participants in the industry- (i) Broadcasters on one-hand are required to make heavy investments and have net-worth levels as mentioned in Response 1; (ii) HITS operators are required to have entry-level minimum net-worth of Rs. 10 crores; (iii) As regards DTH operators, an entry-fee of Rs. 10 crores has been prescribed to eliminate non-serious players.

Further, as mentioned in the CP, TRAI in its recommendations on Restructuring of Cable TV Services dated 25th July 2008, had prescribed entry fee inter-alia a minimum net worth criterion for the registration of entrant MSOs so as to restrain the non-serious players from entering in the business. Further, the minimum net worth depended on proposed area of operation for the MSOs, as detailed below:

Sl. No.	Area of operation	Recommended Net-Worth
1	District level	Rs. 5 lakhs
2	State level	Rs. 10 lakhs
3	Country Level	Rs. 25 lakhs

[2] http://digitalindiamib.com/hits.pdf

[3] https://mib.gov.in/sites/default/files/GuidelinesforDTHServiceDated15.3.2001.pdf

However, unfortunately, no entry-level net-worth was implemented by the MIB.

We propose that entry-level net-worth requirement for MSOs be implemented in the manner proposed by TRAI (i.e. District, State and Country wise) however, with revised threshold as follows:

Sl. No.	Area of operation	Recommended Net-Worth
1	District level	Rs. 50 lakhs
2	State level	Rs. 2 crores
3	Country/National Level	Rs. 5 crores

The aforementioned recommendation on net-worth requirement of MSOs would entail issuance of district/state/country level license for MSOs. Hence, the notification of the MIB dated January 27, 2017 (bearing no. 2/108/2015-DAS) stating that all registered MSOs are free to operate in any parts of the country, irrespective of registration for specified DAS notified areas granted by the MIB would need to be re-visited. Licenses would have to be granted to the various categories of MSOs stipulating their area of operations. At the local level, license would entail an MSO operating in a district/part thereof. A state-level, MSO can have a particular state as an area of operation. A national level MSO could be rendering services in a substantial part of the country covering at least 'n' number of states.

The minimum net-worth requirement could be the only solution to ensure that the technology/infrastructure deployed by MSOs are at par with that of DTH and HITS operators. This would also result in elimination of non-serious players that are presently rampant in the industry. As per the CP, only 77% of the MSOs who were granted licenses by the MIB are current operating. This reflects the number of non-serious players that would have applied for licenses in the absence of any net-worth level requirement.

It is to be noted that an MSO has to make substantial investment for setting up the head-ends. Further additional investment is necessary for spreading the network. The equipment (SMSs & CASs) also requires continuous technology up-gradation. In addition, as a business entity, an MSO has to face competition from within and outside the industry, thereby necessitating expenditure on marketing, sales and value-added services to gain new customer and to retain existing customers. Hence, specifying a minimum net-worth for an applicant MSO will help improve orderly growth.

The counter-argument in the CP that in a free market, there is no need for any stipulation by the Government as the applicant has full freedom as to how it manages the resources such as land, labour and capital, surely holds true for all service providers in the industry and not just MSOs. In that case, the net worth requirement should be removed for all service providers.

We do not agree that a minimum net-worth criterion or entry fee could discourage the growth of smaller MSOs in far-flung areas and in-turn may hinder the incubation and growth of local and regional channels. An entry barrier like fixing a minimum net-worth requirement will not adversely affect overall program diversity and development of local and regional content. In the absence of adequate investments, local channels in any case cannot be operationalised by MSOs and this definitely cannot be a parameter for not prescribing minimum net-worth.

As far as local channels are concerned, the greatest challenge that is faced by broadcasters is when the LCOs affiliated to MSOs use their local video channel frequencies to re-transmit demodulated unencrypted signals to their subscribers to ensure that they remain untraceable and thereby do not get netted in the monthly subscriber numbers, which in turn leads the operator to believe that demand for a particular channel is low and ask for deactivation of such channel. Even though there are regulations in place discouraging such practices, on account of lack of corporatization ensuring greater transparency and absence of net-worth level requirements, malpractices enumerated in the foregoing remain in place which is detrimental to the longer term growth of the industry.

Query 4:

If yes, what should be the procedure to check and verify the net-worth in case of individual or group of individuals? Similarly, what should be the mechanism to verify the net-worth as claimed by business entities like proprietor-ship firm, partnership firm, LLP or Company as the case may be?

Response 4:

As far as broadcasters are concerned, for calculating the abovementioned net-worth thresholds, MIB sends each of the applications of both existing non-news broadcasters and news broadcasters to its empanelled auditors for verification. In addition, each of the applications are also referred to Ministry of Corporate Affairs (MCA). Further all corporates file their audited financial statements with their respective Registrar of Companies annually. The empanelled auditors of MIB and MCA cross-verify the Balance Sheets and Audited Account Statements certified by the statutory auditors of the concerned broadcaster companies. This mechanism could be made applicable for MSOs as well but will only work if MSOs are corporatised.

TRAI in its Recommendations on issues pertaining to uplinking and downlinking of television channels in India had mentioned that - a self-declaration, in a prescribed format, stating that the applicant company meets net-worth requirements, as specified under the policy guidelines, to be taken from the applicant company at the time of submitting the application, should suffice. This declaration should be supported with duly audited financial statements of the company. The requirement of examining net worth, ownership details, shareholding pattern and its effect on net worth etc., by the empanelled CA were recommended to be done away with. If the said recommendation is implemented by the MIB, the same may be made applicable for MSOs as well.

Further, in light of corporatization being proposed by us, the question of validating the net-worth of other entities (like individuals) become redundant.

Query 5:

Should the net worth requirements for entrant MSO be based on its proposed area of operation? Give your comments with justification.

Response 5:

We have already provided our response on this above.

Query 6:

If yes, what could be different classification of entrant MSOs based on area of operation? Give your comments with justification.

Response 6:

We have already provided our response on this above.

Query 7:

What should be the entry level net worth for each of the categories of MSOs if any classification is made on the basis of area of operation? Give your comments with justification.

Response 7:

We have already provided our response on this above.

Query 8:

In case, license area of MSO's is classified on the basis of area of operation, what should be the mechanism and criteria to classify existing MSOs? Please comment with proposed process to re-classify.

Response 8:

At the outset, licenses going forward should be granted basis area of operation of the MSOs. For existing MSOs, who have pan-India licenses, these licenses will have to be revoked and licenses need to be granted depending upon the area of operation subject to meeting the net-worth requirement (as discussed in detail above). The net-worth requirement we believe, would automatically result in removal of non-serious/incapable players, reducing the number of MSOs that are currently operational. Though this might involve some additional work for the MIB initially to streamline the process, it would go a long way in eradicating the issues that bedevil the cable TV industry. Further, it is necessary that the classification (at district level, state level and national level) is applied uniformly for all MSOs to ensure level-playing field and avoid any malpractices arising from grant of pan-India licenses for some MSOs and area-wise licenses to others.

Query 9:

Should the minimum net worth required in case of MSOs operating in North East and/or J&K be relaxed compared to other regions? Please provide suitable justification.

Response 9:

No, minimum net-worth level requirements should be uniformly implemented as is the case for broadcasters, DTH operators and HITs operators. Any carve-outs can result in misuse. Instead of providing relaxations, only parties that are capable of investing in infrastructure to be able to render services (by way of laying-down and maintenance of cables) should be allowed to operate.

Query 10:

If yes, by how much should the entry level net worth criteria be relaxed? Please give your comments with justification.

Response 10:

In view of our response in Response 9 above, response to this query becomes non-applicable.

Query 11:

What are the components of the fixed costs incurred by an entrant MSO? Give your comments with justification.

Response 11:

We believe fixed costs for MSOs would include – head-end establishment, CAS & SMS installation, STB deployment, having an efficient ERP/IT enabled systems, customer response centre, internet connectivity and laying down cable.

Query 12:

What are the components of the variable costs incurred by an entrant MSO?

Response 12:

These are likely to be manpower, rent, utilities, working capital, repairs and maintenance, etc.

Query 13:

How do the fixed costs and the variable costs depend upon the scale of the operation that is for the small, medium and large operators?

Response 13:

We are not entirely informed to answer this query.

Query 14:

Should the minimum net worth required be based upon the average fixed cost incurred by an entrant? If yes, what should be the appropriate criterion? Please explain.

Response 14:

Minimum net-worth requirements should be implemented in the manner proposed by us in our responses above.

Query 15:

Discuss if there could be some other criteria in context of costs incurred such as a combination of average fixed and variable costs.

Response 15:

Minimum net-worth requirements should be implemented in the manner proposed by us in our responses above. Further, all service providers in the sector incur significant costs and face sufficient challenges to be able to render services. Hence, no special treatment should be accorded upon MSOs. Benefits if any, should be applied uniformly for other service providers operating in the industry as well.

Query 16:

What is the average cost incurred in establishing a minimum capacity of 100/200/300/500 channels? Should the minimum net worth depend upon the proposed channel carrying capacity of the entrant? Please justify.

Response 16:

No, minimum net-worth of an MSO should not depend upon channel carrying capacity. In this regard, please refer to our responses above.

In any case, implementation of net-worth requirement as proposed by us would result in operationalisation of MSOs with sufficient channel carrying capacity only.

Query 17:

If the answer to question (16) is in affirmative, what should be the minimum net worth requirement for an entrant MSO willing to provide just the basic service tier of channels? Further, how should the minimum net worth requirement vary with increase in proposed capacity tier?

Response 17:

Not applicable in light of our responses above.

Query 18:

Should the minimum net worth depend upon the proposed number of subscribers that an applicant MSO would cater to? Please justify.

Response 18:

No. Net-worth level requirements as proposed by us should be uniformly implemented agnostic of proposed subscriber bases of MSOs. No such leeway is in any case allowed for the other service providers operating in the industry. Hence, no special treatment should be allowed for MSOs.

Query 19:

If the answer to question (18) is in affirmative, what should be the proposed number of subscribers and the relevant net worth for the same?

Response 19:

Not applicable in light of our responses above.

Query 20:

Discuss if any other criterion could be used to determine the entry-level net worth of the MSOs?

Response 20:

None.

Query 21:

Should necessary modifications be made in Cable TV rules in case of individual applicants so as to ascertain his/her net worth more prudently compared to the existing regime?

Response 21:

In view of corporatisation of MSOs proposed by us, this query becomes redundant.

Query 22:

Should the individual be permitted to seek MSO registration? If he/she is permitted, what should be the method for calculating and verifying his/her net worth?

Response 22:

In view of corporatisation of MSOs proposed by us, this query becomes redundant.

Query 23:

Which documents need to be furnished at the time of registration in order to justify the given net worth requirements for all other 3 cases, i.e., body of individual, partnership firms, companies?

Response 23:

Audited balance sheets and statement of profit/loss accounts may be furnished by the MSO companies at the time of registration in order to evaluate the net-worth of the company.

Query 24

Comments on the contents of proforma on the basis of which net worth for the new entities is to be calculated?

Response 24:

Not applicable in light of our responses above.

- **CONCLUSION:**

As of March 2018, 1,471 MSOs are registered with the MIB.[4] Due to various benefits granted to MSOs thus far, in the nature of no net-worth requirement, entry fee of Rs. 1,00,000/- only, lack of corporatization, the television industry has been adversely impacted by various non-serious players. Broadcasters have been impacted the most since significant portion of their revenues depend on this particular sector who have proven track record of being notorious players. Further, consumers have also been at the suffering end since they do not receive quality customer-care services due to lack of infrastructure and manpower at MSOs' end. Simply introducing regulations without the service providers being sufficient abled to pass on the benefits of regulations to end-consumers would result in hitting rock bottom for the industry. We believe that corporatization and net-worth level requirements in the manner proposed by us, would result in deployment of better infrastructure, including IT systems, call centres and back office operations, channel carrying capacity etc. for MSOs. This would also eradicate the malpractices/corruption rampant in the industry.

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[4] https://www.thehindubusinessline.com/info-tech/trai-seeks-views-on-fixing-entry-level-net-worth-norm-for-msos-in-cable-tv-services/article26784428.ece