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I. Introduction

We are thankful to the Authority for having allowed us to respond to the aforesaid Consultation Paper. The industry and the TRAI do share common goals namely - balanced and orderly development, inclusive growth and effective competition. We at Star have always been a firm believer that the Industry should be working closely with the Regulator on policy issues to tap the full potential of the sector and unlock the dividends that would resultantly accrue to the entire nation.

It is therefore imperative that the Industry and the TRAI draw upon their respective reservoirs of strength and mutually cooperate to script an enabling policy framework that would serve as a roadmap to encourage investments, spur employment, raise living standards and reduce disparities. In these times when technology out paces ground rules and thereby compels corporates to rapidly alter business models, it is all the more necessary that underpinning regulations - facilitate more than restrict, incentivize rather than discourage, inspire more than delude and liberate instead of protect.

Our considered views are given herein. Trust the same shall be found useful by your kindself. We earnestly request the Authority to kindly consider our submissions in the intended spirit of cooperation and information sharing. We also request that our submissions be read in the light of present day ground realities on both the economic and business fronts.

II. A Fait Accompli?

At the outset we would like to take this opportunity to respectfully highlight our threshold concern on the entire Paper. It is alarming to note that both the Ministerial reference and the instant TRAI paper are apparently resigned to the position that the admittedly illegal 'ground based channels' owned and operated by DPOs should now be legalised and regularised. The Paper appears to present a 'given' in that these ground based channels are a fait

accompli and questions have been asked to elicit responses on how to legitimise these channels that have always been considered as unlawful.

III. Questions that needed answers

In the consultation paper, there are no questions asked on whether at all such channels should be allowed in the first place, nor is there any impact analysis on how allowing such ground based channels would affect competition across the value chain. In fact there are several questions that could have been posed but were not asked among others - for example - **what are the implications on national security if such ground based channels are allowed and most importantly how will any regulatory framework or construct in respect of such ground based channels be implemented or enforced (emphasis applied).**

IV. The Omission in the Ministerial Reference

The reason for not asking these questions is not very far to find. The Ministerial reference appended to the paper has made a significant omission in that it does not refer to a proposed amendment that the then Ministry had attempted in 2011-12; in fact the instant Ministerial reference is completely silent about the same. We respectfully submit that the then Ministry should have highlighted the said proposed amendment that it had attempted a couple of years back to the present dispensation at TRAI for the latter to fully comprehend the magnitude and dimension of the issue which could have then, in turn, led the Regulator to frame the relevant questions.

V. The Earlier Proposed Amendment:

It may be pertinent to note that in 2011, the then government had attempted to come up with an amendment to the Cable Television Network Regulation Act to regulate the ground based channels as the Intelligence Bureau had identified many such channels to be a security threat. Towards this end the Ministry had mooted a new Section 5A to the Act and had also prepared a draft cabinet note which articulated the various security concerns that arose from the continuous mushrooming of such ground

based channels. The then Prime Minister's office and the then Ministry of Home Affairs had concurred with the said draft. However the then government could not satisfy or convince the Parliamentary Committee owing to the several infirmities that informed the then government's approach in bringing about the proposed amendment.

VI. Recommendations/Observations of the Parliamentary Committee[1]

"The Committee noted that several complaints have been received by the Central Government against cable operators showing illegal channels.

Intelligence Bureau had identified around 25 such channels and informed the Government that the contents of these channels are not conducive to the security environment of the country and pose a potential threat to the peace and security of the Country. There have also been instances of illegal carriage of terrestrial channels by cable operators in some border areas of the country.

Inspite of various measures taken within the ambit of the extant law to stop carriage of these illegal channels, the transmission of illegal channels by operators continued. It is in this background, the Government considered necessary to bring the necessary amendments in the Cable Television Network (Regulation) Act 1995 to make its provisions more stringent and also to enhance the punishment to have necessary deterrent effect.

2. So far as the details of proposed amendments are concerned, a new Section 5A is to be inserted in the Cable Television Networks (Regulation) Act, 1995 namely section 5A which prohibits cable operator from carrying unregistered satellite or terrestrial channels on their cable service networks irrespective of manner of reception of these channels. The Bill further proposes to amend sub-section(1) of section 11 to empower the Authorized Officers to seize the

[1] Standing Committee On Information Technology (2011-12), Fifteenth Lok Sabha, Ministry Of Information And Broadcasting, The Cable Television Networks (Regulation) Second Amendment Bill, 2011, Thirty-Sixth Report. Pages 33-46;

equipments of the Cable operators if it is found that cable operators indulge in re-transmission of illegal channels i.e. violation of section 5A. Besides, financial penalties provided under sub-section (1) of section 16 of the Cable Act for violation of the provisions of the Act are proposed to be enhanced from Rupees one thousand to Rupees one lakh for the first offence and Rupees five thousand to Rupees three lakh, on each subsequent offence.

The amending legislation further provides that in case of violation of section 5A, fine imposed for the first offence shall not be less than Rupees Fifty thousand and for every subsequent offence it shall not be less than Rupees one lakh. The Bill also proposes to amend sub-section (2) of section 16 to make contravention of section 5A a cognizable offence.

3. With the enactment of the proposed amendments, a cable operator would be allowed to carry only those channels which are indicated at Clause (a)(b)(c) of sub-Section (1) of section 5A as elaborated below:-

"5A. (1) No cable operator shall carry or include in his cable service any satellite or terrestrial television broadcast or channel unless such broadcast or channel has been—

(a) registered with, or permitted by, the Central Government for being viewed within the territory of India, in accordance with the policy guidelines for downlinking of television channels as may be specified by the Central Government from time to time; or

(b) approved by the Central Government for being viewed within the territory of India; or

(c) allowed in accordance with the provisions of any Central Act or rules made thereunder for being viewed within the territory of India."

4. The Ministry in the written note has clarified that section 5A (1)(a) covers all satellite channels registered with the Ministry of Information and Broadcasting. Section 5A prohibits the cable operators from carrying unregistered satellite or terrestrial channels on their cable service networks

irrespective of manner of reception of these channels. This provision will also prohibit cable operators from picking up illegal channels via broadband/internet and re-transmitting them. As is evident in sub-section(1) of section 5A, a cable operator is allowed to carry only those channels which are indicated at clause (a), (b),(c) of sub-section(1) of section 5A. Section 5A(1)(a) covers all satellite channels registered with the Ministry of Information and Broadcasting while section 5A(1)(b) covers channels approved by the Cabinet such as channel being operated by Indira Gandhi National Open University (IGNOU) [Gyandarshan Channels], Lok Sabha Channel etc. Channels of Prasar Bharati (Doordarshan) are covered under section 5A (1) (c).

5. Technology provides varied options for viewing TV channels. TV channels reaches subscribers' homes through various service providers like cable operator, DTH operator, DD Direct, IPTV, etc. Besides, TV channels can also be watched through internet. While explaining how the cable operator picks up illegal channels, the Ministry stated that cable operator in the border areas can take the feed of the terrestrial channels of neighbouring countries which are not allowed to be shown in India. It is also possible that cable operator can pick illegal channels via broadband/internet or IPTV, mobile TV, video streaming and re-transmitting them.

6. The Committee have further been apprised by the Ministry that the list of registered channels is maintained in the Ministry and is available on the website of the Ministry. Besides, the list is periodically updated. The channels which are not reflected in the list of registered channels are considered as unregistered/illegal channels.

7. The Committee during the course of deliberations have been apprised that the Group consisting of representatives of National Technical Research Organisation (NTRO), CERT-in and Intelligence Bureau explored various technical options to address the issue of showing illegal contents by the Cable Networks. The Group was of the unanimous view that localized blocking of a particular TV channel using terrestrial transmitter is neither feasible nor financially viable option and secondly that although it is technically feasible to

block any particular channel on a pan India basis by disturbing/jamming the downlink frequency of a particular TV channel, such actions are not internationally acceptable and are against provision 197 of International Telecommunication Union (ITU) as well as provision of article 21 of the Radio Regulations. TRAI was also of the view that technological intervention as well as international conventions/treaties may not address the issue fully as proposed to be addressed by the amending legislation

8. Even though the Secretary, Information and Broadcasting during the course of evidence before the Committee acknowledged that there are many technological issues which have strong technological implications for which there is a need for an expert body to advise and guide the Ministry, the Ministry did not bother to consult the various stakeholders which inter-alia include cable associations and broadcaster associations etc. Although the proposed amendments related to content for which the Government was not mandated to consult TRAI, the Ministry could have consulted TRAI particularly when the digitalization of cable has great implications on the proposed amendments. But the Ministry chose not to consult TRAI before bringing the amendments.

9. The Committee's examination has further revealed that the Ministry has never bothered to monitor the implementation of the Cable Act which is the Central legislation. Not only that the Ministry never attempted to know as to how the issue of transmission of anti-national content by various service providers is being addressed internationally. Moreover, no survey has ever been made to see the impact of implementation of the Cable Television Act particularly the implementation of section 16 which provides the penalty for contravening any of the provisions of the Cable Act. The Committee deplore the way the amending legislation has been brought without knowing the ground reality.

10. Considering the immense importance of the Bill, the Committee undertook detailed consultations on the provisions made in the Bill. The Committee during the examination had consultations with various stakeholders which

include cable associations, broadcaster associations, public at large and the expert body and the Telecom Regulator i.e., Telecom Regulatory Authority of India. The Committee also sought clarifications and details from the nodal Ministry i.e. the Ministry of Information and Broadcasting. The Committee's examination of the proposed amendments has revealed several infirmities and inconsistencies with regard to the proposed provisions as well as the enforcement mechanism in the context of the amending legislation which have been highlighted in the succeeding paragraphs.

A. The concerns about level playing field

The Committee's attention during the course of examination has been drawn to inequitable treatment with various service providers viz. cable operators, DTH, IPTV, internet in the context of the amending provisions made in the proposed legislation. The cable associations were of the view that unregistered channels are carried through platforms other than cable like DTH, IPTV, mobile TV, video streaming, internet whereas the legislation has been brought only for the cable operators. The Committee during the course of deliberations with the cable industry stakeholders have been given the impression that the cable operators are being over burdened with penalty, punishment and with so many regulations that small cable operators are unable to protect themselves. The broadcaster associations on the other side had given the impression to the Committee that in their case stringent license conditions are applicable whereas in the case of a cable operator the requirement is only of registration. The Committee understand that the extant legislative framework/guidelines with regard to regulating unregistered/illegal channels has the commonality through the Cable Act and rules thereunder which prescribe the Programme Code and Advertisement Code. The common legislative framework is applicable to all the platforms as acknowledged by the Ministry. The Committee during the course of deliberations tried to analyze the specific reasons for bringing the proposed amendments in the Cable Act that would be applicable to only cable operators in the context of showing illegal/unregistered channels. The Ministry has justified the proposed amendments on the pretext that the DTH and IPTV

services providers do not indulge in carriage of illegal channel as the channels carried on DTH service and IPTV service can be centrally monitored as these are addressable and leave a digital trail.

The Ministry in their own documents while explaining how illegal channels reach subscribers' homes through cable network has stated that it is possible that cable operator can pick illegal channels via broadband, internet, IPTV, mobile TV, video streaming etc. and re-transmit them. The Committee fail to understand the assertion of the Ministry that these service providers other than cable operator do not indulge in carriage of illegal channels when their own document states that the source of illegal channels re-transmitted by the cable operator can be broadband, internet, IPTV, mobile TV, video streaming etc.

The Committee further notes that even the Prime Minister's Office had drawn the attention of the Ministry to address the issue of showing non-permitted channels by the internet. In the views furnished by the PMO to the Ministry at the consultations stage, it was specifically mentioned that the problem of availability of non – permitted TV channels available for viewing over the internet needs to be taken cognisance of and the Ministry may take further action. The Committee are surprised to note that in the comments column as elaborated in Part-I of the Report, the Ministry has tried to ignore the important concern expressed by PMO. Instead of examining the issue, the Ministry has stated that the internet is, by and large, unregulated, except for certain restrictions under the Information Technology Act. The Committee fail to understand how the issue of transmitting illegal/unregistered channels can be addressed in entirety without regulating the source i.e. internet.

The other basis for the assertion of the Ministry that DTH and IPTV service providers do not indulge in carriage of illegal channel is stringent licensing conditions for DTH and IPTV. When the issue of licensing of cable operators to bring all the service providers on the level playing field was raised, the main constraint as expressed by the Ministry in licensing to cable operators was the infrastructure needed to provide licence to 60,000 cable operators. The

Committee observe that considering the emerging technologies, the scenario of TV watching may change drastically. As per the FICCI KPMG Indian Media Entertainment Industry Report 2012, the percentage of cable share which is 62 per cent at present may reduce to 47.3 per cent by the year 2015. During this period the DTH percentage may increase from 31 per cent to 46.7 per cent. With the multiple transformation undergoing world over in the technologies available in the media and entertainment sector, the whole scenario of watching TV may change in future. The Ministry need to keep a constant watch on the new and emerging technologies and the international legislative framework in this regard to address the multiple challenges coming in the way. Moreover, to provide the level playing field to various service providers, the extant legislation guidelines need a constant review in the light of the technological changes so as to avoid legal complications in managing the issue of illegal transmission.

B. Contradiction in the amending legislation with the Objects and Reasons of the Bill

One of the contradictions noted by the Committee during the course of deliberations was that marginal heading of clause 2 states 'insertion of new Section 5A Prohibition of re-transmission of unregistered channels', whereas the Statement of Objects and Reasons of the legislation states that the Bill proposes to amend Cable Act to prohibit transmission or retransmission of unregistered channels. In this connection, the Secretary during the course of oral evidence clarified that the legislation covers both transmission and re-transmission and there may be some editorial corrections which are possible to make. The representative of the Ministry of Law and Justice (Legislative Department) during the course of deliberations acknowledged that little addition in the marginal heading may save a lot of litigation.

C. Contradiction with regard to Uplinking and Downlinking Guidelines

Another contradiction pointed out during the course of deliberations was that whereas the Statement of Objects and Reasons states about Uplinking and Downlinking, the proposed section 5A(a) mentions about only downlinking of

television channels. The representative of the Ministry of Law and Justice (Legislative Department) during the course of oral evidence clarified that there would be same interpretation. The extracts from the Statement of Objects and Reasons in this regard inter-alia provides 'several complaints have been received by the Central Government against cable operators showing illegal channels which have neither been permitted to uplink from India nor permitted or registered to downlink into India, as per the Uplinking and Downlinking Guidelines'. Although it may be a matter of technical interpretation, referring to both uplinking and downlinking in the Statements of Objects and Reasons whereby the Bill states only about downlinking has created confusion

D. Constraint in enforcement in the provisions made under the Cable Act

The Secretary during the course of deliberations has acknowledged that there has been reluctance on the part of local administration to act against the cable operators. In some cases, where the local administration has acted, it has raised such a socio-political crisis in that area that post-haste this had to be really withdrawn. The Committee fail to understand as to how the amending legislation would address the issue in the aforesaid scenario and act as a deterrent when it has not been possible to take action against the cable operator although sufficient provisions exist in the Cable Act to penalize the cable operators for not adhering to the provisions made under the Cable Act which include adherence to Programme Code. Further, no action could be taken pursuant to Intelligence Bureau feedback about 25 channels, the contents of which were found as not conducive to the security environment of the country and posed a potential security hazard, although sufficient provisions are there under the extant Cable Act and Rules thereunder to take action in this regard. Moreover, the Ministry could not categorically respond as to how and by whom the content being 'anti-national' is decided. The Ministry also could not respond categorically when asked about the parameters on which Intelligence Bureau decided that the contents shown by channels are not conducive to the security environment of the Country and pose a potential security hazard.

The Ministry further opined that the purpose of the amending legislation was to actually create a deterrent kind of act. The Committee are unable to understand how the proposed provisions would act as a deterrent without being able to enforce the provisions. In this connection, the Committee endorse the views expressed by the Chairman, TRAI that the Authorized Officers have to do, what they are expected to do under the law and unless that is done the cable operator would never learn what he is not supposed to do.

E. The requirement of amending legislation for the transit period till digitization of Cable Network takes place

One of the fundamental reasons for ruling out transmission of illegal/unregistered channels by TV service providers other than cable network as stated by the Ministry is the programmes being on addressable mode leaving a digital trail. The cable network so far is on analogue mode. The Committee fail to understand that even when the digitalization of cable network can provide the solution to address the issue of showing illegal/unregistered channels through the cable network as acknowledged by the Secretary as well as Chairman TRAI during the course of evidence, the Ministry could not foresee the linkages between the two during the process of consultations. The Secretary during the course of evidence acknowledged that the linkages could not be established as the Parliament has not passed the digitalization amendment in the Cable Act when the proposed amending legislation was moved.

The Committee note that the concerned legislation with regard to digitalization amendment in the Cable Act was passed by Parliament on 19 December, 2011 and notified on 30 December, 2011 and the proposed legislation was introduced on 15 December, 2011. Although it is a fact that digitalization amendments were not notified by the time amending legislation was introduced, the Government could have visualized the linkages between the two.

It came out during the course of deliberations that perhaps the amending legislation has been brought to address the issue of showing

illegal/unregistered channels by cable operators for the transit period till when the cable services would be digitalized.

Since the problem particularly relates to border areas, the Committee inquired about the deadline of digitalization in border areas. The Ministry in the written reply has informed that the areas near the borders in India would be covered in Phase-3 and Phase-4 of the timeline for which is by 30 September, 2014 and 31 December, 2014 respectively. The transit period as such would be from the date of notification of the amending legislation till 30 September, 2014 or 31 December, 2014. The Committee are further concerned to note that the Ministry didk not visualize to expedite digitalization deadline in case of border areas by taking proactive initiatives by the Government and instead resorted to legislative option for the interim period after which the law may become redundant as acknowledged by the Ministry. Now, when the issue has been analyzed threadbare by the Committee, the Ministry still acknowledges that the amending provisions should be in place in the Act at all times even if the technological advancement is in the DAS regime may make such a offence redundant.

11. The Committee have made the aforesaid observations after exhaustive examination of several issues involved with the proposed amendment in the Bill in the light of various documents procured and consultations held with the stakeholders, the Ministry of Information and Broadcasting and Telecom Regulatory Authority of India. The Committee strongly recommend that various inconsistencies and infirmities pointed out with regard to amending legislation as well as the issues relating to enforcement of the provisions made in the Cable Act should be given due attention in consultation with the Ministry of Law and Justice and other concerned Departments/Agencies before the amending Bill is taken up for consideration by the Parliament. Moreover, the Committee may also like to strongly emphasize that the digitalization deadline in the border areas should be advanced by taking proactive initiatives by the Government particularly when as per the Ministry's own assertion digitalization can provide mechanism to regulate/monitor the problem of showing illegal channels by the cable operators, which the

proposed amendments seek to address as emerged during the course of the deliberations.

The constraints with regard to implementation of the provisions made under the Cable Television Networks (Regulation) Act, 1995

12. The Committee during the course of deliberations have analyzed the enforcement issue in the context of the existing provisions made under the Cable Act. As elaborated in the earlier part of the Report, the Secretary himself acknowledged that in large number of cases while the problem has been very real there has been reluctance on the part of local administration to act against such cable operators. In some cases where the local administration has acted, it has raised such a socio political crisis in that area that post-haste this had to be really withdrawn. The Committee in this context feel that there is an urgent need to involve the consumer/subscriber in the whole process of implementation of the provisions made under the Cable Act. Besides, the involvement of the elected representatives would also address the constraints being faced in implementation of the provisions made under the Cable Act.

Moreover, there is an urgent need to create awareness about the provisions made in the Cable Act that prohibit the cable operator to show the illegal channels. The information relating to registered channel is although available on the website of the Ministry, with the scenario of poor broadband connectivity in border areas, it may be difficult to access the information by the agencies involved as well as by the public at large. The Committee may like to recommend that the pamphlets containing the information should be made available to the agencies involved in enforcement of the provisions of the Cable Act. Besides, for wider dissemination, the local bodies should also be supplied the copies of the pamphlets and also made aware about the positions in this regard. The Committee are of the firm view that by taking certain pro active initiatives the authorized agencies would be able to enforce the provisions made under the Cable Act and the issue of showing illegal channels by cable operators can be addressed.

13. The Committee further note that the Ministry of Information and Broadcasting has formulated detailed guidelines for setting up State and District Level Monitoring Committees to monitor the content transmitted by the cable operators. The composition of these Committees include representation of academicians, psychologists, sociologists, NGOs working for women and child welfare, etc. The State and District Level Monitoring Committees are headed by Secretary, Information and Public Relations of the State and District Magistrate or Police commissioner as Chairman respectively. The Committee are constrained to note that the elected representatives do not find any place in the State and District Level Monitoring Committees. The Committee as such strongly recommend that the respective guidelines should be amended so as to include the elected representatives including local MPs of Lok Sabha and Rajya Sabha as well as MLAs and MLCs in the composition of the State and District Level Monitoring Committees.

14. The Committee further note from the information furnished by the Ministry that initial order for constitution of State and District Level Monitoring Committees was issued on 6 September, 2005. Subsequently, detailed guidelines were issued on 19 February, 2008. The Committee are constrained to note that only 15 States and 266 Districts have so far been able to set up these Committees. With regard to the State-wise position of status of these Committees, the Committee note that in North Eastern States, Arunachal Pradesh is the only State which has set up the State Level Committee.

15. The Committee are further constrained to note that the Ministry does not maintain centralized data about the functioning of these Committees. The Committee feel that various issues confronting implementation of the provisions made in the Cable Act can be addressed by ensuring effective functioning of State and District Level Monitoring Committees. The Ministry should persuade the State Governments particularly the bordering States to set up these Committees expeditiously. Besides, the position of setting up of these Committees as well as their functioning should be constantly monitored by the Ministry.

Setting up of Expert Body

16. The Secretary during the course of deliberations has apprised the Committee about the constraints being faced by the Ministry in handling the issues of technological nature. The Secretary himself acknowledged the need to set up Expert Bodies to really advise and guide the Ministry on the matter. The Committee observe that with the multiple transformation going world over in the technologies available in the media and entertainment sector, there is an urgent need to have expertise to assist and advise the Ministry in handling the issues related to emerging technologies. The Committee, accordingly recommend that the Government should look into the matter urgently to find the solution in this regard by setting up some Expert Body or widening the mandate and infrastructure of the existing expert body i.e. TRAI.

17. The Committee during the course of deliberations have noted that the administrative Ministry for legislative framework with regard to internet is the Department of Electronics and Information Technology. Whereas, the Ministry of Information and Broadcasting is the nodal Ministry for media, internet plays an important role and in the context of the present legislation one of the medium for watching TV is internet. The Committee are constrained to note that there is no mechanism to have inter-Ministerial coordination between the various related Ministries viz. the Ministry of Information and Broadcasting, the Department of Electronics and Information Technology, the Department of Telecommunications etc. The Committee strongly recommend that there is an urgent need to have some structured mechanism to have inter-Ministerial consultations and coordination between the various Ministries/Agencies dealing with technological issues related to media transmission.

Involvement of Consumer/Subscriber in the implementation process

18. The Committee observe that the most important factor for enforcement to address the issue of illegal channels being shown by cable operators is how to get the information in this regard. As stated in the earlier part of the Report, the active involvement of consumers/subscribers in the implementation process can certainly help in identifying the offender and addressing the issue

of transmission/retransmission of illegal channels. The Committee have been apprised that individual subscriber can lodge complaint in this regard to Authorized Officer or report the matter to District/State Level Monitoring Committees. The Committee feel that to facilitate the consumer/subscriber to lodge the complaint in this regard to the Authorized Officer or report to State/District Level Monitoring Committee, toll free helplines should be provided. Besides, a National Helpline should also be set up to facilitate lodging of complaint by the individual consumer/subscriber from all over the country." (Emphasis Ours)

We therefore respectfully submit that the instant consultation process is trying to set right what was wrong in the very first instance i.e. local cable video channels which are not registered under the Cable TV Act. Further, the issues highlighted by the Parliamentary Committee have not even been adverted to in the Ministerial Reference much less referred to TRAI for any meaningful resolution. Accordingly the final outcome of this instant consultation process runs the risk of coming up half-baked as the questions raised by the Parliamentary Committee will continue to remain unanswered.

VII. The CP's stated position on Platform Services.

TRAI has on the contrary been very appreciative of such ground based channels in its Consultation Paper[2]:

"DPOs use PS to offer innovative services and product differentiation. It acts as unique selling proposition (USP) for DPOs and also helps them in meeting the specific needs of their subscribers. Provisioning of such services also results in an additional source of revenue for the DPOs as they earn revenue not only from their subscription but also from the advertisements transmitted along with such PS. Unlike TV channels broadcast by the authorized broadcasters, PS is largely unregulated at present. There is no requirement for registration of PS channels. Some concerns have been expressed about the programme content on PS, particularly those distributed through the cable. It is proposed to put in place a proper regulatory framework for PS channels

[2] Page 4 of the instant Consultation Paper

being operated by various DPOs. The intention is to address the concerns and protect the interests of all stakeholders adequately."

While the TRAI acknowledges and extolls the unique selling proposition of ground based channels referred to as platform services in the paper, yet in the same breath it denies exclusivity to broadcast channels. This appears to be favouring one stakeholder's interest over the interest of the other stakeholders and is not in line with the principles of creating a level playing field with a consistent regulatory dispensation. (Emphasis supplied)

VIII. The well settled policy of separation of content and carriage is sought to be undone:

We respectfully submit that the cable and satellite industry in this country has grown over the years on one fundamental policy which is the separation of content from carriage and vice versa. While the industry has been making demands for vertical integration that was never at the cost of this basic pillar (of separation of content and carriage) that held together the broadcasting narrative of this country. This elemental approach that defines the structural framework for the industry is now being sought to be done away with as the Consultation Paper talks of platforms being allowed limited entry into content. The underpinning principle of segregating content providers from the distribution platforms has through-out the years ensured balanced growth for the industry and has by and large, successfully ensured in keeping the market free from anticompetitive traits and tendencies. The removal of this distinction at this critical juncture, when the industry is caught up in a transformational cusp owing to the on-going digitalisation process, is fraught with risks of skewing the level playing field in favour of distribution platforms and would irreparably harm content providers like broadcasters.

IX. The earlier TRAI Consultation Paper dated 6th March 2009

This is however not the first time that the Regulator has initiated a consultation process like the present one. In fact the TRAI in its earlier consultation paper dated 6th March 2009 had undertaken a similar exercise and had acknowledged the traditional roles between Broadcast and Distribution Platforms. It had also raised several queries. However the said consultation proved inconclusive and no recommendations had been made in pursuance thereto. The relevant extracts are as follows:[3]

"6.1: Provisioning of new services on DTH platform

6.1.1 It has been observed that some of the DTH operators are providing services like Movie-on-Demand, Video-on-Demand, Pay-per-View, Near Video-on-Demand, etc. These services are available when any active subscriber sends a request through a SMS or a telephone call or Internet and is authorized, in turn, for viewing the requested content at predetermined time on assigned channels.

Further, some DTH service providers are offering services such as Active stories, Active Sports, Active Whizkids, Active Learning, Active Matrimony, Active games, Active Cooking, Active Astrology, ICICI Active, News active, etc.

6.1.2 Such a set of services has come under reference from the Ministry of Information and Broadcasting vide D.O. letter no. 8/5/2006-BP&L dated 02.02.2009. Therefore, recommendations or comments with respect to these kind of services have not been dealt with in previous instances.

6.1.3 As these services mentioned above are relatively new in nature, issues have been raised in the Ministry's reference with respect to such services being in consonance with the existing provisions of DTH license, Uplinking and Downlinking Guidelines, restrictions on cross holding and adherence to Program Code (PC) and Advertisement Code (AC). As such these "channels" or the services through DTH platform are not currently approved as a TV channel

[3] Consultation Paper No. 4/ 2009 DTH Issues relating to Tariff Regulation & new issues under reference

registered with the Ministry of Information and Broadcasting as per the Uplinking and Downlinking Guidelines.

6.1.4 Here, it is pertinent to mention the relevant provisions of the prevalent regulatory mechanism. As per Article 6.7 of the schedule to the DTH license agreement "no licensee shall carry or include in his DTH service any television broadcast or channel which has not been registered by the Central Government for being viewed within the territory of India."

As per Article 10 of the Schedule to the license agreement "the DTH facility shall not be used for other modes of communication, including voice, fax, data, communication, Internet etc. unless specific license for these value-added services has been obtained from the competent authority."

Article 1.4 of the DTH license agreement provides a restriction on cross holding as follows:

"The Licensee shall not allow Broadcasting companies and/or Cable Network Companies to collectively hold or own more than 20% of the total paid up equity in its company at any time during the license period."

6.1.5 In view of the above situation, the following issues are posed for comments of the various stakeholders:

(a) Whether Movie On Demand, Video On Demand, Pay per view, or other value added services, such as Active Stories, should be recognised as a broadcast TV channel?

It is well accepted that these services are of a recent origin. In principle, these types of services not only provide the choice of content according to target subscriber base but also extend the mechanism to provision of such services as and when so demanded or desired. This kind of flexibility is welcome on account of service personalisation on 24 X 7 basis with a simple approach to indicate the choice and subscribe. These also help in fully exploiting the addressability features of DTH platform.

There is one view that content provision lies in the sphere of the broadcasters. If this view is accepted, then, introduction of these services under the control and ownership of a DTH operator may appear to be in contravention of the existing DTH license provisions. However another view is that these are not conventional TV channels, and that these are value added services that utilize the interactivity features of a DTH platform. A final view would be taken depending upon the outcome of the consultation process.

(b) *In case these are termed as broadcast TV channels, then how could the apparent violation of DTH license provision (Article 6.7, Article 10 and Article 1.4), Uplinking and Downlinking guidelines be dealt with so that availability of new content to consumer does not suffer for want of supporting regulatory provisions?*

In case a view is taken that these services and channels carrying them are broadcast channels, then this content would be open for further distribution on non-exclusive basis under the 'must provide' clause of Interconnection Regulation.

Additionally, all services as channelized would need to be provided with specific permission for Uplink/ Downlink guidelines, registration of channels and, amendments to the cross ownership norms. Moreover, if such content has been developed for exclusive distribution to a known set of subscribers, such exclusivity may cease to exist under 'must provide' clause.

(c) *What should be the regulatory approach in order to introduce these services or channels while keeping the subscriber interest and suggested alterations in DTH service operations and business model?*

One approach may be that each DTH operator obtains requisite permissions to offer such services and these services are not treated as broadcasting channels but merely as value added services. Another approach could be to provide stipulated transition time to all existing DTH operators to hive-off such services into separate and independent entities treating such entities as broadcasters, which are then subject to general policy of must provide a non-

discriminatory offering of channels. Comments may be offered on any other kind of regulatory framework.

(d) *In case these are not termed as broadcast TV channels, then how could such a channel be prevented from assuming the role of a traditional TV channel? How could bypassing of regulatory provisions- Uplinking/ Downlinking, Programme Code, and Advertisement Code be prevented?*

If these services or channels are not termed as broadcast channels, then this content will have to be delivered to the specific set of subscribers only at their choice. In such a case, all subscription packages to the subscribers may need to present an option where any subscriber is free to choose the offer with or without these services. The responsibility for Programme Code and Advertisement Code may have to be cast upon the DTH operator, except where content has been certified by competent agencies such as Censor Board etc.

Suggestions may also be offered on appropriate definition of such value added services, if they have to be treated as distinct from conventional TV channels.

The number of such services may grow each day and therefore, periodic review may be required.

(e) *Whether it should be made mandatory for each case of a new Value added service to seek permission before distribution of such value added service to subscribers? Or whether automatic permission be granted for new services on the basis that the services may be asked to be discontinued if so becomes necessary in the subscribers' interest or in general public interest or upon other considerations such as security of state, public order, etc.?*

With the development of technology, many new services targeting the specific subscriber base may be offered with the preferred mode of service delivery based on a request made through SMS, e-mail, phone call, internet or even through 2-way interactivity. It may be impractical to grant permissions for

each minor addition or modification. The permissions may have to be granted in principle for the first time proposal against a set of similar services or channels and be extended universally to subsequent proposals on similar lines. Another proposal regarding automatic permission may be to allow only post-facto reporting after the commencement of service.

(f) In view of above, what amendments shall be required in the present DTH license conditions and Uplink/ Downlink guidelines?

Views may be offered regarding possible amendments required in both the scenarios, i.e., when these services are treated as normal broadcast channels, and alternatively, when they are not treated so.

(g) How could the selling of advertisement space on DTH channels or Electronic Program Guide (EPG) or with Value added Service by DTH operators be regulated so that cross-holding restrictions are not violated. In this view, a DTH operator may become a broadcaster technically once the DTH operator independently transmits advertisement content which is not provided by any broadcaster. How could the broadcaster level responsibility for adherence to Program code and Advertisement Code be shifted to a DTH operator, in case the operator executes the sale and carriage of advertisements?

In general, advertisements also denote content meant for the subscribers. Traditionally, it has been the domain of the broadcasters that supply them along with the program feed. A DTH operator only carries such content in the form of encrypted signals. The issue is linked with the first question and may be considered accordingly.

(h) Traditionally advertisements as well as program content fall in the domain of the Broadcasters. In case, DTH operator shares the right to create, sale and carry the advertisement on his platform, then the channels are necessarily distinguished on the basis of who has provided the advertisement with the same program feed. In what way any potential demand to supply clean feed without advertisement by a

DTH operator be attended to (by a broadcaster)? Should 'must provide' provision of the Interconnect Regulation be reviewed, in case supply of clean feed is considered necessary?

This is an additional issue that becomes relevant once a DTH operator is permitted to carry its own exclusive content with the locally inserted advertisement in the same feed. Another combination may also appear when content belonging to regular broadcaster channel is demanded without advertisements. In such a scenario, a possibility may arise where a DTH operator wishes to have advertisement free clean program feed from the broadcaster and delivers it finally to the subscribers with its own procured advertisements. Comments are also invited on whether such an arrangement would require review of "must provide' clause in Interconnection Regulation." (Emphasis Ours)

It is most respectfully submitted that this earlier consultation process was never brought to its logical conclusion. The TRAI had not taken a final view on the matter. The questions raised therein remained unanswered. But now the instant consultation process has come up with the same subject matter but with a different set of questions. What is of utmost concern is that there is an air of finality in TRAI's present approach. The consultation paper makes it appear that TRAI has already taken a final view in the matter. It does not even refer to the earlier consultation of 6th March 2009. We submit that unless the issues raised in the previous consultation paper are settled one way or the other with adequate reasoning, it shall not be in the fitness of things for TRAI to now consider a set of altogether new questions particularly when the subject matter remains the same.

X. A holistic and consistent Policy is needed for the Broadcast Sector;

We submit that there are several TRAI Papers that are at different stages of consideration, these are:

1. Recommendations on Monopoly/Market dominance in Cable TV Services dated 26th November 2013;
2. Consultation Paper on Issues relating to Media Ownership dated 15th Feb 2013
3. Recommendations on Issues related to New DTH Licenses dated 23rd July 2014

We therefore submit that the current consultation paper cannot be decided fairly and in accordance with Level Playing field principles unless the above issues are decided and implemented by the Ministry of Information & Broadcasting

Further the Recommendations on Monopoly/Market Dominance in Cable TV Services have clearly identified the extent of monopoly power being exercised by MSOs:

"1.8 It has been observed that the level of competition in the MSOs' business is not uniform throughout the country; certain markets like the States of Delhi, Karnataka, Rajasthan, West Bengal and Maharashtra have a large number of MSOs while other markets like the States of Tamil Nadu, Punjab, Orissa, Kerala, Uttar Pradesh and Andhra Pradesh are characterized by dominance of a single MSO. However, the same MSO is not dominant in all States."

If distribution platforms are now allowed to scope-creep into content, it would only serve to increase the monopoly power of the distribution platforms and lead to potential abuse of dominance (Emphasis supplied).

Further the TRAI has already recommended media ownership norms between distribution platforms and broadcasters in its latest recommendations on DTH Licenses as aforesaid. These recommendations also respect the underpinning principle of segregation between Broadcast Carriage and Television Content. The recommendations provide elaborate guidelines on how this existential segregation should continue. For example it mandates that while vertical integration between a Distribution Platform

and Broadcaster is permissible, yet the two have to be separate legal entities. Not more than 15 per cent of channel carrying capacity can be reserved for in house channels, et al.

We therefore submit that TRAI has clearly indicated its intent of demarcating Broadcasters and DPOs in the new licensing construct. It has also stated that it will strictly enforce the definition of 'Control'. **We therefore are of the considered view that the instant consultation paper if recommended in its present form shall unnecessarily result in the creation of a further sub-classification within the new Vertical Integration norms. It will permit a back door entry by DPO's into content play which neither the Ministry nor the Regulator will be in a position to monitor or enforce given the hurdles as identified by the Parliamentary Standing Committee as aforesaid. (Emphasis Supplied).**

Also regulations in this regard need to be certain, consistent and agnostic of any particular technology, platform or devise. As the TRAI has already framed its recommendations on licensing conditions for DTH, it should not dilute it now by coming up with an inconsistent proposition that allows licensees to undermine the recommended scheme.

XI. Response/Comments to the issues raised in the Consultation Paper.

1. Do you agree with the following definition for Platform Services (PS)? If not, please suggest an alternative definition:
"*Platform services (PS) are programs transmitted by Distribution Platform Operators (DPOs) exclusively to their own subscribers and does not include Doordarshan channels and TV channels permitted under downlinking guidelines.*"

Our Comments:

We respectfully disagree with the proposed definition. We believe at a threshold level that DPOs ought not to be allowed to transmit any programs through its platforms. **If the DPO intends to transmit any of its own content through its platform in a linear form, it should abide by the principles and regulatory construct stipulated in the "Recommendations on Issues related to New DTH Licenses dated 23rd July 2014". Accordingly a stipulated transition time should be allowed to all existing DPOs to hive-off such linear services into separate and independent entities treating such entities as broadcasters, which are then subject to the general policy of must provide and non-discriminatory offering of channels; we submit that this is in keeping with the recent recommendations as stated and also in line with one of the approaches suggested by TRAI in the earlier Consultation Paper dated 6th March 2009.[4] (Emphasis Supplied)**

However, we are not averse to DPOs offering 'On Demand Services' that are primarily based on the platform's interactivity and addressability features, subject to the following:

1. The content offered and delivered through such On Demand Services should not consist or comprise of any linear channel(s),
2. Nor should it be made inhouse by such distribution platforms ie it should be procured either from a third party source or from its vertically integrated broadcaster (as provided for in the Recommendations dated 23rd July 2014), or both. This is being suggested in view of the well settled policy of segregating content from carriage as aforesaid.
3. In cases movies are being shown 'On Demand' by such DPO then the DPO concerned should only have non-exclusive rights to such movies

[4] Consultation Paper No. 4/ 2009 DTH Issues relating to Tariff Regulation & new issues under reference, at Page 39:

"Another approach could be to provide stipulated transition time to all existing DTH operators to hive-off such services into separate and independent entities treating such entities as broadcasters, which are then subject to general policy of must provide a non-discriminatory offering of channels."

and its contracts with movie rights' owners should clearly stipulate that rights to such movies have not been granted on an exclusive basis. The reason we recommend this is - if the DPOs acquire exclusive license to movies then such movies will be viewed only by the subscriber base of that DPO on "On Demand" basis as the Paper recommends that no 'Must Provide' shall apply to Platform Services. This will not only limit the viewership of the movie but will also give content exclusivity to DPOs thereby destroying the principle of separation of content and carriage as aforesaid besides skewing the level playing fields for broadcasters in the highly competitive movie rights acquisition market. Hence it is necessary that the DPOs acquire movies on a non-exclusive basis from the movie rights' owners so that such movie rights' owners can also license such movies to other DPOs (only on On-demand basis) and broadcasters (based on the principles of freedom of contract and copyright law)

4. Further such movies should be duly certified by the Censor Board as "U" or "U/A" till the time a policy decision is taken on exhibiting adult content on television.
5. Insofar as any other On Demand content is concerned the DPO should be accountable under the existing Programing Code.
6. DPOs should not be allowed to carry advertisements in their On Demand programs/content or even otherwise till the time there are appropriate monitoring and enforcement mechanisms at the disposal of the government to ensure that DPOs comply with the Advertising Code. Today no such mechanism exists as held by the Parliamentary Committee as aforesaid.
7. Further such on demand programing other than movies should not include any content from unlicensed foreign television channels among others.
8. Such 'on demand' content should be stored for 90 days.
9. A national/state level help line/email/office address should be set up by the government to enable the viewing public to complain against such On Demand services; also DPOs should appoint internal nodal

officers who could look into viewer complaints among others. This is in keeping with the suggestions made by the Parliamentary Committee as aforesaid and also is in sync with established practices in telecom.

The TRAI may therefore formulate an appropriate definition which takes into account the above-said aspects.

The reason we propose this construct is to maintain a clear divide between 'push' and 'pull' services. While broadcasters are traditionally aligned to the 'push' models however the platforms could develop a 'pull' model to develop a separate subscription line that does not militate against the channel subscription revenues – a portion of which accrues to broadcasters.

The TRAI has already recommended media ownership norms between distribution platforms and broadcasters in its latest recommendations on DTH Licenses as aforesaid. These recommendations also respect the underpinning principle of segregation between Broadcast Carriage and Television Content. The recommendations provide elaborate guidelines on how this existential segregation should continue. For example it mandates that while vertical integration between a Distribution Platform and Broadcaster is permissible, yet the two have to be separate legal entities. Not more than 15 per cent of channel carrying capacity can be reserved for in house channels, et al.

We therefore submit that TRAI has clearly indicated its intent of demarcating Broadcasters and DPOs in the new licensing construct. It has also stated that it will strictly enforce the definition of 'Control'. We therefore are of the considered view that the instant consultation paper if recommended in its present form shall unnecessarily result in the creation of a further sub-classification within the new Vertical Integration norms. It will permit a back door entry by DPO's into content play which neither the Ministry nor the Regulator will be in a position to monitor or enforce given

the hurdles as identified by the Parliamentary Standing Committee as aforesaid.

Also regulations in this regard need to be certain, consistent and agnostic of any particular technology, platform or devise. As the TRAI has already framed its recommendations on licensing conditions for DTH, it should not dilute it now by coming up with an inconsistent proposition that allows licensees to undermine the recommended scheme.

Again it is not desirable that DPOs reserve their capacity for their own linear channels thereby depriving broadcasters of much needed platform capacity.

Also the Recommendations on Monopoly/Market Dominance in Cable TV Services have clearly identified the extent of monopoly power being exercised by MSOs:

"1.8 It has been observed that the level of competition in the MSOs' business is not uniform throughout the country; certain markets like the States of Delhi, Karnataka, Rajasthan, West Bengal and Maharashtra have a large number of MSOs while other markets like the States of Tamil Nadu, Punjab, Orissa, Kerala, Uttar Pradesh and Andhra Pradesh are characterized by dominance of a single MSO. However, the same MSO is not dominant in all States."

If distribution platforms are now allowed to scope - creep into content, it would only serve to increase the monopoly power of the distribution platforms and lead to potential abuse of dominance.

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 counseling, 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.

Our Comments:

We substantially agree but please refer to our comments in 1 supra, whereby any such content provisioning by DPOs should only be made through an "On Demand" mode/route. Further the following also should not be permitted and hence ought to be taken out from the permitted list:

"2.2.3 Coverage of local cultural events and festivals,

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."

The reason we seek these exclusions is because local cultural events and festivals might take on political colour if politicians and religious leaders attend such events. It would be very difficult to categorise which events are cultural or religious on one hand and political on the other. Further the dividing lines between sports channels and DPOs become blurred if these are permitted areas for DPOs. Also today there is nothing as 'sporting events of local nature or sports event played by district level or below teams and where no broadcasting rights are required'. Even till last year 'Kabaddi' may have been a sport that could have fitted this description but not anymore. As broadcast channels pursue more and more regional and localised content such classification cease to be of any practical meaning or significance. Today kabaddi is a sport being telecast by two major broadcast networks who have invested millions towards developing these local sports from scratch without any support from the government. Tomorrow more such local sports will be explored and developed by broadcasters for an immersive experience that will cater to not only national but also local/regional tastes and preferences. Further such micro management and analysis will be impossible for the regulator or the licensor to sustain on an ongoing basis.

In case any such DPO wishes to offer any content in linear form it should abide by the Recommendations of TRAI on DTH licensing dated 23rd July 2014 and the suggestion provided in the earlier TRAI Consultation Paper dated 6th March 2009 as proposed by us in 1 supra.

3. What should be periodicity of review to ensure that the PS is not trespassing into the domain of regular TV broadcasters?

Our Comments:

We submit that periodicity of review is only one of the many issues that inform the vast multitude of challenges of monitoring and enforcement in this country. In this connection we reiterate the findings of the parliamentary committee as already stated above:

9. The Committee's examination has further revealed that the Ministry has never bothered to monitor the implementation of the Cable Act which is the Central legislation. Not only that the Ministry never attempted to know as to how the issue of transmission of anti-national content by various service providers is being addressed internationally. Moreover, no survey has ever been made to see the impact of implementation of the Cable Television Act particularly the implementation of section 16 which provides the penalty for contravening any of the provisions of the Cable Act. The Committee deplore the way the amending legislation has been brought without knowing the ground reality……

And further……

The Committee's examination of the proposed amendments has revealed several infirmities and inconsistencies with regard to the proposed provisions as well as the enforcement mechanism……

And again….

The Secretary during the course of deliberations has acknowledged that there has been reluctance on the part of local administration to act against the cable operators. In some cases, where the local administration has acted, it has raised such a socio-political crisis in that area that post-haste this had to be really withdrawn. The Committee fail to understand as to how the amending legislation would address the issue in the aforesaid scenario and act as a deterrent when it has not been possible to take action against the cable operator although sufficient provisions exist in the Cable Act to penalize the cable operators for not adhering to the provisions made under the Cable Act which include adherence to Programme Code. Further, no action could be taken pursuant to Intelligence Bureau feedback about 25 channels, the contents of which were found as not conducive to the security environment of the country and posed a potential security hazard, although sufficient provisions are there under the extant Cable Act and Rules thereunder to take action in this regard. …….

And also….

The Ministry further opined that the purpose of the amending legislation was to actually create a deterrent kind of act. The Committee are unable to understand how the proposed provisions would act as a deterrent without being able to enforce the provisions…….

And finally…….

14. The Committee further note from the information furnished by the Ministry that initial order for constitution of State and District Level Monitoring Committees was issued on 6 September, 2005. Subsequently, detailed guidelines were issued on 19 February, 2008. The Committee are constrained to note that only 15 States and 266 Districts have so far been able to set up these Committees. With regard to the State-wise position of status of these Committees, the Committee note that in North Eastern States, Arunachal Pradesh is the only State which has set up the State Level Committee.

15. The Committee are further constrained to note that the Ministry does not maintain centralized data about the functioning of these Committees. The Committee feel that various issues confronting implementation of the provisions made in the Cable Act can be addressed by ensuring effective functioning of State and District Level Monitoring Committees. The Ministry should persuade the State Governments particularly the bordering States to set up these Committees expeditiously. Besides, the position of setting up of these Committees as well as their functioning should be constantly monitored by the Ministry.

We therefore submit that given the challenges to implementation, ground monitoring and ground enforcement it is necessary that only limited provisions be made of the nature suggested in our comments to 1 and 2 supra. As otherwise the DPOs would then completely encroach into the content space and blur the basic dividing lines between content and carriage which has all along been the basic pillar supporting this industry and enabling it to sustain and grow. There would be no mechanism whatsoever to deal with the same and that would sound the death knell to the cable and satellite broadcasting sector. In any event we propose a quarterly review to

ensure that the DPO is only provisioning On Demand Services as Platform Services and if it is providing linear channels then to ensure that it is compliant with the recommendations dated 23rd July 2014 as proposed by us in 1 supra by hiving off its linear services to a separate broadcasting entity in terms of the suggestion provided by TRAI in its earlier Consultation Paper dated 6th March 2009 as aforesaid.

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?

Our Comments:

We agree and this is also in keeping with the recent recommendations made by TRAI on DTH Licensing on 23rd July 2014, which we presume shall be the base line recommendations by TRAI for all DPOs.

5. Views, if any, on FDI limits?

Our Comments:

In case our suggestions as aforesaid are accepted, there should be no issues even if FDI is allowed to the tune of 100 percent for DPOs, given that the essential differentiation between carriage and content shall always sustain if our proposals are considered.

However if any such DPO wishes to offer any content in linear form it should abide by the Recommendations of TRAI on DTH licensing dated 23rd July 2014 and the suggestion provided in the earlier TRAI Consultation Paper dated 6th March 2009 as proposed by us in 1 supra and in which cases all the FDI stipulations pertaining to broadcasting, in so far as the resulting broadcasting entity is concerned (after the hive off as aforesaid), shall apply.

6. Should there be any minimum net-worth requirement for offering PS channels? If yes, then what should it be?

Our Comments:

In our proposed construct wherein only 'limited on demand services' are being allowed to DPOs as Platform Services without fundamentally altering the existing well settled differentiation between platforms and content providers, there is no requirement to prescribe any minimum networth requirement for offering such services.

However if any such DPO wishes to offer any content in linear form it should abide by the Recommendations of TRAI on DTH licensing dated 23rd July 2014 and the suggestion provided in the earlier TRAI Consultation Paper dated 6th March 2009 as proposed by us in 1 supra and in which cases all the networth stipulations pertaining to broadcasting, in so far as the resulting broadcasting entity is concerned (after the hive off as aforesaid), shall apply.

7. Do you agree that PS channels should also be subjected to same security clearances/ conditions, as applicable for private satellite TV channels?

Our Comments:

So long as such platform services are confined to On Demand Services, they need not be subjected to the same conditions as applicable for TV channels.

However if any such DPO wishes to offer any content in linear form it should abide by the principles and regulatory construct of Recommendations of TRAI on DTH licensing dated 23rd July 2014 and the suggestion provided in the earlier TRAI Consultation Paper dated 6th March 2009 as proposed by us in 1 supra and in which cases all the security related stipulations pertaining to broadcasting of private satellite TV channels shall apply in so far as the resulting broadcasting entity is concerned after the hive off as aforesaid.

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?

Our Comments:

As long as such platform services are confined to On Demand Services, they need not be subjected to any period of validity of registration or any annual fee.

However if any such DPO wishes to offer any content in linear form it should abide by the principles and regulatory construct of Recommendations of TRAI on DTH licensing dated 23rd July 2014 and the suggestion provided in the earlier TRAI Consultation Paper dated 6th March 2009 as proposed by us in 1 supra and in which cases all the conditions applicable to broadcasting of private satellite TV channels including those pertaining or relating to valid registration period and annual fee per channel shall apply in so far as the resulting broadcasting entity is concerned after the hive off as aforesaid.

9. What is your proposal for renewal of permission?

Our Comments:

If platform services are only rendering On Demand Services, they need not be subjected to any separate renewal.

However if any such DPO wishes to offer any content in linear form it should abide by the principles and regulatory construct of Recommendations of TRAI on DTH licensing dated 23rd July 2014 and the suggestion provided in the earlier TRAI Consultation Paper dated 6th March 2009 as proposed by us in 1 supra and in which cases all the conditions applicable to broadcasting of private satellite TV channels including those pertaining or relating to channel permission renewals shall apply in so far as the resulting broadcasting entity is concerned after the hive off as aforesaid.

10. Should there be any limits in terms of geographical area for PS channels? If yes what should be these limits.

Our Comments:

The licensed area of operation of the DPO should be the limits in terms of geographical area for the PS channels if only "On Demand" services are being provisioned.

However if any such DPO wishes to offer any content in linear form it should abide by the principles and regulatory construct of Recommendations of TRAI on DTH licensing dated 23rd July 2014 and the suggestion provided in the earlier TRAI Consultation Paper dated 6th March 2009 as proposed by us in 1 supra and in which cases all the conditions applicable to broadcasting of private satellite TV channels shall apply in so far as the resulting broadcasting entity is concerned after the hive off as aforesaid and accordingly the geographical area shall be Pan – India.

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?

Our Comments

If the DPO offers only 'On Demand Services' as its platform services ("PS") then there is no need to limit the number of such channels.

However if any such DPO wishes to offer any content in linear form it should abide by the principles and regulatory construct of Recommendations of TRAI on DTH licensing dated 23rd July 2014 and the suggestion provided in the earlier TRAI Consultation Paper dated 6th March 2009 as proposed by us in 1 supra and in which cases all the conditions applicable to broadcasting of private satellite TV channels shall apply in so far as the resulting broadcasting entity is concerned after the hive off as aforesaid and only 15 percent of its capacity should be made available to house its own vertically integrated channels.

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;

Our Comments:

Given our position that On Demand Services require no registration, no question therefore arises on transferability or non transferability of any registration.

However if we mean linear channels as platform services, the DPO should abide by the principles and regulatory construct of Recommendations of TRAI on DTH licensing dated 23rd July 2014 and the suggestion provided in the earlier TRAI Consultation Paper dated 6th March 2009 as proposed by us in 1 supra and in which cases all the conditions applicable to broadcasting of private satellite TV channels shall apply in so far as the resulting broadcasting entity is concerned after the hive off as aforesaid including but not limited to non-transferability of registration.

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

Our Comments:

If we construe On Demand Services as Platform Services there may be syndicated deals between Platforms that would fall outside the mandate of the Regulations. However this could be permitted so long as the content is shown on demand.

However if we mean linear channels as platform services, the DPO should abide by the principles and regulatory construct of Recommendations of TRAI on DTH licensing dated 23rd July 2014 and the suggestion provided in the earlier TRAI Consultation Paper dated 6th March 2009 as proposed by us in 1 supra and in which cases all the conditions applicable to broadcasting of private satellite TV channels shall apply in so far as the resulting broadcasting entity is concerned after the hive off as aforesaid including but not limited to Must Provide.

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

Our Comments

DPOs should be prohibited from carrying their own advertisements in their On Demand Services or even otherwise till there are appropriate mechanisms available to the government for monitoring and enforcement as pointed out by the Parliamentary Committee as aforesaid.

If however the DPO proposes to provision linear channels, the DPO should abide by the principles and regulatory construct of Recommendations of TRAI on DTH licensing dated 23rd July 2014 and the suggestion provided in the earlier TRAI Consultation Paper dated 6th March 2009 as proposed by us in 1 supra and in which cases all the conditions applicable to broadcasting of private satellite TV channels shall apply in so far as the resulting broadcasting entity is concerned after the hive off as aforesaid including but not limited to compliance with program and advertisement codes as well as all applicable TRAI regulations.

Also the TRAI as far back as in 2009 recognised that advertisement was the traditional revenue line for broadcasters:

"In general, advertisements also denote content meant for the subscribers. Traditionally, it has been the domain of the broadcasters that supply them along with the program feed. A DTH operator only carries such content in the form of encrypted signals. The issue is linked with the first question and may be considered accordingly.

h) Traditionally advertisements as well as program content fall in the domain of the Broadcasters……"[5]

[5] Pages 41-42, Consultation Paper No. 4/ 2009 DTH Issues relating to Tariff Regulation & new issues under reference

13. What other obligations/ restrictions need to be imposed on DPOs for offering PS?

Our Comments:

No further restrictions are needed.

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?

Our Comments:

Yes FM channels should be allowed to be retransmitted by the DPOs under a suitable arrangement, this would augur well for consumer welfare as people hailing from specific States shall gain access to their favourite FM stations in their own language even though they may not be residing at their home state. For example a Tamilian in Delhi may gain access to his favourite Tamil FM channels through a DPO in Delhi which FM channels is otherwise altogether lost to him as he is not residing in his home state of Tamil Nadu. Suitable alterations can be made to the FM licensing conditions in order to enable this. No further restrictions are needed in this sphere excepting suitable enabling provisions in the DPO licenses.

15. Please suggest the mechanism for monitoring of PS channel.

Our Comments:

The Parliamentary Committee sheds sufficient insights on what needs to be done specifically on the monitoring front:

14. The Committee further note from the information furnished by the Ministry that initial order for constitution of State and District Level Monitoring Committees was issued on 6 September, 2005. Subsequently, detailed guidelines were issued on 19 February, 2008. The Committee are constrained to note that only 15 States and 266 Districts have so far been able to set up these Committees. With regard to the State-wise position of status of these

Committees, the Committee note that in North Eastern States, Arunachal Pradesh is the only State which has set up the State Level Committee.

15. The Committee are further constrained to note that the Ministry does not maintain centralized data about the functioning of these Committees. The Committee feel that various issues confronting implementation of the provisions made in the Cable Act can be addressed by ensuring effective functioning of State and District Level Monitoring Committees. The Ministry should persuade the State Governments particularly the bordering States to set up these Committees expeditiously. Besides, the position of setting up of these Committees as well as their functioning should be constantly monitored by the Ministry.

The DPO should be mandated to keep a record of programs for a period of 90 days and produce the same before any agency of the Government as and when required for monitoring of content on PS channel on day to day or quarterly basis.

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.

Our Comments:

We submit that, given the relative ease in detection of defaults that are committed by broadcasters as compared to that of DPOs, the penal provisions imposed on Platform Services should be atleast twice than what is imposed on TV broadcasters. It is all the more necessary that penal provisions for DPOs are far more prohibitive in order to ensure a greater degree of compliance by DPOs as possibility of detection of violations committed by DPOs is remote. Timely detection of violations perpetrated by DPOs requires a much wider infrastructure and more efficient logistics than what is required for broadcasters. This greater requirement for infrastructure and logistics could be financed and met through the

increased penalties levied on DPOs (as compared to broadcasters) for any violations committed by them.

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?

Our Comments

None

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?

Our Comments:

In case such PS only comprises of On Demand Services there should not be any requirement for registration, however in case the PS has linear channels to offer then, as stated in the Consultation Paper No. 4/ 2009 ie DTH Issues relating to Tariff Regulation & new issues under reference[6]:

"Another approach could be to provide stipulated transition time to all existing DTH operators to hive-off such services into separate and independent entities treating such entities as broadcasters, which are then subject to general policy of must provide a non-discriminatory offering of channels."

This would also be in sync with the principles and regulatory construct of recently issued recommendations on DTH licensing dated 23rd July 2014 wherein vertically integrated entities have been asked to main separate legal entities for broadcasting on the one hand and distribution on the other.

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.

Our Comments:

[6] At page 39 of the said Consultation Paper dated 6th March 2009.

None