



BY HAND/ELECTRONIC MAIL
ABP
NEWS NETWORK

04 October, 2019

To,

Advisor (B&CS)

Telecom Regulatory Authority of India,
Mahanagar Doorsanchar Bhawan,
Jawahar Lal Nehru Marg,
Old Minto Road,
New Delhi – 110 002

Dear Sir,

Re: Submissions to Telecom Regulatory Authority of India (“TRAI”) in response to the Consultation Paper on Platform Services offered by DTH Operators

At the outset, we would like to thank the Authority for giving us an opportunity to tender our comments on the “**Consultation Paper on Platform Services offered by DTH Operators**”.

In this regard, we at ABP News Network Private Limited submit that we have perused the said Consultation paper carefully. We hereby submit our comments attached as Annexure. The said comments are submitted without prejudice to our rights and contentions, including but not limited to our right to appeal and/ or any such legal recourse or remedy available under the law at the appropriate stage.

The same are for your kind perusal and consideration.

Yours Sincerely,

For ABP News Network Private Ltd.


Kishan Singh Rawat



AVP – Administration and Regulatory Affairs

Encl: As above



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Submissions by ABP News Network Private Limited (“ANN”) to the Telecom Regulatory Authority of India (“TRAI/Regulator/Authority”) in response to the Consultation Paper on Platform Services offered by DTH Operators dated _____

INTRODUCTION & CRUX OF OUR SUBMISSIONS

At the outset, ANN would like to state that TRAI’s decision to examine the **Platform Services offered by DTH Operators** is a welcome one. On a reading of the consultation paper, ***it appears the legality and permissibility of such platform services are not getting examined and the present attempt is only to have some controls and regulated approach in respect to Platform Services offered by DTH Operators.*** It would have been more appropriate that the same also gets examined especially keeping in mind the fact that the linear television are already suffering heavy competition from OTT services, which have almost become ***substitutable or marching towards attaining the same.*** The entire approach should be to determine as to whether Platform services (also referred as “PS” at some places in the present response) are substituting the Linear Televisions Channel which require ***Permissions, payment of fee, compliance to various requirements.*** It also needs to be appreciated that the platform services are also offered by ***MSO’s and cable operators*** and thus they should also be examined and brought into the ambit of the present consultations rather than confining the same to DTH operators in order to address and have ***Level Playing Fields between all forms of Distribution.***

Thus, it would have been more apt for the Regulator to have fully re-examined the very permissibility and legality of such services especially ***keeping in mind the promulgation, effectuating and implementing of New Tariff Order (NTO) and New Regulation wherein customer choice has been given the paramount importance.*** It has to be necessarily assured and ensured that the choice which is made by the consumers is amongst the channels with valid uplinking and downlinking permissions and no channels in the form of Platform Services are allowed in any manner without having the need to comply the rigours and cost of obtaining such permissions. Further, merely making them only to comply with certain provisions of such requirements would not create the right balance between the Platform Services and the Linear TV channels. In fact, if such permissions is to be granted then applying the principle of equality amongst equals, similar approach needs to be reciprocally adopted for linear channels to directly approach the consumers.

Thus, our first and foremost proposition and humble request to regulator is to ***re-visit the earlier recommendations and to test the very legality and permissibility of the Platform Services.*** In fact, it is our submission that so far as News Channel are concerned, the Regulator needs to ***re-visit its 2014 Recommendations wherein Platform Services were permitted to broadcast information about local events and other local affairs sourced locally and not obtained from News Agency or from Broadcast News Channel.***

It needs to be appreciated that the ***News channel are performing the constitutional objectives*** by:-

- a) ensuring that it is in full compliance to both law and journalism ethics;



- b) Being under an obligation to ensure that that the truth should reach the people of country;
- c) Acting as public trustees and report fairly with integrity and independence;
- d) Educating people on happenings of country and help people of country to understand and form their conclusions;
- e) Being in relentless pursuit of performing duties and obligations under the Constitution of India under “free press and free media and information to our viewers”.

If any form of News whether local or otherwise is recommended to be permitted to be done through Platform Services then the very objective of ensuring and achieving the constitutional objectives of free speech with reasonable restriction gets defeated.

The Regulator in the present Consultation and in some paras have referred to its earlier recommendations wherein Platform service channels were not considered equivalent or substitutable to normal Broadcast channels. Like in para 2.13 the reason and rationale of “**limited clientele**” prevailed in concluding that one time registration fee of nominal Rs.1,000/- would be sufficient and no requirement of paying Rs.5,00,000/- per channel per annum for downlinking of channels. This was despite the MIB suggesting on whether the registration fee can be considered as Rs.1,00,000/- as against Rs.1000/- proposed by the authority.

It is our submission that the terms “**limited clientele**” **would now be a misnomer** in the changed market scenario and especially keeping in mind a substantial consolidation which has happened over last 3 to 4 years and also keeping in mind the changed scenario under the New Tariff Order and New Regulations. **Thus, the entire permissibility of Platform Services without having a reciprocal compliance requirement right from the point of seeking permissions to payment of fee / recurring fee to compliance of terms and conditions needs to be re-examined.**

It is also further important to note that the Regulator apparently only referred to as Platform Services (PS) offered by DTH operator and which was found to be fewer in number up to the maximum of 40 - 42. **The statistics has not taken into account the number of Platform services offered by MSO's / DPO's which runs into 100's.** It needs to be kept in mind that the capacity constraints has been a major challenge and this **self-created / inbuilt capacity constraints** by enlarging the number of Platform Services cannot be permitted and the principles of “**must carry**” **cannot be defeated** on these grounds. Without prejudice to our main contentions, if at all PS needs to be permitted then the same can only find place post accommodating all Broadcasters channel carriage request. Needless to state and we reiterate that any existence of such Platform service can only be by duly complying to all the requirements imposed upon Linear Broadcast Channels including **permissions / payment of fee / recurring fee / compliance of terms and conditions etc.**

It is also to be kept in mind that such PS being permitted for News Channels is a **fertile ground for propagating paid / false / fake news**. It can also be a medium used by anti-socials, criminals and terrorist to spread illegal, infringing, misleading and may also be used as a tool to promote violence



and create unrest. Thus, the permissibility without any accountability of such PS needs to be addressed before posing the questions in the present Consultation Paper.

OUR RESPONSE

Coming back to the scope of present consultation paper and without prejudice to our right and contentions submitted herein before, we submit as under:

BACKGROUND

The existing estimated list of DTH Subscribers in India throws light on how much of the Broadcasting Sector including consumers are dependent upon DTH Services in the country. Even after subtracting the subscribers of Independent TV the license for which stands suspended as on date.

S. No.	Service Provider	Subscribers March 2019
1	Airtel digital TV	44.9 million
2	DD Free Dish	35.0 million
3	Tata Sky	18.11 million
4	Sun Direct	8.69 million

Reports also show that the DTH sector had added 3.92 million subscribers in financial year 2018 and has displayed an even more significant growth in financial year 2019 with the addition of 4.91 million active subscribers between 1 April 2018 and 31 March 2019.¹ As per its own admission, DTH Executives in public statements have stated that the new Regulatory Regime by TRAI has in fact, given DTH operators more benefit and consumers better value for money.

At present, the content on Television is broadly classified as follows:

1. Non-news and Current affairs (entertainment);
2. News and Current affairs.

The content or programs broadcasted have to comply to a "Program Code" and the "Advertising Code". Program Code prohibits airing any content that may not be suitable for public viewing and / or which may be otherwise prohibited under the Cinematograph Act, 1952. The Advertising Code, on the other hand, regulates the content that can be advertised and prohibits advertising of those content that is in violation of public morality and decency and any other content that can create social disharmony etc.

The News and the Current Affairs TV channels in India are regulated by a self-regulatory body known as the News Broadcasters Association (NBA). It is imperative to note that News Channels work very hard; pay hefty sums of money right from acquiring channel licenses from Ministry of Information and broadcasting (MIB), Wireless Planning & Coordination (WPC) Wing, NOCC, getting Satellite

¹ <https://www.livemint.com/industry/media/paid-dth-subscribers-grow-by-4-91-million-in-fy-2019-in-india-1562851138795.html>



rights etc. and also adhere to strict norms of reporting and journalism in order to obtain and maintain the license to operate a News and Current Affairs Channel.

Thus, it is imperative that the Authorities do not allow any Distribution Platform Operator including the DTH Operator to create any content which is not regulated and also not adhered to the licensing conditions.. As already submitted herein before, we should not in any way allow the Platform services to telecast the news and current affairs content as the News Broadcaster have to ensure that it is in full compliance to both law and journalism ethics. The present consultation paper rightly states that unlike private satellite TV channels, which are permitted and regulated under the Uplinking/ Downlinking Guidelines of MIB, Platform services (PS) is not subject to any specific regulations or guidelines as of now. The present and acutely broad understanding of Platform Services is that all these platform specific services being offered by DPOs but not obtained from broadcasters have been referred to as Platform Services (PS). This makes such PS's an additional source of revenue to the kitty of DTH Operators and for the MSO's. The same in light of the above said burgeoning growth of the DTH Sector and the increased powers of Distributors under the New Regime calls for complete regulation so that other stakeholders (who are subjected to severe rigours of Regulations, compliances and fees) are offered a fair chance to grow.

It is pertinent to mention here that it would not be in the best interest if broadcasting activities are permitted for such Platform owners, particularly in view of the fact that the broadcasting activities to be undertaken by such bodies would start getting dictated and determined by controlling entities who would be furthering their own objectives. There is also a strong potential of vertical integration and impact to competition or in other words a market having Appreciable and Adverse Effect and Impact on Competition. Further, Opening up the broadcasting sector to Platform Operators will give rise to vertical integration and there will be blackouts of popular pay channels just because they are not vertically integrated to the Distribution Platforms.

It will not be in the interest of the broadcasting sector and in the interest of the public at large to permit the Platform Operators to enter into broadcasting activities as some of the State Governments will also indirectly try to enter into this business via the Platform Operators.

It is important to note that in no way the News can be done by way of Platform service as the News is characterised by different factors. In this regard reference is made to the Supreme Court Judgment:

Hon'ble Supreme Court Judgment on airwaves:

The following observations of the Hon'ble Supreme Court in its judgment in the case of *Union of India v. Cricket Association of Bengal* dated 9.2.1995 (AIR 1995 (SC) 1236:1995 (2) SCC 161) are relevant herein:

(a) "Broadcasting media should be under the control of the public as distinct from Government. This is the command implicit in Article 19(1) (a). It should be operated by a public statutory corporation or corporations, as the case may be, whose constitution and composition must be such as to ensure its/their impartiality in political, economic and social matters and on all other public issues."(Justice Jeevan Reddy) (para 201)



(b) "Government control in effect means the control of the political party or parties in power for the time being. Such control is bound to colour and in some cases, may even distort the news, views and opinions expressed through the media. It is not conducive to free expression of contending view points and opinions which is essential for the growth of a healthy democracy". (Justice Jeevan Reddy) (para 199)

- Having regard to the aforesaid observations, it is submitted that in order to ensure impartiality in political, economic and social matters and in other public issues. It is imperative not to create any opportunity for any political control directly or indirectly of broadcasting activities by permitting Platform Services.
- Broadcast media is a powerful tool to formulate public opinion, by virtue of its enormous reach and impact. By allowing Platform Services to enter into broadcasting activities will expose the citizens of India to the unbridled risk of distortion and tampering of news and public opinion by such entities. This dangerous tendency, therefore, must be avoided at any cost to preserve India's democratic institutions and culture.
- It is submitted that the entry of the Platform Services into the broadcasting sector will also have to be carefully tested against the touchstone of India's Competition Laws. It is quite logical to suggest that owing to the enormous clout and power of these local entities, there is a real risk that their entry into this sector will pose serious issues of creating "State Monopolies" and distort and obstruct competition.
- It is submitted that in such an unlikely scenario where Platform Services are permitted, it will be impossible to enumerate and enforce any safeguards to ensure bonafide usage of the broadcasting permission. The safeguards, if any, will be merely on paper and would be difficult to be enforced and implemented.

Response to Questions

At the outset, we reiterate and rely upon the submissions made herein above, however without prejudice to the same, we answer to the questions raised in the present Consultation Paper as under:

Q 1: Do you think programmes of the PS should be exclusively available on one single DTH operators' network only to qualify as a PS channel for the DPO? Should there be any sharing of such programmes with other DPOs? If yes, please provide justification and if no, the reasons thereof.

In view of the concerns raised by MIB in the past, if the programme is exclusive to one DTH operator, it should not be available to any other DTH operator; otherwise it would become another broadcaster channel and loose the tag of PS. ANN shares similar concern as that shared by MIB as an ordinary Broadcaster has to firstly comply with MIB's Uplinking Downlinking Guidelines, follow the advertising and programming code and also go through the rigours to generate demand for itself in order to find a LCN spot in an Operator's Network after incurring huge cost on regulatory levies, distribution cost, content cost. On the other hand PS's are entitled to be part of any Operator's



Network just because they are owned by the Operator. In such a situation, it would be unfair to treat the two unequal's as equals and allow the Operator to place its PS's on other Distributor networks. Further, Authorities should not allow Platform Services to display News and Current Affairs content. Thus, there should be no sharing of such programmes with other Distributors.

Currently the programming services provided by Platform Operators like DTH, IPTV and MSOs are what can be called "value added services" in the form of PPV, SVOD, AVOD, etc. These are usually provided on a standalone basis. However of late there is a trend of these Platform Operators entering into arrangements with third parties and providing country wide programming with an EPG to their subscribers, including subscribers of their affiliate networks. The manner and the technology with which such programs are offered often blurs the distinction between the channels that these operators carry and the programming services they offer. In short free of any regulation or oversight these operators can provide any form of programming to thousands of their subscribers whether on their own localized network or the network of their affiliates spread out all over the country.

Hence it is important to make a distinction between programs offered by Broadcasters i.e. channels which have been licensed under the Uplinking and Downlinking Guidelines of the Ministry of Information and Broadcasting and programmes offered by individual Platform Operators to their subscribers on a standalone basis. The differentiator here ought not to be whether these programs are offered by a broadcaster or a Platform Operator but on the spread and pervasiveness of the content that is being offered. A DTH operator can offer these kind of services to the entire area covered by his satellite footprint which could be the entire country. And if he can do this without any regulatory intervention, the question that arises is why should broadcasters face the kind of scrutiny if they currently have to undergo to provide similar services?

Apart, from the above the same can also have serious and wide spread impact on quality Journalism since the core values followed and implemented by a news organization may not be present at all and these services provided by way of PS would be bereft of any research, deep rooted analysis.

Q 2: In case answer to Question 1 is no, how it can be ensured that programmes of the PS are exclusively available only on single DTH operators' network? What conditions are to be imposed in registration/license/guidelines?

As deliberated by MIB and TRAI in the present consultation, the onus is on the DTH operator to ensure that the same program should not be shared with other DTH operators so as to maintain the exclusivity.

Q 3 : Is there a need to revisit/review the earlier recommendations of the Authority dated 11th November, 2014, relating to keeping recording of all PS channel programs for a period of 90 days and maintaining a written log/ register of such program for a period of 1 year by the DPO from the date of broadcast and the role of Authorised Officer and the State/ District Monitoring Committee and MIB as monitoring authorities.



In response to this question, the submissions made herein above are reiterated and relied upon. Since PS is equivalent to substitute Linear TV, all safeguards, fees and compliances need to be in place. It is also important to ensure that such PS's do not violate any of the rules under Cable Television Networks Act, ___ more specifically the Advertising and Programming Code in the interest of safe content flowing through to the Television sets of consumers. The recommendations of the Authority dated 11th November 2014 alongwith usual safeguard measures such as quick action on consumer complaints / grievances regarding the content of PS's must be in place in order to monitor the same. Further, the entire permissibility needs to be looked at from a fresh lens and perspective.

Q 4: What should be the Registration fee/Annual fee for PS per channel? And how it is to be estimated?

In response to this question, the submissions made herein above are reiterated and relied upon. The DTH operator should be made to pay a similar annual/ registration fee as paid by a broadcaster for acquiring a channel licence. As detailed in the introductory paragraph above, DTH operator has a vast subscriber reach which therefore leads to a larger eye balls which further leads to larger revenue over and above the subscription fee for the said Distributors channel. With introductory and liberty given to a distributor to enter the domain of a broadcaster, it would be unfair and unjust if the DTH operators are not made to follow the same guidelines as imposed over a broadcaster.. It is also pertinent to note that due to bundling of various MSO's to one entity, the concept of limited or lesser eye ball is not applicable.

Q 5: How many PS channels are to be allowed to DTH operators? and Why?

In response to this question, the submissions made herein above are reiterated and relied upon. It is a known fact that there exists a channel capacity constraint in DTH sector as it is limited by the transponder capacity. Moreover, in consonance with clause 4 (7) of the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017, dated 3rd March 2017, **depending upon the availability of spare channel capacity**, Distributor has to 'must carry' the channel of a broadcaster. In a situation where the Distributor has no limitations to its own PS Channels, the Broadcasters of Channels will be left high and dry as they will be unable to find a spot in the Network of the Operator who will cite "capacity constraints". It is also a known fact that in case the PS are allowed, same will lead to biasness of the DTH and MSO as they will prefer their PS over the Broadcaster's Channel.

Q 6: Whether PS channels should be placed separately on EPG to distinguish them from regular TV channels ? If yes, how these channels are to be placed?

In response to this question, the submissions made herein above are reiterated and relied upon.

Q 7: Should there be any provision for displaying name and sequence number of PS channels in a particular font size under the heading 'PS' or 'Value Added Services' on TV screen so as to distinguish them from the regular TV channels ? If yes, please provide justification.

In response to this question, the submissions made herein above are reiterated and relied upon.



Q 8: Should PS channels be also categorised in specific genre such as 'Devotional' or 'General Entertainment' or 'Infotainment' or 'Kids' or 'Movies' or 'Music' or 'News and Current Affairs' or 'Sports' or 'Miscellaneous'? Please provide proper justification for your answer.

Since the provisions already exists in the Quality of Service Regulations dated 3rd March, 2017 regarding activation/deactivation of TV channels, hence that the same regulations can be applied to PS channels. However it is pertinent for the reasons stated above that 'News and Current Affairs' should not be permitted as 'PS' or 'Value Added Services'.

Q 9: Stakeholders may also provide their comments on any other issue relevant to the present consultation.

It is pertinent to mention that there have been cases wherein while packaging channels in initial Network Capacity and Distributor's Bouquet, Distributors owing their own channels give precedence to their own channels and legitimately declare an artificial scarcity in channel capacity for channels for the Broadcaster. This provides arbitrary powers to Distributors in making bouquets under the present framework making it a win-win situation for Distributors and its favoured channels and a situation where the Broadcaster's in-demand channels may never even see the light of a Television Set thereby affecting consumer choice. Such actions of the Distributor need to be addressed by the Authority which is in direct contravention to free and fair markets.

