

10<sup>th</sup> July, 2014

Telecom Regulatory Authority of India  
Mahanagar Door Sanchar Bhawan  
Jawahar Lal Nehru Marg  
(Old Minto Road)  
New Delhi – 110002

**Subject:** Response to the Consultation Paper No. 07/2014 on the Regulatory Framework for Platform Services

**Kind Attn:** Mr. Agneshwar Sen, Advisor (B&CS)

Dear Sir,

We thank the TRAI for this opportunity to express our views on the above captioned consultation paper and the same are as follows.

At the outset, we would like to refer to the letter dated 17<sup>th</sup> January, 2013 of the Ministry of Information and Broadcasting ('MIB') based on which the present consultation paper has been initiated. A bare perusal of the said letter clearly indicates that the reference made by the MIB is in relation to the transmission of local channels or ground based channels by Cable operators / MSOs only and there is no reference of DTH platforms in the said letter. Accordingly, it is clear that the Licensor of the DTH platform does not feel that any regulation is required for the services being provided by the DTH operators since the same are in line with the terms and conditions laid down under the DTH License. The intent of the MIB is to regulate the Platform Services ('PS') being offered by the Cable operators/ MSOs which are branded marketed and provided in a manner similar to permitted broadcaster channels and which are either in violation of Intellectual Property Rights of a third party or any applicable law of territory. It is an admitted fact that no such violation takes place in case of a DTH platform based on which the MIB required the TRAI to provide its recommendation on the PS of Cable operators/ MSOs. The TRAI has accordingly erred in placing the PS of DTH operators akin to PS of Cable operators / MSOs.

Our response to the consultation paper is without prejudice to our rights and contentions that the PS provided by Cable operators / MSOs cannot be compared with the PS provided by the DTH operators for the following reasons:

- 'Ground based, local channels' are channels over which the subscriber has no control over, are non-interactive, and as also specified in the MIB's letter, are apparently being shared inter and intra state between MSOs and are basically operating as State/Regional/National channels like permitted private satellite TV channels without getting any permission.
- On the other hand, PS offered on DTH platforms are services which subscribers can control and are interactive in nature. Unlike 'ground based, local channels', because DPOs are functioning on different combinations of operating standards and core technology, such interactive services cannot be shared with other platforms.

Further, even the MIB does not require the TRAI to conduct any consultation process for in respect of PS offered by the DTH operators.

In addition to our submissions below, we would like to state that MSOs have been granted the right to transmit 'ground based, local channels' under the under the Cable Television Network (Regulation) Act, 1995. In view of Government's current digitization drive, the TRAI should now ensure parity between

*Handwritten notes:*  
10/7/14  
DA (SS)  
John  
Pl. complete 11/7  
SP (Yogesh)  
RA (Shreyas)  
9/15/14

Advisor (B&CS-III)  
Dy. No. 20  
Date 9.7.14

DTH Association

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DPOs by permitting DTH platforms to also transmit such 'ground based, local channels' as a regulated service similar to the requirements required by broadcasters.

1. Do you agree with the definition for platform services proposed in paragraph 1.6? If not, please suggest an alternative definition. Please elaborate your response with full justification.

Response:

The definition of and approach to PS provided in the consultation paper needs to adequately cover the 2 types of services being offered by the DPOs. Further, the meaning of the word 'Program' in the definition needs to be clarified.

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.

Response:

A negative list of content which the PS should not include, such as pornographic channels, secret/anti national message, any content which hurts religious sentiments, content which violates the Program Code and Advertising Codes, may be provided instead of a list of permitted content, to ensure active innovation in interactive services to ensure additional choice and variety to subscribers. In this regard, it is also important to note that the DPO should be required to have the permission from the owner of a movie before making the same available on its platform. It is common knowledge that movie piracy takes place on the Cable platform and the present consultation papers aims to establish a framework under which the Cable platforms are not permitted to violate any third party rights.

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

**Response:**

Based on the MIB's letter the TRAI needs to establish a frame work through which it is able to review the PS provided by the Cable operators /MSOs who have in the past been showing movies and news items which were outside legal purview. Cable operators /MSOs providing such PS should be required to submit the information in relation to the PS provided by them in the previous 6 months which should be followed up by a review every 6 months.

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?**

**Response:**

Yes, it should be made mandatory for all DPOs to be registered as Companies under the Companies Act to be allowed to operate PS.

5. **Views, if any, on FDI limits?**

**Response:**

There is no need to provide for any FDI Limits in respect of the PS. It is a matter of record that the PS are not distinct from the platform providing the service. Moreover, the PS on DTH platforms are limited to the subscribers of the particular platform. Further, the Government of India has already prescribed the FDI limit for each platform and accordingly, there is no need to provide any FDI limit for the PS.

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

**Response:**

There is no need to prescribe any net worth requirement for offering PS. As stated above, since the PS are not distinct from the platform providing the service, there is no need for prescribing any net worth requirement in respect of the PS.

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

**Response:**

There is no need for security clearances / conditions for the PS on DTH platforms as the same are distinct from private satellite TV channels.

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?**

**Response:**

The validity of the registration of the PS for DTH operators should be linked with the validity of the DTH License. There should not be any fee imposed on the DTH operators in respect of the PS. Among all the DPOs, only the DTH operators are required to pay entry fee, license fee and also furnish a bank guarantee. Thus, there should not be any requirement of any additional payment by the DTH operators on account of PS. The requirement for payment of annual fee can be imposed on the Cable operators/ MSOs which are not required to pay any kind of entry or license fee to the government.

9. What is your proposal for renewal of permission?

Response:

There is no need for a separate renewal process for PS on DTH platforms and the same should also be linked with the period for which the DTH License is valid.

10. Should there be any limits in terms of geographical area for PS channels? If yes what should be these limits. Please elaborate your response with justifications.

Response:

The geographical area for PS should be linked with the License available with the DPO. The DTH has country wide license and accordingly, the DTH operators should be permitted to have the PS for the entire country.

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?

Response:

There should not be any limit on the number of PS operated by a DPO. It is stated that since a platform launches a PS keeping in mind the requirements of the subscribers, there is no rationale for fixing any limit on the number of PS. Such a decision is a commercial decision which should be left upon the DPO.

12. Do you have any comments on the following obligations/ restrictions on DPOs:

- 12.1. Non-transferability of registration for PS without prior approval of MIB,
- 12.2. Prohibition from interconnecting with other distribution networks for re-transmission of PS i.e. cannot share or allow the re-transmission of the PS channel to another DPO
- 12.3. Compliance with the Programme & Advertisement Code and TRAI's Regulations pertaining to QOS and complaint redressal.

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

Response:

The most important requirement under the provisioning of PS should be the requirement to comply with all applicable laws including the Programme and Advertisement Code.

The DTH License condition imposes an obligation on the DTH operator to:

- comply with all applicable laws including the Programme and Advertisement Code; and
- that recordings of services need to be maintained for a period of 90 days from the date the same have been provided and producing it to the Licensor or its authorised representative

It should be noted that, content for PS on DTH platforms is mainly provided by broadcasters, music companies, third party developers etc. which already adhere to clearance processes for the same such as the Central Board for Film Certification (CBFC) and is also subject to laws such as the Indian Copyright Act, 1957, Indian Contract Act, 1872, Uplinking and Downlinking Guidelines and the Cable Television Network (Regulation) Act, 1995, Indian Penal Code, 1860 Program Code.

**RECOMMENDATION**

In light of the above, we urge the TRAI to:

- Recognize that there exist 2 distinct types of PS, as also highlighted in paragraph 1.5 of the consultation paper itself;



- Recommend registration for 'ground based, local channels' based on the concerns of the MIB and in view of the Government's digitization drive, ensure parity between DPOs by permitting DTH platforms to also carry 'ground based, local channels'; and
- Recognize that PS on DTH platforms which are basically interactive services do not require registration and are covered by the various Code/Standards guidelines/restrictions prescribed by MIB, Government of India.

Thanking you,

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Harit Nagpal', written over a horizontal line.

**Harit Nagpal**  
President