

**April 03, 2023**

To,  
**Shri Sanjeev Kumar Sharma,**  
Advisor (Broadband and Policy Analysis),  
Telecom Regulatory Authority of India.

**Subject:** Comments on behalf of GTPL Hathway Limited (“**GTPL**”) on the Consultation Paper on “*Regulating Converged Digital Technologies and Services: Enabling Convergence of Carriage of Broadcasting and Telecommunication Services*” dated 30.01.2023 (“**CP**”).

Dear Sir,

We would like to thank the Authority for providing us with the opportunity to share our comments on the CP.

At the outset, we would like to put on record our sincere appreciation and gratitude for all the endeavors and measures that the Hon’ble Telecom Regulatory Authority of India (TRAI) has been putting forth in the recent past to improve the functioning of the broadcasting and telecommunication sector by periodically introducing diverse regulations and processes with deep involvement of the concerned stakeholders.

The Authority has in its CP rightly acknowledged that in the present scenario, various technological developments in digital markets have resulted in the convergence of devices, services, and networks. While it is praiseworthy that the Authority has sought views of all relevant and concerned stakeholders for creating a sustainable converged ecosystem, we strongly believe that before contemplating and delving on the issues of wider “convergence” scenario, it is essential to address the subsisting issues that are presently being faced and have been left unaddressed and unexamined across various segments that form part of such ostensible and supposedly convergent segment. We vehemently suggest that before the Authority dwells into the issues of convergence, it is imperative for the Authority to first take a coherent view on all technologies/platforms, which deliver the same result/ same services (*albeit by different medium*), like for instance, deliver the same content as that of the licensed satellite channels to the end consumers.

The Authority would acknowledge and agree that there has not been any attempt to remove the deliberate distinction between those who deliver content via a licensed distribution platform operators (hereinafter referred as ‘Licensed Operators’ viz. *multi system operators (MSOs), Direct-to-Home (DTH), Internet Protocol and Television (IPTV) and Headend in the Sky (HITS)*); as against via internet (Over-the Top (OTT) players and other open-sourced websites) or through the medium of Free Dish. It is unfathomable as to how the Authority has ignored the fact that level playing field is being grossly vitiated by rigorous regulations that have been imposed on one segment while the other segment has been left completely unfettered (*both in terms of licensing conditions and regulatory framework*).

The Authority has itself acknowledged that presently, Over the top (OTT) platforms have established themselves as a formidable platform for distribution of video and media content. According to Bain and Company, India's online video user base has increased to more than 350 million people, growing 24% in the last three years.<sup>1</sup> Information available in the public domain (*excerpt from the Ormax OTT Audience Report 2021*) establishes that Indian OTT audience universe is currently at 423.8 million.<sup>2</sup> Moreover, the subscriber base of Free Dish has also seen an exponential growth and presently stands at an estimated 38 million. The Authority would acknowledge that an increasingly and growing digital media environment, like that in the present times, gives internet users access to information from more and more sources, including the OTT platforms as well as various other open-source websites. The Authority would be well aware that presently both Free Dish as well as the OTT platforms are outside the purview of regulatory ambit as have been notified and enshrined by the Authority, despite them providing the same services as that of the Licensed Operators. We further bring the kind attention of the Authority to clause 11(3)(f) of the Policy Guidelines for Uplinking and Downlinking of Television Channels dated 09<sup>th</sup> November, 2022 issued by the Ministry ("**Applicable Licensing Framework**"), which clearly prescribes that the broadcasters can provide the signals of satellite television channels and the equipment thereof, strictly to the Licensed Operators. Additionally, we also seek to bring the kind attention of the Authority to the Clarification dated 24.03.2023 that has been issued by the Ministry re-averring and stating that the broadcasters are permitted to provide signals of their television channels **only** to the Licensed Operators. The relevant excerpt of the said Clarification is reproduced herewith for your easy reference:

*"2. Accordingly, it is reaffirmed that the permitted entities may **only** provide TV Channel Signal Decoders to the following:*

- i. MSOs/ Cable Operators registered under the Cable Television Networks (Regulation) Act, 1995;*
- ii. DTH Operators registered under the DTH guidelines issued by Government of India;*
- iii. Internet Protocol Television (IPTV) Service Provider duly permitted under the Telecom License or authorized by Department of Telecommunication;*
- iv. HITS Operator duly permitted under the Policy Guidelines for HITS operators issued by MIB."*

We further seek to bring the kind attention of the Authority on one other significant and crucial aspect regarding absence of licensing and regulatory regime of the OTT platforms. It is imperative to note in this context that while the transmission of satellite channels through the platforms of Licensed Operators are heavily regulated vide the Regulations of Interconnection, Tariff and Quality of Services, the transmission of the said licensed channels and/or its content thereof, on the OTT platforms and Free Dish are neither regulated

<sup>1</sup> Samarpita Bannerjee, 'Where the Indian OTT Industry is headed in 2022' (Business Insider, 06th January 2022), accessed at <https://www.businessinsider.in/advertising/media/article/where-the-indian-ott-industry-is-headed-in-2022/articleshow/88694261.cms>.

<sup>2</sup> <https://www.ormaxmedia.com/insights/stories/indias-ott-universe-the-growth-story.html>

nor such platforms are subjected to any licensing framework. This definitely subjects the Licensed Operators to an unequal regulatory regime and hence an urgent intervention is sought from the Authority to firstly establish and formulate a Licensing Framework for the OTT platforms with appropriate and applicable conditions by virtue of which only such licensed OTT platforms are allowed to remain operational in the country. Simultaneously, the purview of the regulations of Interconnection, Tariff Order and Quality of Service should also be extended to the OTT platforms as well as Free Dish as they are engaged in the provisioning of same services as that of the Licensed Operators. Evidently, allowing the OTT platforms and Free Dish to exhibit and transmit the same services (*in addition to other diverse content on OTT platforms*) without subjecting them to any licensing and regulatory conditions, unlike the Licensed Operators, is clearly arbitrary and devoid of the interests of the consumers as well as the Licensed Operators. It is further stated that the Hon'ble Ministry of Information and Broadcasting (MIB) has already proposed to include all the Licensed Operators under the purview of Cable Television Network (Regulation) Act, 1995 vide CTN Amendment Bill, 2020. We suggest that the said Amendment should be brought into effect and the OTT applications providing video services shall also be brought under the purview of CTN Regulations, 1995 for enabling the proliferation of an equitable regulatory framework. This, consequently, will also extend the obligations with respect to adherence of Advertisement and Programming Code, on all the Licensed Operators including the OTT application providers who are engaged in the provisioning of video services; thereby leading to the furtherance of a just, equitable and level playing regulatory framework, wherein all platforms are brought at parity in relation to each other.

We therefore urge that before formulating any rules with respect to the issues pertaining to convergence of services, the Authority should forthwith intervene and look into the aforesaid issues and formulate a licensing framework for OTT platforms, extend the purview of the applicable regulatory framework to the OTT players and Free Dish and ensure that all stakeholders including the consumers of all the platforms are brought to parity and are subjected to an equitable regulatory regime as the same will usher equal opportunities to all platforms for business growth and expansion. The Authority may then undertake a comprehensive evaluation of the established equitable framework and issue a fresh consultation for formulating regulatory and administrative framework with respect to the 'convergence' scenario.

In view of this backdrop and without prejudice to the aforesaid submissions, we would like to submit our comments on the issues highlighted in the CP. We stand ready to be involved in further consultations and industry dialogues that may be undertaken by the Authority before finalizing any view on these issues.

## **ISSUES FOR CONSULTATION**

**Q1. Whether the present laws are functional to deal with convergence of carriage of broadcasting services and telecommunication services? If yes, please explain how?**

**OR**

**Whether the existing laws need to be amended to bring in synergies amongst different acts to deal with convergence of carriage of broadcasting services and**

telecommunication services? If yes, please explain with reasons and what amendments are required?

OR

Whether there is a need for having a comprehensive/converged legal framework (separate Comprehensive Code) to deal with convergence of carriage of broadcasting services and telecommunication services? If yes, provide details of the suggested comprehensive code.

**Response:** We reiterate and suggest that at this juncture, it is pre-mature for the Authority to contemplate and formulate a policy with respect to convergence of services. It is suggested that the Authority should first and foremost bring all the platforms delivering similar and/or substitutable services under a common and equitable regulatory and licensing framework. Once the same is achieved and implemented, a comprehensive evaluation of all the service-specific regulatory and administrative regime can be undertaken in order to reconcile distinct regulatory and administrative philosophies that are prevalent across different segments. Moreover, a level-playing and equitable framework will lead to the furtherance of a more organised and structured growth across all segments and such scenario will be more favourable to address new developments across digital broadcasting and telecommunication infrastructure, which in turn will promote a sustainable convergent scenario.

**Q2. Whether the present regime of separate licenses and distinct administrative establishments under different ministries for processing and taking decisions on licensing issues, are able to adequately handle convergence of carriage of broadcasting services and telecommunication services?**

**Response:** The Authority would appreciate and acknowledge that the subsisting regulatory regime and administrative structures are distinct and specialized towards the respective broadcasting and telecommunication segment as they have been curated in a technology/service-specific manner to address and take care of the nuances that may persist in relation to the respective sector. We are of the opinion that the present regime of separate licensing, administrative and regulatory framework stands adequate, competent, and essential to deal with broadcasting and telecommunication services, even in a converged scenario. We strongly suggest that the same principles in relation to administrative and regulatory framework for broadcasting and telecommunication segments cannot be applied on account of associated inherent distinction prevalent across both segments. To cite an instance, any administrative or regulatory framework in relation to broadcasting segment should be principally based and guided by a framework that promotes creation of innovative content and protection of the said content thereof (*intellectual property related laws*), while the telecommunication segment has no control or is not affected in any manner by content, but is rather based on technical efficacies, security parameters and seamless delivery of services. We therefore suggest that *a status quo* with respect to both the segments shall be maintained and a separate regulatory and administrative framework should always remain in existence for broadcasting sector. Therefore, all licensing and regulatory aspects with respect to

telecommunication and broadcasting services should be dealt with and treated as distinct from each other.

In this regard, we would also like to highlight that we are in complete agreement with the Letter dated 4<sup>th</sup> October 2022 issued by the Honorable Ministry of Information and Broadcasting (letter no. 8/13/2021- BP&L), wherein Honorable Ministry has categorically highlighted that there is no need of convergence of carriage of broadcasting services and telecommunication services. The relevant excerpt of the said letter is also reproduced hereinbelow for easy reference:

*“6. The need of the hour is not to bring in further disturbances but to re-engineer business processes such that there is ease and convenience of doing business for these entities. The regulatory convergence in the broadcasting sector is being achieved through the **“Ease of doing business model”** by creating a single platform in the form of **“Broadcast seva portal”** on which all the stakeholders/ministries/departments are integrated as a single window for all licensing, permissions and reporting requirements.....”*

Therefore, to promote ease of doing business, it is rather suggested that a single unified portal with prescribed timelines should be formulated with respect to all licenses, permissions and clearances that fall under the segment of broadcasting services. Similarly, a single unified portal with prescribed timelines should also be formulated with respect to all licenses, permissions and clearances that fall under the segment of telecommunication services. Such a portal enabling online submission of application would considerably reduce the time and effort of the applicant as well as the concerned Ministry for processing the application of the applicant for obtaining the license or registration or permission, as applicable, to conduct and start its business operations. Once an applicant makes the application for the said license or registration or permission, as applicable, via online mode, with all the relevant documents; in such case, further processing of the application along with check on all the technical requisites and parameters should be routed within the concerned Ministries/ concerned departments on its own without any additional effort on part of the applicant. For example, any Gigabyte Passive Optical Network (GPON) device that comprises of components like Optical Line Terminal (OLT), Optical Fibre Splitter, Optical Network Terminal (ONT) and any associated transmitting media like splitters/connectors; or any Optical Network Unit (ONU) or routers; is subjected to multiple clearances and certifications; (*manufacturing certifications in the nature of Bureau of Indian Standard (BIS) certification and Wireless planning and co-ordination Equipment Type Approval (WPC ETA); technical certifications in the nature of Telecommunications and Engineering Center (TEC) certification through the Mandatory Testing and Certification of Telecommunication Equipment (MTCTE) portal and security-related certifications through Trusted Telecom portal*); all of which should be made accessible and available to the applicant on a single unified portal of Department of Telecommunications instead of the Applicant separately approaching different Ministries and Departments for concerned permissions and certifications. In the event that there is any further requirement to be fulfilled by the applicant, the same should be communicated to the applicant on the portal as well as via e-mail or on registered mobile number of the Applicant through text message.

The applicant would then comply with the additional requirements, online itself. Further, the applicant should be able to track the status of its application till the final stage. This single window would reduce the timeline of the applicant in getting the license or registration or permission, as applicable, while also giving the applicant the real-time status of its application.

### **Q3. How various institutional establishment dealing with –**

**(a) Standardization, testing and certification.**

**(b) Training and Skilling.**

**(c) Research & Development; and**

**(d) Promotion of industries**

**under different ministries can be synergized effectively to serve in the converged era. Please provide institution wise details along with justification.**

**Response:** Placing reliance and reiterating the contents of our introductory comments, we suggest that the Authority should first and foremost bring all the platforms delivering similar and/or substitutable services under a common and equitable regulatory and licensing framework. The Authority may then undertake a comprehensive evaluation of the established equitable framework for formulating regulatory and administrative policies towards building synergies and convergence across various dimensions, segments and ministries.

Prima-facie, we are of the opinion that the Authority may evaluate the scope of bringing standardization, testing and certification for both broadcasting and telecommunication services under the purview of a single unified agency like that of Telecommunication Engineering Centre (TEC) having representatives and specialized members or inter-departments that are equipped to adequately deal with, understand and certify the products/equipment of concerned services. Similarly, training and skilling can also be brought under the ambit of a single specialized body provided they have adequate resources to provide requisite and specific skillsets and training required with respect to broadcasting and telecommunication services. Both segments being inherently different from each other; the skillsets that stand relevant to each segment are also not comparable. Training and skillsets with respect to telecommunication segment will require knowledge and training with respect to computer networks like LAN, WAN, IP protocols, network devices like routers, switches, gateways, IT support, structured cabling standards, cloud computing, *et cetera*. On the other hand, skillsets with respect to broadcasting services are in relation to knowledge with respect to media production, creation of content, protection of content, communication, *et cetera*. Hence, any unified agency should be endowed with adequate resources and technically qualified and specialized individuals for providing required skillsets to the relevant segment.

We suggest that research and development should not be synergized and converged for broadcasting and telecommunication services. Research and development (R&D) stand

fundamental to any segment as it involves the process of gathering knowledge to create new products or discover new ways of improving the subsisting products and services. This segment should fundamentally be sector-specific for both the broadcasting and telecommunication sector on account of inherent distinction that persists with respect to each sector. It is reiterated that broadcasting segment is principally based and guided by creation of innovative content and protection of the said content thereof (*intellectual property related laws*), while the telecommunication segment has no control or is not affected in any manner by content, but is rather based on technical efficacies, security parameters and seamless delivery of services. Even technical specifications and knowledge with respect to equipment that are used in the provisioning of broadcasting services and telecommunication services exhibit stark distinction from each other.

With respect to the question regarding promotion of industries, we state that it is imperative for the Authority as a primary measure to first declare the broadcasting segment as an 'industry' and grant 'infrastructure-status' to the broadcasting sector. The significant importance of the broadcasting and content distribution infrastructure is evident from the fact that besides delivering cable television signals, the infrastructure can be effectively used to deliver broadband and internet connectivity services thereby effectively contributing to the E-governance initiative of the government as well as for proliferation and growth of broadband and internet connectivity services. The subsisting cable television infrastructure which connects approximately over 100 million urban and rural households, has indispensable potential to provide reliable and affordable broadband services along with cable television distribution services. In addition, large number of local cable operators (LCOs) who are affiliated to the MSOs have laid down their vast network for providing last mile connectivity till the premises of the subscribers. This evidently establishes that the MSOs have formidable capacity to reach each household in the country by utilizing the last mile connectivity of the fiber cable and network infrastructure of the LCOs. Therefore, taking into consideration that the cable television networks have formidable reach to cater to the entertainment and information needs as well as growing demand of broadband services, it is imperative that the distribution networks of MSOs and LCOs be recognized and granted 'infrastructure-status'.

**Q4. What steps are required to be taken for establishing a unified policy framework and spectrum management regime for the carriage of broadcasting services and telecommunication services? Kindly provide details with justification.**

**Response:** We do not advocate establishment of a unified policy framework and spectrum management regime for broadcasting and telecommunication services on account of inherent and associated distinction between both the services. It is for this reason that taking into consideration the principle of economies of scale, there are distinct policies in place in terms of which spectrum for telecommunication services are allocated vide auction and that for broadcasting services are allocated in terms of a standardized policy.

We suggest that the Authority should, in letter and in spirit, give equal impetus to both broadcasting and telecommunication segments in its policy for spectrum allocation and management. Proliferation of any segment should not impact provisioning and delivery of

services in another segment on account of a biased and unfavorable spectrum allocation mechanism. The Authority would be well aware that during 5G rollout, MSOs had to incur additional and uncalled expenses for deploying the ‘Guard Band’ to put a gap of 100 MHz to restrict the impact of interference of telecommunication signals on satellite television signals; in order to sustain and maintain quality of services. This would not have been required, had there been an equitable approach on part of the concerned Ministry/ Department towards allotting spectrum to telecommunication and broadcasting sector.

It is further suggested that any policy/framework promoting synergies and/or consolidation must ensure that it does not hinder competition and access to diverse views and opinions. As evident, the situation of convergence may lead to markets facing intense consolidation activity throughout the broadcasting and telecommunication segments. As entities merge, it is important that convergence across sectors does not result in a monopolistic market structure. Significant control of a single entity/group over multiple segments may lead to a situation whereby the public at large are deprived of the avenue to have access to multiple views and opinions for forming a holistic and independent view on any subject-matter. The Authority is well aware that even today, how a leading telecommunication player, in absence of any formidable and strong regulatory framework, is abusing and exploiting the market by engaging in the transmission of satellite channels, providing other diverse content through its OTT platform, is also providing wired & wireless broadband & internet connectivity services and telephony; collectively, at vastly discounted and disparate prices, thereby ushering the growth of an imperfectly competitive market by virtue of which the said company and its product/service is evidently abusing its dominant position in the media segment.

In this regard, we place reliance on our views that have been put across to the Authority on the CP on “*Issues relating to Media Ownership*” dated 12.04.2022; wherein we have segregated the media segment basis i) ‘*user-based*’ paradigm into four verticals, i.e. entities that are engaged in providing satellite services, teleport owners, content producers and content aggregators/ owner of channels; and basis ii) ‘*consumer-based*’ paradigm i.e. the mediums/modes vide which the broadcasting services or the views/agenda of the broadcasters are made accessible or are likely to be propagated to the consumers through i) MSOs, ii) DTH operators, iii) HITS operators, iv) IPTV operators, v) LCOs, vi) newspapers, vii) radio, viii) websites, ix) Free Dish and x) OTT applications, including communication-based services, video, audio, search engines like Google, Yahoo, Bing, etc., social media intermediaries like Facebook, Instagram, Twitter, etc. We have suggested that in order to ensure that consumers have access to diversified views, opinions and information, the cross-media control of individual horizontal segment (i.e. *broadcasting services, print, radio and digital*) as have been identified under the said CP should be restricted to a ***maximum number of two verticals each in both ‘user based’ and ‘consumer-based’ interfaces.***

**Q5. Beyond restructuring of legal, licensing, and regulatory frameworks of carriage of broadcasting services and telecommunication services, whether other issues also need to be addressed for reaping the benefits of convergence holistically? What other**



**issues would need addressing? Please provide full details with suggested changes, if any.**

**Response:** We have already highlighted the prevalent and associated concerns with respect to convergence in our introductory comments as well as our response to the aforementioned questions.