



By Courier/ Speedpost/ Email ✓

July 14, 2014

Telecom Regulatory Authority Of India,  
Mahanagar Door Sanchar Bhawan,  
Jawahar Lal Nehru Marg,  
New Delhi – 110 002.

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

Ref: Consultation Paper (No. 7/2014) on Regulatory Framework for Platform Services ("Consultation Paper")

Sub: Submissions of Novex Communications Private Limited

Dear Sir,

With reference to the above, enclosed please find our submissions to the Consultation Paper.

We request you to kindly take note of the same.

Thank you,

For Novex Communications Pvt. Ltd.



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Authorised Signatory

Encl.: As above



By Courier/Speed Post/Email

July 14, 2014

Submissions of Novex Communications Pvt. Ltd. to Telecom Regulatory Authority of India ("TRAI" / "Authority"), in response to the Consultation Paper (No. 7/2014) on Regulatory Framework for Platform Services ("Consultation Paper")

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Kind Attention: Mr. Agneshwar Sen,  
Advisor (B&CS),  
Telecom Regulatory Authority of India  
Mahanagar Doorsanchar Bhawan,  
Jawahar Lal Nehru Marg,  
New Delhi – 110002.

We welcome TRAI's initiative in releasing the Consultation Paper, and seeking views of the stakeholders on matter concerning platform specific services, offered by distribution platform operators to their subscribers.

The following response is without prejudice to any of our rights. In particular we reserve our right to challenge any directions, regulations, recommendations or any other order(s) that may be made/passed by TRAI on the subject matter.

India has the world's third largest TV market after China and USA. Television is now considered the most prominent medium in India for the delivery of information, news, entertainment etc. It represents around 42 percent (42%) of the total media industry, with scope for further growth, as television penetration in India is still at approximately 60 percent (60%) of total households.<sup>1</sup>

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<sup>1</sup>Telecom Regulatory Authority of India, *Annual Report 2012-13*: Pg. 8 "As per industry estimates, of the 2621 million households, around 1611 million have Television as on March 2013";  
CII PwC- *India Entertainment and Media Outlook 2013*, released on 13 September, 2013: pg. 13 "It is noteworthy that TV penetration on India is about 55 to 60% as compared with over 90% in developed markets and therefore, there is a lot of potential for growth."







As the TV Industry grows, the TV channel distribution sector, comprising of Cable TV Operators (Multi System Operators (MSOs) in areas covered by DAS, MSOs and Local Cable Operators (LCOs) elsewhere), Direct-to-Home (DTH) operators, Headend-in-the-Sky (HITS) and IPTV service providers (hereinafter collectively referred to as, "Distribution Platforms" / "Distribution Platform Operators" / "DPOs", and individually as "Distribution Platform" / "Distribution Platform Operator" / "DPO"), continues to contribute to its growth story. In fact, the TV Channel Distribution Sector, in India, is right now at its most spirited, with multitudes of players on the Distribution Platforms, constantly competing to provide cutting edge services to the subscribers.

While primarily re-transmitting satellite TV channels, Distribution Platform Operators, in an effort to offer innovative services to their subscribers, and to showcase their product differentiation, also provide some platform specific programming services, to their respective subscribers (hereinafter "Platform Services").

Cable TV Operators (MSOs in DAS areas and MSOs/ LCOs elsewhere), to better meet the specific needs of their subscribers and to improve their customer's experience, provide Platform Services via "ground to ground" transmission, in the nature of content primarily consisting of movies, music related program, local community based programs, educational programmes, local news and current affairs etc.

In terms of entertainment to subscribers, currently one of the most popular Platform Services, available on cable TV, is that of movies. Offering more than 2000 movies to choose from, the said Platform Services offered by numerous MSO/LCOs, provides distinctive, value-for-money, entertainment to their subscribers.

These Platform Services also cater to the advertisement needs of the small local businesses and service providers, of a given locality, by providing them with specific access to their target demographic, in the relevant locality.





It is interesting to note here that historical origin of the cable TV “ground to ground” platform services, in India, is even older than that of satellite TV channels, and can be traced back to as early as the eighties (1980s). It was then, the Indian television viewers, looking for entertainment options, apart from single terrestrial TV, first opted for cable TV service, which at that point was mostly including Hindi and English movies and music videos.<sup>2</sup>

Currently, of course, other Distribution Platform Operators i.e. DTH operators, IPTV and HITS operators, also provide Platform Services, which are specific to the subscribers on their respective platforms, and are not obtained from broadcasters.

As TRAI has itself observed in the Consultation Paper, these Platform Services, are value added services (VAS), designed and tailored to cater to the interests of subscribers of a particular Distribution Platform; and irrespective of the Distribution Platform concerned, these cannot be categorized or treated as satellite TV channels.

We recapitulate the following major features of Platform Services, which further highlight the distinction between Platform Services and satellite TV channels:

- Reach: A satellite TV channel is uplinked for general distribution via multiple platforms and is available to subscribers of all such platforms. Whereas, a Platform Service is only available to the subscribers of the Distribution Platform providing it.
- Programming: A satellite TV channel disseminates general programming, usually conforming to the genre such channel belongs to, for its national / regional audience. Whereas, on Platform Services, programming is comparatively local, driven by specific demands / interests of the subscribers of the concerned

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<sup>2</sup> TRAI, *Recommendations on Restructuring of Cable TV Services*, 25th July 2008: Introduction





Distribution Platform Operator. For example: movies, music related program, local community based programs, educational programs etc.. As has also been noted by the Authority in the Consultation Paper: "..... the programs offered through Platform Services are thematically distinct from regular TV channel programs".

- Technology: Satellite TV channels, uplinked and downlinked for general consumption, continuously disseminate content, in push mode with a linear time schedule, Whereas, in most of the cases, Platform Services disseminate content in pull mode, stimulated by the demand / need of the subscriber. Also noted by the Authority in the Consultation Paper<sup>3</sup>.
- Service Providers: Satellite TV channels, are mostly run by major broadcasting conglomerates or broadcasting companies, making available their channels nationally or at the very least, regionally at a state level; Whereas, Platform Services are provided by Distribution Platform Operators with wide-ranging subscriber numbers – From MSOs/LCOS, operating in a small locality, with subscribers base of mere few thousands, to bigger MSOs and DTH operators, operating in multiple states or even nationally, with subscriber base of millions.

Given the aforesaid dissimilarities, it is very surprising that the Authority is looking at regulating these Platform Services, on the lines of regulations and guidelines governing satellite TV channels, suggesting parity between the two services, where it does not exist.

In the light of the above, and also given, that these Platform Services are value-adds, primarily added to act as a USP (unique selling proposition) for a Distribution Platform, we, urge the Hon'ble Authority, to first determine whether regulation of these

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<sup>3</sup> TRAI Consultation Paper (No. 7/2014) on Regulatory Framework for Platform Services: pg. 6, section 1.5.





Platform Services is even warranted, and then, if required, proceed to consider the issues raised in the Consultation Paper.

If the Authority still concludes that regulation of these Platform Services is warranted, it should while making the regulations or issuing recommendations regarding the same, give due consideration to the varied profiles of these Distribution Platform Operators, including, but not limited to, factors such as, their subscriber base and financial strength.

While regulating on the issues covered herein, Authority also needs to consider the disparities that exist (i) between Distribution Platform Operators and broadcasters; (ii) among various Distribution Platforms and (iii) among different levels of operators within a particular Distribution Platform. By way of example: On the Cable TV platform, across the country, there are MSOs with subscriber base ranging from mere few thousands, to that of a million and, in some cases, even more.

A latest review of the DAS cities, in terms of number of set top boxes seeded, revealed huge disparity in subscriber numbers of different MSOs, within the same city. For example: In the city of Mumbai, while one MSO caters to a gigantic subscriber base of 0.9 million, there is another MSO, in the same city, with just about 15000 subscribers. Similarly, in Bangalore, where there is a MSO with about 0.8 million subscribers, there is also a MSO with a mere 10,000 subscribers. Since the regulations being discussed in the Consultation Paper, are to be at a pan India level, it should be noted that an intercity reference of the aforesaid numbers, would reveal even bigger disparities.

In these circumstances, it will not be sufficient to roll-out straight-jacketed regulations (particularly the regulations concerning, networth requirement, annual fee, uniform legal status etc.), laying down uniform criterion/ requirements for all the Distribution





Platforms, that are otherwise differently placed. The regulations must be rational and method based, and, at the very least, meet the constitutional requirements, laid down pursuant to under Article 21 of the Constitution, and be fair, just and reasonable.<sup>4</sup>

We now proceed to our responses to the specific 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."

In general, the definition of a term is for communicating the meaning of the term, while also unequivocally stating the peculiar features of the term / item concerned.

In the present context, we note that the definition of the "Platform Services" rightfully mentions that Platform Services are programs transmitted by Distribution Platforms Operators "exclusively to their own subscribers.....", and then goes on to rightfully exclude doordarshan channels and TV channels permitted under downlinking guidelines.

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<sup>4</sup>The Constitution of India: Article 21: "Protection of Life and Personal Liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law"; In *Maneka Gandhi v. Union of India* (AIR 1978 SC 597), the Supreme Court of India held that the procedure prescribed by "law" referred to in article 21, should be one that is fair, just, and reasonable, and 'not arbitrary, fanciful or oppressive' otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied.





However, to add further clarity, we submit that Authority may consider adding the words, "on their own respective Distribution Platforms", after the words "transmitted by Distribution Platforms Operators". Accordingly, the revised definition be as follows:

*"Platform services (PS) are programs transmitted by Distribution Platform Operators (DPOs), on their respective distribution platforms, exclusively to their own subscribers and does not include Doordarshan channels and TV channels permitted under downlinking guidelines."*

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.

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

Authority has itself observed in the Consultation Paper, these Platform Services, are value added services (VAS),<sup>5</sup> provided to the subscribers, over and above the satellite TV channels, so by nature, it will always be an added service, to the key service of satellite TV channels, being offered on the platform.

We also cannot support an oppressive regulation, which provides a general, all-encompassing list of content categories, that cannot be included in the Platform Services, because the same will have a detrimental impact on the range and quality of content available to the subscribers, i.e. hurting the demand side of TV industry.

By way of example, we refer to point 2.1.3 above, under the list "PS channels cannot transmit/ include", which mentions: "Any program that is/ has been transmitted by any ☐Doordarshan channels or TV channels permitted under uplinking/ downlinking guidelines, including serials and reality shows." The scope of this restriction with the use of words "any program that is/ has been transmitted by any ☐Doordarshan channels or TV channels", has been made dangerously wide, and can be interpreted to include, the content otherwise permitted on Platform Services, but which has also been / is being transmitted by a satellite TV channel. As a result, keeping the Distribution Platforms from including the same in their Platform Services.

Arguendo, if the Authority decides to proceed with the regulation of content on Platform Services, we support the items included under point 2(2) as 2.2.1 to 2.2.6;

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<sup>5</sup> Please see our Introductory remarks, on pages 3 and 4 of this Submission.





but submit that the general and ambiguous restrictions, such as the aforesaid (ref. point 2.1.3), not be included.

Also, with respect to "news and current affairs", general restriction included under point 2.1.1, i.e. "any news and / or current affairs programme", with use of word "any", will end up depriving the subscriber, of useful local and current information, which the Platform Service will not be allowed to include, and the satellite TV channels or Doordarshan, operating at national level, may decide not to include, given its local appeal. Accordingly, we submit that the aforesaid general restriction not be imposed.

Nonetheless, if the Authority decides to impose the aforesaid restriction, we agree with Authority's suggestion, about carving an exception to the same, similar to that provided under section 11.2 of the "Policy Guidelines on Expansion of FM Radio Broadcasting Services through Private Agencies (Phase III)"<sup>6</sup>, as these guidelines, atleast to some extent, recognize locally relevant information, which should be made available to the subscribers of Platform Services.

We reiterate, that imposing such extreme form of content control, will become a major threat to the very survival of these Platform Services, adversely effecting the consumers, and also small local businesses and service providers who use these

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<sup>6</sup> Policy Guidelines on Expansion of FM Radio Broadcasting Services Through Private Agencies (Phase III): Section 11.2, "The broadcast pertaining to the following categories will be treated as non-news and current affairs broadcast and will therefore be permissible:

- (a) Information pertaining to sporting events excluding live coverage. However live commentaries of sporting events of local nature may be permissible;
- (b) Information pertaining to Traffic and Weather;
- (c) Information pertaining to and coverage of cultural events, festivals;
- (d) Coverage of topics pertaining to examinations, results, admissions, career counseling;
- (e) Availability of employment opportunities;
- (f) Public announcements pertaining to civic amenities like electricity, water supply, natural calamities, health alerts etc. as provided by the local administration;
- (g) Such other categories not permitted at present, that may subsequently be specifically permitted by Ministry of Information and Broadcasting from time to time."





Platform Services to advertise and promote their products/ services in the concerned locality<sup>7</sup>.

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?**

We agree with Authority's observation, that it is essential that the entity offering Platform Services is legally responsible and registered under an appropriate regulatory framework. We submit that there already exists, detailed regulatory framework for all the categories of Distribution Platform Operators to be registered and be responsible thereunder.

By way of illustration: For Cable Operators (MSOs in DAS areas and MSOs and LCOs elsewhere), a detailed framework is provided under the Cable TV Network (Regulation) Act, 1995 and the Cable TV Network Rules, 1994<sup>8</sup>; For DTH Operators, the licensing / registration is covered under the Guidelines For Obtaining License For Providing Direct-To-Home (DTH) Broadcasting Service In India, issued by the Ministry of Information and Broadcasting<sup>9</sup>. Similarly, IPTV Operators and HITS Operators are also governed by the policies issued by Ministry of Information and Broadcasting, in this regard.<sup>10</sup>

In other words, there is no need for an additional licensing regime for these Distribution Platform Operators.

<sup>7</sup> Please see our Introductory remarks, on pages 2 and 3 of this Submission

<sup>8</sup> The Cable TV Network (Regulation) Act, 1995 and the Cable TV Network Rules, 1994, as amended by the Cable TV Networks (Regulatory) Amendment Act, 2011 and Cable TV Networks (Amendment) Rules, 2012: Sections 3 and 4; Rules 2A, 5, 5A, 11A-11F.

<sup>9</sup> Ministry of Information and Broadcasting, *Guidelines For Obtaining License For Providing Direct-To-Home (DTH) Broadcasting Service In India*: Sections (i), (iii), (iv) and (v).

<sup>10</sup> Ministry of Information and Broadcasting, *Guidelines For Provisioning of Internet Protocol Television (IPTV) Services; and Guidelines For Providing Headend-in-the-Sky (HITS) Broadcasting Service In India*





We also do not find merit in the suggestion that it should be mandatory for all the categories of DPOs, to be registered as Companies, under the Companies Act, 2013; because if these DPOs, that are not registered companies (which, under the current regime, would only mean Cable Operators i.e. MSOs in DAS and MSOs and LCOs elsewhere), can obtain registration and operate distribution platforms, under the concerned regulatory framework, they can also provide a value-add Platform Service, pursuant to the same registration. Additional registration for these cable operators would only create regulatory replication, causing unnecessary burden on the public exchequer.

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

Platform Services, are value added services (VAS), offered by DPOs to act as a USP (unique selling proposition) for their respective platform, even Authority has observed the same in the Consultation Paper.<sup>11</sup> In the light of foregoing, we submit that Platform Services, provided by DPOs are not TV channels, and therefore, FDI limits / foreign investment restrictions extended to TV channels and their uplinking, should not be made applicable to these Platform Services/ DPOs.

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

We agree with the observation made by the Authority, in the Consultation Paper, that the requirement of net-worth is to ensure that only serious players enter into the sector. This pre-condition is moot in this case, where the concerned players i.e. DPOs offering Platform Services, are already registered/ permitted, under the concerned regulatory framework, and operating their platforms.

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<sup>11</sup> Please see our Introductory remarks, on pages 3 and 4 of this Submission.





Nonetheless, if the Authority still proceeds to regulate/ recommend net-worth requirement for DPOs offering Platform Services, it should keep in mind the disparities that exist (i) between Distribution Platform Operators and broadcasters; (ii) among various Distribution Platforms and (iii) among different levels of operators within a particular Distribution Platform.

To illustrate: it would be both unfair and unreasonable, to extend the networth requirement prescribed under downlinking guidelines, for a broadcasting company, intending to operate a TV channel nationally, to a MSO, with a subscriber base in mere few thousands, intending to provide a “ground-to-ground” Platform Service, exclusively to its own subscribers in a small locality; or for that matter, to impose the uniform networth requirement on all MSOs, when there are MSOs with subscriber base ranging from mere few thousands, to that of million, and in some cases even more.<sup>12</sup>

A review of DAS cities, i.e. the number of set top boxes seeded in various DAS areas, further highlights this disparity.<sup>13</sup> For example, in the city of Kolkata: while there is a MSO network covering a whopping 1.1 million subscribers, at the same time, in the same city, there also co-exists a small MSO network, catering to a mere 800 subscribers.

Accordingly, we submit that a regulation in this regard needs to be method based, laying down different net-worth requirements / criteria, for different categories and levels of DPOs, *inter alia* linked to / depending on their subscriber base.

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<sup>12</sup> Please see our introductory remarks on pages 5 and 6 of this Submission.

<sup>13</sup> *ibid.*





We submit, that imposing any extreme form of regulation with an unjustified and unreasonable net-worth requirement, will become a major threat to the very survival of these Platform Services, adversely affecting the consumers, and also small local businesses and service providers who use these Platform Services to advertise and promote their products/ services in the concerned locality<sup>14</sup>.

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

We reiterate our earlier position that Platform Services are not the same as satellite TV channels, but are mere value-adds, with different content / programming, and reach, than that of satellite TV channels<sup>15</sup>.

Therefore, we submit that the Authority should require these Platform Services or DPOs to be subjected to same security clearances, as that required for private satellite TV channels, if and only if, it considers that the reasons requiring security clearance for the said TV channels, are also valid/present with respect to the Platform Services.

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?
9. What is your proposal for renewal of permission?
10. Should there be any limits in terms of geographical area for PS channels? If yes what should be these limits.

In the year 2005, when Ministry of Information and Broadcasting issued the Downlinking Guidelines, requiring any and every channel being downlinked or to be downlinked in India to be registered thereunder, there was no registration required for

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<sup>14</sup> Please see our Introductory remarks, on page 2 of this Submission

<sup>15</sup> Please see our Introductory remarks, on pages 3 and 4 of this Submission





becoming a broadcaster (other than registration for legal status, for example registration under the Companies Act, 1956). Therefore, channel registration under the said Downlinking Guidelines was one way of according recognition to these broadcasting entities and to bring them within a regulatory framework.

However, in the case of DPOs, under the current regime, there exists an extensive licensing framework, for licensing / registration of each of the Distribution Platforms, albeit under different statutes/guidelines.<sup>16</sup> Therefore, given the aforesaid, there is no requirement for further registration of these Platform Services, being offered by already registered / licensed Distribution Platforms.

With respect to the permission / annual fee, we notice that the Authority has drawn a reference to the annual permission fee prescribed, for private satellite TV channels under the Downlinking Guidelines<sup>17</sup>. In this connection, we wish to bring to Authority attention the critical difference of "reach", between that of private satellite TV channels and of Platform Services. I.e. in case of the private satellite TV channels, the downlinked channels are available for distribution, through all the DPOs, to consumers countrywide, whereas, in the case of Platform Services, the availability is restricted to subscribers of the concerned DPO, which could be a small locality, town, city or state(s). Given the foregoing, the annual fee for the Platform Services cannot be the same, as that for satellite TV channels.

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<sup>16</sup> Please see our response under Issue No. 4 on pages 10 and 11.

<sup>17</sup> Ministry of Information, Downlinking Guidelines, 2011: "4. PERMISSION FEE

4.1. The Company seeking permission to downlink channels, uplinked from other countries, into India under these guidelines shall pay a permission fee of Rs 10 lakhs at the time of grant of permission.

4.2. The Company shall pay a Permission fee for Registration of channels under these guidelines as follows:-

4.2.1. Rs. 5 lakhs per channel per annum for Downlinking of Television Channel uplinked from India.

4.2.2. Rs. 15 lakhs per channel per annum for Downlinking of Television Channel uplinked from abroad."





Therefore, if the Authority decides to recommend or require registration of these Platform Services, with an annual fee for registration / permission, we suggest that the fee amounts prescribed under the Downlinking Guidelines, for private satellite TV channels, should be proportionately applied to these Platform Services; making the permission / annual fee, payable by the Distribution Platform, determinable according to the subscriber reach of the concerned Distribution Platform.

With respect to limits on geographical area of Platform services, we agree with Authority's observation that the market forces themselves would compel the DPOs to restrict the transmission of local level programs, to a certain local geographical area, as these programs may not be of much interest countrywide. We also agree that since DPOs operate as per the provisions stipulated in their respective license/ registration, and offer Platform Services only to their own subscribers, regulation / restrictions on the geographical coverage for Platform Services is not quite required.

**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?**

We do not support the view that there is a need to limit the number of Platform Services offered by a particular DPO on its platform. For starters, none of the Distribution Platforms, other than DTH, have a capacity constraint, and can carry the requisite satellite TV channels along with their Platform Services. Therefore, a general limit of this kind, restricting the number of Platform Services allowed on Distribution Platforms, will be unjustified and arbitrary.

Even in case of DTH platforms, despite the capacity constraint, the strong market forces and effective competition will itself ensure that a DTH Operator transmits satellite TV channels and Platform Services, in line with the consumer choice and demands.





We reiterate, that imposing any such unjustified limit, will only restrict the consumer choice, having detrimental impact on the range and quality of the content being made available to the consumers<sup>18</sup>.

**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; and**

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

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

We refer to the definition of the term "Platform Services" being proposed under issue no. 1, where a Platform Service is by definition, exclusive to the subscribers of the concerned Distribution Platform. We also draw Authority's attention to the fact that a Platform Service is so named because it is generated for a platform and is exclusive to a platform, reaching the subscribers of a particular Distribution Platform. Further, Authority has itself admitted<sup>19</sup> that these Platform Services act as USP (unique selling proposition) for a particular Distribution Platform. Given the foregoing, one does not see the need for a regulation prohibiting interconnection between two DPOs, for retransmission of a Platform Service.

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<sup>18</sup> Please see our Introductory remarks, on page 2 of this Submission

<sup>19</sup> In this Consultation Paper (7/2014) Regulatory Framework for Platform Services.





With respect to the compliance, by Platform Services, with the Programme Code and Advertisement Code<sup>20</sup>, it is relevant to mention here that a legal requirement, to that extent, already exists for all the DPOs, in their concerned licensing / registration statute and guidelines<sup>21</sup>.

With respect to TRAI's regulations pertaining to Quality of Service and complaint redressal, the existing regulations are platform centric, and as such, a regulation applicable to any category of Distribution Platform, appears to be applicable also to the Platform Service, being provided by such Distribution Platform. Nonetheless, to further improve the consumer experience, Authority may make such regulations in this connection, as required.

- 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?**

DPOs may be permitted to carry radio channels in accordance with the existing statutory framework for private FM radio channels. Accordingly, any DPO who is making available a radio channel on its platform should be required to comply with the existing laws, byelaws and regulations applicable to the private FM radio industry.

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<sup>20</sup> The Cable TV Networks (Regulation) Act, 1995: Sections 5 and 6; the Cable TV Network Rules, 1994: the Rules 6 and 7.

<sup>21</sup> The Cable TV Network (Regulation) Act, 1995 and the Cable TV Network Rules, 1994: Sections 5 and 6;

Ministry of Information and Broadcasting, *Guidelines For Obtaining License For Providing Direct-To-Home (DTH) Broadcasting Service In India*: Article 5.1 of the DTH License Agreement;

Ministry of Information and Broadcasting, *Guidelines For Provisioning of Internet Protocol Television (IPTV) Services: Section (ix)*; and

Ministry of Information and Broadcasting, *Guidelines For Providing Headend-in-the-Sky (HITS) Broadcasting Service In India: section 6.5*.





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

We reiterate that Platform Service are not satellite TV channels, they are value-add offerings provided to a consumer, who subscribes to the service of a particular platform; and Distribution Platforms providing these Platform Services are not broadcasters, they are platform operators driven by different technologies, and as such regulated by their respective regulatory framework. Therefore, monitoring mechanism for these Platform Services cannot and should not be the same as for satellite TV channels.

The existing regulatory framework governing these Distribution Platforms, adequately addresses the issue of monitoring of Platform Services, in the concerned statute and guidelines<sup>22</sup>.

To exemplify, section 10A of the Cable TV Networks (Regulatory) Act, 1995, provides for the inspection of a cable network and services (i.e. MSOs in DAS areas and MSOs and LCOs elsewhere) by authorized officers, even without any requirement of a prior intimation; Section 11 of the said Act makes a cable network liable for seizure of equipment for violation of the provisions of the Act, including *inter alia* violation of the Programme Code and Advertisement Code<sup>23</sup> with respect to Platform Services.

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<sup>22</sup>The Cable TV Network (Regulation) Act, 1995 and the Cable TV Network Rules, 1994; Ministry of Information and Broadcasting, *Guidelines For Obtaining License For Providing Direct-To-Home (DTH) Broadcasting Service In India*; Ministry of Information and Broadcasting, *Guidelines For Provisioning of Internet Protocol Television (IPTV) Services*; and Ministry of Information and Broadcasting, *Guidelines For Providing Headend-in-the-Sky (HITS) Broadcasting Service In India*.

<sup>23</sup>The Cable TV Network (Regulation) Act, 1995 and the Cable TV Network Rules, 1994: Sections 5 and 6; Rules 6 and 7.





Similarly, the DTH license Agreement<sup>24</sup>, under its article 8, provides for monitoring and inspection of a DTH broadcasting service, and requires a DTH Operator to maintain the recordings of programmes and advertisements carried on the platform for a period of ninety (90) days from the date of broadcast, and produce the same to the Licensor, as and when required. Further, article 15.1 of the License, makes the DTH operator liable for revocation /suspension of the DTH license, in the event of breach of any terms and conditions of the license.

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?
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?

In this respect, we our submissions hereinbefore, particularly our response to issues No. 4, 6, 7, 8, 10, 11, 12, 15 and 16.

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.

Since the Authority, via this Consultation Paper, is reviewing all issues related to Platform Services, and is soliciting comments/ views of stakeholder on the same, we would like to highlight here, a rather arbitrary isolated imposition, applicable on

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<sup>24</sup>Ministry of Information and Broadcasting, *Guidelines For Obtaining License For Providing Direct-To-Home (DTH) Broadcasting Service In India*;





cable TV operators in the state of Uttar Pradesh, *vis-à-vis*, Platform Services pertaining to showcasing of movies.

The aforesaid is pursuant to the Uttar Pradesh Cinema (Regulation of Exhibition by means of Video) (4th Amendment) Rules, 2011<sup>25</sup>, which requires all cable operators in Uttar Pradesh to register themselves with their local district authorities, for "Video Cinema, including exhibition by means of video", by paying an annual license fee of Rs 2400/- (Rupees Two Thousand Four Hundred only).

In addition, the aforesaid rules, for the above purpose of video cinema exhibition (i.e. for provision of movies-based Platform Services), also require cable operators to pay, an additional license fee of Rs 100 (Rupees One Hundred only), per cable TV consumer, per annum.

By way of example: Pursuant to the above rules, a cable operator in Uttar Pradesh, providing movie-based Platform Services to 20,000 subscriber homes, is required to pay an unwarranted financial imposition of Rs 20,00,000/- (Rs. Twenty Lacs only) per annum.

We do not see a basis here for isolating movie-based Platform Services, and imposing such a financial imposition on the same. At present, the sole purpose it serves, is to prevent and strongly dissuade cable operators, from providing movie-based Platform Services to their subscribers, thereby depriving consumers in the state of Uttar Pradesh of a major source of home entertainment, and not to mention, having a detrimental impact on general range and quality of the content being made available to the consumers.

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<sup>25</sup> Fourth (4<sup>th</sup>) Amendment, to the Uttar Pradesh Cinemas (Regulations of Exhibition by means of Video) Rules 1988.





It is pertinent to mention here that this registration at the state-level, is in addition to the registration required under the Cable TV Networks (Regulation) Act, 1995, and the licensing fees paid thereunder.

We submit that since the Authority, pursuant to this Consultation Paper, is working on, a method based and reasoned, regulatory framework for all categories/ levels of DPOs, and for all kinds of Platform Services, it should take this opportunity to strongly recommend abolition of the aforesaid arbitrary imposition.

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