



VIL Comments to the TRAI's Consultation Paper on "Inputs for formulation of National Broadcasting Policy – 2024"

At the outset, we are thankful to the Authority for giving us this opportunity to provide our comments to the Consultation Paper on "Inputs for formulation of National Broadcasting Policy – 2024" dated April 02, 2024.

In this regard, we would like to submit our comments to some questions for Authority's kind consideration, as given below:

Question-wise Comments

Q1. Stakeholders are requested to provide their inputs in framing the Preamble, Vision, Mission and Broad Objectives for the formulation of the National Broadcasting Policy (NBP).

VIL Comments to Q1.

1. The National Digital Communications Policy 2018 (NDCP 2018) envisages one of the strategies as:
 - (g) **Enabling Infrastructure Convergence of IT, telecom and broadcasting:**
 - i. *Amending the Indian Telegraph Act, 1885 and other relevant acts for the purpose of convergence in coordination with respective ministries*
 - ii. **Establishing a unified policy framework and spectrum management regime for broadcast and broadband technologies**
 - iii. *Restructuring of legal, licensing and regulatory frameworks for reaping the benefits of convergence*
 - iv. *Allowing benefits of convergence in areas such as IP-PSTN switching*
2. Also, the broadcasting sector, just like telecommunications sector, is a spectrum-dependent sector which requires spectrum to deliver its services.
3. As is evident from above, a unified policy framework and spectrum management regime in convergence era i.e. for telecom and broadcasting, is one of the key strategies of the Government, as enunciated in NDCP 2018.
4. In this regard, since convergence between telecommunication, broadcasting, and other services has now been widely acknowledged, **the new framework should focus upon creating a level playing field amongst all the service providers, be it converged service providers or standalone service providers.** To cater to all such convergence covering provision of different services through the same technology as well as provision of the same service through different technologies and platforms, we believe that the **Government would rely on the principle of same service, same rules.**



5. Just like spectrum allocation for telecom services has been assigned through fair and transparent auction, same should be followed for spectrum to be assigned for broadcasting services, in any band. Any spectrum, if allocated administratively for broadcasting services will disrupt level playing field amongst the two sectors, based on a regulatory intervention instead of its value to the consumers and society.
6. **Hence, to ensure homogeneity across Government policies and strategies in a convergence era, the National Broadcasting Policy should also have similar strategy, to ensure unified policy framework and spectrum management regime for telecommunication and broadcasting technologies.**

Q9. Online gaming being a rising sector holds potential for contributing to economy, what policy and regulatory aspects should be adopted for the orderly growth of online gaming in India? Further, suggest measures to support local game developers to compete and grow. Also suggest safeguards to protect general public (especially underage players) from negative and psychological side effects, while promoting healthy gaming.

VII Comments to Q9.

1. With respect to promising a growth trajectory for Indian online gaming segment, TRAI, in its consultation paper, has stated as below:

“The Intermediary Guidelines and Digital Media Ethics Code Rules, 2021 (online gaming rules)⁶² for online gaming issued by MeitY, lays out a comprehensive framework for online gaming ecosystem and deals with fact checking related to online content pertaining to Government.”

2. However, with respect to “The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021”, updated as on 6.4.2023, we would like to highlight that there are certain sections in these guidelines with respect to policy and regulatory aspects in terms of online gaming in India which need clarification especially w.r.t. the offerings by the TSPs. These are as below:

a. **Rule 2 (qd) on the definition of “online real money game”:**

- i. The said rules define the term as –

‘online real money game’ means an online game where a user makes a deposit in cash or kind with the expectation of earning winnings on that deposit.

- ii. In this regard, we would like to submit that for a game to qualify as an online real money game, the user has to make a deposit with the expectation of winning in money or money’s worth. It may be clarified that a game will qualify as an online real money game only if the user has made a deposit of money or money’s worth (i.e. anything that has monetary value that is capable of being realized) in order to play the game with the expectation of winning/getting money or money’s worth on winning the game - i.e. both these criteria are required to be met for a game to qualify as an online game. For a game



to qualify as an online real money game, the same must entail a money or money's worth deposit made by the subscriber in the expectation of winning a prize in cash or cash equivalent. Thus, online games that do not involve any deposit by user and do not involve any winnings (cash/kind) are not covered under the ambit of Online Gaming Rules.

- iii. **Mere payment of subscription to play a bouquet of games will not qualify as a deposit:** TSPs facilitate their subscribers/users to go on to the telco app/website and play the games offered by the gaming Partner on the gaming Partner platform (through backend integration between the telcos' app and gaming Partner platform). As this subscription is not locked to any specific game, nor are the subscriptions paid with the objective of winning, thus, the payment of a subscription alone cannot be treated as a deposit and cannot be the basis to classify any game as an online game.
 - iv. **Use of In-game currency will not qualify as an online game:** Use of in-game currency (i.e. virtual coins), which users may earn by either fulfilling certain objectives or tasks set out by the game, if these coins are not bought via direct payment, and instead can only be earned by the users via game objective fulfilment, cannot be treated as a deposit paid/made by the user. Similarly, even if such coins are redeemed to play certain games or against in-game purchases (such as for in-game items or skins), such games will not be treated as online games, since there are no deposits or rewards against money or money's worth.
 - v. Hence, we request TRAI to acknowledge and ascertain that the above-mentioned offerings of TSPs would not come under the ambit of online gaming rules.
- b. **Rule 2 (qb) on the definition of "Online Gaming Intermediary (OGI)":**
- i. The said rule defines the term as –

'online gaming intermediary' means any intermediary that enables the users of its computer resource to access one or more online games;
 - ii. **Online Gaming intermediary is the one that develops and offers the game along with relevant terms & conditions:** There are entities who offer games on their app that are provided by third party game Partners and these games reside on the Partner's own infrastructure, and a dedicated instance of their gaming platform is accessed by users through the entities app. The OGI in this case, is the game platform (third party game partner) and not the App (Entity). Thus, we request that it may be clarified that the OGI will be the partner that develops and offers the game including all its relevant terms and conditions and the entity that is just an intermediary that is merely hosting the game, will not qualify as an OGI.
 - iii. **The same game will not be regulated twice:** The principle that the same content should not be regulated twice has been recognized by the Ministry of Information and Broadcasting (MIB), where noting the overlap w.r.t digital news publishers and OTT platforms, it issued a clarification 10.06.2021 clarifying that content of such publishers on an OTT platform would be outside the regulatory responsibility of that OTT platform and grievances w.r.t such content will be handled by the concerned publisher of that content. The same principle/approach may be adopted for online games.



- iv. Considering the above, we request TRAI to recommend that the TSPs providing access to the gaming partners' platform would not be classified as OGI.
 - c. **Rule 4A on additional due diligence by an OGI:** In this regard, we would like to submit that any intermediary that is merely hosting or publishing or advertising an online game will not qualify as an OGI. Thus, a telco (intermediary) that provides a dedicated instance of a gaming platform through its app will not be treated as an OGI and there should not be any overlap as such. We request TRAI to suitably address the concern and issue clarification in this regard.
3. Lastly, w.r.t the safeguards to protect general public from negative and psychological side effects, while the Intermediary Rules, Consumer Protection Act and Rules and Advertising Standards Council Of India (ASCI) rules/guidelines have safeguards to protect the general public such as handling user complaints about negative experiences of online gaming, removal of content that promotes harmful behavior or psychological distress, providing accurate descriptions of games and their potential effects, socially responsible advertising etc., there can be public awareness campaigns and educational initiatives by educational and social institutions for the underage players/young students.

Policy and Regulations

Q13. With the continuous advancement of technologies and convergence of the telecom, information technology and broadcasting sectors, what policy and regulatory measures are required, beyond the existing ones, to facilitate the growth of the broadcasting sector with ease of compliance? Elaborate your comments with proper reasoning and justifications to the following issues:

- i. **To enable healthy and competitive environment amongst the existing and emerging services and ensuring parity among comparable distribution mediums, while being technology neutral.**
- ii. **To allow and encourage infrastructure sharing among the players of broadcasting and that with the telecommunication sector.**
- iii. **Any other suggestion for policy and regulatory framework.**

VII Comments to Q13.

1. Policy and Regulation:

a. Refarming Spectrum required for IMT:

- i. TRAI had recommended refarming of spectrum 526 MHz - 582 MHz band to be utilized for IMT deployments. Extract of TRAI recommendations dated April 11, 2022 is provided below:

c) DoT should come out with a plan for refarming 526-582 MHz band to be utilized for IMT deployments. To make 526-582 MHz band available for IMT, DoT should work with MIB to prepare a plan for an early migration from Analogue to Digital Transmission, so that the frequency band from 526-582



MHz can be vacated for IMT services. Considering that ITU has identified spectrum in 470-698 MHz as an IMT band in Region 2 & Region 3, DoT may adopt a holistic approach and review the entire frequency range starting from 470 MHz to 582 MHz.

d) In case, complete refarming of 526-582 MHz frequency range for IMT is not feasible, DoT may explore the possibility of this band being used for IMT as well as for broadcasting by MIB on coexistence basis. Refarming of this frequency range for IMT may be performed in a phased manner so that as and when some frequency carriers are vacated, the same can be auctioned for IMT services.

- ii. The Bharat 6G Vision of March 2023 also recognizes 526 MHz - 582 MHz as one of the potential IMT bands for low power private networks in coordinated use with MIB on non-interference and non-protection basis from TV transmission.
 - iii. **Therefore, the National Broadcasting Policy should provide for a clear strategy under Policy and Regulation, for vacating the spectrum 526 MHz - 582 MHz in a time-bound manner.**
- b. D2M (Direct to Mobile):**
- i. We understand that the underlying policy intent for D2M is to leverage broadcasting capabilities to offload unicast traffic from mobile networks and save bandwidth. However, the implementation of the D2M as a dedicated network, outside the cellular networks needs to be properly examined.
 - ii. Building a dedicated D2M network appears to be in contradiction to the notion of the convergence, as it will lead to fragmentation of spectrum by earmarking spectrum specifically for the broadcasting infrastructure as opposed to technology neutral approach adopted in the spectrum assignment and licensing conditions until now.
 - iii. Furthermore, offloading cellular networks requires a close integration of D2M (i.e. broadcasting capabilities) with cellular networks, so that the spectrum and infrastructure can be optimally leveraged for broadcasting and IMT services as per the demand. Therefore, a dedicated D2M network, built by a third party, will not be able to achieve these aspects optimally.
 - iv. Most importantly, the proposed band 526 MHz - 582 MHz is crucial for IMT services. Any allocation of spectrum for D2M within this band will adversely affect IMT deployments. Further, spectrum allocation specifically for D2M will lead to fragmentation of spectrum, as opposed to technology neutral approach adopted in the spectrum assignment and licensing conditions until now as well as it would be highly inefficient and sub-optimal use of spectrum.
 - v. Cellular broadband networks have increasingly played an important role in the delivering the video content to consumers. On the other hand, there are various challenges, such as lack of device ecosystem, in various D2M technologies.



- vi. The purpose of leveraging the broadcasting capabilities for delivery of video content to consumers, can be achieved by utilizing the broadcasting technologies within the ecosystem of mobile cellular networks so that the spectrum can be optimally utilized between Broadcasting and Unicasting requirements. This will provide seamless experience to customers who use smartphone for both video consumption and other data-based services.
- vii. Due to the above aspects, the model for implementing the D2M as a dedicated network, needs to be reviewed. D2M should work in tandem with cellular networks as a complimentary network, as its primary function is to carry traffic offloaded from cellular networks.
- viii. **It should be a clear strategy in National Broadcasting Policy, to utilize D2M as a complimentary network to cellular networks.**

c. Spectrum assignment methodology:

- i. In the era of convergence, it is most important to ensure level playing field across overlapping services, technology neutral spectrum and using existing time-tested policies.
- ii. In our view the existing spectrum assignment methodology i.e. a fair and transparent auction mechanism being used for access spectrum, should be applicable for all fresh spectrum assignments across telecommunication and broadcasting sector.
- iii. Thus, any fresh spectrum allocation for broadcasting sector, including for D2M services, needs to be assigned through auctions in a technology neutral manner. The successful bidders should be able to deploy this spectrum either for D2M as complementary network to cellular networks or IMT or both.
- iv. This will allow the spectrum holders to utilize the spectrum flexibly within the networks for IMT and Broadcasting Services, thereby making optimal utilization of this finite and precious national resource.

2. Specific Regulatory Authority for Broadcasting:

- a. In our opinion, there is no need or plausible justification to explore for a separate regulator for broadcasting services.
- b. TRAI has been successfully regulating both the telecommunications and broadcasting sector for years and is well aware of the emerging technologies, policies, past practices, licensing framework, etc.
- c. TRAI has always been the torch bearer and way ahead of time when it comes to building the policy and licensing framework. Its inputs have been playing a significant role in building the foundation for various telecom and broadcasting policies from time to time.



- d. Considering the era of convergence, the distinction between the telecommunication and broadcasting services as well as provision of these services through separate networks, is fast fading away.
- e. In such scenarios, these sectors would definitely require a single regulator for deeply understanding the licensing and regulatory framework applicable for these services, emerging technologies and for formulating future-fit regulatory frameworks.
- f. **Therefore, the need of single regulator i.e. TRAI for telecommunication as well as broadcasting is quite obvious and there should not be any specific separate regulator for broadcasting. The same should also be captured in the National Broadcasting Policy.**

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