

**CONSULTATION PAPER ON “INPUTS FOR FORMULATION OF NATIONAL
TELECOM POLICY -2018” ISSUED BY THE TELECOM REGULATORY AUTHORITY
OF INDIA DATED JANUARY 03, 2018**

**TO
THE TELECOM REGULATORY AUTHORITY OF INDIA**

**FOR AND ON BEHALF OF
SONY PICTURES NETWORKS INDIA PVT. LTD.**



Dated: January 31, 2018

I. **INTRODUCTION**

We thank the TRAI for initiating consultation by issuance of the Consultation Paper on Inputs for Formulation of National Telecom Policy-2018 (“**Consultation Paper**”). By way of the Consultation Paper, TRAI has sought views on the new telecom policy being formulated by the government to attract \$100 billion worth of investments in a sector that is going through consolidation amid intense competition. As part of the consultations for the National Telecom Policy-2018, the TRAI has set objectives including leap-frogging into the top-50 nations in terms of network readiness, communication systems and services, which will align with the Government's agenda of improving its ease of doing business score in the telecom sector.

II. **ISSUES**

Under the structure of Policy framework, please see our comments below on D) (j) & (k) of the Consultation Paper pertaining to ‘integrated regulation of ICT and broadcasting sector led by economic and social policy goals of the country’ and ‘restructuring of TRAI as converged regulator for ICT and Broadcasting sector’:

Creativity and content creation and carriage/distribution platforms are fundamentally different both conceptually and as businesses. One involves the application of the intellect in creative pursuits and the consequent creation of intellectual property and the other a technology platform to carry content. Intellectual Property in content is of utmost importance to broadcasters. Any attempt at putting the two at par for the purposes of regulatory oversight by taking shelter under ‘convergence’ would be wholly inappropriate and flawed. Convergence is the coming together of similar technologies and not the forcible joining of two dissimilar business models. Hence we are of the view that the current policy framework with regard to broadcasting and ICT have worked well across the respective sectors and we do not see the need for integration between ICT and broadcasting sector due to the reasons mentioned below:

→ **Forbearance and level playing field**

Content providers are free to license their content as per the provisions of the Copyright Act and carriage providers (i.e. Cable TV, DTH, IPTV and HITS) are providing content through their distribution pipeline and charging the consumers for use of their networks, thereby ensuring forbearance and level playing field in their respective areas. Content creation is an intellectual exercise and subject to proprietary rights and royalty and license fee payment mechanisms as per the relevant provisions of the Copyright Act and Rules. Further, oversight over copyright licensing and royalty tariffs is the exclusive remit of the Copyright Board (now merged with the IPAB- Intellectual Property Appellate Board). Issues of competition are dealt with by the Competition Commission of India.

On the other hand, the carriage of content to consumers via distribution platforms like DTH, MSOs/LCOs and IPTV networks, where no copyright licensing is involved, falls within the purview of the Telecom Regulatory Authority of India (TRAI) which regulates the inter-connection between broadcasters and platforms and sets the quality of service requirements. TRAI has also attempted to regulate the tariff for provision of content to platform operators which is currently sub-judice before the Madras High Court.

In addition, so far as complaints on content shown on television, a self-regulatory mechanism comprising ASCI for advertisements, BCCC for content on non-news channels, the NBA for content on news channels and the Press Council of India for print media is already in place and functioning well.

The above system has worked well for many years now and we do not see any need to make changes in the name of ‘convergence’.

Further, there are several laws and self-regulatory mechanisms that govern the exhibition of content whether in cinemas, on television screens or on the internet:

- (i) The Cable Television Networks (Regulation) Act, 1995 and the Rules thereunder;
- (ii) The Code for Self-Regulation of Advertising Content in India/ Advertising Standards Council of India (ASCI);
- (iii) Indian Broadcasting Foundation’s Self-Regulatory Content Guidelines for Non-News & Current Affairs Television Channels/the Broadcasting Content Complaints Council’s (BCCC);
- (iv) News Broadcasters Association (NBA);
- (v) Central Board of Film Certification Guidelines;
- (vi) Cinematograph Act, 1952 read with the rules;
- (vii) Sports Broadcast Signals (Mandatory Sharing with Prasar Bharati) Act, 2007;
- (viii) The Copyright Act, 1957;
- (ix) Flag Code of India, 2002;
- (x) The Prevention of Insults to National Honour Act, 1971;
- (xi) Emblems and Names (Prevention of Improper Use) Act, 1950;
- (xii) The Information Technology Act and the Rules thereunder;
- (xiii) Judicial Pronouncements – Judgement of the Delhi High Court in the NDTV matter¹, judgement of the Supreme Court in the clean feed matter filed by Star India Pvt. Ltd.², judgement of the Supreme Court on the mandatory sharing of sporting events with Prasar Bharati matter³ etc.;
- (xiv) TRAI notifications on several aspects– for instance prohibition on dual LCNs, prohibition on landing page (sub-judice before the TDSAT), the 12-minute advertisement cap per hour (currently sub-judice before the Delhi High Court);
- (xv) Broadcasters’ own contractual obligations towards sporting authorities/other third parties which inter alia include compliance with applicable laws.

With content now widely available on internet, further regulation is not necessary. To the contrary, codification of self-regulation should be encouraged.

→ **Governance of content and carriage**

Per the Cable Television and Networks Act, 1996 read with the rules, MIB is the nodal Ministry for all broadcasting activities in the country. MIB is not only the policy maker but also acts as licensor and content regulator for broadcasters. Broadcasters also coordinate with the DoT/MoC and DIPP. On the other hand, per the TRAI Act, 1997,

¹ *New Delhi Television Ltd. (Appellant) v. ICC Development (International) Ltd. & Another (Respondent)* [(FAO) OS 460/2012] dated October 12, 2012

² *Star Sports India Pvt. Ltd. (Appellant) v. Prasar Bharati & Ors. (Respondent) (S.L.P. (CIVIL) NO. 8988/2014)* dated May 27, 2016

³ *Union of India (Appellant v. Board of Control for Cricket in India and Ors. (Civil Appeal Ni. (s) 10732-10733/2017)* dated August 22, 2017

TRAI is the regulator for broadcasting carriage and cable services. TRAI regulates tariff, interconnection, QOS for broadcasting services and cable services. Broadcasting being primarily concerned with content creation and creative processes is completely different from ICT technologies which are carriage platforms. Hence, the need for two separate authorities who are experts on the respective subject matters. Authority dealing in content should most definitely be different from authority dealing in other carriage related issues. This is also important to ensure transparency in the process.

Further, in the absence of a convergence policy, convergent regulations/integrated authorities governing two distinct sectors i.e. Broadcast and ICT would result in ambiguity and overlap which would not be helpful for industry growth.

→ **Forty Fourth Report of the Standing Committee on Information Technology (2017-18)**

The Standing Committee in its report placed before the Parliament on December, 2017 had recommended a separate Regulator for 'Broadcasting' primarily due to tremendous growth in the Broadcast sector and increase in the number of satellite television channels by leaps and bounds. TRAI's proposal for a converged regulator is contrary to the report because if Telecom and Broadcasting are converged there would be no need for a separate regulator as recommended by the Committee. Infact it is inappropriate for TRAI to make such a proposal knowing fully well that the report of the Standing Committee is yet to be examined by the Ministry of Information and Broadcasting (MIB) which is the appropriate authority on the matter.

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