

BY COURIER/ELECTRONIC MAIL

8<sup>th</sup> May, 2019

To,

Advisor (B&CS)  
Telecom Regulatory Authority of India,  
Mahanagar Doorsanchar Bhawan,  
Jawahar Lal Nehru Marg,  
Old Minto Road,  
New Delhi – 110 002

Dear Sir,

Re: **Submissions to Telecom Regulatory Authority of India ("TRAI") in response to the Consultation Paper on "Entry Level Net worth requirement of Multi-system Operators in Cable TV Services".**

At the outset, we would like to thank the Authority for giving us an opportunity to tender our views on the issues related to "Entry Level Net worth requirement of Multi-system Operators in Cable TV services".

In regard to the present consultation process, we submit that we have perused the said paper carefully. We hereby submit our comments attached as Annexure. The said comments are submitted without prejudice to our rights and contentions, including but not limited to our right to appeal and/or any such legal recourse or remedy available under the law.

The same are for your kind perusal and consideration.

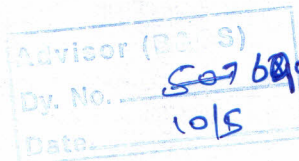
Yours Sincerely,


Ms. Mansha Shukla

Director Legal Affairs- South Asia

Encl: As above



Dyno-5751  
09/05/19

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**Submissions to Telecom Regulatory Authority of India ("TRAI/ Regulator") in response to the Consultation Paper on Entry Level Net worth requirement of Multi-system Operators in Cable TV services.**

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At the outset, we would like to state that TRAI's decision to examine the Entry Level Net worth requirement of Multi-system Operators in Cable TV services is a welcome one. Such exercise ensures that the Regulator is willing to take into consideration that, only serious players are present in the distribution chain in effect ensuring the orderly growth of the sector. Addressability loses its significance if non serious players are in the distribution chain ultimately leading to economic loss for the Broadcaster and inconvenience to the consumer.

It is submitted that the present eligibility criteria do not clearly take into account financial strength, technical strength and experience of the applicant to provide cable TV services. Currently, any personnel willing to provide cable TV services can simply apply and take a license. Investment is required in retransmission of signals of the channels of the Broadcaster to the end consumer and it also requires continuous technology up-gradation and maintenance for which it is essential that the MSO is in a strong stable financial position in order to meet all its obligations and provide services to the consumers without compromising the quality. The Regulator should appoint authorized officers to ensure that only persons having enough financial, technical strength and experience can apply to run cable networks. There must be a clause of renewal of License every year, where-in the Regulator can grant and cancel the license basis of minimum level net worth criteria and the Quality of Service audit, which the Regulator will be entitled to carry out for respective MSO operating in respective city, towns and villages. Different parameters must be fixed for financial and technical requirement of an MSO, depending on the population of the city town or village.

There must be a comprehensive list of documents required to be submitted along with the application. The list of documents, should highlight, infrastructural capability, proposed area of operation, number of subscriber targeted, the intent and definition of the value-add services that the MSO proposes to provide, financial capability and resources to establish, run and maintain a cable network.

Further only private organizations should be allowed to apply for an MSO license. It would be in the public interest to discourage state governments, municipal bodies and panchayats from entering the field of distribution.

Just like the Consumer Price Index, the Gross Domestic Product, and the unemployment numbers are key indicators of the health of the nation's economy, the Net Worth of a MSO is a key indicator of its overall personal financial health. In the era that has seen entire industries being shaken up in India in the advent of the Insolvency and Bankruptcy Code, 2016, having a net worth criteria for entering competitive business wakes entities up to the downside of debt instead of just emphasizing assets. Therefore, if banks and lenders care about assets and liabilities of an entity, so should authorities who regulate the entry and exit of such entities in specialized sectors such as Telecommunications and Broadcasting responsible for last mile delivery of services to customers i.e. the Multi System Operators ("MSOs").

**3.1 Do the present rules and provisions as regards eligibility and net worth for MSO require a review or modification? Give your answer with justification?**

Yes, the present rules and provisions in regard to eligibility and net worth for MSO do require a review and modification in terms of fine tuning the criteria so that only serious players are able to enter the broadcasting market. In exercise of the powers conferred by subsection 2 of Section 22 of the Cable Television Networks (Regulation) Act, 1995, the Central Government vide notification dated 28<sup>th</sup> April 2012 (hereinafter referred to as "extant Rules") made the following amendments in regard to the eligibility criteria for MSO's-

Rule 11A of the extant Rules states the following-

*"11A Application for registration as a Multi-System Operator-*

(1) For the purpose of operation of cable television network services with digital addressable system in a notified area, a person who desires to provide such service shall make application for registration as MSO to the registration authority in form 6

(2) Every application under sub-rule(1) shall be accompanied by-

- Processing fee of rupees one lakh
- Declaration in Form 2".

*"11B Eligibility criteria for Multi System operator- The following criteria shall be fulfilled by an applicant who makes an application under rule 11A, namely-*

- (a) Where the applicant is a person, he shall be a citizen of India and not less than eighteen years of age;*
- (b) Where the applicant is an association of individuals or body of individuals whether incorporated or not, the members of such an association or body shall be citizens of India and not less than eighteen years of age;*
- (c) Where the applicant is a company, such company shall be a company registered under the Companies Act, 1956 and shall be subject to such conditions relating to Foreign Direct Investment as maybe decided by the Central Government*
- (d) The Applicant shall not be an un-discharged insolvent*
- (e) The Applicant shall not be of unsound mind as declared by a competent court*
- (f) The Applicant shall not be convicted of any criminal offense"*

In addition to the given Rules 11A and B, Rule 11C subject to terms specified in Rule 11D and security clearance from Central Government issue a certificate of registration. The Rule 11D of the present rules are reproduced hereinunder-

*"11D Terms and conditions for registration as Multi-Systems Operator- a person who has been granted certificate under rule 11C shall comply with the following terms and conditions, namely-*

- (a) Such person shall comply with all the provisions of the Act and the rules made thereunder;*
- (b) Such person shall comply with the regulations, orders, directions or guidelines made or issued by the Authority;*
- (c) Such person shall have the capacity to carry minimum number of channels specified by the Authority;*
- (d) Such person shall not carry programming service provided on the channel generated at the level of such Multi-System Operator which is in violation of the Programme Code specified in rule 6 and Advertising Code specified in rule 7."*

In terms of the current framework on eligibility criteria, MSOs being responsible for the last mile delivery of services to the subscribers must have a prescribed minimum net worth criterion for registration (which may be further sub divided into city, towns and villages) so as to restrain the non-serious players from entering in the business. Furthermore, in light of the latest guideline wherein MIB decided and conveyed in a circular dated 27th Jan 2017 that all registered MSOs are free to operate in any parts of the country, irrespective of registration for specified DAS notified areas granted by the Ministry, the exercise of granting city-wise, district wise or state-wise registration becomes redundant which however can be a benchmark for assessing the network, which further can ensure effective competition and not be a deterrent / entry barrier for MSO's willing to operate on a regional basis only. A mechanism needs to be introduced wherein MSOs operating in specific areas need to have category-wise Net-Worth and entry requirements so that smaller players who provide last mile connectivity to smaller, rural or remote areas are not discouraged.

It is necessary to highlight here that in current scenario where there is no minimum Entry Level Net-Worth, non-serious players accumulate outstanding under the Interconnection Agreement and shut their operation completely, which results in huge loss to the Broadcasters. Once a MSO closes its operations on ground and legally ceases to exist, Broadcaster faces huge difficulty in recovering the monies due to them even through litigation. Further, every player in the industry has a Net- Worth

criterion, be it Broadcaster, DTH, HITS, IPTV or Telcom operators and hence, to have level playing field and parity in the industry, it becomes more important to have rules and provisions regarding eligibility and net worth for MSOs.

Therefore, the amendments need to have a two-fold focus wherein on one front, MSOs operating in large sectors must have higher net-worth and entry requirements to ensure adequate infrastructure for the particular scale of operations that it is proposing and on the other front, different categories for different MSOs must be created depending upon their scale and area of operations with separate net worth and entry categories. In such cases, MSOs operating on a smaller scale or level may always have an option to upgrade subject to meeting the terms and conditions which can be proposed as is being suggested herein.

The population / demographic classifications of places can be used to prescribe the transition path. Starting with Metros, it can be followed in the order of 10 Lac + pop cities, then 5lac to 10lac pop towns, then 1lac to 5 lac pop towns, then 20,000 to 1 lac and below 20,000 populated towns.

In our view, apart from the registration fees, every additional market(s), which an existing or a new MSO is entering into, should entail an entry fees which shall be dependent on the population of the market(s) in which the MSO is entering and shall be submitted by the MSO to the Authority as follows before starting its operation in that market:

Market Population	Entry Fees (In INR)
Less than 20, 000	Rs. 5, 00, 000/-
20,000 to 50, 000	Rs. 8, 00, 000/-
50, 000 to 1, 00, 000	Rs. 10, 00, 000/-
More than 1, 00, 000	Rs. 25, 00, 000/-

It is suggested that following must fall under the eligibility criteria for MSO:

- ✓ Net-worth Certificates, Balance Sheets and Audited Account Statements, as certified by the statutory auditors of the concerned MSO should be the basis for processing of applications.
- ✓ Certificate from a firm of national/international repute certifying that all hardware and software systems and technology adopted by the MSO are as per the standards required under the applicable laws and fully capable of curbing hacking or piracy of any nature or form;
- ✓ Certification on the security standard being followed by MSO which shall not, in any case, be less stringent than the security standard recommended by the Authority for the Telcom Sector.

**3.2 If yes, should there be provisions specifying eligibility only for registered proprietorship / partnership firms or it should continue to include individuals or group of individuals as at present? Please elaborate your comments with reasons and facts.**

All entities including registered companies, partnerships firms should only be allowed to be eligible for qualifying as an MSO as long as they have registered their business either as a Private Limited Company, a One Person Company or a Limited Liability Partnership registered under the applicable laws in India. We completely agree with the noting made by TRAI in its consultation paper that if an individual applies for an MSO license, there is no prudent way to confirm his/her actual net worth mainly because an individual is not required to make any statutory submissions to any public authority that specifies the net-worth. Therefore, if a minimum net worth requirement is specified, it will be necessary to specify the format and the procedure to calculate the net-worth. Individual entities or groups of individuals are also not governed by Ministry of Corporate Affairs in respect to regular submissions of their financial worth and activities. The various advantages of providing eligibility only to registered firms / companies as MSOs is that the MSO apart from following the various compliances under TRAI Act and various rules

under the Central Government will also be liable to comply with the various compliances under the Registrar of Companies as prescribed by the Ministry of Corporate Affairs which ensures that a certain standard is maintained by the MSO in terms of its financials, audit and corporate functioning making way for seamless relationships and enforceable contracts.

Given that the Broadcasting Industry is a highly specialized industry, the possibilities are huge and MSOs are a very important cog in the wheel for last mile delivery of services to the consumers, it is important for MSOs to be part and parcel of a formal setup which is subject to monitoring and scrutiny as and when necessary.

**3.3 Is there a need for prescribing an entry level minimum net worth for the MSOs? Please justify your comments.**

The Net-worth is an important indicator for gauging the financial standing of an entity. MSOs have to make substantial obligation, liabilities and investment for setting up the head-ends and additional investment is necessary for spreading the network which further also requires continuous technology up-gradation. Given that the distribution service provided by MSOs is a critical in the distribution of Television Channels, being the last mile for extending service to the consumer, a financially weak entity may either wind-up or may have to compromise on quality of its services. Thus, specifying a minimum net-worth for an applicant MSO (with sub categorization as detailed herein above) will help ensure orderly growth of the sector as only entities of good financial standing will be able to enter the market for performing all the obligation towards various stakeholder thus creating a stable environment for the industry to flourish.

**3.4 If yes, what should be the procedure to check and verify the net-worth in case of individual or group of individuals? Similarly, what should be the mechanism to verify the net-worth as claimed by business entities like proprietor-ship firm, partnership firm, LLP or Company as the case may be?**

Only entities with verifiable net worth as detailed herein above should be allowed to enter the market as MSOs. With respect to the mechanism to be followed for verifying the net-worth as claimed by entities such as Limited Liability Partnership firms, or Company including One Person Company incorporated under the laws of India, please refer to our comment to 3.23 detailed herein below. The definition of "net worth" should be applicable as defined under the Indian Companies Act 2013.

**3.5 Should the net worth requirements for entrant MSO be based on its proposed area of operation? Give your comments with justification.**

In terms of the Cable Television Act and Rules, MSOs are not allowed to provide cable television services in any one or more notified areas without valid permission of the Central Government under sub-rule 3 of rule 11. However, under the extant TRAI Guidelines, registered MSOs are free to operate in any parts of the country, irrespective of registration for specified DAS notified area(s). It is also pertinent to note that since the capital requirements for setting up operations of an entrant MSO would depend upon the areas of operation, thus their net worth requirements should also vary with the initial proposed area of operation. For instance, setting up the same Net Worth Requirements for a District Level MSO and a Country Wide MSO would be akin to treating un-equals as equals and would be discriminatory to the smaller MSO.

**3.6 If yes, what could be different classification of entrant MSOs based on area of operation? Give your comments with justification.**

The different Classification of entrant MSOs based on area of Operation should be on the basis of the aggregate population in the respective market of the MSO in India. Further, since MSOs should be encouraged to have operations in more remote destinations, the suggested categorization shall ensure more relaxed requirements for MSO operating in a market with an aggregate of less than 20,000

consumers/subscribers. However, no such relaxation should be available to the MSOs operating in markets with an aggregate of more than 20,000 subscribers.

**3.7 What should be the entry level net worth for each of the categories of MSOs if any classification is made on the basis of area of operation? Give your comments with justification.**

The net worth criteria can be then decided on the basis of area covered and capital requirement for each MSO based on the abovesaid classification which can be as follows-

<u>Classification based on Market Population</u>	<u>Minimum Net Worth (in INR)</u>	<u>Entry Fee (in INR)</u>
More than 1, 00, 000	Rs. 20 crores	Rs. 25 Crores
50, 000 to 1, 00, 000	Rs. 10 crores	Rs. 10,00,000
20,000 to 50, 000	Rs. 5 crores	Rs. 8,00,000

Further, total value of the assets of an MSO shall always be more than the total value of its liabilities.

**3.8 In case, license area of MSO's is classified on the basis of area of operation, what should be the mechanism and criteria to classify existing MSOs? Please comment with proposed process to re-classify.**

Please refer to the comments of the preceeding issues for consultation.

**3.9 Should the minimum net worth required in case of MSOs operating in North east and/or J&K be relaxed compared to other regions? Please provide suitable justification.**

No. As any relaxation might lead to breach of security, data pilferage, illegal transmission of signals beyond the control of the Broadcasters which may lead to breach of intellectual property rights,

**3.10 If yes, by how much should the entry level net worth criteria be relaxed? Please give your comments with justification.**

Not applicable.

**3.11 What are the components of the fixed costs incurred by an entrant MSO? Give your comments with justification.**

An MSO incurs upfront costs mainly for - a) Head-end establishment b) CAS and SMS installation c) STB deployment d) Laying down cables e) customer care centre for compliance with Quality of Service Regulation.

**3.12 What are the components of the variable costs incurred by an entrant MSO?**

We feel that topography, capax, manpower, pay-out to the broadcaster, viewership, earning capacity and ease of operations play a role in deciding the variable costs which may change from area to area.

**3.13 How do the fixed costs and the variable costs depend upon the scale of the operation that is for the small, medium and large operators?**

Costs both fixed and variable have a direct linkage with Operations. If an MSO is catering to a large area of Operations ranging into several 1000s of Square Kilo-meters both the fixed and variable costs for such operations will be higher. Similarly MSOs carrying 100 channels will have lesser fixed and variable costs than MSO carrying 500 channels.

- 3.14 Should the minimum net worth required be based upon the average fixed cost incurred by an entrant? If yes, what should be the appropriate criterion? Please explain.

No. Net worth should not be linked to average fixed cost incurred by an entrant as net worth should be there to ensure quality of service, to ensure that only serious players enter the market and all the stakeholders of the MSO can offer and repose long term business equation with the entrant MSO.

- 3.15 Discuss if there could be some other criteria in context of costs incurred such as a combination of average fixed and variable costs.

No. Any other combination will lead compromise in terms of service and deliverables to all stakeholders.

- 3.16 What is the average cost incurred in establishing a minimum capacity of 100/200/300/500 channels? Should the minimum net worth depend upon the proposed channel carrying capacity of the entrant? Please justify.

No. The minimum net worth of an MSO should be governed in terms of the criteria referred to in the responses with respect to the preceeding issues for consultation. In such a scenario, the size and scale of operations of MSO will already be taken into account for assessment of Net Worth that is required for an MSO to begin operations.

- 3.17 If the answer to question 3.16 is in affirmative, what should be the minimum net worth requirement for an entrant MSO willing to provide just the basic service tier of channels? Further, how should the minimum net worth requirement vary with increase in proposed capacity tier?

Not Applicable. Please refer to the comments of the preceeding issues for consultation.

- 3.18 Should the minimum net worth depend upon the proposed number of subscribers that an applicant MSO would cater to? Please justify.

No. This cannot be the sole basis as the number of subscribers is variable at any point of time. Please refer to the comments of the preceding issues for consultation.

- 3.19 If the answer to question 3.18 is in affirmative, what should be the proposed number of subscribers and the relevant net worth for the same?

Not applicable. Please refer to the comments of the preceeding issues for consultation.

- 3.20 Discuss if any other criterion could be used to determine the entry level net worth of the MSOs?

Please refer to the comments of the preceeding issues for consultation.

- 3.21 Should necessary modifications be made in Cable TV rules in case of individual applicants so as to ascertain his/her net worth more prudently compared to the existing regime?

Rule 11 of the Cable Television Network Rules can be suitably modified / amended to include eligibility criteria for MSOs providing a suitable methodology for Net Worth Requirements for a MSO depending upon the area of coverage given by the MSO alongwith the number of Channels it is distributing. Such mechanism can thus be a pre requisite to entities seeking to apply for a license to operate as an MSO which should be restricted to only registered entities.

**3.22 Should the individual be permitted to seek MSO registration? If he/she is permitted, what should be the method for calculating and verifying his/her net worth?**

No. Only registered entities should be permitted to apply for MSO registration.

**3.23 Which documents need to be furnished at the time of registration in order to justify the given net worth requirements for all other 3 cases, i.e., body of individual, partnership firms, companies?**

The Ministry of Corporate Affairs (MCA), in 2015, had notified the Companies (Indian Accounting Standards (IND AS)) Rules 2015, which stipulated the adoption and applicability of IND AS in a phased manner beginning from the Accounting period 2016-17. The MCA has since issued three Amendment Rules, one each in year 2016, 2017, and 2018 to amend the 2015 rules. In terms of the same, each entity willing to participate in the process must give its net worth calculation in the following manner on yearly basis:-

Net worth will be determined based on the stand-alone accounts of the company /partnership firm as on 31st March of that year, or the first audited period ending after that date. Net Worth is the total of Paid-up share Capital and all reserves out of profit & securities premium account, after deducting accumulated losses, deferred expenditure, and miscellaneous expenditure not written off. Only capital Reserve arising out of Promoters Contribution and Government Grants received can be included. Reserves created out of revaluation of assets and written back depreciation cannot be included.

It is suggested that Net-worth Certificates, Balance Sheets and Audited Account Statements as certified by the statutory auditors of the concerned MSO should be the basis for processing of applications.

**3.24 Comments on the contents of proforma on the basis of which net worth for the new entities is to be calculated?**

In the present Regulations, Form 2 is an affidavit on behalf of the Applicant MSO that it shall comply by the various terms of conditions of laws relating to Cable TV. Form 6 is a list of particulars which includes the name, address, registration, financial documents such as those relating to tax, areas of operation, channel capacity, strength and ability to carry out cable services, existing agreements with broadcasters etc. We feel that apart from these, the definition of net-worth as provided above in terms of the Companies Act, 2013 should be used as a parameter.