



**Koan Advisory Group’s Counter Comments to the TRAI Consultation Paper on Formulation of a Regulatory Framework for Application-based Linear Television Distribution (ALTD) Services (Including Free Ad-Supported Streaming Television (FAST) Services)**

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We thank the Telecom Regulatory Authority of India (TRAI) for giving stakeholders the opportunity to submit comments on the Consultation Paper (CP) on Formulation of a Regulatory Framework for Application-based Linear Television Distribution (ALTD) Services (Including Free Ad-Supported Streaming Television (FAST) Services). We also appreciate TRAI for publishing these comments and offering stakeholders an opportunity to submit their counter comments. Please see our counter comments below. We specifically respond to stakeholder views regarding the need to regulate ALTD services including FAST channels as broadcasters and respectfully submit the following:

1. TRAI should revisit its decision of introducing a new player in the value chain, in the form of ‘ALTD services’ and treating these services akin to DPOs. FAST channel development and adoption is at a nascent stage in India. At this juncture, introducing prescriptive regulation will be premature and can risk stifling the segment’s growth and potential to innovate.
2. FAST channels operate via the open internet and not by utilising scarce and finite resources. Thus, introduction of licensing measures such as authorisation is unwarranted and can create entry barriers for new players.
3. By virtue of the broad definition of ALTD services, the CP risks saddling FAST channels, and even OTT streaming services, with distributor-style, legacy broadcasting regulation, thereby blurring the established distinction between content and carriage.
4. TRAI must not attempt to extend legacy DPO-style obligations to regulate online content providers. If the regulator’s intent is to create a level-playing-field between traditional and new, emerging players, it must consider doing so by introducing regulatory forbearance for the legacy sectors and allowing them to develop at par with digital services.
5. Internet services fall outside TRAI’s regulatory remit and must be regulated by line ministries – the Ministry of Information and Broadcasting (MIB) and the Ministry of Electronics and Information Technology (MeitY) instead.
6. Online content providers are sufficiently regulated via the Information Technology Act, 2000 and rules made thereunder and the Consumer Protection Act, 2019 and the introduction of new regulations can risk overregulating the sector by creating parallel obligations.

**Recommendation:** Thus, we recommend that no authorisation framework be introduced for FAST channels at this stage. Additionally, no regulatory interventions must be introduced that equate FAST channels with legacy players such as distributors. If needed, the Ministry of Information and Broadcasting (MIB) must consult on this issue with relevant stakeholders, as the nodal regulator for online content.

Please see our detailed comments below.

S. No.	Stakeholder Comments	Koan’s Counter Comments
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<p>1.</p>	<p><b>Defining ALTD services in an all-encompassing manner</b></p> <p>Stakeholders have submitted suggestions to define ALTD services such as FAST channels in an overbroad manner that would effectively capture all online content services within the proposed regulatory framework.</p>	<p>The CP and stakeholders comments received on it risk expanding the scope of the commonly accepted understanding of FAST channels, by clubbing it with other parts of the ecosystem as ‘ALTD services’. They propose expansive definitions of ALTD services that encompass all application providers distributing linear television channels, whether pre-installed on devices, downloadable, or web-based over the internet. These risks capturing a wide range of internet-based services, including OTT streaming services.</p> <p>Traditionally, the term ‘FAST channels’ has referred to channels that offer viewers free-to-air linear programming, without any paid subscription, and is funded exclusively by advertising. We believe that a broad definition that clubs various unrelated services and products together and significantly expands the business model of FAST channels risks expanding the regime way beyond TRAI’s scope. As explained below, TRAI does not have jurisdiction to regulate online content or providers and is broadly a carriage regulator. The wide definition will grant TRAI oversight over OTT streaming and other digital services. This will go against established structural separations and the government’s intent to keep OTT services outside the scope of the Telecommunications Act, 2023 and its provisions.</p> <p><b>Recommendation:</b> We recommend that TRAI revisit its decision of introducing a new player in the value chain, in the form of ‘ALTD services’ and treating these services akin to DPOs.</p>
<p>2.</p>	<p><b>Regulating ALTD services including FAST channels akin to distributors</b></p> <p>Stakeholders submitted the following:</p> <ul style="list-style-type: none"><li>• ALTD service providers should be brought under the regulatory framework applicable to Distribution Platform Operators.</li><li>• A pan-India authorisation framework for ALTD services should be introduced, which is aligned with DTH/HITS services.</li><li>• Must carry, must provide obligations should apply on ALTD services including FAST channels.</li></ul>	<p>We respectfully submit that these arguments are stemming from a flawed understanding of the ecosystem and the desire to create an artificial level-playing-field by force-fitting legacy regulations on digital players.</p> <p>Traditional DPOs operate on the network layer, i.e., on closed, managed networks. On the other hand, ALTD services, including FAST channels operate on the application layer, i.e., the open internet. Unlike DPOs, online content providers do not utilise a scarce, finite and rivalrous public resource like spectrum. They do not own, manage, or control physical carriage infrastructure or satellite transponders. Online content delivery via ALTD services, including FAST channels or OTT streaming services does not involve licensed carriage infrastructure, which is the defining characteristic of distribution services regulated by TRAI. In such a</p>



		<p>scenario, there is no regulatory rationale for extending infrastructure-centric obligations and DPO-style requirements such as must carry, must provide on online content providers such as FAST channels or OTT streaming services.</p> <p><b>Recommendation:</b> TRAI must not attempt to extend legacy DPO-style obligations to regulate online content providers. If the regulator’s intent is to create a level-playing-field between traditional and new, emerging players, it must consider doing so by introducing regulatory forbearance for the legacy sectors and allowing them to develop at par with digital services.</p>
3.	<p><b>Regulating ALTD services including FAST channels as broadcasters</b></p> <p>Stakeholders submitted the following:</p> <ul style="list-style-type: none"><li>• If any content is distributed through ALTD services, the content provider should be mandated to be registered as a broadcaster to ensure compliance with the Guidelines for Uplinking and Downlinking of Satellite Television Channels in India, 2022.</li><li>• The Ministry of Information and Broadcasting’s (MIB) Guidelines for Uplinking and Downlinking of Satellite Television Channels in India, 2022 (UL/DL Guidelines) should be amended to include FAST channels as well</li></ul>	<p>We respectfully submit that by making such suggestions, stakeholders have misinterpreted TRAI’s definition of broadcasting.</p> <p>TRAI has defined a ‘broadcasting service’ as “the dissemination of any programme(s) through terrestrial or satellite communication medium or a combination of both, intended to be received by the users, either directly or indirectly and all its grammatical variations and cognate expressions shall be construed accordingly;”. As online content providers do not disseminate programmes through terrestrial or satellite mediums, they cannot be said to be providers of broadcasting services or broadcasters. Further, while broadcasters operate on a ‘push’ model, online content providers such as OTT streaming services operate on a ‘pull model’. Thus, calling for their registration as broadcasters is unwarranted.</p> <p>Further, UL/DL Guidelines are applicable on satellite TV broadcasters, teleport operators, news agencies that uplink feeds to TV channels and foreign satellite channels. ALTD/FAST services and OTT streaming services do not leverage any such infrastructure. Instead of transmitting via signals through space or through cables, they deliver content as Internet Protocol (IP) data packets over the general-purpose public internet. Thus, calls to amend the UL/DL Guidelines and expand their scope to FAST channels are flawed and without any regulatory rationale.</p> <p><b>Recommendation:</b> TRAI must appreciate the significant technical differences between broadcasters and online content providers such as FAST channels and OTT streaming services, and</p>



		refrain from regulating them via a one-size-fits-all approach.
4.	<p><b>Mandating a separate authorisation framework for ALTD services, including FAST channels</b></p> <p>Stakeholders submitted the following:</p> <ul style="list-style-type: none"><li>• Broadcasters or content owners providing linear television channels on ALTD services should be mandatorily required to obtain service authorisation as mandated by TRAI.</li><li>• ALTD services including FAST channels should be subject to an authorisation framework that includes substantial entry fees, AGR-based annual fees, minimum net worth requirements, bank guarantees, and security deposits, etc.</li><li>• As ALTD services have lower infrastructure costs than traditional DPOs, they must be charged higher entry fees.</li></ul>	<p>We respectfully submit that any attempts to upend existing frameworks and replace them with more stringent regimes must be rooted in rationale such as market failure.</p> <p>Players such as FAST channels are not experiencing any such challenges in the Indian market. The CP itself notes that India is the fourth largest country in terms of revenue generated via FAST channels. FAST channels in India operate in a highly competitive, self-regulated, free market environment and are not subject to prescriptive authorisation requirements or economic regulation. This has allowed the sector to flourish and has enhanced consumer choice. At this juncture and in the absence of any market failure, introducing prescriptive regulatory measures such as authorisation will be premature. It can distort efficient market outcomes, impose heavy compliance burdens and risk reducing the sector's potential to innovate. We respectfully submit that</p> <p>It is our case that TRAI should consider <i>ex-ante</i> regulatory measures such as authorisation in the industry only on issues that pose a threat of market failure. For instance, an <i>ex-ante</i> regulation may be required to prevent gatekeeping by dominant players in the industry or to battle information asymmetry. At the current stage of growth of FAST channels, where there is high competition in the market and the market is able to correct itself, a prescriptive authorisation regime will risk creating barriers to entry and forcing players out. This can result in inadvertently distorting market dynamics by protecting larger players who can absorb hefty compliance costs, while disadvantaging startups and smaller players. This will go against the government of India's intent and priority to develop the Indian media and entertainment sector as a market leader and a key exporter of soft power. It will further deter the growth of digital technologies and startups</p> <p>Further, introduction of an authorisation regime as per the Telecommunications Act, 2023 will go beyond the limits of the parent Act and the regulator's own regulatory remit as TRAI's mandate under the TRAI Act, 1997 extends only to entities that provide telecommunication services, not to entities that use those services to deliver content over the internet. Thus, any attempts at requiring online</p>



		<p>content providers such as FAST channels and OTT streaming services to seek authorisation as telecommunication services will be bad in law.</p> <p>Lastly, stakeholder inputs that FAST channels must be subject to entry fees and other DPO-style obligations, to make good for lesser infrastructure costs are flawed. Any such assertions ignore the day-to-day operational realities of online content providers.</p> <p>Further, DPOs benefit from regulatory entitlements like spectrum access and right of way, whereas online content providers such as FAST channels and OTT streaming services operate over the highly competitive, open internet, without any such privileges or benefits. They are thus subject to high volatility, massive competition, and complete dependence on third-party ISPs / TSPs for delivery quality.</p> <p>At this juncture, extending authorisation requirements onto online content providers will create insurmountable entry and continuity barriers for all stakeholders, and specially startups and digital entrepreneurs. Additionally, this licensing-style regime will be unique to India, as other jurisdictions such as the European Union, Australia, United Kingdom continue to opt for lighter-touch approaches. Many online content providers that provide FAST channels are global content companies which operate across multiple jurisdictions, by leveraging standardised products. In such a scenario, an India-specific licensing mandate can fragment these global value chains and stem India's growth as a global content hub.</p> <p><b>Recommendation:</b> In the absence of any market failure, upending existing regimes and introducing compliance-heavy authorisation is unwarranted.</p>
5.	<p><b>Concerns around content regulation</b></p> <p>Stakeholders submitted the following:</p> <ul style="list-style-type: none"><li>• OTT and ALTD service platforms operate in regulatory vacuum.</li><li>• Channels distributed on ALTD services do not comply with Programme or Advertising Codes, which they comply with while being distributed via licensed DPOs.</li></ul>	<p>We respectfully submit that online content is sufficiently regulated via the Information Technology Act, 2000 and the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. This shows that there is no 'regulatory vacuum', as contended by certain stakeholders. On top of these specific regulations, online content providers are also subject to general laws of the land (e.g., laws against hate speech, defamation, etc.) and curate their content offerings accordingly. Thus, they voluntarily curate safe, high-quality content to attract advertisers</p>



<ul style="list-style-type: none"><li>• unregulated ALTD / FAST services pose security threats and lack effective consumer grievance mechanisms.</li></ul>	<p>and/or viewers.</p> <p>Unlike submissions of flawed or inefficient consumer protection, online content providers also have their own grievance redressal mechanisms and also offer immediate redressal through reviews, social media, in-app support etc. Their services are also subject to the Consumer Protection act, 2019. In such a scenario, there is no need to introduce any new, overlapping regulations.</p> <p>Any new regulatory inroads by TRAI into the content domain will blur the sacrosanct content-carriage separation, which has recently been upheld by the Supreme Court in <i>Star India Private Limited v. Department of Industrial Policy and Promotion &amp; Ors.</i></p> <p>TRAI's mandate is limited to regulating the technical and economic aspects of broadcasting and we respectfully submit that online content providers such as FAST channels and OTT streaming that operate on the application layer fall outside their purview. Thus, it is our case that TRAI must forbear from creating regulatory inroads into the domain of FAST channels and must limit itself to carriage regulation. Content-related regulatory interventions must be left to the Ministry of Information and Broadcasting (MIB), which is the nodal regulator of all online content in the country as per the Government of India's Allocation of Business Rules. MIB will be best placed to do so by leveraging its experience and subject matter expertise, resulting in balanced regulation that grants certainty to the market.</p> <p><b>Recommendation:</b> We recommend that TRAI should not attempt to regulate FAST channels, but instead delegate this exercise to MIB. We further recommend that an approach that aims to categorise ALTD services including FAST channels as a DSP is misplaced and urge TRAI to take a relook.</p>
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