

Feedback on Telecom Regulatory Authority of India (Authority) Pre-Consultation Paper on Inputs for Formulation of “National Broadcasting Policy”

Shri Anil Kumar Bhardwaj
Advisor (B&CS)
Telecom Regulatory Authority of India
November 07, 2023

We welcome the initiative of the Authority to come out with a [pre-consultation paper](#) to solicit initial comments from stakeholders to formulate the India’s first national broadcasting policy (**NBP**). Before we respond to the Pre-Consultation Paper, we request the Authority to refer our past position/submission [Response to the Consultation Paper on Regulating Converged Digital Technologies and Services – Enabling Convergence of Carriage of Broadcasting and Telecommunication Services \(March 27, 2023\)](#).

For ease of reference, we reiterate below the main recommendations of the submission which the Authority should kindly consider for formulating the final consultation paper on NBP:

1. The current frameworks for telecommunications and broadcasting can be suitably geared to address the requirements on account of market growth and development. For example, a coordination mechanism should be established where all institutions/bodies collaborate for introducing standards, testing and certification.
2. Regulation of carriage and content should continue to be separate, as the functions and the associated risks for the two are significantly different. It is extremely important to note that content services or the media services being offered through the purportedly converged pipeline/infrastructure/means of dissemination does not change the essential nature of the underlying product, which is the content, and as such the content made available via this medium is already regulated under existing laws.

It is important to note that content services or the media services being offered through the purportedly converged pipeline/infrastructure/means of dissemination does not change the essential nature of the underlying product, which is the content, and as such the content made available via this medium is already regulated under existing laws.

3. In the event there is a converged framework, it must clearly segregate the principles for the regulation of content from that of carriage. It must avoid using licensing/registration/permission conditions to impose content regulations, particularly those that restrict freedom of speech and expression.
4. Any regulatory intervention should be designed (a) using an activity-led and risk-based approach (b) that ensures obligations on an activity are proportionate to the harms and risks associated with it (c) whilst keeping in mind the need to avoid regulatory overlaps.

Recommendations

1. The NBP must acknowledge the distinction between different services.

With the changing technologies, the manner of delivering/distribution and viewing content is evolving. The NBP is an opportunity to acknowledge these differences with a focus on creativity which is the founding pillar of broadcasting. However, the Pre-Consultation Paper under the heading of “Policy and Regulation”, includes digital media (both intermediaries and publishers of online curated content) as a type of broadcasting services.¹ **However, it is not clear whether this proposed taxonomy acknowledges the distinction between different services which assumes critical importance in the discourse of convergence.** Further, the Pre-Consultation Paper refers to “restructuring of legal, licensing, and regulatory frameworks for reaping the benefits of convergence”. **Again, it is not clear why convergence, if any, needs restructuring of the existing regulatory framework.**

Consumers today consume content on television (**TV**), hand-set phone or any other screen (device). The content can be delivered through satellite or internet (carrier). The content is procured through a subscription of cable TV or OTT apps (content medium) as a bundled service. This phenomenon can at best be understood as some sort of convergence at the consumer end where the combination of device, carrier and content available has significantly increased. Often **bundling of different services** like cable TV and broadband in offerings to consumers leads to the assumption that there is a convergence of technology. To elucidate further, while e-commerce services and video streaming services could be accessed and viewed from the same mobile handset, they are surely not similar services.

Rather, there are clear technical distinctions between telecom, broadcasting, and digital services, including the infrastructure and mode of transmission, that justify their separate treatment. In other words, from the supply side, all these devices, carriers and content medium are unique, even though they may share certain common characteristics. The regulatory framework needs to deal with these unique and common features. Regulating all devices or all carrier and all content medium based on a blanket yardstick would be an over-simplification and poses unintended outcomes. To illustrate our position, we use below the example of content medium.

¹ Under **Chapter 1, section 2 – Indian Broadcasting Sector**, the CP states that the “**broadcasting sector consists of television and radio services**”. However, in **Chapter 2 – Structure of Policy Framework, II. Policy and Regulation**, the types of broadcasting services include digital media (both intermediaries and publishers of online curated content) and print media. Further, in the same chapter, under the heading of **Broad Issues for Consideration**, the Pre-Consultation Paper refers to **restructuring of legal, licensing, and regulatory frameworks for reaping the benefits of convergence.**

Differences in mode of delivery and consumption

The principles for regulating content across different platforms are different for theatres, TV, and OTT because of **differences in how content is consumed via different mediums/platforms**. For example, content shown in theatres is being publicly exhibited, viewed by a wide range of viewers at the same time, and hence is governed by the Cinematograph Act & Rules and a Self-Regulatory Framework.

Television, by comparison, is relatively private with scheduled programs (push content) and hence governed by the Cable Television Networks Regulation Act and Rules.

OTT on the other hand, is characterised with private viewing with consumers making informed choice (pull content) about every content that they watch. Content on OTT is governed by Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 and the Self-Regulatory Framework including the certification process for identification of content and calibration of access.

The viewer's ability to exercise choice in how they view the content, or indeed whether they view it at all, factors into the potential risks of providing content via a particular platform. Therefore, a converged or "one size fits all" framework for content regulation cannot be applied for all platforms.

This is supported by a recent decision of the Telecom Disputes and Settlement Appellate Tribunal (**TDSAT**) which held that an OTT service is not a TV channel based on several distinctions between the two, and the separate laws that govern either service.²

Upcoming laws in the form of the Indian Telecommunication Bill, the Digital India Bill, and the Broadcasting Services Bill will likely draw these distinctions further. Therefore, the NBP should acknowledge the distinctions for different types of services.

2. The NBP should outline policy principles and avoid prescriptive measures.

The NBP should be a policy document, which sets out principles and that regulators and other authorities can later use to develop rules and guidelines to meet their objectives within the NBP goal-framework. This is particularly important as the broadcasting sector involves diverse stakeholders operating in a rapidly changing technological environment. Prescriptive measures or strategies will prevent the NBP from being a future-proof policy that can guide the broadcasting sector through 2047 and beyond.

Our response to issues for pre-consultation

Q 1 Stakeholders are requested to provide their comments on the possible structure and content for National Broadcasting Policy, clearly outlining the specifics along with the justification. The comments may explicitly include the following titles/heads:

- Preamble
- Vision

² See, [All India Digital Cable Federation vs. Star India Pvt. Ltd.](#) Broadcasting Petition/217/2023

- Mission
- Objectives
 - Goals
 - Strategies

The stakeholders are requested that against each suggested objective, possible goals and the strategies may be explicitly provided.

RESPONSE TO Q 1

The NBP should intend to:

- Create a vibrant and resilient broadcasting sector that can meet the Indian citizen's diverse content preferences and receive news, reliable information, and high-quality entertainment in a variety of languages.
- Position India as a global hub for content production, export Indian content to the world, promote India as an optimal location for content creation, and develop technical capabilities in emerging technology areas like Animation and Visual Effects to meet global requirements for skilled labour.
- Develop a globally competitive and growth-oriented broadcasting sector with enhanced ease of doing business, robust state-of-the-art infrastructure, seamless market entry, world-class distribution technology, enhanced content security, and a cooperative and collaborative ecosystem.

We have listed the below goals and strategies which the NBP may consider:

Goal 1: Create stable regulatory environment.

Strategies:

- 1) Collaborate and consult with industry stakeholders to foster activity-based regulation for new-age technologies / mediums to pre-empt risks and mitigate societal harm.
- 2) Create a regulatory toolkit in which broadcasting supply chains are mapped along with relevant rules and regulations.
- 3) Develop an enabling framework guided by principles of regulatory forbearance and light-touch intervention.
- 4) Ensure policy and regulatory stability through transparent public consultations.
- 5) Review inter-ministerial coordination guidelines/practices in keeping with global best-practices and fostering greater transparency.
- 6) Commission market studies to identify potential barriers to market entry and review regulatory effectiveness.

Goal 2: Enhance ease of doing business.

Strategies:

1. Simplify compliances and transition to light-touch licensing frameworks and automatic authorizations wherever possible to create an enabling framework which supports creative freedom and supports content creation.
2. Streamline clearances under the 'Broadcast Seva' portal, with focus on automating and harmonising interdepartmental and inter- ministerial processes under a single window.
3. Specify timelines for approval of permissions or authorisations at each stage of an application submitted through the Broadcast Seva Portal.
4. Enable sandbox testing of emerging broadcast technologies.

Goal 3: Skill Development & Capacity Building.

Strategies

1. Engage with relevant skill councils to continually encourage the addition and review of Qualification Packs and National Occupational Standards and aim to harmonise these with international standards in areas such as digital skilling in keeping with the New Delhi Declaration of the G20.
2. Establish upskilling programmes with reputed educational and vocational institutions and help establish National Centres for excellence in AV technologies and production techniques in such institutions.
3. Collaborate with industry to identify cutting-edge developments in emerging technologies and explore means to accelerate adoption.
4. Identify public institutes and partner with private institutes to set up specialised courses for training professionals working in emerging areas.

For any queries related to this submission, please contact:

Ashish Aggarwal (asaggarwal@nasscom.in) or Sudipto Banerjee (sudipto@nasscom.in) with a copy to policy@nasscom.in.

About nasscom

Nasscom is the premier trade body and chamber of commerce of the Tech industry in India and comprises over 3000 member companies including both Indian and multinational organisations that have a presence in India. Established in 1988, nasscom helps the technology products and services industry in India to be trustworthy and innovative across the globe. Our membership spans across the entire spectrum of the industry from start-ups to multinationals and from products to services, Global Service Centres to Engineering firms. Guided by India's vision to become a leading digital economy globally, nasscom focuses on accelerating the pace of transformation of the industry to emerge as the preferred enablers for global digital transformation. For more details, kindly visit www.nasscom.in