

**Only by Email <advbbpa@trai.gov.in>**

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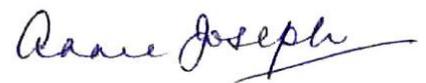
Dear Sir,

**Re: NBDA Comments on TRAI Consultation Paper dated 30.1.2023 on “Regulating Converged Digital Technologies and Services – Enabling Convergence of Carriage of Broadcasting and Telecommunication services”**

Attached please find comments of NBDA on the TRAI Consultation Paper dated 30.1.2023 on “Regulating Converged Digital Technologies and Services – Enabling Convergence of Carriage of Broadcasting and Telecommunication services” .

Thanking you,

Yours faithfully,



**Annie Joseph**  
Secretary General

*CC: Mr. Avinash Pandey, President, NBDA*  
*<jtadv-bbpa@trai.gov.in.>*

*Encl: As above*

**NBDA Comments on TRAI Consultation Paper dated 30.1.2023 on “Regulating Converged Digital Technologies and Services – Enabling Convergence of Carriage of Broadcasting and Telecommunication services”**

The News Broadcasters & Digital Association (NBDA) (formerly known as News Broadcasters Association (NBA) is an association of 24x7 television broadcasters and digital media entities/platforms who broadcast and/or publish news and current affairs programmes and content. NBDA represents several important and leading national and regional private news and current affairs broadcasters who run news channels and digital platforms in Hindi, English and Regional languages.

1. On 30.01.2023, the Telecom Regulatory Authority of India (“TRAI”) issued a Consultation Paper titled “Regulating Converged Digital Technologies and Services - Enabling Convergence of Carriage of Broadcasting and Telecommunication Services” (“Consultation Paper”) seeking views of the stakeholders on the challenges posed by converging technologies and changes required, if any, in legal, administrative, and licensing framework. The Consultation Paper was accompanied by the following statement *“Over the period of time, various technological developments in digital markets have resulted in the convergence of devices, services, and networks. Efficient utilization of resources, increased level of competition, more innovative user applications and technological developments are the main drivers of convergence. Convergence has been intensified by the emerging use of digital technologies across sectors. The convergence of digital and physical products through the use of Machine to Machine (M2M), Internet of Things (IoT), Artificial Intelligence and other technologies is paving the way for Fourth Industrial Revolution (Industry 4.0). Convergence has brought several benefits to stakeholders. Technological convergence not only enables the possibility of delivering a broader set of products, but also benefits through lower entrance barriers, **promotion of competition**, lower-cost equipment, quicker market response, and new business opportunities. But at the same time, it has posed several challenges as well.”*
2. At the outset, NBDA would like to state that the objective behind the issuance of the aforesaid Consultation Paper is unclear. In the present Consultation Paper the need for having a separate comprehensive legal and licensing framework to deal with convergence of carriage of broadcasting services and telecommunication services has been raised.
3. Apart from the above, the Consultation Paper also notes the overlaps in terms of certain permissions and functions between Ministry of Information & Broadcasting (“MoI&B”) and Department of Telecommunication (“DoT”), and explores the possibility of amending the existing legal, administrative and licensing regime to deal with the challenges posed by the converging technologies including the possibility of setting up a converged regulator.

4. Before commenting on the issues raised in the Consultation Paper, NBDA would like to place on record, that it is not in favour of any legal, administrative, regulatory and licensing framework for the convergence of carriage of broadcasting services and telecommunication services.
5. NBDA's concerns in respect of the Consultation Paper are summarized herein below:

**There should be no convergence of Broadcasting Services and Telecommunication Services in any manner whatsoever**

**A. Difference between Broadcasting Services and Telecommunication Services**

- 5.1 That 'broadcasting services' are a very different and distinct service/category in comparison to 'telecommunication services', as the latter is concerned with voice and data services while the former involves offering of programming services and content to the consumers.
- 5.2 That broadcasting services and telecommunication services are independent and distinct sectors. At present, the *content* of broadcasting services is regulated by the MoI&B under the Cable Television Networks (Regulation) Act, 1995 ("Cable Act"), the Cable Television Networks Rules, 1994 ("Cable Rules"), Guidelines for Uplinking and Downlinking of Satellite Television Channels in India, 2022 ("Guidelines 2022"), and by the various guidelines/advisories issued by the self-regulatory bodies like News Broadcasting & Digital Standards Authority ("NBDSA"). The aspect of *carriage* is regulated by the Telecom Regulatory Authority of India ("TRAI") under the Telecom Regulatory Authority of India Act, 1997 ("TRAI Act"). In view of the above, it is stated that broadcasting services are already adequately regulated. Therefore, there can be no justification for combining the legal, licensing and the administrative framework of the two sectors merely because the broadcasting sector is using certain common services such as internet bandwidth for making the content available on mobile phones.
- 5.3 That merely because telecommunication, broadcasting and data service are at time delivered through common delivery platforms, the same cannot be interpreted as convergence of such services and/or a reason to advocate for a converged legal, administrative, licensing and regulatory regime for sectors which are substantially different. If this logic were to be applied to all services which are provided through a converged delivery platform like

mobile phones, it would imply that even services like e-commerce, teleconsultation etc., which are accessed through mobile phones and have nothing even remotely in common with telecommunication services should be merged with the telecommunication sector.

- 5.4 That it is relevant to note that *'convergence' is merely a technological construct*, which has happened due to evolution of alternate technology. However, convergence of technology does not imply that the telecom and broadcasting sectors have to be merged or that the underlying functions they perform have to be merged. There is a substantial difference in the types of services offered by the broadcasting sector and the telecom sector, which does not call for any form of convergence of laws, regulations etc. Broadcast involves communication to public and the world at large whereas telecommunication is communication between two or more individuals. Therefore, the mere possibility of offering telecommunication using a broadcast infrastructure or vice versa cannot be a cause and/or reason to converge the regulating authorities and the legislations.
- 5.5 That furthermore, the bundling of telecommunication services with broadcasting services does not amount to convergence of services. Bundling of services like linear, voice and broadband is for the benefit of consumers, and cannot mean that these services have converged, as each service is a different service.
- 5.6 That it is relevant to note herein that there are only three telecom operators who directly cater and provide telecom services such as voice, data, SMS, broadband services, etc. to the end consumers in the country. However, there are more than 900 channels which are made available to the consumers through the licensed distribution platforms namely cable, MSOs, DTH, IPTV, HITS, etc.
- 5.7 That TRAI should appreciate the different business models employed in the broadcasting sector and the telecom sector. Within the broadcasting sector itself, a broadcaster can be a pay broadcaster who depends on subscription revenue and advertising revenue or a Free- To-Air (FTA) broadcaster, who depends on advertising revenue alone. Similarly, even the distributors like cable and DTH operators have different sources of revenues like subscription revenues from the last mile customers which ranges from Rs. 200/Rs. 300 to Rs. 800, revenue in the form of Carriage Fee which is charged from Members and the revenue earned from Landing Page, Barker, Boot-up Screen, etc. They can also earn advertisement revenue through the route of 'Platform Services'. Telecom operators on

the other hand have a different methodology of earning revenue by monetizing data consumption i.e., by maximising consumption of data while not charging for content at all. For example, IPL may be streamed by the telecom operators for free however, the same content is offered on linear platforms by charging a subscription fee. Therefore, any form of convergence of licensing, ministries, etc., which would result in making one stakeholder being grossly disadvantaged, must be avoided.

## **B. Difference in the Licensing of the Broadcast Sector and Telecom Sector**

- 5.8 That while licenses are granted under Section 4 of the Indian Telegraph Act, 1885 (“the Act”) to teleports operators and to Direct To Home (“DTH”) by the MoI&B, all other services pertaining to broadcasting require permissions/registrations.
- 5.9 That the Consultation Paper itself has noted that the ‘permission’ to uplink and downlink television channels is governed by the Guidelines for Uplinking and Downlinking Television Channels in India issued by MoI&B. It is submitted that these Guidelines are neither a creation of any Statute nor a license under Section 4 of the Act.
- 5.10 That while Government has exclusive privilege in respect of telegraphs under the Act and has the power to grant licenses to teleports holders for a consideration and subject to the terms of contract as may be deemed fit and proper, however, it is unclear as to how ‘broadcasting services’ can be construed to be an “exercise of sovereign functions of the Government” and in that respect be brought within the ambit of licensing by the Executive. Since broadcasting is an exercise of the right of freedom of speech and expression of the media, it cannot be subject to any licensing pursuant to licensing of sovereign rights particularly on disproportionate and unreasonable terms and conditions, as the same would not pass muster of Article 19(2) of the Constitution.
- 5.11 That recently, with the help of a Unified License Permission, telecom operators have also started providing channels with the use of direct fibre commonly called as Fibre To The Home (“FTTH”). The channels in this case are streamed through the fibre. The MSOs and DTH downlink the permitted channels from the satellite using satellite spectrum and make them available to the last mile through dish antennas or last mile cable wires. It is pertinent to note herein that small time operators like LCOs and small broadcasters are the stakeholders in the entire ecosystem and value

chain and any attempt to bring them within the ambit of ‘telecommunication services’ may result in indirectly conveying to them that they will have to compete with the might of the big telecom operators and be subject to onerous license conditions both from economic and compliance perspective i.e., the requirement to make payment of license fee on revenue share basis AGR definition, spectrum fee payments, bank guarantee obligations, participation and acquisition of spectrum through auctions and various other onerous obligations making their survival unviable.

- 5.12 That the DTH sector is already suffering heavy losses as DTH operators are required to obtain a license under Section 4 of the Act which results in imposition of conditions like license fee and thereby creates a non-level playing field vis-à-vis their competitors namely the MSOs/LCOs and HITS, who are not subject to any such obligations as they are not required to obtain a license under Section 4 of the Act. TRAI’s attempt should have been to completely segregate and separate the telecom and broadcasting sector and it should have considered bringing out stakeholders like DTH from the onerous obligations for grant of license under Section 4 of the Act. In other words, it should have attempted to bring level playing field conditions in the broadcasting sector by permitting all stakeholders to compete in a fair and non-discriminatory manner. However, on the contrary, it appears that through the present consultation an attempt is being made to strangle the already ailing broadcasting sector with a regulatory framework which would result in the death knell of this sector.
- 5.13 That TRAI must appreciate that any attempt to coerce a broadcaster to get multiple licenses for extended activities of its main businesses by paying huge license fees would cause severe adversity to the broadcaster and may cast an unfair burden on the broadcaster making its business unviable.
- 5.14 That the broadcasting/Media & Entertainment industry caters to a large mass of creators and also generates employment for millions of households therefore, any attempt to bring them within the ambit of telecom license would be fatal and would result in loss of employment. It would also adversely impact small news organizations and cable operators.

**C. Differences in spectrum allocation between the Broadcasting Sector and Telecommunication Sector**

- 5.15 That in respect of spectrum management the policy of “one size fits all” cannot be applied. There is a need to accord differential treatment to different types of entities considering that some entities make minimal or no use of spectrum for providing their services. In respect of satellite TV channels, it may be noted that there is no limitation in the bandwidth spectrum available for satellite TV channels which is available in abundance and will continue to increase as the number of satellites are increased from time-to-time. Further, in any event, satellite location and frequency are determined by the International Telecommunications Union (“ITU”) and no satellite can be launched without the ITU’s consent- all of which makes satellite frequency quite different. Therefore, there is a need to appreciate that satellite broadcasters warrant differential treatment, especially considering that they do not use any ‘scarce resource’ unlike the telecom spectrum. In view of the above and in view of the fact that the kind of services which get delivered through broadcasting are in the nature of exercise of freedom of speech and expression, NBDA submits that auctioning of satellite bandwidth/broadcast spectrum should not even be a matter for consideration. The status quo in respect of auctioning for telecommunication services and administrative allocation of satellite spectrum for broadcasting services should be maintained.

**The principle of same service-same rule is not applicable, particularly to Internet-based or OTT service providers**

- 5.16 That in the Consultation Paper, it appears that TRAI is attempting to propose the principle of “*same service - same rule*” i.e., for voice, text, broadcast if in the form of WhatsApp, Facetime, or OTT content platforms like Netflix, Prime Video, etc., which provide services outside the regulatory regimes of licenses and permissions to also be subject to same rules/regulations as telecommunication and broadcasting services by assuming them to be aspects of convergence of services, which they are clearly not.
- 5.17 That TRAI quotes Section 6A of the Information Technology Act, 2000 (“IT Act”) to suggest that “*as it appears from the plain reading of this provision in the Information Technology Act 2000, the service providers using electronic means to deliver services must have the permission of the appropriate Government in accordance with the policy governing such service sector.*” It adds that the policy and legal framework for delivering such services over the Internet remain

ambiguous, saying that “*there is an urgent need to review the existing policy/ institutional framework in the country.*” It is submitted that legislation that compels online services to get government permission to launch will jeopardise both (a) the neutrality of the Internet; (b) the idea of Digital India; and (c) the government’s aim to promote Ease of Doing Business (“EoDB”).

**A. Difference between Telecommunication and Internet-based or OTT service providers**

- 5.18 That by advocating for the principle of same service – same rule it appears that TRAI has failed to take into account the fact that services provided by Telecommunication service providers (“TSPs”) are vastly distinct in nature from the services provided by Internet based service providers. While TSPs own and operate telecom and communication infrastructure for providing voice and data services, Internet based services do not have any communication infrastructure of their own and are dependent on TSPs to make their services available to consumers viz internet through mobile data or broadband. TSPs, Internet Based and OTT communication service, offer divergent services and operate in different markets, and therefore cannot be regarded to be similar services.
- 5.19 That before advocating for regulation of Internet based or OTT communication services, TRAI must examine aspects like the dependency of OTT communication services or Internet-based services on licensed telecom services and their inability to operate in the event of failure of the licensed telecom services.
- 5.20 That further, OTT and Internet based services face a stiff competition in the market and have to constantly innovate in order to keep pace with future technological developments. Therefore, subjecting ‘Internet based’ and ‘OTT’ communication service providers to the same terms and conditions as TSPs and consequently to licensing obligations would be detrimental to their business as it would slow their growth and result in increased operational costs which would ultimately be borne by consumers. Imposing identical/similar licensing obligation on Internet based and OTT communication services would be counterproductive, in view of their contribution to the socio-economic growth which is enormous, particularly when it relates to the digital economy of the country.
- 5.21 That it is reiterated that ‘Internet Based’ and ‘OTT communication’ service providers are not at par with TSPs and should not be subject to the same

regulation. In any event, even globally it is accepted that internet based services should not be statutorily regulated, but the content thereof should be subject to self- regulation.

- 5.22 That it is important to note that TSPs enjoy a special and exclusive position in the telecommunication industry by virtue of having exclusive rights to commercialize a limited public resource, i.e., spectrum. TSPs are granted this privilege only by paying the appropriate charges and acquiring the appropriate rights from the Government. The licensing regime for TSPs is crucial to ensure that this limited public resource is distributed and used efficiently and in an appropriate manner. TSPs also own and control what is considered to be critical infrastructure and resources in the country. The Government's National Digital Communications Policy, 2018 – which seeks to enable a competitive telecom market in India by the establishment of resilient and affordable digital communication infrastructure and services – recognizes telecommunication infrastructure / systems and services as essential connectivity infrastructure at par with roadways, railways, waterways, airlines, etc. for the development of India. Therefore, any adverse effect on the network that TSPs administer could cripple the communication network in the country.
- 5.23 That on the other hand, digital content entities including OTT providers do not have any control over nor do they contribute to such critical infrastructure as they merely provide their services on the application layer facilitated by such infrastructure. Thus, the accountability that TSPs may be required to ensure cannot be equated with the responsibility of other service providers that offer services that are not similarly critical or essential. The inherent lifecycle of services provided by TSPs compared to digital content entities is quite distinct. TSPs enjoy license terms from the DoT which span approximately 20 years. Such license terms are beneficial for the services operated by TSPs as the technologies underpinning such services take significant amount of time to develop. However, the services offered by digital content entities are more dynamic in nature and are constantly evolving.
- 5.24 That the license to operate, establish and maintain telecom services should not be a blanket license to manipulate the various OTT services and in the garb of substitutability, require the products and services available in such forms to be subject to licensing requirements or other unreasonable considerations/obligations.

- 5.25 That it is accepted even globally that internet based services should not be statutorily regulated as telecommunication services. It may be relevant to note herein that the Australian Competition and Consumer Commission (“ACCC”) while examining the competition between fixed and mobile voice services and OTT voice services observed that OTT voice services suffered from technical limitations in the form of lack of connectivity between different OTT voice services and the inability to make emergency calls. In view of such limitations, ACCC held that OTT services cannot be regarded to be full substitutes for voice services and *“as a result there is no basis for requiring equivalent regulatory treatment”*.
- 5.26 That even TRAI in its recommendations on a regulatory framework for OTT communication services, while responding to a DoT reference dated 3<sup>rd</sup> March 2016 advocated against any regulatory intervention and suggested that the matter may be relooked afresh when more clarity emerged in international jurisdictions.
- 5.27 It may be noted that *“in 2015, DoT found no case for prescribing regulatory oversight for OTTs, similar to communication services. DoT found that OTTs enhance consumer welfare and productivity. TRAI, in 2015, noted that OTT neither operate a network nor leases network capacity from a network operator. In 2017, TRAI clearly noted the separation of network and service layer. Its recommendation on OTTs in 2020 stated that market forces may be allow without prescribing any regulatory intervention”*.<sup>1</sup>

**B. Difference between Broadcasting Services and Internet-based or OTT services**

- 5.28 That TRAI should understand and take into account the difference in the ecosystems that operate independently namely the broadcast ecosystem wherein person /entity is a creator/broadcaster and the other is the viewer on the other end, whereas in the internet ecosystem, the same person/entity can be the creator and viewer. In the absence of carriage fees on the internet and due to principle of “Net Neutrality”, technologies have been able to flourish and evolve over a period of time. Presently, the Internet based services enable access to all content and applications in a non-discriminatory manner regardless of its source and without favouring or blocking/selectively blocking particular products/websites. Therefore, any attempt to bring OTT services under regulations or licensing will have a disastrous impact on the entire creative and technology sector. In fact, such restrictions/licensing regimes may result in unreasonable restrictions

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<sup>1</sup> TV Ramachandran, “Don’t kill the golden goose” The Financial Express 29th March 2023

on freedom of speech and expression granted to the media under the Constitution.

- 5.29 That by suggesting that online services should be regulated in the present Consultation Paper, TRAI neglects to consider that one of the core pillars of an information-driven society is to promote the spirit of entrepreneurship. This allows stakeholders to make decisions based on economic rationale and also allows stakeholders in the value chain to arrive at more efficient outcomes cooperatively and to reduce the number of litigations in sectors such as broadcast, which have mainly been a result of ad-hoc and skewed regulatory interventions.
- 5.30 That in 2020, TRAI recommended regulatory forbearance for OTT's to allow market forces to operate. Such forbearance to regulate OTT should continue since not much has changed since. Furthermore, TRAI has not provided any cogent reasoning on why regulation for OTT should now be enacted. It may not be out of place to state that as a carriage regulator whose role is to govern network, TRAI may not have the expertise to regulate OTT services.
- 5.31 That in 2002, TRAI took a policy decision to exercise forbearance on telecom tariffs and studies conducted by Competition Commission of India ("CCI") have shown that forbearance allowed telcos to contest on quality of service, data speeds and bundled offerings. Today, OTT's compete on quality and diversity of content. Making OTT's subject to stringent regulations will only bring the growth story to a halt, reduce the number of players offering digital services and negatively impact service quality.

### **Regulation of Content should be different from Carriage**

- 5.32 That in the Consultation Paper, TRAI has observed that "*the existing regulatory oversight framework for content regulation, which is patchy and inadequate at its best, may need a complete overhaul in a converged era in line with many other nations, where a converged regulator regulates carriage and content*". In this regard, it is relevant to state herein that the aforesaid observations made by TRAI in the Consultation Paper falls outside DoT's reference dated 20.10.2021 and 12.8.2022 to TRAI wherein recommendations have only been sought on the following issues:

- (i). *Amending license regimes to enable convergence of carriage of broadcasting and telecom services;*

- (ii). *Establishing a unified policy framework and spectrum management regime for carriage of broadcasting services and telecom services;*
- (iii). *Restructuring of legal licensing and regulatory framework for reaping benefits of convergence of carriage of broadcasting and telecom services;*
- (iv). *Revising regulatory regime in respect of DTH and cable TV services holistically addressing all institutional, regulatory and legal aspects.*

5.33 That the aforesaid statement made by TRAI in the Consultation Paper also fails to take into account that news content is over-regulated with four-five layers of rules relating to content in each individual media segment. It is strongly believed that news media in India, across platforms and technologies, must be governed by the principles of self-regulation. There already exists robust self-regulation mechanisms across the media sector relating to content and the need of the hour is to strengthen and give more power to the self-regulatory bodies rather than to formulate additional layers of regulations in the media sector. Keeping in mind the evolving self-regulatory approach in the digital media space and the already existing robust self-regulation system in the broadcasting sector and on digital platforms, there is absolutely no requirement for any measures to converge broadcasting services and telecommunication services, whether in content or carriage. This kind of convergence is not comprehensible as they are separate sectors.

5.34 That in any event, content regulation touches upon the right of freedom of speech and expression guaranteed to the media by Article 19(1)(a) of the Constitution, which is only subject to reasonable restrictions under Article 19(2). Therefore, regulation of content is vastly different from regulation of carriage and should not be subject of the present consultation process.

### **Convergence may result in creation of Monopolies**

5.35 That it must be understood that the nature of investments differs from stakeholder to stakeholder. If the regulatory framework as envisaged in the Consultation Paper is brought into force, it will give preference or advantage to one stakeholder at the cost of the other and will create an imbalance and disturb the level playing field between the stakeholders.

5.36 That TRAI must be cautious of vertical integration of some stakeholders who are omnipresent in all types of service provisioning namely, telecom, broadcasting, distribution, and should avoid formulating regulations or laws or framework in respect of the same which would result in giving undue advantage or which would lead to creation of monopolies or

promote gatekeeping by the dominant players, in the event TRAI attempts to create a comprehensive legal and/or licensing framework, which convergence framework is not acceptable. In order to protect the free speech rights of the media, it is essential that such convergence does not come into force as it will lead to broadcasting services becoming the prerogative of few cash rich entities. What is especially problematic is the telecom sector's ownership of all parts of the broadband and mobile value chain from content to carriage and the same owners' similar and growing ownership in media content and carriage as well.

- 5.37 That with the advent of OTT, telecom companies have been aggressive in pushing OTT content through their distribution chains, something which the broadcasting sector has not been able to do. According to FICCI-EY Report 2021, digital subscriptions rose by 49% in 2020. Digital and OTT sectors registered a growth of 26%, the highest amongst other Media & Entertainment segments. According to the PwC Report of Global Entertainment and Media Outlook 2020-2024, with a CAGR of 28.6%, India will be the fastest growing OTT market. It predicts 16% year-on-year decline in TV ad revenue and 59% year-on-year decline in box office revenue while predicting a 16.1% growth in digital newspaper and circulation revenue. The OTT players have been successful in controlling and influencing the entire media distribution chain, primarily due to (1) lower service costs as compared to cable and satellite services; (2) leveraging the distribution pipe provided by telecom players more effectively; (3) direct delivery of services to the consumers. On the other hand, broadcast companies incur high costs for distribution of their content through cable operators and DPOs. Further, it may be relevant to note that a few Indian telecom companies also own television broadcasting/content production companies, including news channels. Telcos have also acquired cable and satellite service providers and have thus entered the media distribution space in addition to their ownership of content telecast/published in different formats and platforms. Despite the telecom sector directly competing with media in terms of controlling the distribution of such content, unlike broadcasting, there are no restrictions or regulations imposed on telcos which own media content on multiple platforms like TV and Online. Hence, telcos are today one of the biggest distributors of content, data and information in every form which has become a major activity and source of revenue. Their ownership of content for different platforms as well as all parts of the broadcast media value chain from content to carriage, raises hard questions on both dominance as well as possible abuse of dominance.

- 5.38 That the linear broadcasting sector is facing the same and stiffer challenges from OTT players and does not have the liberty or the freedom under extant regulations to effectively deal with this challenge. Any horizontal integration restrictions would effectively deprive the broadcast sector from meeting the OTT challenge even as telcos have been given a free hand to deal with OTT competition apart from ensuring the demise of independent media distribution entities since telcos are allowed unrestricted ownership of any content and any distribution platforms, unlike the broadcast sector.
- 5.39 That there is lack of parity in the regulations and laws specifically in the distribution segment. This is evident from the fact that telecom sector is not subject to regulations such as the Interconnect Regulations, Tariff Orders, etc. that broadcast media is currently subject to nor is there any mention of the convergence threat that telecom brings with it while even owning broadcast media.
- 5.40 That for vertical integration not to be misused and serve as a detriment to the growth of the industry, certain pertinent and critical decisions need to be taken. The need of the hour is to ensure strict adherence to fair and reasonable restrictions and guidelines within the vertically integrated media value chain and to extend this to telcos as described above --while allowing free operation of media entities across horizontal media sectors. In the event, that a framework for convergence of legal, administrative, licensing and regulatory framework is imposed, the broadcast media sector, will be unfairly singled out to bear the brunt of unreasonable cross media restrictions arising out of purported control and dominance. Exclusionary market power concentrated with telecom companies that dominate the reach and distribution of content would be detrimental to the aim of plurality and diversity of content and outlets in the media market –and especially when the same distribution companies own the same content. It may also be not out of context here to mention that there are only a handful of players in the telecom sector and the public sector presence has been reduced to a great extent –and hence, this aspect is also a cause for concern.
- 5.41 That if a converged framework is brought into force, it will encourage complete vertically integrated ownership where the entire chain of content creation and delivery/distribution across multiple platforms will be controlled by the same entities using their own infrastructure and platforms. This aspect needs to be considered by TRAI as it poses a threat to a fair and level playing market for all constituents. There are no regulations at present to put a check on such vertical integration by telcos and it is vital that TRAI looks at this challenge that poses a serious threat

to the media broadcasting segment. In fact, by not including or considering the impact of the telecom sector on media distribution, the TRAI is presupposing that media distribution will not be affected by the telecom companies if convergence happens which is an incorrect premise.

- 5.42 That the Telecom players have the unique advantage of being: (i) the providers of mobile communications (ii) ISPs i.e., internet service providers, (iii) creators and owners of entertainment content (iv) distributors of the content via OTT/IPTV platforms and (v) advertising platforms. As per EY FICCI 2022 report, India is the world's second largest smartphone market behind China with 954 million users. India has a user base of 1.18 billion telecom subscriptions and of this, approximately 68% subscribers use 4G technology, which is an indicator of how easy, access to digital content on mobile phones has become. No traditional media platform reaches as many people. In fact, telecom companies are amongst the biggest media players today.
- 5.43 That if these telecom service providers are provided unfettered rights to own and also distribute content, then this could become a huge issue. It is generally acknowledged that companies that own "pipelines" (distribution platforms) should not be allowed to own the content that is ploughed into these pipelines. Earlier experience in India itself in the Cable TV business has shown that this leads to abuse of power. This situation must be prevented on the Digital platforms as well. The risk of domination is further enhanced by the fact that there are only three TSPs nationally (compared to hundreds and thousands of media providers in traditional media). Each one of the TSPs has more than 250 million subscribers and such user numbers are vastly higher than what most traditional media companies have.
- 5.44 That it is clear from the aforesaid facts, that telecom service providers need to be restricted. "Vertical" integration in the telecom sector (same company owning pipelines and content) can create a monopolistic situation with abuse a distinct possibility. Hence, in order to ensure a level playing field for all players, there is a clear need to have water-tight restrictions on vertical integration. To reiterate, companies which own the pipelines should not be allowed to own the content.
- 5.45 That there is a need to prevent abuse emerging from vertical integration (same company owning pipelines and content). It is imperative that specific and strict measures to control vertical integration are put into place, in the absence of which vertically integrated groups/entities could

dominate the market and render it uncompetitive, thus leaving the industry in bad health. The broadcasting entity should be restricted from owning content distribution platforms (DPO/LCOs) to ensure a level playing field for all.

- 5.46 That it is the need of the hour to bring in transparency and non-discrimination between entities in a vertically integrated media segment, the absence of which will give rise to malpractices and discrimination by dominant entities vis-à-vis other constituents within the segment.
- 5.47 That the MIB and the TRAI, recognizing this issue, have already imposed certain restrictions on vertical integration. The DTH Guidelines restricts broadcasting companies and/or cable network companies to own more than 20% of the total equity of the DTH company and vice versa. Likewise, the HITS Guidelines restricts broadcasting companies and/or DTH companies to own more than 20% of the total equity of the HITS company and vice versa. However, there are no such restrictions on telecom companies and in order to ensure level playing field. Hence the new framework must ensure that the telecom companies are subjected to similar restrictions.
- 5.48 That in order to ensure level playing field, new framework/law must ensure no telecom company can hold/own more than 20% in any Media & Entertainment business especially broadcasting and OTT companies whether content or carriage, and vice versa.
- 5.49 That in view of the above, convergence of any kind is not desirable as it may tend to create monopolies.
- 5.50 That new age tech companies like - Google including Google search & YouTube and Facebook including Instagram & Whatsapp control majority of market revenue share through their monopolistic power & strong hold in supply chain. They use traditional Media houses' trustworthy content to distribute on their platforms without sharing adequate revenue with publishers. Indirectly, they are controlling and directing traditional Media houses to dictate and follow their rules for content distribution & revenue. The dominance and control exercised by Tech Companies like Facebook and Google (over 60%) is itself an indicator of the potential abuse and which gets further corroborated and re-enforced because of their non transparent behaviour when it comes to revenue sharing of advertising revenue. There is already a CCI case pending on the said issue wherein Director General has been asked to investigate the unfair and monopolistic

trade practices followed by Facebook and Google and alleged abuse of dominance practiced by them.

- 5.51 That the Internet and new digital mediums are posing stiff competition to print and television across the world. There is no denying the obvious advantage that Internet companies have over other media forms. An internet company can launch an exclusive platform for news without any permission from the Government. Chris Goodall aptly said - *‘In ten years’ time the threat is not going to be BSkyB, it’s going to be the influence of Google over mass media’*. What Goodall said was in context of media plurality in the UK but keeping in view the emphatic rise of new media in the field of information, news and current affairs, the same holds true for the entire world.
- 5.52 That in order to ensure a level playing field for all participants in a given media sector, it is imperative that specific and strict measures are put into place, in the absence of which vertically integrated groups/entities could dominate the market and render it uncompetitive, thus leaving the industry in bad health.

### **Decreasing revenues of traditional media and level playing field**

- 5.53 That traditional media companies the world over are facing decreased revenues, as a result of several factors, majorly, pandemic induced economic hardships, competition from online/digital media players and user generated video programming providers. There is also increased competition from new media players, especially Big Tech large global companies that have become the “go-to” destination for news and entertainment, this has adversely impacted the economic value of this industry.
- 5.54 That globally, print media is on the verge of a shut down and localized newspapers are facing stiff competition from global on-line businesses with global footprint, a domain that is not regulated. The American and other Western newspaper markets have suffered significant reversals in readership and revenue. In countries like the United States, Greece and the United Kingdom, the business of journalism is suffering from cost-cutting measures, reduced consumption, declining resources, consolidation and its accompanying challenges.
- 5.55 That television sector is still grappling with the pandemic induced slow down and is yet to bounce back fully. With stagnant or slow growth TV

- companies are under tremendous pressure to deliver quality content at high costs.
- 5.56 That as is evident from the Indian media landscape specified above, the revenues of traditional media (including television, print and radio) are decreasing at a fast pace. Under the circumstances, any regulation legal, administrative or licensing if converged would debilitate the media sector.
- 5.57 That furthermore, it must be noted that technological development has made a big impact on the way news and information is delivered to the consumer. The world is witnessing the growth of alternative platforms for consumption of news in the form of mediums like blogs, social media platforms like Twitter, YouTube, Instagram, Facebook and platforms like Google that also disseminate news and information. Online media has made it possible for consumers to read text, watch videos, listen to audio and also interact on one single platform completely dispensing with traditional forms of viewing. News consumption is drifting away from Newspapers and other traditional forms of dissemination and more and more consumers are accessing their need for news and infotainment through such new mediums.
- 5.58 That while it is appreciated and understood that with evolution of technology there can be a gradual churn and shift in the mode of consumption or distribution/carriage of content as has also happened in the past, however, the same should happen on account of market dynamics and not because of any unwarranted regulatory regimes, which creates a non-level playing field.
- 5.59 That before undertaking this consultation process, TRAI should first study the adequacy of competition in the broadcasting sector and telecom sector and examine whether converging broadcasting sector and telecom sector under one license, legal or administrative regime would make sense or would the broadcasting sector be affected substantially.
- 5.60 That further it is verily believed that since it is not the Government's intention to converge the broadcasting regime with the telecommunication regime, TRAI should wait for the revised draft Telecommunication Bill before undertaking the present consultation. In this regard, it may be relevant to note herein that while holding a discussion on the draft Telecommunication Bill, the Telecom Minister clarified that the intention of the Bill was to provide light touch regulation for OTT communication services like WhatsApp, Facetime, Telegram, Signal, etc. and it did not

intend to include broadcasting services within the ambit of the Bill. Further, different Government departments have already written to TRAI expressing their concerns about the Consultation Paper. In this regard, it is relevant to note that in its letter dated 4.10.2022 MoI&B has stated that MoI&B and TRAI have so far effectively handled all legal, policy and regulatory requirements arising out of technological changes. In respect of content regulation, MoI&B stated that separate skill sets of creative and artistic persons who can factor the impact of content on sensibilities, morals and values of society and not that of technocrats and economists were required for regulation of content. Therefore, it reiterated that the policy relating to content and content regulation should continue to be dealt with by it. In the letter, MoI&B also noted that while there are multiple agencies involved in the process of clearance in the broadcasting sector like Ministry of Home Affairs for security; DoT for wireless and spectrum clearance; DoS for satellite allocation; Ministry of External Affairs, Department for Promotion of Industry and Internal Trade for FDI and foreign executives working in broadcast entities; Ministry of Electronics and Information Technology for digital use and OCC and Ministry of Corporate Affairs for company matters; however, it effectively coordinates with each one of them and thus shifting of licensing to DoT would not only be counterproductive but would also impact the EoDB.

- 5.61 That through the letter dated 4.10.2022, MoI&B has essentially opposed any form of re-look into the license terms which may only bring inconvenience and complications. Therefore, before proposing any legal regime to deal with convergence of carriage of broadcasting services and telecommunication services, TRAI must also acknowledge this internal turf war between the Ministries and should not delve into any of the issues raised in the Consultation Paper at this stage, in view of the reasons stated herein above.
- 5.62 That broadcasting services, digital publishers and OTT services are totally distinct from telecommunication services in respect of content and carriage. Hence, it is unacceptable to club these entities and their services with telecom services.
- 5.63 In view of the above, a summary is given herein below of the submissions made above for TRAI's consideration:
- (i). Considering the issues raised for consultation, as well as their magnitude and implication of possible outcome, at least 6 month's should be granted for responses.

- (ii). Consultation paper is misplaced since, it proceeds on the assumption that internet / OTT services are substitutable services of Telcos.
- (iii). There is symbiotic relationship between Internet / OTT services and as such, OTT is propelling growth and uptake of services of telcos.
- (iv). Excessive regulations may stifle growth and competition. Further, both Internet / OTT services as well as services of telcos operate in different environments with different competition and consumer protection concerns. In any event, applicable laws and regulations are in place for both. ITU too observed that regulation for sake of regulations is not good if the Authorities want to encourage growth of telecom and OTT sectors, respectively.
- (v). Telecom and broadcasting are different services and remain so. Mere convergence of devices, services or networks does not warrant drawing of conclusion that there is convergence of telecom and broadcasting services. All bundled services, even if offered by one service provider, are still separate services.
- (vi). Consultation Paper does not highlight benefit of convergence. TRAI is already common regulator for telecom and 'carriage' in respect of the broadcasting sector. Telecom and broadcasting services are distinct services requiring separate licensing and regulatory requirements. Telecom sector should continue to be with DoT whereas, broadcasting sector (broadcasters, DTH, cable, HITS & IPTV) should continue with MoI&B.
- (vii). Content regulation should be outside the scope of the Consultation Paper. DoT reference to TRAI was limited to convergence of carriage of broadcasting and telecom services. Consultation ought to be restricted to DoT's reference and such remarks overlook institutional learnings as well as learnings from self-regulatory bodies (e.g., NBDSA, BCCC, DMCRC, DPCGC).
- (viii). Internet / digital services are different from telecom services. OTT services are not substitutable services vis-à-vis telecom services. Former is totally dependent on the latter, and not vice versa. Also, telcos act as gatekeepers since access to OTTs is only through telcos. Laws already exist in the form of IT Act and new laws are proposed in the form of Digital India Act. Further, in any event there are separate Ministries for

each of the services/areas, and no meaningful purpose is sought to be achieved in case of a converged scenario.

In response to the specific questions formulated by TRAI in the Consultation Paper, NBDA submits :-

**Q. 1 Whether the present laws are adequate to deal with convergence of carriage of broadcasting services and telecommunication services. If yes, please explain how?**

**OR**

**Whether the existing laws need to be amended to bring in synergies amongst different acts to deal with convergence of carriage of broadcasting services and telecommunication services? If yes, please explain with reasons and what amendments are required?**

**OR**

**Whether there is a need for having a comprehensive/converged legal framework (separate Comprehensive Code) to deal with convergence of carriage of broadcasting services and telecommunication services? If yes, provide details of the suggested comprehensive code.**

That in view of the submissions made above, there is no requirement for convergence of carriage of broadcasting services and telecommunication services. Therefore, there is no requirement for a comprehensive/converged legal and/or licensing framework to deal with convergence of carriage of broadcasting services and telecommunication services, for the following reasons:-

1. That it is reiterated that not only are the two services entirely different but they also perform different functions. Therefore, since broadcasting services and telecommunication services are not similarly placed, it would not be correct to compare the two services, advocate for their convergence and/or to have a comprehensive/converged legal framework to deal with convergence of the two distinct services.
2. That as stated herein above convergence of technologies which has already happened to a great extent in the last decade has been effectively handled by MoI&B and TRAI who have been able to address all legal, regulatory and policy requirements which emerged on account of such technological changes.
3. That since the absence of a converged legal and regulatory regime has not resulted in the stunted growth of the sectors or hindered the growth of technology in the sectors or resulted in higher cost to the consumers or caused

any other difficulties to the other stakeholders, TRAI must answer what problem it seeks to address by proposing a converged legal, licensing and administrative framework.

4. That it is reiterated that the broadcasting sector must be regulated by a separate regulator. The problem with establishing a converged regulator is (a) the risk of “false equivalence” being drawn between the sectors; and (b) the risk of regulation of certain sectors by people who are out of depth and lack specialised knowledge and understanding which is a prerequisite to deal with sector-specific issues. Therefore, the question of comprehensive/converged framework in any aspect cannot arise.
5. That instead of introducing a regulation that *converges* regulators and regulations, the departments and agencies tasked with various aspects of governing the areas that comprise telecom and broadcast sectors should be enabled to remove redundancies of filings, permissions and timelines for completion to give effect to EoDB.
6. That if a converged legal regime for broadcasting and telecommunication is brought into force, it is apprehended that it may result in concentration of power in the hands of a few existing players and increased dependence of users on few service providers, which may ultimately result in opaque pricing and restrictions on fundamental right of speech and expression due to information being disseminated by a few entities, thereby may create a monopoly by certain stakeholders.

**Q.2. Whether the present regime of separate licenses and distinct administrative establishments under different ministries for processing and taking decisions on licensing issues, are able to adequately handle convergence of carriage of broadcasting services and telecommunication services? If yes, please explain how?**

**If no, what should be the suggested alternative licensing and administrative framework/architecture/establishment that facilitates the orderly growth of telecom and broadcasting sectors while handling challenges being posed by convergence? Please provide details.**

That the present regime of separate licenses and distinct administrative establishments under different Ministries for processing and taking decisions on licensing/permission issues, is able to handle broadcasting services adequately in all its aspects. Therefore, there is no requirement for convergence of carriage of broadcasting services and telecommunication services or for a comprehensive/converged legal, administrative and/or licensing framework to deal

with convergence of carriage of broadcasting services and telecommunication services, for the reasons stated herein:-

1. That one of the key goals for advocating a converged licensing framework is to achieve technology neutrality. This term is intended to convey the meaning that a licensee retains the ability to choose the technology and equipment he or she will use to provide the licensed service. The main objective of the unified licensing framework should be to promote EoDB and sustain competition. However, an integrated licensing framework for the regulation of carriage of broadcasting services may lead to creation of monopolies in the sector, ongoing economies of scale and scope, and the ability of some enterprises to abuse their control of key gateways.
2. That therefore it must be kept in mind that no such conditions should be imposed which makes the broadcasting/media & entertainment sector unviable or unsustainable or which amounts to an unreasonable restriction on freedom of speech and expression.
3. That in view of the above, the entire licensing/permission system and the manner in which they operate is different for telecom services and broadcasting services and both sectors require a separate skill set to function. It is reiterated that the present regime of separate licenses/permission and distinct administrative establishments under different ministries for processing and taking decisions on licensing/permission issues is able to handle broadcasting services adequately.

**Q3. How various institutional establishment dealing with – (a) Standardization, testing and certification. (b) Training and Skilling. (c) Research & Development; and (d) Promotion of industries under different ministries can be synergized effectively to serve in the converged era. Please provide institution wise details along with justification.**

No Comments

**Q4. What steps are required to be taken for establishing a unified policy framework and spectrum management regime for the carriage of broadcasting services and telecommunication services? Kindly provide details with justification.**

That no unified policy framework for spectrum management is required to be made, for the reasons given below:-

1. That the telecom services primarily use the terrestrial horizontal spectrum whereas the broadcasting services use the vertical space spectrum. The services are not similar and hence placing different services under a common policy will severely hamper and adversely impact the broadcasting services in the country. In fact the present framework in respect of allocation of spectrum should be followed and the status quo should be maintained.

**Q5. Beyond restructuring of legal, licensing, and regulatory frameworks of carriage of broadcasting services and telecommunication services, whether other issues also need to be addressed for reaping the benefits of convergence holistically? What other issues would need addressing? Please provide full details with suggested changes, if any.**

That in view of the submissions made above this question requires no answer. However, it is pointed out that at present there are over 350 different broadcasting companies, 4 private DTH players, 1500 MSOs and about 60000 Local Cable Operators and the sector is highly diversified, and the ownership is also highly fragmented. If broadcasting services are converged, the few players over a period of time will gain dominance in the market and will indulge in anti-competitive practices. The consumer interest will be further compromised as now he will be forced to depend on such entities for more of his requirement. The pricing of consumer will further become opaque through complicated plans offered by telcos.

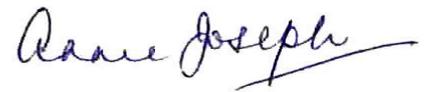
### **Conclusion**

NBDA submits that there is no requirement for convergence of carriage of broadcasting services and telecommunication services. Therefore, there is no requirement for a comprehensive/converged legal, licensing and/or administrative framework to deal with convergence of carriage of broadcasting services and telecommunication services.

Further, before undertaking the present consultation process, TRAI should wait for the draft Telecommunication Bill, Digital Personal Data Protection Bill, the Digital India Act and other sectoral legislations to be finalized. Therefore, this Consultation Paper appears to be premature and unwarranted at this point of time as the need of the hour is not the convergence of ministries/legislations but a harmonization of the same.

TV18 does not subscribe to the view of imposing restrictions on ‘vertical integration’ as it is of the view that there should be complete forbearance. However, they are in agreement with the other submissions made in the response including that there should be no converged legal, licensing and/or administrative framework to deal with convergence of carriage of broadcasting services and telecommunication services.

The above comments have been made on behalf of the Members of News Broadcaster & Digital Association.



**Annie Joseph**  
**Secretary General**

**April 3, 2023**