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Dear Sir,

**Re: NBDA Comments on TRAI Pre-Consultation Paper on Inputs
for Formulation of "National Broadcasting Policy"**

Attached please find comments of NBDA on the TRAI Pre-Consultation Paper dated 21.09.2023 on Inputs for Formulation of "National Broadcasting Policy"

Thanking you,

Yours Faithfully,



Annie Joseph
Secretary General

Encl: As above

CC: Mr. Avinash Pandey, President, NBDA

NBDA Comment on the TRAI Pre-Consultation Paper on Inputs for formulation of “National Broadcasting Policy”

The News Broadcasters & Digital Association (NBDA) (formerly known as News Broadcasters Association (NBA), is an association of 24x7 television and digital broadcasters which broadcast and/or publish news and current affairs programmes. 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.

At the outset, NBDA would like to appreciate this initiative by TRAI of circulating a Pre-Consultation Paper on Inputs for formulation of “National Broadcasting Policy”. In response to the Issues raised for Pre-Consultation, NBDA submits as under :-

Preamble

1. The foundation of any Industry, including the Broadcasting Industry, is on the bedrock of certainty and predictability in policy formulation. Thus, the preamble, vision, mission, objectives, goals, and strategies of the National Broadcasting Policy (hereinafter the “Policy”) should be aligned to achieve the objectives of predictability, certainty and sustainability.
2. The Broadcasting Industry consists of nearly 903 satellite TV channels, 388 private radio channels¹, 1478 registered MSOs², 4 DTH³, 25 IPTV⁴ and several HTS operators apart from DD Free Dish, which exist in the country. Further, with changes in technology and, in particular, with the proliferation of the Internet, new mediums for distribution and consumption of news content have emerged in the form of digital media. Therefore, the broadcasting landscape as it stands today is diverse, dynamic and features a large number of avenues for consumers to consume news content.
3. The Broadcasting Industry is rapidly evolving with the emergence of new technologies and changes in content consumption habits. For the Industry to

¹ TRAI The Indian Telecom Services Performance Indicators January – March, 2023

² <https://mib.gov.in/sites/default/files/List%20of%20Registered%20MSOs%20as%20on%2030.09.2023.pdf>

³ TRAI The Indian Telecom Services Performance Indicators January – March, 2023

⁴ TRAI The Indian Telecom Services Performance Indicators January – March, 2023

reach its true potential as a sunrise sector and to make the Broadcasting Industry a more attractive proposition, regulatory obstacles and procedural bottlenecks must be eliminated and removed.

4. The Broadcasting Industry is capital and technology-intensive and requires a constant infusion of funds for creating quality content, inducting talent, introducing new technologies and encouraging innovation.
5. The digital transformation has rendered the Broadcasting Industry boundary and technologically agnostic. Content broadcast on traditional linear television channels can now be accessed through portable devices such as smartphones, tablets and laptops, and digital content can be accessed through televisions by virtue of connected TVs and external video streaming devices. Further, content has transcended geographical boundaries as local content can be accessed and viewed by audiences worldwide.
6. With the evolution of broadcasting, there is a paradigm shift in the dissemination and consumption of content. Over the years, broadcasting has become very complex and demands sizable investments. Broadcasters are compelled to invest in rich content delivery services that are relevant to users of traditional television as well as to users of smart technology (such as smartphones, tablets etc.), which is constantly evolving.
7. As consumers become more driven to personalized experiences, the Broadcasting Industry must keep up with changing content delivery models, distribution technologies, demand for new and innovative content, and changing consumer behaviour and preferences. Thus, to ensure the success of these endeavours, the Policy should lay down a solid foundation which acts as and provides a clear framework for the operation of the Broadcasting Industry.
8. Certainty and predictability which are vital for fostering competition and innovation within the Industry must form the foundation for a robust Policy. A stable regulatory environment would enable stakeholders in the Broadcasting Industry to plan their operations and make long-term investments. The Policy however must be flexible enough to accommodate changes while protecting the interests of the existing broadcasters who have

already made long-term investments. A balance must be struck to allow adaptability and responsiveness to changing market dynamics and technological advancements.

9. The Policy must also strive to maintain a balance between protecting public interest and allowing creative freedom and innovation as excessive legislation or any unreasonable restrictive approach would impede the Industry's growth and hinder developments of new ideas and formats.
10. The satellite TV broadcast industry is on the cusp of becoming extinct on account of onerous, and prescriptive regulations being made applicable to the linear Broadcast Industry. The linear Broadcasting Industry should be governed by market forces and a policy of forbearance should be adopted in that respect.
11. A level playing field with transparent rules and regulations would encourage fair competition and incentivize broadcasters to explore new ideas, technologies, and formats. This would, in turn, lead to an enriched and diverse content landscape for the viewers. Therefore, as stated in Paragraph 10, the Broadcasting Industry should be governed by market forces and policy with regard to forbearance should be adopted.
12. At present, the inability to attract new investments, coupled with the restrictions imposed on foreign direct investment (FDI) in broadcasting content services, high cost of operations, regulatory burdens and delays, lack of robust and transparent audience measurement system, the absence of effective protection against content piracy, high dependency on advertising revenue and stiff competition from global technology players, have adversely impacted the Industry's overall growth.
13. A thriving and robust Broadcasting Industry would be characterized by strong competition, which would enhance productivity, foster new employment opportunities and play a vital role in boosting the nation's GDP. From a consumer's perspective, a competitive landscape will allow consumers to access a broad spectrum of services at competitive prices.

14. To fuel the next phase of growth and establish India as a global hub for content, regulatory and structural reforms must be undertaken to reduce the regulatory burden adversely impacting innovation, investments and consumer interest. Such reforms would not only increase and improve the diversity, accessibility and quality of content but also create an atmosphere conducive to innovation and creativity, thereby affording consumers a wider range of choices.
15. The Policy should therefore champion and safeguard competition by allowing the Broadcasting Industry to keep pace with the changing business and technological environment.

Vision

1. To make the Indian Broadcasting Industry a global hub for media and entertainment so that it becomes robust, resilient, addresses diversity, is accessible, affordable and to create an environment conducive to innovation and creativity.
2. To lay down a clear roadmap for the existing stakeholders which defines clearly the process for allocation of natural resources and all such modes and mediums of broadcast which may be contemplated for the future. In the event of any proposed change for future or in the coming years, there should be clear milestones spelt out in a pragmatic and planned manner, which also ensures that the existing permission holders are not being displaced on account of any sudden change of plans/methodologies/spectrum bands in the mode and manner of its allocation.

Mission/Objectives

To accomplish the Vision set out for the Broadcasting Industry, the Policy should focus on:

1. Facilitating and promoting the growth of the Broadcasting Industry.
2. Embracing the digital technological changes within the Broadcasting Industry.
3. Adopting light touch regulation with emphasize on self-regulation.
4. Ensuring certainty, predictability and sustainability of the existing stakeholders.

5. Establishing a level playing field between big tech platforms i.e., Google and traditional television broadcasters/ news publishers by ensuring that the news publishers are given fair share of revenue for their content, which is used by the big tech platforms.
6. Adopting an open sky policy and establishing India as a Broadcasting Hub and as a teleport hub for Uplinking of satellite television channels.
7. Augmenting and encouraging the development of the state-of-the-art technology in the Broadcasting Industry.

Goal:

A. Facilitating and Promoting the growth of the Broadcasting Industry.

Granting ‘infrastructure status’ to the broadcasting sector, liberalizing the inflow of investments through FDI and reducing regulatory burdens will encourage overall economic growth of the industry, and will in turn, have a cascading effect that will accelerate the development of the content production ecosystem, strengthen infrastructure, improve quality of operations, create additional business and employment opportunities, facilitate the adoption of digital technologies, foster competition and lead to overall economic growth, all of which are necessary for ‘Ease of Doing Business’.

Strategy:

1. To grant the longstanding demand of the Broadcasting Industry for infrastructure status.

Granting ‘infrastructure status’ to the Broadcasting Industry would confer the following benefits:-

- i. Tax benefits under Section 80-IA (tax holiday) and Section 72A (carry-forward of losses) of the Income Tax Act, 1961 will help classify the broadcasting sector as a priority sector by the Reserve Bank of India;
- ii. Enable the Industry to raise financing from Non-Banking Financial Companies, Insurance Companies, Pension Funds and India Infrastructure Financing Company Limited (IIFCL);
- iii. Help in availing easier loans/credit facilities on a long-term basis at reasonable rates;

- iv. Enhance savings in terms of foreign exchange as it would encourage entrepreneurs to set up businesses for production of equipment/services which are being imported at present;
- v. Help in setting up production facilities for broadcasters as various state governments offer concessions and incentives for setting up infrastructure industries;
- vi. Help in reducing the cost of service of the Broadcasting Industry and therefore, it would be able to compete with emerging technologies, apart from enhancing adaptability of new technology, especially in the global digital world.

2. To ensure the mandatory carriage of news channels

- i. The broadcasting sector, especially the news broadcasting sector plays a critical and pivotal role in public broadcast, particularly during disasters and emergencies by ensuring that timely alerts and guidance are available to the public. Therefore, for the broadcasting sector especially the news broadcasting sector to fulfill its role in its true spirit, the Policy must endeavor for mandatory carriage of news channels on the network of the distributors without any additional cost whether in terms of carriage or otherwise being imposed upon the news broadcasters / news channels.

3. To re-examine the current FDI Policy for Broadcast Carriage Services and in particular relax the FDI threshold/caps for Uplinking of News and Current Affairs TV Channels and Uploading/Streaming of News and Current Affairs through Digital Media.

- i. The existing limits/caps on FDI for Uplinking of News and Current Affairs TV Channels and Uploading/Streaming of News and Current Affairs through Digital Media, should be liberalized or removed to enable companies to raise foreign investments, set up operations in India and be a catalyst for empowering India's digital revolution.
- ii. There are adequate safeguards under the existing provisions of the Uplinking Guidelines and the legal regulatory framework for the news and current affairs channels to safeguard management and editorial

control in news creation and therefore, the FDI infusion in the news broadcasting sector should be completely liberalized.

4. To promote Ease of Doing Business by undertaking a comprehensive review of regulatory processes, policies, practices and procedures in the broadcasting industry.

- i. To ensure sustained growth of the Industry, the regulatory framework concerning the Broadcasting Industry should be revamped and simplified. Onerous prescriptive regulations governing the Broadcasting Industry must be relooked in light of the digital transformation of the Industry. It must be acknowledged that the absence of an onerous regulatory framework has facilitated the growth of digital media. Therefore, the regulatory framework governing traditional broadcasting must also be liberalized to ensure a level playing field.
- ii. The complex regulatory framework governing every aspect of business, from pricing to ad inventory usage, should be replaced with light-touch/self-regulation.
- iii. The process of filing applications and requisite documentation for seeking grants of approvals/permissions should be carried out in a time-bound manner.
- iv. A time-bound, single-window clearance system that seamlessly integrates approvals across Ministries/Departments should be deployed to reduce timelines, remove uncertainties, ensure cost-effectiveness and address manpower limitations. The system should also be equipped with the latest technologies like chatbots, automated call centres and Artificial Intelligence based tracking, analysis and response systems, which technologies should be adopted with sufficient safeguards.
- v. A policy shift from the existing regime of 'Prior Approval' to the more practical 'Prior Intimation' regime should be adopted.

- vi. Penetration of wired broadband should be increased through cable TV operators. This will lead to an increase in consumption of online services and will accelerate the economic and social development of the country.
- vii. Enhance and enforce QoS through adoption of the latest consumer centric technologies by DPOs to ensure that the end customer can receive services that are at par with developed countries.

5. To promote Make in India:

India is a market of close to 200 million television households and still growing. However, Indian set top box (STB) manufacturers have been unable to produce quality STBs at globally competitive costs, therefore majority of STBs deployed in Indian homes are imported. In view of the above, domestically manufactured STBs maybe incentivised by policy changes in terms of duties and levies to make them more competitive. A task force comprising Ministry of Finance (MoF), Ministry of Information & Broadcasting (MIB), Department for Promotion of Industry and Internal Trade (DPIIT), Niti Ayog, Ministry of Electronics & Information Technology (MEITY), Bureau of Indian Standards (BIS), Telecom Regulatory Authority of India (TRAI), and other Industry stakeholders should be formed to draw a roadmap and introduce incentive schemes to make STBs in India both for domestic and international markets.

In addition to the above, manufacturing of equipment, networks and digital communication devices is lacking in India. Granting the broadcasting sector 'infrastructure status', tax benefits/sops, creating special broadcasting/economic zones/parks, rebate of duty for import of setting up a manufacturing plant, developing research centres, reducing the entry barriers for start-ups by reducing the initial cost and compliance burden, especially for new and innovative segments and services will help in boosting the Government's Make in India policy and lead to creation of employment in the broadcasting sector.

It will also maximise India's contribution to global value chains, by focusing on domestic production, increasing exports and reducing the import burden.

Accordingly, the Government should:

- i. Rationalise taxes, impose levies and differential duties to incentivise local manufacturing of equipment, networks and devices to the extent of domestic value addition;
- ii. Introduce a manufacturing program for identified product segments in digital communication technologies;
- iii. Attract and incentivise global OEMs and generic component players to setup manufacturing bases in India;
- iv. Encourage domestic Research and Development (R&D) thereby promoting design led manufacturing in India by leveraging indigenous software/ R&D capabilities;
- v. Ensure the availability of essential background IPR in a fair, reasonable and non-discriminatory (FRAND) manner required for promoting local manufacturing;
- vi. Incentivise fab and/or fab-less design and manufacturing of chips and system on a chip (SOC) for network and devices in emerging technologies;
- vii. Attract global talent from Indian diaspora to create best in class enterprises;
- viii. Ensure strict compliance to preferential market access requirements;
- ix. Preferring domestic products and services with domestically owned IPR in the procurement by government agencies, especially for the procurement of security related products; and
- x. Incentivising private operators to buy domestic broadcast products.

Further, the policy of the government on local manufacturing and value additional as set out in the National Digital Communication Policy 2018, should also be incorporated into and be part of the Policy.

6. To promote Fair Competition

The Policy must promote fair competition amongst broadcasters and ensure that no single entity has got any undue / unfair advantage / control or influence over the sector / market. Monopolistic and abusive practices by dominant entities should be prevented. Diversity must be encouraged in the Broadcasting Industry which would indirectly help plurality of views with no concentration of power or potential of abuse.

Q2. Stakeholders may provide specific comments and suggestions for identifying objectives, goals and strategies for National Broadcasting Policy including the following aspects:

i. Public Service Broadcasting

1. The requirement for public service broadcasting is adequately being fulfilled through Prasar Bharati, the designated public service broadcaster. The primary objective of Prasar Bharati, the statutory autonomous body established under the Prasar Bharati (Broadcasting Corporation of India) Act, 1990, is *“to organise and conduct public broadcasting services to inform, educate and entertain the public and to ensure a balanced development of broadcasting on radio and television.”* In pursuance of its social objective, Prasar Bharati is inter alia, required to:-
 - (a) *“upholding the unity and integrity of the country and the values enshrined in the Constitution;*
 - (b) *safeguarding the citizen’s right to be informed freely, truthfully and objectively on all matters of public interest, national or international, and presenting a fair and balanced flow of information including contrasting views without advocating any opinion or ideology of its own;*
 - (c) *paying special attention to the fields of education and spread of literacy, agriculture, rural development, environment, health and family welfare and science and technology;*
 - (d) *providing adequate coverage to the diverse cultures and languages of the various regions of the country by broadcasting appropriate programmes;*
 - (e) *providing adequate coverage to sports and games so as to encourage healthy competition and the spirit of sportsmanship;*
 - (f) *providing appropriate programmes keeping in view the special needs of the youth*
 - (g) *informing and stimulating the national consciousness in regard to the status and problems of women and paying special attention to the upliftment of women;*
 - (h) *promoting social justice and combating exploitation, inequality and such evils as untouchability and advancing the welfare of the weaker sections of the society;*

- (i) safeguarding the rights of the working classes and advancing their welfare;*
 - (j) serving the rural and weaker sections of the people and those residing in border regions, backward or remote areas;*
 - (k) providing suitable programmes keeping in view the special needs of the minorities and tribal communities;*
 - (l) taking special steps to protect the interests of children, the blind, the aged, the handicapped and other vulnerable sections of the people;*
 - (m) promoting national integration by broadcasting in a manner that facilitates communication in the languages in India; and facilitating the distribution of regional broadcasting services in every State in the languages of that State;*
 - (n) providing comprehensive broadcast coverage through the choice of appropriate technology and the best utilisation of the broadcast frequencies available and ensuring high quality reception;*
 - (o) promoting research and development activities in order to ensure that radio and television broadcast technology are constantly updated; and*
 - (p) expanding broadcasting facilities by establishing additional channels of transmission at various levels.*
- (3) In particular, and without prejudice to the generality of the foregoing provisions, the Corporation may take such steps as it thinks fit —*
- (a) to ensure that broadcasting is conducted as a public service to provide and produce programmes;*
 - (b) to establish a system for the gathering of news for radio and television;*
 - (c) to negotiate for purchase of, or otherwise acquire, programmes and rights or privileges in respect of sports and other events, films, serials, occasions, meetings, functions or incidents of public interest, for broadcasting and to establish procedures for the allocation of such programmes, rights or privileges to the services;*
 - (d) to establish and maintain a library or libraries of radio, television and other materials;*
 - (e) to conduct or commission, from time to time, programmes, audience research, market or technical service, which may be released to such persons and in such manner and subject to such terms and conditions as the Corporation may think fit;*

(f) to provide such other services as may be specified by regulations.”⁵

2. For undertaking the public service broadcasting obligations, Prasar Bharati is funded by the Government. Further, certain additional privileges have also been conferred on Prasar Bharati under various legislations. For example, under Section 8 of the Cable Television Networks (Regulation) Act, 1995, (Cable TV Act) the channels operated by Prasar Bharati are to be mandatorily aired by private DTH Operators.
3. At present, Prasar Bharati operates 36 Doordarshan satellite TV channels including twenty one 24x7 regional channels and one international channel. Additionally, it also operates Akashvani and has its own DTH platform called DD Free Dish. To further achieve the objective of public service broadcasting, Prasar Bharati must have the capacity to carry all the channels for which permissions have been granted by the MIB.
4. In view of the above, the social objective sought to be achieved by public service broadcasting is being adequately met by Prasar Bharati to meet the goal of enhanced global reach and there is no requirement to impose any additional obligation on private satellite television channels.
5. The present mandate under Clause 35 of the Guidelines for Uplinking and Downlinking of Satellite Television Channels in India, 2022 (Guidelines 2022), regarding Public Service Broadcasting should be re-considered by the authorities since by seeking to impose obligations upon news broadcasters in respect of the content, it is effectively seeking to regulate content on ground of “*public interest*”, “*national importance*” and “*social relevance*” which is impermissible in law and do not fall within any of the restrictions under Article 19(2).
6. The mandatory obligations upon the news broadcasters to telecast content under several heads in respect of obligation of public service broadcasting and the compliance thereunder is onerous, oppressive and violative of Article 19(1)(g).

⁵ Section 12 of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990,

7. The mandatory obligation imposed upon the news broadcasters to telecast content under several heads under Clause 35 of Guidelines while exempting sports, devotional, spiritual and yoga channels from compliance, makes the provision discriminatory, does not satisfy the test of intelligible differentia and is violative of Article 14.
8. In any event Members of NBDA being "News and Current Affairs" channels, telecast topics of public importance including on subject matters mentioned in Clause 35 of Guidelines 2022. Therefore, failure to grant exemption to news broadcasters is irrational and arbitrary.
9. In view of the above, NBDA is not commenting on Requirement, Relevance and Review, Support and Validation, Content Priority and Mandatory Sharing of television programmes.

ii. Policy and Regulation

- a) Satellite Broadcasting**
- b) Terrestrial television Broadcasting**
- c) Radio Broadcasting**
- d) Print media**
- f) Digital Media**

1. The regulatory framework for the satellite TV broadcast industry should be left to be determined by market forces by adopting the policy of forbearance.
2. Recent trends have indicated that several legislations and regulations enacted by the Government and by the Authorities have been challenged before various Courts, clearly insinuating that the said legislations and regulations were unreasonable restrictions on freedom of speech.
3. The Policy should therefore strengthen and promote the self-regulatory mechanisms and must ensure that any framework is supportive and strengthens self-regulation.
4. As the Broadcasting Industry undergoes transformation, a modern, dynamic and adaptable regulatory framework holds the key to unlocking the true potential of the Industry. Forbearance should be the cornerstone of such a

regulatory framework, the impetus of which should be towards enhancing sectoral development, plurality, QoS, accelerating adoption of new technologies while also establishing a level playing field.

5. In order to establish an adequate and proportionate broadcasting policy, the primary consideration is the examination and implementation of “balancing acts” to be undertaken by both the government and private sectors. Thus, the Policy should aim to strike a balance between the independence of the broadcasters and the government’s pursuit to attain public policy objectives. Further, in doing so, the Policy should ensure that the freedom of the broadcasters to disseminate information should be balanced with the rights of the citizens to receive information.
6. To achieve the aforesaid objectives, the Policy should :-
 - i. Recognise and promote a light-touch regulatory framework to ensure progressiveness, promote freedom of speech and expression, facilitate the development of an eco-system to promote creativity and innovation, encourage diversity and plurality of viewpoints by allowing self-certification, by streamlining the timelines and the procedures for seeking approvals and/or grant of permissions.
 - ii. Review onerous, broad, ambiguous and prescriptive regulation on content under the Cable TV Act, the Cable Television Network Rules, 1994 (Cable TV Rules) and the Cable Television Network Amendment Rules, 2021 (Amendment Rules 2021) keeping in mind the fundamental right of freedom of speech and expression. Any restriction imposed on the right to freedom of speech and expression should be consistent with the reasonable restrictions enumerated under Article 19(2) and with the well-established judicial pronouncements in that regard.
 - iii. Acknowledge that India’s diverse population is increasingly demanding and consuming original online content in vernacular languages. Online content is expected to drive the next phase of growth of the broadcasting sector in India. Therefore, a healthy environment should support innovation, freedom of speech and expression and self-

regulation, which will in turn promote the growth of content production and content distribution eco-system.

- iv. Adopt self-regulation which has proven its effectiveness in maintaining quality and integrity of television content and addressing consumer complaints concerning television over the last few years. Due to the nature of digital/online content and its delivery mechanism, self-regulation by industry stakeholders would be the most suitable mode of regulation.
- v. Revisit the existing ad-cap regulations and framework which can fit into a forbearance regime and also match up with the digital medium. The Policy must clearly recognize and facilitate level playing field conditions between both digital advertising and linear broadcast advertising. Digital advertising is more specific, targeted and personalized vis-à-vis linear/traditional broadcast medium of advertising. Any unreasonable regulatory restrictions would result in making the linear medium broadcast a completely unattractive mode of advertising and would discourage the advertisers from opting for the same. Thus, free market conditions and forbearance regime would go a long way if incorporated suitably into the Policy.
- vi. Formulate a legal framework/policy for addressing the dominant position enjoyed by big tech platforms. Such a framework/policy should ensure fair share of revenue for news publishers and transparency in the algorithms and technologies employed by big tech platforms, which use the news content generated by the news publishers arbitrarily to increase their revenues.

iii. Promotion of Local Content

1. In view of India being a diverse country, it is essential that local content be promoted and disseminated. Therefore, the regulatory framework with respect to legislations, economic policies and incentives have to be liberal in order to promote local content. The Broadcasting Industry is over-regulated and the present regulations and policies as enacted are not conducive for dissemination and promotion of local content.

2. To create an environment suitable for enabling local content creation, a broad spectrum of measures ranging from promoting IP awareness, improving Internet infrastructure and access to affordable ICT equipment such as camera, audio/video recorders should be adopted and form the bedrock of the Policy.⁶
3. Schemes, programmes and initiatives for promoting, supporting and granting subsidies and exemptions to local content producers including start-ups, small medium enterprises in the Broadcasting Industry should be evolved.

iv. Piracy and Content Security

1. Protecting physical and digital assets, for production, storage and distribution, ensuring continuity of service, safeguarding valuable content from being stolen or misused, are some of the challenges facing the Broadcasting Industry.
2. Accordingly, and to begin with, the Policy could stipulate the implementation of internationally acknowledged IEC (International Electrotechnical Commission) standards for cyber security and subsequently move to implement a domestic robust cybersecurity framework having multiple layers of protection across networks.
3. There must be robust protection for copyright and intellectual property rights which are crucial for encouraging creativity and for supporting the production of high-quality content and for protecting the rights of creators and distributors.
4. The Policy should in particular mandate an overhaul of the law on copyright infringement by introducing stringent measures such as heavy penalties to tackle the issue of piracy of content that is plaguing the Broadcasting sector and also causing loss to the public exchequer. The Policy should focus on piracy with regard to digital media and therefore, it is suggested that the copyright law be amended to include piracy vis-à-vis digital media.

⁶ UNESCO “The Relationship between Local Content, Internet Development and Access Prices” Available at <https://www.oecd.org/digital/ieconomy/48761013.pdf>

5. The Policy should recognise the importance of protecting the broadcast signal on an end- to-end basis i.e., right from pre-broadcast and retransmission of content (including live content) and mandate guidelines to address issues relating thereto like curbing cable television and digital/online piracy (through task force or otherwise) and heavily penalising violations.
6. Tackling piracy would increase industry revenues, create employment opportunities, fulfil important objectives of India's National Intellectual Property Rights Policy, 2016 and will give relief against piracy and infringement to satellite broadcasters, terrestrial TV broadcasters and digital media.
7. The Policy should also address other difficulties being faced by stakeholders such as in respect of copyright collecting societies (especially in relation to issues pertaining to their constitution and management, framing of tariff, manner of collection and disbursal).
8. Additionally, there are issues such as the proposed WIPO treaty on the protection of broadcasting organisations on which stakeholders are already working with the DPIIT and such protection of rights should be included in Policy to address the issue of copyright on a holistic basis.
9. To address issues of copyright in respect of the Broadcasting Industry and Digital Media, it is suggested that the relevant Ministries collaborate with International Organizations like WIPO to evolve standards, which can be equitably applied to prevent any infringement vis-à-vis copyright in the aforementioned sectors.
10. There should be collaboration between MIB, Department of Telecommunication, DPIIT, MEITY and other Industry stakeholders for content protection as this will help these Ministries in formulating effective policy measures.

v. Convergence

1. The Policy must recognize 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,

Information Technology (IT) 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, IT 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 legislation.

2. The broadcasting sector, for one, must be governed by a separate policy framework. With a converged policy framework, there is (a) the risk of “false equivalence” being drawn between the sectors; and (b) the risk of regulation of certain sectors by persons who are not competent, specialized, or focused enough to deal with sector-specific issues. As submitted, convergence is a technological construct and as such, it must not be misconstrued to converge the policy framework.
3. At the same time, it must be noted that with convergence of technologies, there is no concept of ‘geographical markets’.
4. 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. Therefore, the Policy should not converge the Broadcasting, IT and Telecom sectors. Instead, the Policy should be formulated in such a manner that it results in the formulation of a policy framework that solely caters to the broadcasting sector in a comprehensive and precise manner.
6. Merely because telecommunication, broadcasting and data services 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.

In view of the above, NBDA submits that there is no requirement for establishing a legal, administrative, regulatory and licensing framework for reaping the benefits of convergence.

vi. Specific Regulatory Authority for Broadcasting

1. The Ministry of Information & Broadcasting, which is the nodal ministry for regulating the Broadcasting Industry in India should continue to have oversight over content.
2. Article 19(1)(a) of the Constitution guarantees freedom of speech and expression to the press/media, which can only be restricted under the eight heads enumerated under Article 19(2). There are sufficient regulations, rules and statutory mechanisms and no further regulations or any statutory regulator is required to regulate content.

vii. Robust grievance redressal mechanism

NBDA submits that TRAI should withhold conducting any consultation on this subject as the three-tier grievance redressal mechanism established under the Amendment Rules, 2021 and several provisions of the Information Technology (Intermediary Guidelines & Digital Media Code) Rules, 2021 [IT Rules, 2021] are sub judice before the Hon'ble High Courts and the Hon'ble Supreme Court. Without prejudice to the above, NBDA submits as under: -

1. That Industry established self-regulation should be the cornerstone of a robust grievance redressal mechanism.
2. That to make self-regulation more effective, NBDA has represented to the MIB, that it should notify the Codes of Ethics & Broadcasting Standards (Code of Ethics) of the NBDA under Rule 6 “ Programme Code” of the Cable TV Rules. Presently, the Code of Ethics are only binding on the members of NBDA and inclusion of the Code in the Cable TV Rules will give more teeth to NBDSA and it would also put it on par with the Advertising Standards Council of India (ASCI) whose Code has been included in the Cable TV Rules.
3. That it is essential to establish the importance of self-regulation as a principle to regulate media. It is the accepted best practice throughout the

world that the development of an independent Broadcasting Industry is of paramount importance and can most efficiently be achieved by the promoting broad avenues for self-regulation.⁷

4. That in *Destruction of Public and Private Properties vs Union of India (2009) 5 SCC 212*, the Hon'ble Supreme Court accepted the recommendations of the Nariman Committee of the need for self-regulation in the media at the industry level and observed that the appropriate authorities should take steps for implementation of the same. Bearing in mind the balance of various interests, the Hon'ble has approved the model of media self-regulation and rejected a state-intervention mode.
5. An ideal grievance redressal mechanism should be the self-regulatory mechanism established by industry stakeholders to address complaints pertaining to content.
6. India must endeavour to come up with a policy which would bring up its ranking under the Press Freedom Index, which is only possible with minimum Government intervention and maximum self-governance.

viii. Audience Measurement System:

1. To promote orderly growth of the sector, viewership metrics, which are the basis for revenue spends, need to be upgraded. The viewership metrics should be able to measure the viewership of the same content/ program irrespective of the platform over which it is consumed i.e., linear television and online/digital.
2. There is an immediate need for increasing the sample size to measure the viewership patterns of the diverse population of the country and minimise sample tampering.
3. Currently no reliable metrics are available for online content consumption. An accurate and unified audience viewership metrics will lead to better revenue monetisation for content across both offline and online platforms.

⁷ Guidelines for Broadcasting Regulation, Eve Salomon, CBA and UNESCO, available at: <https://unesdoc.unesco.org/ark:/48223/pf0000144292/PDF/144292eng.pdf.multi>

4. The Policy should promote audience viewership measurement metrics that captures viewership patterns irrespective of the platform, has a diverse, robust, tamper proof and large sample size, has a transparent methodology and encourages competition in the sector.
5. Accordingly, the development of an independent, reliable, transparent and robust rating system that will take advantage of technology convergence and enhance revenue monetisation for content across both offline and online platforms is essential.
6. The television audience measurement and ratings in respect of the news genre should be transparent and accurate. For this purpose, it is suggested as under:
 - i. **Sample size and allied issues.**
 - (a) The sample size of panel homes should be increased. There is need to increase meters particularly for news and other genre which have low viewership.
 - (b) To further enhance the accuracy and have greater representative data, BARC should endeavour to increase the sample size to at least 100,000 BARO meters, as it collects a hefty fee from the broadcasters for audience measurement and hence it should invest in increasing the sample size, providing a more representative data which is backed by adequate sample size and is also free from other data fallacies.
 - ii. **Security of data**

Any Audience Measurement Systems including BARC should evaluate ways to anonymise data in a manner that no one has access to details on how and which boxes are used to obtain data. Appropriate steps should be taken by any Audience Measurement Systems to ensure:

 - (a). privacy of personal information is not compromised;
 - (b). data is maintained, transferred and dealt with in pseudonymized form;
 - (c). there is rotation of panel homes in quick succession / intervals;
 - (d). all concerned are required to execute non-disclosure agreements breach of which should inter-alia entail severe monetary consequences, and

- (e). dummy panel homes should be installed to eradicate possibility of manipulation.

iii. **Transparent Outlier policy.**

Audience Measurement Systems should have an outlier policy in place, which is transparent in respect of viewership data of channels. In the spirit of transparency and fairness, the following is proposed:

- (a). The Outlier policy should only be driven to check statistical outliers which have arisen due to technical issues such as meters getting jammed or a household member unintentionally forgetting to switch-off the button of the People's Meter remote etc.
- (b). The Outlier policy should also check for panel tampering where viewing habits are not in line with the household or market profile and there is evidence of panel tampering on the basis of internal investigations and raw data analysis.
- (c). Application of the Outlier policy should be algorithmically driven, and no manual / human intervention should be allowed in any manner. This will ensure credibility of the Audience Measurement Systems data.

iv. **Any form of data smoothening should not be permissible.**

- (a). Reduction in data variability by reporting data at monthly level, rolling averages, broader target group and market cuts like 2+, 15+, only town class data, etc. should not be encouraged as these measures do not remove anomalies but, smoothen anomalies over longer periods and in fact make them harder to detect even when they exist.
- (b). It is imperative that data is available at the same granular level for news channels as it is available for all other genres. Otherwise, news channels have a distinct disadvantage from a media planning perspective.

- (c). Further, when data is available at a granular level, anomalies can be detected more easily and channels which are tampering data can be put under scrutiny.
 - (d). Niche channels are under reported as the number of individuals sampling such channels are low and with lesser provisions for booster sample, the viewership shows huge fluctuations. It is imperative that booster samples should be increased for niche channels to represent their true viewership and with lesser fluctuations.
 - (e). Raw Data and Additional Data should be made available. Audience Measurement Systems should be mandated to provide raw level masked data when sought by the broadcasters. Raw data would help in determining any changes made to weightage is clearly known. Audience Measurement Systems should endeavour to give separate data for DTH to check if there is a major difference between the data gathered from cable operators and DTH.
 - (f). Engaging an independent global advisor. Audience Measurement Systems should engage an advisor that has experience in rating agencies internationally that can advise on best practices and technologies that Audience Measurement Systems can adopt to further strengthen the systems and processes to ensure that Audience Measurement Systems remains a credible source of television viewership measurement.
 - (g). Data reporting. Audience Measurement Systems should share sample size and TV universe of every market that is being reported.
- v. **Return Path Data (RPD) mechanism:** RPD should be mandated in every STBs to be deployed from January 2024, subject to introduction of a comprehensive and tamper proof system of sampling across platforms. However, it is submitted that the burden to upgrade the STBs with the RPD technology should not be borne by the broadcasters in any direct or

indirect manner, particularly as RPD technology is completely dependent on the infrastructure of the DPOs.

- vi. Encourage equal participation by all stakeholders;
- vii. Move to a regime of real time data measurement and analysis; and
- viii. Encourage competition in the audience measurement sector.

ix. Social Goals

1. A systematic approach should be adopted for implementation of Accessibility Standards across the Broadcasting Industry with emphasis on “voluntary compliance”.
2. Accessibility Standards should be issued by the MIB as Codes of Good Practice.
3. OEMs should be encouraged to make Set-top-boxes, Televisions and Remote controls which provide easy access to captions, subtitles, audio descriptions which can be readily turned on/off by consumers.
4. Government should provide financial support to Broadcasters, Distributors, OEMs, in the form of incentives, deductions or source of funding to facilitate the implementation of Accessibility Standards by the stakeholders and encourage content creators to create content with audio description, subtitles, close captioning and sign language interpretation.

x. Environmental Responsibility

The Policy formulated should be environmentally friendly to make the Broadcasting Industry carbon neutral with a clear-cut timelines.

Q3) Stakeholders may also suggest any other issues which should be considered for formulation of National Broadcasting Policy, along with detailed justification.

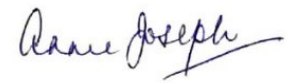
1. **Digitization and Technological development:** It is well known that the advancement of technology is taking place at a lightening pace, with the

evolution of AI, ML, Web3.0, AR/VR/MR, Metaverse and so on. Therefore, the Policy should take into account the development of technologies and provide for a level playing field conditions by adopting a policy of forbearance for all participants and stakeholders irrespective of the medium, particularly as the Broadcasting Industry is overregulated and is getting stifled.

2. **Broadcast sector not to be mixed or confused with telecom sector especially w.r.t. Licensing norms and spectrum allocation:** The broadcast sector should not have similar license terms akin to telecom sector and the distinction and dichotomy should continue to be maintained. The broadcast sector deserves separate and distinct treatment when it comes to spectrum allocation and the said band must continue to be allocated on an administrative basis as against taking up any auction route.
3. **Opening up of terrestrial broadcasting to private sector:** The utilization of terrestrial spectrum should be permitted to the private sector for providing ‘news broadcasting’.
4. **Digital literacy and consumer protection:** With the sector becoming overloaded with complexities, there is an increased need for creating awareness and also digital literacy, which must be implemented across the stakeholders including the consumers.
5. **Protection of journalistic freedom:** The Policy must suitably incorporate provisions which can protect the rights and freedom of journalists. They should have complete freedom to investigate and report on matters of public interest without undue influence or threat and therefore legislations and regulations to that effect must be put in place.
6. **DAVP (Central Bureau of Communications – independent body to determine the distribution of Government advertisement revenue share):** An independent body should be established for the distribution of Government advertisement revenue as the media has two-fold responsibilities, firstly, to disseminate accurate information to the public at large and secondly to stay afloat by weighing commercial viability. If the Government advertisement revenue share and distribution thereof is dependent and governed by the very same body which can be subject matter

of criticism, it is highly unlikely that there will be any fair determination of advertisement revenue distribution by them. The tax revenue paid by the people must be used and distributed in a fair and equitable manner.

The submissions are being made on behalf of the Members of NBDA for the news genre.



Annie Joseph
Secretary General

November 7, 2023