



TELECOM REGULATORY AUTHORITY OF INDIA



Recommendations

On

Regulatory Framework for Platform Services

19 November 2014

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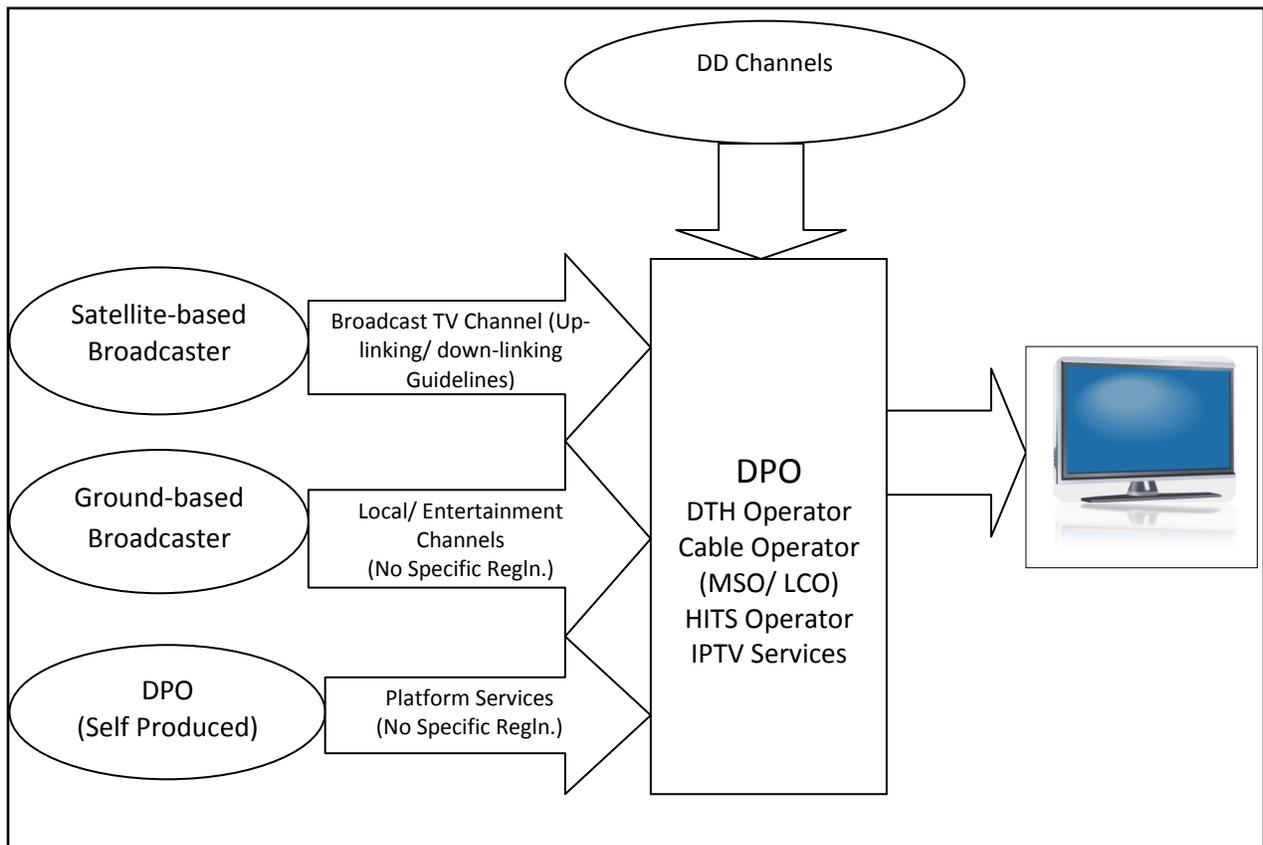
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Chapter 1

Introduction

1.1 The Television service distribution sector in the country mainly comprises cable TV services (delivered by Multi-System Operator (MSO)/ Local Cable Operator (LCO)), Direct to Home (DTH) services, Internet Protocol Television (IPTV) services, Headend-in-the-Sky (HITS) services, and terrestrial TV services which are provided by Doordarshan, the public broadcaster. All of these service providers together are commonly referred to as Distribution Platform Operators (DPOs).

Fig.1: TV Channels Distributed by DPOs



- 1.2 The TV channel distribution platforms primarily re-transmit broadcast TV channels permitted by the Ministry of Information & Broadcasting (MIB) under their Uplinking/Downlinking Guidelines. In addition, TV channel Distribution Platform Operators (DPOs) - cable TV operators (MSO/ LCO), DTH, IPTV and HITS operators - provide certain programming services which are specific to each platform and are not obtained from satellite-based broadcasters. Please see Fig.1.
- 1.3 These programming services are either produced by the DPO itself or are sourced from certain ground-based broadcasters. The delivery of such services by Cable Operators is extensive. In common parlance, 'local channels' are channels distributed by Cable Operators, either self-produced or obtained from ground-based broadcasters. These channels by and large cater to the local information needs of cable TV subscribers. The ground-based broadcasters provide 'local channels' as also a variety of entertainment programming on the cable TV networks.
- 1.4 The DPOs own programming services are referred to as 'Platform Services (PS)', which also includes most 'local-channels'¹. PS are exclusive programming services being offered by DPOs only to their own subscribers.
- 1.5 Unlike private satellite TV channels, which are permitted and regulated under the Uplinking/ Downlinking Guidelines of MIB, neither the PS nor the channels distributed by ground-based broadcasters are presently subject to any specific regulations or guidelines.
- 1.6 Earlier, the Authority in its recommendations on 'Restructuring of Cable TV Services' dated 25 July 2008 had, *inter alia*, recommended that LCOs should be permitted to transmit their ground-based channels, which will be subjected to the Programming Code and Advertisement Code as prescribed in the Cable Television Network (Regulation) Act, 1995 and any other instructions issued by Ministry of Information & Broadcasting

¹ Ground-based broadcaster provides 'local channels' which are different in that they are not owned or produced by the DPO through which the channels are distributed.

(MIB) from time to time. As part of the Authority's recommendations, MIB was requested to issue detailed guidelines for provision of ground-based (local) channels by LCOs.

- 1.7 Through their letter dated 17 January 2013 (**Annex I**), MIB had sought recommendations of TRAI under section 11 (1) (a) (ii), (iii) and (iv) of TRAI Act, 1997 (as amended) on the issues related to local ground-based channels of cable TV operators. In addition, through their earlier letter dated 2 February 2009 (**Annex II**), MIB had also sought TRAI's recommendations about such kind of programming services being offered by DTH service providers to their subscribers as well as on the issue of carriage of FM radio channels on the DTH platform.
- 1.8 Ground-based channels on cable TV networks, either as PS operated by cable TV operators or from ground-based broadcasters, generally provide movies, music related programs, local community-based programs, local information and current affairs, etc. DTH platforms are being used to offer specialized services that enable subscribers to access content 'on-demand', like movies-on-demand, video-on-demand, pay-per-view, near video-on-demand. DTH platform also provide interactive services such as games, education, etc., which are presently not being offered by traditional broadcasters. Serious concerns have been expressed about the program content of some channels distributed through the cable, either as PS or by ground-based broadcasters. In its report², the Parliamentary Standing Committee on Information Technology, has observed:

a. *"...The Committee have been informed that the Ministry of Information and Broadcasting has received several complaints against cable operators showing illegal channels which have neither been permitted to uplink from India nor permitted/registered to downlink into India as per the Uplinking and Downlinking*

² Thirty-sixth Report, Standing Committee on Information Technology (2011-12), presented to Lok Sabha on 28 August, 2012.

Guidelines. Intelligence Bureau had identified around 25 such channels and informed the Government that the contents of these channels are not conducive to the security environment in the country and pose a potential security hazard...”

- 1.9 Since there is no registration system in place for the PS offered by DPOs or the ground-based channels, neither MIB nor any other agency has full information about what is being shown on TV networks. The various rules/ regulations on cable TV networks or the DTH platform mandate that all the channels transmitted/re-transmitted on TV networks need to have requisite registration/ permission/ approval of the MIB. Therefore, there is an urgent need to ensure that these programming services are brought within the four corners of a robust and fair regulatory system that addresses all concerns adequately.
- 1.10 The Authority issued a Consultation Paper (CP) on ‘Regulatory framework for Platform Services’ on 23 June 2014 to solicit the comments/views of all stakeholders on issues related to PS, so that an appropriate regulatory framework for PS could be put in place. Written comments on the CP were invited from stakeholders by 14 July, 2014 and counter-comments, if any, by 21 July 2014. On the request of stakeholders, the last date for receipt of written comments was extended up to 29 July 2014 and counter-comments up to 5 August 2014 respectively. 143 comments and 4 counter-comments were received. These were posted on TRAI’s website.
- 1.11 Keeping in view the numerous stakeholders involved and the fact that the issues raised required extensive consultation with the stakeholders, four regional Open House Discussions (OHDs) were held in Mumbai (12 September 2014), Bengaluru (16 September 2014), Kolkata (19 September 2014) and New Delhi (24 September 2014). One last opportunity was given to all stakeholders for sending any additional points or comments on the issues till 29 September 2014.

1.12 After considering the written comments and counter-comments received from stakeholders, views expressed during the OHDs and their written submissions after the OHDs, and after carrying out its own analysis, the Authority has finalised these recommendations. The suggested regulatory framework ought to apply to all DPOs providing PS irrespective of the mode of distribution. In addition *suo motu* recommendations have been made for a regulatory framework for ground-based broadcasters, who are providing local-channels to the cable operators, with the intention to ensure that the regulatory framework established is comprehensive in its coverage of all program content that is available to TV subscribers. Chapter 2 discusses various issues related to the regulatory framework for platform services. Chapter 3 discusses the issues relating to ground-based broadcasters and Chapter 4 summarises the recommendations.

Chapter 2

Regulatory Framework for Platform Services

What constitutes PS?

2.1 Deliberations at the OHDs and the written comments received bring out that there are four distinct kinds of channels³, though variously described, and with a variety of content, that are being carried on DPO networks. For analytical ease and simplicity these are classified below in terms of the source of the channel:

- (a) Private Satellite Channels: These are the traditional satellite broadcast channels, governed by the Uplinking/ Downlinking Guidelines of the MIB. They carry all genres of program content.
- (b) Doordarshan Channels: These are the Public Broadcaster's channels, some of which the TV networks are mandated to carry under the Cable Television Networks (Regulation) Act, 1995.
- (c) Platform Services (PS) Channels: These are channels owned and operated by the DPOs and distributed to their own subscribers. They are of several kinds and, depending on the design of the network, may or may not be interactive. They offer a fairly wide variety of content to their subscribers. Content generally offered includes local affairs information/news; movies; general entertainment; music; education and religion. The DTH networks offer on-demand services for which the subscriber has to pay extra. These channels include movies/ video on demand, educational channels, interactive channels, etc. While such on-demand channels are at present distributed only by the DTH operators, in the DAS environment MSOs too can provide them.

³ 'Channel' for the purposes of this paper is defined as *a set of frequencies used for transmission of a programme.*

(d) Ground-based Channels: These channels are akin to the traditional broadcast channels, but with a strong local focus. In the comments received they have generally been referred to as 'local-channels' and the producers of such channels have been described as 'local-channel operators'. In reality they are ground-based broadcasters. These channels offer a variety of content such as local news and information; regional movies and music; religious content, etc. The ground-based broadcaster channels are an integral part of most cable TV networks. Like traditional TV channels, these channels may also be carried on more than one DPO network simultaneously. The owners of these channels transmit the content terrestrially to the headend of the cable TV network, i.e., there is no uplinking or downlinking of the channel and the DPOs retransmit them on commercial terms to the subscribers. Like traditional TV channels, these local-channels also carry advertisements and the ad-revenue obtained usually accrues to the ground-based broadcaster. Consequently, they own the rights for the content carried and are responsible for the same. At present, such channels are not specifically covered under any regulatory framework and the ground-based broadcasters are not formally recognized as a 'broadcaster'.

2.2 The channels listed at (a) and (b) above are comprehensively covered by various regulations. However, in respect of those at (c) and (d), there is a lack of clarity regarding the applicable regulatory framework. DTH operators, for example, claim that PS are in the nature of value added services which are not included in the list of restricted⁴ value added services covered in the DTH Guidelines. Therefore, they contend that they are not required to obtain any permission for producing or offering

⁴ Guidelines For Obtaining License For Providing Direct-To-Home (DTH) Broadcasting Service In India; Article 10 *"The DTH facility shall not be used for other modes of communication, including voice, fax, data, communication, Internet, etc. unless specific license for these value-added services has been obtained from the competent authority."*

these channels to their subscribers. As regards cable operators, the Cable TV Act allows cable operators to transmit their own programming services. The Cable TV Rules⁵ permits MSOs in DAS areas to transmit their own programming service, either directly or through one or more LCOs. However, there are no procedures/ guidelines on registration/ regulation of the ‘own programming’ services. Further, at some point of time, this permission to transmit ‘own programming’ has been outsourced to dedicated ground-based channel operators who provide cable operators with fully developed TV channels for distribution. Some of the ground-based broadcasters have stated that they have attempted to register their channels with MIB but failed, as they are neither uplinking nor downlinking the same. This is despite The Cable TV Networks (Regulation) Amendment Act 2011, defining “Broadcaster” in a technology-neutral manner. The said Act defines Broadcaster as “*any person or a group of persons, or body corporate, or any organisation or body providing programming services and includes his or its authorized distribution agencies*”.

2.3 Thus, it can be concluded that a comprehensive regulatory framework covering all four types of channels is required. Such a framework will fill in the gaps that exist in providing answers to: (i) what is being shown – as not all content can be allowed to be transmitted or retransmitted; (ii) details of where a program is being shown; and (iii) who is the rights holder and otherwise responsible for the content being shown. Further, such a framework will provide regulatory neutrality amongst similar channels being distributed by DPOs.

2.4 While the present reference from the MIB is about PS being offered by DPOs – both DTH and cable operators - it is clearly necessary to suggest

⁵ Cable Television Networks Rules, 1994 (as amended) provides “*Multi-System Operator (MSO)*” means a cable operator who receives a programming service from a broadcaster and/or his authorized agencies and re-transmits the same or transmits his own programming service for simultaneous reception either by multiple subscribers directly or through one or more local cable operators (LCOs), and includes his authorized distribution agencies by whatever name called;

a regulatory framework for the ground-based broadcasters as described at 2.1(d) above, as well.

Definition and Content

2.5 In the CP, the following definition of PS was proposed:

“Platform services (PS) are programs transmitted by Distribution Platform Operators (DPOs) exclusively to their own subscribers and does not include Doordarshan channels and TV channels permitted under downlinking guidelines.”

2.6 This definition was deliberated upon and discussed in great detail by the stakeholders. Some stakeholders opined that PS could be shared amongst other DPO networks. Some others suggested that linear⁶ programming services that compete with a traditional broadcaster’s content ought not to be allowed as PS. DPOs should be comprehensively restricted from providing advertising spots on their non-linear channels. Such non-linear channels should not carry any news or current affairs programming because of security considerations. However, content necessary to help local citizens on education, job opportunities, weather, calamities/dealing with Acts-of-God situations could be non-exclusively provided by DPOs.

2.7 PS, as mentioned in paragraph 2.1(c) above, are programming services provided by a DPO to its own subscribers. These services are not shared and, therefore, there is no interconnection with other DPOs for distribution of PS. Since PS are operator-specific these services grant a certain uniqueness to each DPO’s network. The local content on a cable TV network is indeed a service greatly valued by subscribers of these networks ever since they were established. Given that subscribers get a wider choice and this leads to no major problems, except for security concerns in sensitive areas including the border regions as has been

⁶ ‘Linear’ refers to a non-interactive channel, where the viewer has to watch a scheduled TV program at the particular time it is offered by the broadcaster.

reported, there seems to be no good reason to significantly alter the definition as proposed in the CP. However, to address the security concerns, content from foreign TV channels not registered in India should be proscribed.

- 2.8 As regards, ownership and determining responsibility for the content carried on a channel, a deciding factor could be who inserts advertisements in the channel and, consequently, derives the ad-revenue therefrom. If the advertisements are inserted by the DPO, then the channel can be construed to be a PS. However, if the advertisements are inserted by the ground-based broadcasters, the DPO's network is only a medium of transmission, and the channel cannot be deemed to be a PS. The logical conclusion of this is that ground-based broadcasters' channels should not be included as PS; they are a class apart and the ground-based channel operators are, in effect, broadcasters.
- 2.9 To conclude, what constitutes a PS? PS are programming services/ channels that are owned by the DPO; available only to the subscribers of the DPO's network; advertisements, if any, on these channels is inserted by the DPO and ad-revenues, therefore, accrue to it. Regular TV channels, howsoever transmitted, and Doordarshan channels which appear on the TV networks, cannot be included in PS. Further, foreign TV channels not registered in India cannot be included in PS.
- 2.10 As regards content, the CP suggested what could and could not be provided through PS. Some stakeholders agreed with the lists suggested in the CP, while others differed, and in various degrees. Some wanted no restrictions at all i.e. all types of content should be permitted on PS. A few suggested a negative list approach, i.e., a clear listing of what is disallowed with everything else being permissible. During the stakeholder consultations, the main issue of contention was whether 'news and current affairs' should be allowed or not. The LCOs and their associations stressed that the uniqueness and popularity of their local channel was largely because of the 'local affairs' bulletins that they

carried. Such channels cover a wide gamut of locally relevant information including political, religious and social events in the area covered by the LCO. Any restriction on such locally relevant information from being included in PS would deny subscribers of a critical service.

- 2.11 However, others pointed out that it is not possible in all cases to draw a clear distinction between what is local information and what constitutes 'news'. Therefore, a clear understanding in this regard was required before 'news and current affairs' was proscribed from being carried by local channels. There was a suggestion that local channels should not carry news of national/international nature and current affairs that are the remit of the national news channels being broadcast.
- 2.12 Given that the genesis of the present exercise lies in the concerns expressed in the Thirty-sixth Report of the Parliamentary Standing Committee on Information Technology (2011-12)⁷, the primary obligation of the DPO is to ensure that the PS transmitted on their networks do not contain anything illegal and that they are responsible for adherence with the applicable rules and regulations in the same way as broadcasters.
- 2.13 Cable TV networks disseminate information about local affairs to their subscribers; the importance of such a service provided by the local cable TV networks is well recognised. However, considering the more stringent regulatory norms in India for news broadcast, as compared to that for general entertainment, allowing DPOs to freely include news content in their PS is neither fair to news broadcasters nor advisable as unhindered (unregulated) dissemination of news also has significant security implications. Therefore, only local affairs/ information bulletins sourced entirely from local resources, could be allowed on PS channels run by a cable operator. News from news agency sources or national/international news derived from broadcast TV channels cannot be permitted to be transmitted as content of PS.

⁷ Please see paragraph 1.8 of this paper.

- 2.14 In general, programs included in PS, whether self-created or sourced from third parties, must adhere to the Programming and Advertising Codes of the Government, i.e., it is essential that for the program/content transmitted as PS, the DPO must possess the legal rights to transmit, including copyrights; appropriate licences/ permission from the rights holders; and permission from any Government department, if required.
- 2.15 During the consultation process, it was pointed out that several cable TV networks broadcast illegal/ pirated content. It is clarified that if indeed such content is illegal then the law enforcement agencies should take necessary action under applicable laws.
- 2.16 Keeping in view the potential of local bulletins to lead to law and order problems in the village/town/city, clearance for broadcasting local news and current affairs bulletins should be obtained from the Authorised Officer⁸ who are best placed to judge the sensitivity of the content. The State Government, however, should not charge any fees for according such permission.

Recommendations

- 2.17 **The Authority recommends that the definition of PS shall be:**

“Platform services (PS) are programs transmitted by Distribution Platform Operators (DPOs) exclusively to their own subscribers and does not include Doordarshan channels and registered TV channels. PS shall not include foreign TV channels that are not registered in India.”

- 2.18 **In so far as carrying local news and current affairs bulletins on PS is concerned, the following categories will be treated as non-news and current affairs broadcast and will, therefore, be permissible:**

⁸ As defined in the Article 2 (a) of Cable TV Networks (Regulation) Act 1995, as amended.

- (i) Information about local events and other local affairs, sourced locally and not obtained from news agencies or from broadcast news channels/ sources;**
- (ii) Information pertaining to sporting events, excluding live coverage. However live commentaries of sporting events of local nature may be permissible, if broadcasting rights for the same are not held by anyone else;**
- (iii) Information pertaining to Traffic and Weather;**
- (iv) Information pertaining to and coverage of cultural events, festivals;**
- (v) Coverage of topics pertaining to examinations, results, admissions, career counseling;**
- (vi) Availability of employment opportunities; and**
- (vii) Public announcements pertaining to civic amenities like electricity, water supply, natural calamities, health alerts etc. as provided by the local administration.**

In addition, the Authority recommends that the DPO obtain prior permission from the Authorised Officer⁹ in this regard and that the State Governments should not charge any fees for according such permission. Any DPO offering PS must ensure full adherence to the Programme and Advertising Codes prescribed under the Cable Television Network Rules, 1994.

Registration of PS Channels

2.19 Till date, the PS offered by the DPOs have largely been unregistered. Even for the value-added PS channels, DTH operators have not sought any permission from MIB unlike the broadcast channels carried on the same DTH platform (and for which detailed guidelines have been framed). It has been pointed out that some of the channels offered by cable

⁹ As defined in the Article 2 (a) of Cable TV Networks (Regulation) Act 1995, as amended.

operators are very similar in content to the broadcast channels and should, therefore, face similar regulatory requirements. It seems clear that PS should be treated in a content-neutral manner; there is little reason for different regulatory requirements for different PS channels based on content. Nevertheless, it is necessary to have a registration system whereby MIB has a record of the nature and content of the PS offered by any DPO in India. Without such information, the national security related concerns expressed by the Parliamentary Standing Committee on Information Technology cannot be addressed.

- 2.20 As per extant policy, for satellite-based channels, the permission process comprises a number of stages, such as: payment of prescribed processing fee; checking of eligibility of the applicant company by MIB; security clearance from the Ministry of Home Affairs and satellite use clearance from the Dept. of Space (wherever required); signing of the Grant of Permission Agreement (GOPA) with MIB; Wireless Planning and Coordination Cell (WPC) clearance; issue of operating license from WPC; and payment of spectrum and royalty fee by the applicant company. All this takes a lot of time. For PS, such an elaborate and time-consuming procedure is neither required nor will it be practicable to implement.
- 2.21 While designing the registration system for PS channels, one has to be mindful of the large number of cable operators in India¹⁰. With each DPO operating several PS channels, there is a need for a simple and user-friendly system. Any system that increases complexity will be difficult for compliance by DPOs, leave aside the more difficult problem of ensuring enforcement. Therefore, a simple online registration system may be established by the MIB, on which any DPO desiring to provide PS must register the channel with information that may *inter alia* include - the name of the DPO; its corporate identity number; the names and identity of its beneficial owners; address; area of operation; location; DPO

¹⁰Due to the lack of any central registry, there are no authentic figures of the number of cable operators. However, it is estimated that there are 60,000 operational LCOs in India.

category/ For cable TV operators - whether DAS or non-DAS; nature/ genre of content of the PS channel. Once the information is uploaded, the system must automatically generate an acknowledgement of the registration.

Recommendation

2.22 Considering the above, the Authority recommends that MIB should establish a simple online registration system for PS. All DPOs shall register their PS channels with the MIB on this system. For registration, a basic set of information may be sought from the DPO. The information sought may, *inter alia*, include:

- (i) Name of the entity;**
- (ii) Corporate Identification Number (CIN) allocated by Registrar of Companies (RoC);**
- (iii) Identity of its beneficial owners;**
- (iv) Address/ location/ area of operation;**
- (v) DPO category/ In case of Cable TV Operator whether DAS or non-DAS; and**
- (vi) Nature/ genre of content proposed to be carried.**

The system shall automatically generate an acknowledgement of the registration of the PS channel. Once registered, the DPO can start providing the PS.

Validity; Renewal and Withdrawal of Registration

2.23 Comments received suggest various periods for validity and renewal of the registration. Broadcasters have suggested that the period of validity of registration and its renewal should be for the same period as for their downlinking permission, i.e., 10 years validity with 10 years renewal. Unlike a broadcast channel which is distributed by a DPO following a contract with a broadcaster, PS are of the DPO's own creation and

therefore, the validity period of registration of the PS channels should be co-terminous with the operating license of the DPO. As long as there is no change in the information regarding the PS channel – its owner, nature, content, and area of operation - there is little administrative benefit from a periodical expiry/ renewal requirement. Further, if the validity of the PS is the same as the licence period of the DPO, there is no need to renew the registration of the PS. Extension of the registration/ permission period of the DPO would simultaneously extend the validity of the registered PS channels offered.

- 2.24 In case a DPO wishes to discontinue a registered PS channel, or change its nature/ genre etc. the registration will have to be cancelled/ amended online. This is necessary to ensure that the database with the MIB is up-to-date with latest details of all functional PS channels.

Recommendation

- 2.25 **The Authority recommends that the validity of registration of the PS channels should be co-terminous with the operating licence/ registration of the DPO. Extension of the registration/ permission period of the DPO would simultaneously extend the validity of the registered PS channels offered; consequently, there is no renewal requirement for the registration of PS channels. Further, before discontinuation or effecting any change in the details about a PS channel, the DPO concerned shall cancel or amend online the registration obtained for that channel.**

Permission/ Annual Fee

- 2.26 As far as permission/annual fees are concerned, some stakeholders have suggested no such levy be charged. A few have suggested a one-time payment and some that a graded annual fee may be levied. One suggestion was that the validity and licence fee must be identical to that

of broadcasters, while some have advocated an Adjusted Gross Revenue (AGR) model.

- 2.27 In terms of the downlinking guidelines, in addition to a non-refundable processing fee of ₹10,000 for registration of the channel, the applicant company is required pay annual fee at the rate of ₹ 5 lakhs per channel per annum for the downlinking of a TV channel uplinked from India. However, in the case of PS, an annual fee may not be justifiable as the PS channels have a limited clientele i.e. limited to the DPO's own subscriber base. However, since it has been recommended that a registration system for PS be established, a nominal one-time registration fee of ₹1000 per PS channel may be appropriate to take care of the administrative costs. The online system for registration may also incorporate a payment gateway to enable online payment of the fees.

Recommendation

- 2.28 **The Authority recommends that no annual fees should be imposed on PS channels; however, a one-time registration fee of ₹1000 per PS channel should be charged. An online payment gateway for acceptance of the registration fees may be incorporated by MIB in the recommended online registration system.**

Transferability of Registration and Interconnection

- 2.29 Some stakeholders have suggested that the registration of PS channels should be transferable. They have also suggested that interconnection between networks to share PS channels may be allowed. Other stakeholders have suggested that given the network-specific nature of PS channels there is little scope to allow either transferability or interconnection for sharing of PS channels with other networks.
- 2.30 After due consideration of the definition and nature of PS channels, as discussed in detail above, there are few cogent reasons to permit either

transferability of registration or allow interconnection for sharing of PS channels by a DPO. If either were to be allowed, PS would lose its identity and these channels would be the same as registered broadcast channels, either satellite or ground-based.

Recommendation

2.31 The Authority recommends that transferability of registration and interconnection with other networks for sharing of PS should not be allowed.

Who can provide PS?

2.32 PS being a platform-related service has to be provided by the Distribution Platform Operator (DPO). Any entity which is primarily a broadcaster cannot offer PS. In the context of the TV distribution sector in India, DPOs consist of DTH operators, cable TV network operators (MSOs and LCOs), HITS operators and IPTV service providers. Regarding cable TV networks, the LCOs are presently providing PS in non-DAS¹¹ areas, while it is the MSOs who are doing so in the DAS areas. A basic issue that was discussed in great detail during the OHDs was whether LCOs could provide PS in DAS areas. The assumption in the CP was that in DAS areas all PS has to be inserted at the MSOs headend. Clarity on this matter would determine the entity responsible for the content carried on PS.

2.33 During the consultation process it was explained by some LCOs that two options were available: (i) The LCO's PS channel may be delivered at the MSO's headend for encryption and distribution through the cable TV network; and (ii) It is also technically feasible to introduce the PS at the LCO's end in a digitally addressable encrypted format through appropriate equipment, provided the MSO allows the same

¹¹ Locations/ areas where the Digital Addressable System (DAS) has not yet been implemented.

and have suitable techno-commercial arrangement with its linked LCOs.

- 2.34 Since PS content is socially relevant and useful if it is locally generated and distributed in the local area, the important matter is to enable the LCO to deliver digitally addressable encrypted PS channels to the subscribers. What is more, there is little reason to insist that the PS channels be inserted at the MSO's headend, if there is a more convenient and technologically feasible option available. Hence, the best option is to leave it to the LCOs and MSOs to devise an optimum solution.

Recommendation

- 2.35 **Regarding the insertion of PS channels by LCOs in DAS area, the Authority recommends that LCOs and MSOs operating in that area may work out any appropriate and technologically feasible arrangement to ensure that locally relevant content is available on PS channels in a digitally addressable encrypted format.**

Legal Status of DPOs Offering PS

- 2.36 Many stakeholders have opined that some form of mandatory registration of entities wanting to provide PS should exist¹². A few stakeholders have suggested registration of the DPO as a company under the Companies Act. On the other hand, the smaller cable operators and their associations have stated that it is unnecessary to be registered under the Companies Act in order to be able to offer PS. For them the main concern is about their capacity to register and adhere to post-incorporation obligations.
- 2.37 The proposal for registration is considered necessary from two perspectives – that of uniformity; and transparency. The CP suggested

¹² This is distinct from the registration of PS channels.

registration of all entities proposing to offer PS as a company as a way to ensure that the legal status of all the DPOs is uniform. Transparency will be enhanced as a company has to file/ submit a statutory set of returns/ information with the Registrar of Companies regularly. Finally, as a registered company, there will be greater certainty about who is controlling the PS business.

- 2.38 As explained, in the CP, the process of incorporation as a company has been simplified. The Companies Act 2013, provides that a ‘One-person’ company can now be formed. Several procedural simplifications have also been made, including establishment of an online system for registration of a company. On the whole, the benefits from incorporation outweigh the additional effort to be put in by the DPOs (that are not already registered companies), to get incorporated.

Recommendations

- 2.39 **The Authority recommends that any person/ entity desirous of providing PS, or is already providing such services, must be incorporated as a company under the Indian Companies Act, 2013 and the rules framed thereunder.**

Geographical Area of Operation and Limit on Number of PS Channels

- 2.40 During the consultation process some stakeholders suggested that no geographical limits need to be delineated for PS channels. A few stakeholders suggested that the area of coverage be limited to the taluk/ municipal/ city or district boundaries. There was a suggestion to link the licence and the registration process with the area of coverage and also limit the permissions accordingly.
- 2.41 DTH operators are already operating on a pan-India level. At present, cable operators are limited in their area of operation, particularly in non-DAS areas; however, with the ongoing digitization of the cable TV

network, it will not be feasible to monitor geographical limits, if these are imposed on PS.

- 2.42 Many stakeholders said that there is no need for setting an upper limit on the number of PS channels operated by DPOs. However, many other stakeholders offered suggestions and justification why such a limit needs to be prescribed. Some have proposed a maximum number, while others have suggested a percentage of the number of channels carried on the network. There are also a variety of combinations of the above that have been suggested. The maximum number suggested generally varied from 2 to 20 channels while percentages varied from 1% to 10% of the total number of channels being aired.
- 2.43 In non-DAS areas there is a limit on the number of analogue channels that can be carried due to capacity constraints of the cable. In these areas, a limit on the number of PS channels is required to ensure adequate space for broadcasters. In the digital environment, capacity constraints are far fewer permitting a larger number of PS channels to be allowed. It has been observed that some MSOs are offering a very large number of PS channels, exceeding 80, and that too not just in the local area of the cable TV network, but all over its network, which often covers more than one State.
- 2.44 The issue regarding the number of PS channels to be allowed to a DPO has to strike a balance between the two objectives of the number being adequate enough to grant a DPO the unique identity that these channels offer while, at the same time, given the much simpler and cheaper regulatory framework, they should not become an opportunity to go-around the traditional broadcast route. The ability to provide unlimited or a large number of PS channels will also present an arbitrage opportunity for DPOs as they could circumvent the regulations on broadcasting by using the liberal regulatory framework for PS. Hence, in non-DAS areas a maximum number of 5 PS channels may be offered by cable operators, while in DAS areas and for all other platforms, a

maximum of 15 PS channels may be offered by the DPOs at the subscribers' end. Limiting the number of PS channels at the subscribers' end will force the cable TV operators to ensure only locally relevant channels are offered to a subscriber as PS. This limitation will, thus, address the concern expressed by MIB about national MSOs distributing their local channels over wide geographical areas.

Recommendation

2.45 The Authority recommends that a maximum number of 5 PS channels could be offered by the cable operators in non-DAS areas. In DAS areas and for all other platforms, a maximum of 15 PS channels could be offered by the DPOs. These numbers are the number of PS channels to be made available at the subscribers' end.

FDI Limits and Net-worth Requirement for PS

2.46 Different views were received from various stakeholders on the subject of FDI limits. Similarly, a variety of suggestions were made on the net-worth requirements. Attention has also been drawn to the FDI limit and net-worth requirement for broadcasters under the Uplinking/ Downlinking Guidelines.

2.47 It is noted that FDI limits and net-worth requirements are already provided for in the various regulations applicable to the different types of DPOs, to the extent necessary. These are placed at **Annex III**. Further, most DPOs are already providing PS on their networks; therefore it can be inferred that the present limits/ requirements are adequate in enabling the DPOs to offer PS. No changes in the existing FDI limits or net worth requirements need, therefore, be considered or proposed just for PS. One related issue that needs consideration is the lower FDI limits allowed for broadcasters carrying news and current affairs. In this regard, since news and current affairs are not recommended for PS, this will not apply to DPOs offering PS.

Recommendation

2.48 The Authority recommends that no change in the existing FDI limits and Net-worth requirements be made for DPOs offering PS.

Security Clearances

2.49 On security clearances, some stakeholders have opined that the existing regulations/license terms and conditions are adequate and no additional guidelines for security are required. Another opinion was that for DPOs offering only value added services as PS content, no separate guidelines are required while the same need to be carefully stipulated to the ones that offer news, current affairs and political content. Some stakeholders suggested that such clearances and guidelines may only be relevant to DPOs operating in the border areas. A few stakeholders have submitted that monitoring and security clearances as applicable to DTH/IPTV must be made applicable to all DPOs offering PS. However, if the geographical reach of the DPOs is limited and PS content is provided only to own subscribers, clearances by a locally empowered authority ought to suffice.

2.50 Regarding security clearance, at present, all DTH operators and MSOs in DAS areas are already security cleared. Their PS channels may not need any further security clearance. The issue of security clearance is largely relevant for DPOs operating cable TV networks in non-DAS areas. While these DPOs will need to be security cleared, the issue to be considered is two folds:

- the first is that almost all of these DPOs are already operating PS in their areas; and
- the second is that numerically they constitute a large portion of the total number of DPOs and so their security clearance is likely to take time.

2.51 Therefore, if at any time before the MIB obtains the security clearance, it is determined that the programming service offered on a PS channel

which has been registered on the online system is inimical to India's national security or to the public interest, MIB may require the DPO to withdraw from distribution the PS Channel/ programming service and/ or cancel the registration.

Recommendation

2.52 The Authority notes that that all DPOs, other than MSOs and LCOs operating in non-DAS areas, are already security cleared. For these MSOs and LCOs, the Authority recommends that at any time before the MIB obtains the security clearance, it is determined that the programming service offered on PS and which has been registered on the online system is inimical to India's national security or to the public interest, MIB may cancel the registration and/ or require the DPO to withdraw from distribution the PS Channel or the programming service.

Monitoring of PS Channels

2.53 Some way of monitoring the content of PS channels needs to be devised. Some stakeholders have responded suggesting retention of the recording of the content of these channels for periods ranging from 15 to 90 days. A few stakeholders have suggested that the existing monitoring committees at State/ District level are appropriately placed for monitoring. A few have suggested that MIB may constitute a suitable monitoring committee at the appropriate level. Another suggestion was to set up a self-regulatory body on similar lines as has been done by the broadcasters. Periodic and surprise audits and checks followed by appropriate investigations as required by designated agencies at the appropriate level were also suggested to enable verification of actual PS content distributed by the DPO. Further, complaints on violation may also be rendered by consumers directly to the designated agency for investigation and follow-up. A feedback mechanism must be built into

the system by having representatives from the DPOs on the monitoring committee to minimize misreporting and delays.

- 2.54 Monitoring is required to identify the threat, if any, to the law and order situation, national security and other public policy objectives from the content broadcast, so as to be able to proactively prevent anything untoward from happening. The type of monitoring system depends on this threat perception. The monitoring system needs to be heavy handed for content with high threat perception, i.e. where the content distributed is watched in real-time and immediate action needs to be initiated to block content that is deemed undesirable. For PS, however, such a system need not be contemplated, as the percentage of undesirable programs detected is much less in comparison to the volume of programming available and distributed on PS. Nonetheless, the need for a monitoring system is absolutely essential given the Report of the Parliamentary Standing Committee. A light-touch monitoring system may be better suited for this purpose. Herein, the DPO shall retain a recording, with itself, of all PS programs distributed on its network for a period of 90 days; a written log/ register should also be maintained about such program for a period of 1 year. The Authorised Officer¹³ and the State/ District Monitoring Committee¹⁴ established by the MIB are the best judges of the impact of any PS program on the law and order situation in an area and is better located and best suited to react in case of any problem. They should have access to such recordings/ logs as, when and if required. If any transgression of any applicable laws is *prima facie* proved, necessary action can be initiated by the Authorised Officer, who is already empowered under the provisions of the Cable TV Networks (Regulation) Act, 1995 (as amended). For PS distributed on a pan-India basis, such as by the DTH operators, MIB may be the monitoring agency.

¹³ As defined in the Article 2 (a) of the Cable TV Networks (Regulation) Act 1995, as amended.

¹⁴ Order No. F-1203/1/2007-BC.II dated 19 February 2008, refers.

Recommendation

2.55 **The Authority recommends that any DPO offering PS retain, with itself, a recording of all PS channel programs for a period of 90 days; a written log/ register should also be maintained about such program for a period of 1 year from the date of broadcast. The recording and the register can be examined by the Authorised Officer¹⁵ and the State/ District Monitoring Committee¹⁶ appointed by the MIB as, when and if required. For PS distributed on a pan-India basis MIB should be the monitoring agency.**

Penal Provisions

2.56 While some stakeholders aver that the existing framework is adequate, some others agree that there must be a provision to levy a penalty after issuance of warnings. One suggestion was that for third party content transmitted by the DPOs, culpability reposes with the content provider. A few have suggested creation of a committee with adequate representation from all stakeholders to study the constraints of DPOs and arrive at a balanced set of provisions. Involvement of voluntary consumers' organizations and initial cautionary warnings instead of harsh guidelines has been suggested by some others. Some others have proposed that a local authority may be empowered to seize the equipment of and/ or stop operations of DPOs, in cases of repeated violations and with warnings going unheeded. A graded system of suspension/penalties depending on the number of offences and cancellation of licence in case of repeated violations has also been suggested.

2.57 In the CP, the question asked regarding penal provisions was whether a structure of penalties similar to that imposed on broadcasters under the Downlinking Guidelines of the MIB may be considered for DPOs. The

¹⁵Op. Cit.

¹⁶Op. Cit.

penal provisions provided for broadcasters in the Downlinking Guidelines (see **Annex IV**), amongst others, includes a system of graded penalties based on the number of violations. Channels are prohibited from being transmitted for 30 days; 90 days; followed by revocation of permission, for the first, second or third violations of the said Guidelines. Similar penal provisions may be appropriately included in the guidelines for DPOs offering PS. These penalties may be specific to the PS related violations and will be in addition to penal provisions in the licence/ registration conditions for DPOs and apart from the liability for punishment under other applicable laws.

Recommendations

2.58 The Authority recommends that the first violation of the PS Guidelines should lead to prohibition on transmission of the PS channel for a period of up to 30 days; for the second violation, the prohibition on transmission of the PS channel should be for a period of up to 90 days; for the third violation the registration of the PS should be revoked and the PS channel concerned should not be allowed to be transmitted. Consequently, the number of PS channels that the DPO can transmit thereafter will be appropriately reduced.

Time Limit for Compliance

2.59 Many stakeholders have suggested that once the regulatory framework is notified by MIB, existing DPOs offering PS should be given a time period of 12 months for registration and compliance with the new regulatory framework. The obligations now proposed (in the regulatory framework) are in themselves not cumbersome or time-consuming. However, given the large number of DPOs, particularly the LCOs, who will now be required to register their PS with MIB, the maximum period of 12 months is reasonable.

Recommendation

2.60 **The Authority recommends that a maximum time period of 12 months be granted for full compliance with the new regulatory framework.**

Chapter 3

Regulatory Framework for Ground-based Broadcasters

Who is a Ground-based broadcaster?

- 3.1 In the consultation process, it emerged that there are several channels carried on the cable TV networks that are not PS channels, satellite-based or Doordarshan channels. The channel operators who produce and own the rights to the programming content of these channels largely follow the same processes to create, assemble and distribute these channels, as the traditional satellite-based channels, and, therefore, they are *de facto* broadcasters. However, the main difference between their process and the traditional satellite-based broadcasters is that they transmit the channel for retransmission at the headend of the DPO terrestrially. There is no uplinking or downlinking of such channels.
- 3.2 The owners of these channels transmit the content terrestrially to the headend of the cable TV network, i.e., there is no uplinking or downlinking of the channel and the DPOs retransmit them on commercial terms to the subscribers. These channels may be distributed on one or more cable TV networks, simultaneously. They are also similar to traditional satellite-based channels with regard to the genres of program content, and the carrying of advertisements. The ad-revenue accrues to the channel owner. Consequently, these ground-based broadcasters have all the rights for the content carried and are responsible for the same. However, in the absence of a clear regulatory framework they cannot register their ground-based channel with the MIB and, therefore, they are not legally recognized as 'broadcasters' either.

Why a Regulatory Framework?

- 3.3 While considering the issues related to PS it became clear that in addition to PS, broadcasters of such ground-based channels also have to

be brought within the proposed regulatory framework to ensure that all types of broadcasters and their channels available on any television distribution network in India are registered with the MIB. What is more, during the consultation process, the ground-based broadcasters have themselves represented to be granted legitimacy through an appropriate regulatory framework.

- 3.4 Separately, it has come to the notice of the Authority, that a satellite-based broadcaster has licenced the content, as carried on its satellite-based channel, for distribution terrestrially on a national MSO's network. Being a national MSO the viewership of the ground-based channel is almost as large as that of the satellite-based channel. The reason to do so may be largely due to the lower cost of distribution on the terrestrial network. Such instances show up the need to have all ground-based broadcasters and ground-based channels covered by a comparable regulatory framework.
- 3.5 Cases such as the one cited in the paragraph above are likely to become more common because of the growing reach of the terrestrial optical-fibre network. They potentially offer a comparable viewership to that of satellite-broadcast, sometimes at a significantly lower cost. If the regulatory requirements for ground-based broadcasting remain unclear, with the hugely differentiated costs attached, this will create an arbitrage opportunity for broadcasters, encouraging them to take the terrestrial route. Given that the consultation process for PS included detailed comments on ground-based broadcasting by the stakeholders, the Authority decided *suo motu* to make recommendations on this matter so that all issues are comprehensively covered.

The Regulatory Framework

- 3.6 The main difference between PS and ground-based TV channels is that in the case of a PS channel the legal rights to broadcast the content, the responsibility thereof and the ad-revenue received therefrom belongs to

the DPO on whose network the PS channel is being carried. Whereas for a ground-based channel even though it is retransmitted on the same DPO's network, the rights for the content, responsibility thereof and the ad-revenues therefrom belong to the channel owner i.e. the ground-based broadcaster and not the DPO. Further, a PS channel can only be distributed to the DPO's own subscribers. In contrast, the ground-based broadcaster, like a traditional satellite-based broadcaster, is not confined to any one TV distribution network. Its programs/ channels may be simultaneously broadcast/ transmitted to multiple DPOs for further retransmission.

- 3.7 Ground-based broadcasters in India today are a mixed lot. Some have a very limited reach of a few thousand viewers in a single district while others offer their channels to multiple national-level MSOs thereby achieving a viewership of more than a few million spanning several States in India. Considering the above and the comments received during the consultation process regarding ground-based broadcasting, the Authority can only conclude that there are but a few differences between the traditional satellite and ground-based broadcasting i.e., other than the medium of transmission of the content to the DPO and its reach.
- 3.8 In regulatory terms, the framework for both - the traditional satellite and ground-based broadcasters - ought to be the same, except to the extent that some of the permissions and clearances, such as those for spectrum usage from Department of Space (DoS) and Wireless Planning & Coordination (WPC) Wing, will not be required.
- 3.9 A satellite-based broadcaster has a pan-India presence and, therefore, it would be reasonable assumption that their regulatory obligations is a maxima. The smaller reach of various ground-based broadcasters needs to be factored in by calibrating their obligations, such as on fees and net worth requirements, on a *pro rata* basis so that the largest pan-India ground-based broadcaster faces the same regulatory obligations as a satellite-based broadcaster. The question than is how to choose an

appropriate metric to calibrate the obligations *inter se*, between satellite and ground-based broadcasters. Given the regional, social and linguistic diversity of India coupled with the largely inaccurate data on reach and viewership, there is no perfect metric that can be adopted. One possible metric that can be considered is the number of states in which a ground-based broadcaster's channel is present. Given that about 90% of India's population lives in about 15 most populous states, presence of a ground-based broadcasters' channel in 15 states in India may be taken to be equivalent to a pan-India presence. The States that are members of the North Eastern Council (NEC) may be considered to be equivalent to one State, for this purpose. Consequently, any ground-based broadcaster distributing his channel in only one state will have regulatory obligations no more than 1/15th (say 7%) of that presently imposed on a satellite-based broadcaster *pro rata*. While there are weaknesses in this approach, the results offer a fair and equitable outcome. The *pro rata* reduction shall be applicable to the net-worth requirement, permission & annual fee.

- 3.10 A ground-based broadcaster, like a satellite-based broadcaster, can also be vertically integrated with a DPO. In such cases, the Authority's recommendation on vertical integration amongst broadcasters and DPOs made following its examination of issues related to new DTH licenses¹⁷ shall apply. For ease of reference these are reproduced at **Annex V**.

Recommendations

- 3.11 **The Authority recommends that MIB may establish a regulatory framework for ground-based broadcasters. The framework shall be the same as the framework contained in the Uplinking/ Downlinking Guidelines of MIB for traditional satellite-based broadcasters, to the extent applicable to the ground-based broadcast model. Thus,**

¹⁷ 'Recommendations on Issues related to New DTH Licenses', issued on July 23, 2014

clearances/ permissions for spectrum usage from the DoS and WPC shall not apply.

- 3.12 Considering the smaller reach of some of the ground-based broadcasters, the Authority recommends that a State should be taken as a unit and a reach in 15 or more States should be taken as a pan-India presence. The States that are members of the North Eastern Council (NEC) could be considered to be equivalent to one State, for this purpose. At the pan-India level, a ground-based broadcaster shall take on the same obligations as a traditional satellite-based broadcaster. A smaller footprint shall entail a *pro rata* obligation equivalent to 7% of the traditional satellite-based broadcasters' obligation, for every State that the channel is distributed. The *pro rata* reduction shall be applicable to the net-worth requirement, permission and annual fee.**
- 3.13 A ground-based broadcaster vertically integrated with a DPO, shall be subject to all the restrictions on vertically integrated entities recommended by the Authority in its 'Recommendations on Issues related to New DTH Licenses' issued on July 23, 2014. For ease of reference these are reproduced at Annex V.**

Re-transmission of FM Radio

- 3.14 Many stakeholders have suggested that FM Radio channels should be allowed to be retransmitted by DPOs own their TV channel distribution networks. A few stakeholders submitted that only those radio channels that are operating in that specific area be permitted for retransmission by DPOs in their area of operation. Strong reservations have been voiced by a few stakeholders regarding copyright infringements, as the FM Radio station has no right to retransmit or in parallel transmit the content through another medium including the internet on a simulcast/broadcast basis. Some stakeholders have submitted that should there be any retransmission, separate agreements for this

purpose between the DPOs and the FM Channels must be commercially negotiated. A few others have pointed out that for allowing FM retransmission, a specific Govt. policy with the requisite regulatory framework is needed to ensure that copyrighted content meets all territorial and commercial guidelines/contractual obligations of all stakeholders.

- 3.15 FM radio channels broadcast by FM radio operators are based on a commercially negotiated agreement between the content rights holders and the FM radio stations. Retransmission of these channels by DPOs, can take place only after a specific agreement to this effect with the FM radio station owner. For this, the FM radio station owner also must have the rights to enter into a contractual relationship to allow such retransmission, as in most cases the content is offered for radio transmission in a particular city/ area. Thus, a clear agreement between the content rights holders, the FM radio station and the DPO, allowing wider distribution of the FM stations retransmission, is essential.
- 3.16 Further, since the footprint of FM radio in India is likely to grow rapidly in the next few years, the importance of DPOs to disseminate FM broadcast through PS is not clear at this point of time. Consequently, the proposed regulatory framework in this respect will need to be reviewed later when greater clarity emerges on the relevant issues.

Recommendations

- 3.17 **The Authority recommends that retransmission of FM radio channels should be permitted only after execution of an appropriate commercial agreement with all the rights holders. For retransmission of FM radio channels on TV channel distribution networks, the proposed guidelines for ground-based broadcasters should apply to the FM radio operators. However, this matter will be revisited at a later point in time, once the FM radio industry fully develops in India.**

Chapter 4

Summary of Recommendations

A. Recommendations on Platform Services (PS)

1. The definition of PS shall be:

“Platform services (PS) are programs transmitted by Distribution Platform Operators (DPOs) exclusively to their own subscribers and does not include Doordarshan channels and registered TV channels. PS shall not include foreign TV channels that are not registered in India.”

2. In so far as carrying local news and current affairs bulletins on PS is concerned, the following categories will be treated as non-news and current affairs broadcast and will, therefore, be permissible:

- (i) Information about local events and other local affairs, sourced locally and not obtained from news agencies or from broadcast news channels/ sources;
- (ii) Information pertaining to sporting events, excluding live coverage. However live commentaries of sporting events of local nature may be permissible, if broadcasting rights for the same are not held by anyone else;
- (iii) Information pertaining to Traffic and Weather;
- (iv) Information pertaining to and coverage of cultural events, festivals;
- (v) Coverage of topics pertaining to examinations, results, admissions, career counseling;
- (vi) Availability of employment opportunities; and
- (vii) Public announcements pertaining to civic amenities like electricity, water supply, natural calamities, health alerts etc. as provided by the local administration.

In addition, the Authority recommends that the DPO obtain prior permission from the Authorised Officer¹⁸ in this regard and that the State Governments should not charge any fees for according such permission. Any DPO offering PS must ensure full adherence to the Programme and Advertising Codes prescribed under the Cable Television Network Rules, 1994.

- 3. MIB should establish a simple online registration system for PS. All DPOs shall register their PS channels with the MIB on this system. For registration, a basic set of information may be sought from the DPO. The information sought may, *inter alia*, include:**
- (i) Name of the entity;**
 - (ii) Corporate Identification Number (CIN) allocated by Registrar of Companies (RoC);**
 - (iii) Identity of its beneficial owners;**
 - (iv) Address/ location/ area of operation;**
 - (v) DPO category/ In case of a cable TV operator - whether DAS or non-DAS; and**
 - (vi) Nature/ genre of content proposed to be carried.**

The system shall automatically generate an acknowledgement of the registration of the PS channel. Once registered, the DPO can start providing the PS.

- 4. The validity of registration of the PS channels should be co-terminous with the operating licence/registration of the DPO. Extension of the registration/ permission period of the DPO would simultaneously extend the validity of the registered PS channels offered; consequently, there is no renewal requirement for the registration of PS channels. Further, before discontinuation or effecting any change in the details about a PS channel, the DPO**

¹⁸ As defined in the Article 2 (a) of Cable TV Networks (Regulation) Act 1995, as amended.

concerned shall cancel or amend online the registration obtained for that channel.

5. No annual fees should be imposed on PS channels; however, a one-time registration fee of ₹1000 per PS channel should be charged. An online payment gateway for acceptance of the registration fees may be incorporated by MIB in the recommended online registration system.
6. The transferability of registration and interconnection with other networks for sharing of PS should not be allowed.
7. Regarding the insertion of PS channels by LCOs in DAS area, the Authority recommends that LCOs and MSOs operating in that area may work out any appropriate and technologically feasible arrangement to ensure that locally relevant content is available on PS channels in a digitally addressable encrypted format.
8. Any person/ entity desirous of providing PS, or is already providing such services, must be incorporated as a company under the Indian Companies Act, 2013 and the rules framed thereunder.
9. A maximum number of 5 PS channels may be offered by the cable operators in non-DAS areas. In DAS areas and for all other platforms, a maximum of 15 PS channels may be offered by the DPOs. These numbers are the number of PS channels to be made available at the subscribers' end.
10. No change in the existing FDI limits and Net-worth requirements be made for DPOs offering PS.
11. The Authority notes that all DPOs, other than MSOs and LCOs operating in non-DAS areas, are already security cleared. For these MSOs and LCOs, the Authority recommends that at any time before the MIB obtains the security clearance, it is determined that the programming service offered on PS and which has been registered

on the online system is inimical to India's national security or to the public interest, MIB may require the DPO to withdraw from distribution the PS Channel or the programming service and/ or cancel the registration.

12. Any DPO offering PS retain, with itself, a recording of all PS channel programs for a period of 90 days; a written log/ register should also be maintained about such program for a period of 1 year from the date of broadcast. The recording and the register can be examined by the Authorised Officer¹⁹ and the State/ District Monitoring Committee²⁰ appointed by the MIB as, when and if required. For PS distributed on a pan-India basis MIB shall be the monitoring agency.
13. The first violation of the PS Guidelines shall lead to prohibition on transmission of the PS channel for a period of up to 30 days; for the second violation, the prohibition on transmission of the PS channel shall be for a period of up to 90 days; for the third violation the registration of the PS shall be revoked and the channel concerned shall not be transmitted. Consequently, the number of PS channels that the DPO can transmit thereafter will be appropriately reduced.
14. A maximum time period of 12 months be granted for full compliance with the new regulatory framework.

B. Regulatory Framework for Ground-based Broadcasters

15. The MIB may establish a regulatory framework for ground-based broadcasters. The framework shall be the same as the framework contained in the Uplinking/ Downlinking Guidelines of MIB for traditional satellite-based broadcasters, to the extent applicable to the ground-based broadcast model. Thus, clearances/ permissions for spectrum usage from the DoS and WPC shall not apply.

¹⁹Op. Cit.

²⁰Op. Cit.

16. Considering the smaller reach of some of the ground-based broadcasters, the Authority recommends that a State should be taken as a unit and a reach in 15 or more States should be taken as a pan-India presence. The States that are members of the North Eastern Council (NEC) may be considered to be equivalent to one State, for this purpose. At the pan-India level, a ground-based broadcaster shall take on the same obligations as a traditional satellite-based broadcaster. A smaller footprint shall entail a *pro rata* obligation equivalent to 7% of the traditional satellite-based broadcasters' obligation, for every State that the channel is distributed. The *pro rata* reduction shall be applicable to the net-worth requirement, permission and annual fee.
17. A ground-based broadcaster vertically integrated with a DPO, shall be subject to all the restrictions on vertically integrated entities recommended by the Authority in its 'Recommendations on Issues related to New DTH Licenses' issued on July 23, 2014. For ease of reference these are reproduced at Annex V.

C. Re-transmission of FM Radio

18. Retransmission of FM radio channels should be permitted only after execution of an appropriate commercial agreement with all the rights holders. For retransmission of FM radio channels on TV channel distribution networks, the proposed guidelines for ground-based broadcasters should apply to the FM radio operators. However, this matter will be revisited at a later point in time, once the FM radio industry fully develops in India.

List of Acronyms

AGR	Adjusted Gross Revenue
CIN	Corporate Identification Number
CP	Consultation Paper
DAS	Digitally Addressable System
DoS	Department of Space
DPO	Distribution Platform Operators
DTH	Direct-to-Home
FM	Frequency Modulation
GOPA	Grant of Permission Agreement
HITS	Headend-in-the-Sky
IPTV	Internet Protocol Television
LCO	Local Cable Operator
MHA	Ministry of Home Affairs
MIB	Ministry of Information & Broadcasting
MSO	Multi-system Operator
NEC	North Eastern Council
OHD	Open House Discussion
PS	Platform Services
RoC	Registrar of Companies
WPC	Wireless Planning & Coordination Wing

MIB letter dated 17 January 2013

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MINISTRY OF INFORMATION & BROADCASTING
SHASTRI BHAWAN, NEW DELHI - 110001
17th January, 2013

D.O.No.9/16/2013-BP&L

Dear Dr. Khullar,

The issue of putting in place a regulatory framework for ground based channels being operated at the level of Cable TV operators is under the consideration of the Ministry for quite some time. This has assumed significance in view of Digitization of the cable TV sector being implemented in India in a phased manner. These channels, popularly known as local channels, are presently not subject to a regulatory framework unlike private satellite TV channels permitted under the uplinking/downlinking guidelines of the Ministry.

2. The Authority, in its recommendations on "**Restructuring of Cable TV Services**" dated 25th July, 2008 had recognized the need for transmission of local content through registered cable operators. It has been mentioned that these channels are very effective in showing functions of schools, various local bodies and important messages from district administration during natural calamities like floods, earthquakes, tsunami etc. Accordingly, the Authority had, *inter-alia*, recommended that local cable operators should be permitted to transmit their ground based channels, which will be subjected to Program code and Advertisement code as prescribed in the Cable Television Network (Regulation) Act, 1995 and any other instructions issued by Ministry of I&B from time to time. However, the Authority did not suggest any modifications/mechanisms for regulating the transmission of these channels. The Ministry also did not bring local channels under the ambit of any regulatory regime as result of which these channels continue to mushroom all over the country without having registration /license.

3. The Cable Act defines cable service as "transmission by cables of programmes, including re-transmission by cables of any broadcast television signals. Thus, cable operators/MSOs are transmitting local news, videos, and other locally developed content as separate television channels on their network in addition to satellite TV channels of obtained from various broadcasters. Rule 6(6) of the Cable Television Networks Rules, 1994 provides that no cable operator shall carry or include in his cable service any television broadcast or channel, which has not been registered by the Central Government for being viewed within the territory of India. However, the word "channel" or "television broadcast" has not been defined either in the Cable Act or in the Cable Rules. Local channels therefore have continued to operate without obtaining any registration.

4. The Cable Act is also silent on the area/jurisdiction within which the programme generated at the level of cable operators can be transmitted. Therefore it is possible for LCOs/MSOs operating at the local levels to broadcast local channels over a larger geographical area i.e at Regional/State/National level by transmitting the same content over their entire network. Instances have been brought to the notice of the Ministry that some cable operators are also venturing into transmission of local channels over wider geographical area which includes inter-state and intra state transmission by sharing the same content with others on their network. In such a scenario, local channels are basically operating as State/Regional/National channels like permitted private satellite TV channels without getting any permission. The intent of allowing cable operators to generate and transmit local programme is to keep the local people informed of relevant local issues. However this intent is not fulfilled when LCOs and MSOs start networking of the content to cover a larger geographical area. Given the present state of technological advancement, the tendency to network content at a larger geographical area has gained strength.

5. All satellite TV channels are governed by Rules and Regulations under the extant Guidelines whereas no such regulations apply to local channels. While permission to operate private satellite TV channel is granted only to Companies registered under the Companies Act, 1956, a local channel can be run by a cable operator/MSO who, as per the definition under the Cable Act could be an individual or an association of individuals or body of individuals whether incorporated or not or a Company registered under the Companies Act, 1956. Satellite TV Channels have to fulfill the Net Worth criteria, pay fees and comply with other eligibility conditions throughout the currency of permission continuing their operations in India. However no such criteria or fee is mandated for local channels.

6. In case of satellite News and Current Affairs TV channels, the total direct and indirect foreign investment including portfolio and foreign direct investment into the company shall not exceed 26% at the time of application and during the currency of permission. The foreign investment limits have been kept at 26% in private satellite News channels through Government route keeping in view the sensitivity of the matter.

7. MSOs registered under the Companies Act can access foreign investment limits upto 74% with 49% under automatic route under revised FDI norms of the Government of India. If such MSOs operate local news channels, the FDI limits in such cases exceeds the permissible limit of 26% leading to an anomalous situation which needs to be addressed. Similarly MSOs who are operating in non DAS areas and LCOs operating anywhere in the country (DAS and Non Das areas) can operate a local News Channel and can still have Foreign Investment limit upto 49% under automatic route.

8. Operators of local channels also do not require Security Clearance as against the private satellite TV channels where the security clearance is mandatory. Moreover the private satellite TV channels have to follow several other norms and requirements as mandated under the uplinking /Downlinking Guidelines which are not applicable to local channels.

9. The Ministry is presently implementing Digital Addressable System (DAS) in the cable TV sector throughout the country in a phased manner. In DAS regime only encrypted channels could be transmitted in the cable service. The facility to create encryption of channels could be done by MSOs only. In such a scenario it is essential to clarify as to how a local channel could be transmitted in the DAS regime through a local cable operator.

10. In the light of above facts the Authority may look into the entire aspect of transmission of local channels or ground based channels by cable operators/MSOs and recommend as to whether any change is required to be carried out in the extant rules and regulations to address the concerns mentioned above including the following issues;

- a. Need for putting in place a comprehensive set of provisions for Local Channels including definitions of **“local” or ‘ground based channels’** and their area of operation? The limits in terms of geographical area for such channels and how it should be operated. Who should be the registering authority for ground based channels? What kind of registration mechanism including eligibility requirements, fee, terms and conditions, etc to be provided for such channels? Action to be taken in case of violation of terms and conditions of registration including appeal provisions may be clearly defined? Comprehensive recommendations on each of the above is requested.
- b. The Authority in its recommendations dated 25th July, 2008 had inter-alia recommended that Local Cable Operators (LCOs) shall be permitted to transmit their ground based channels. However in DAS regime only digital addressable signals could be carried on the cable network which is generated at the MSO headends. Therefore LCOs will not be able to transmit local ground based channels through digital networks in DAS regime. Therefore the issue of transmission of ground based channels at LCO level in DAS regime needs to be addressed.
- c. Whether there is a case for putting a cap on the total number of ground base channels operated by a single MSO/cable operator? If yes, how many local channels may be allowed to be run by a MSO/cable operator?

- d. The need for prescribing eligibility criteria, terms and conditions including foreign investment levels, net worth criteria, composition of the Board of Directors where applicable, requirement of security clearance etc. for cable operators transmitting local News and Current affairs channels.
- e. There are mechanisms to centrally monitor the content of private satellite television channels. However, no such mechanism is in place in case of local channels. Hence the recommendations may also be made with regard to the mechanism for monitoring content on such channels.

11. It is requested that the Authority may kindly consider the above issues and furnish their recommendations under section under Section 11(1) (a) (ii) (iii) and (iv) of the TRAI Act, 1997.

Regards,

Yours sincerely,

Uday Kumar Varma
(Uday Kumar Varma)

Shri Rahul Khullar
Chairman,
Telecom Regulatory Authority of India,
Mahanagar Doorsanchar Bhawan,
Jawaharlal Nehru Marg, Old Minto Road, New Delhi.

MIB letter dated 02 February 2009



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भारत सरकार
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नई दिल्ली-110115
GOVERNMENT OF INDIA
MINISTRY OF INFORMATION & BROADCASTING
NEW DELHI - 110115

D.O. No. 8/5/2006-BP&L

Dated: February 2, 2009

Dear Sir/Ms,

Please refer to your d. o. letter No. 4-1/2005-B&CS dated 25th August, 2006 forwarding therewith recommendations of Telecom Regulatory Authority of India under section 11(1)(a) of TRAI Act, 1997 on licensing issue relating to DTH. After having considered the recommendations of the Authority, the views of the Ministry are being enclosed for reconsideration by TRAI.

2. With the passage of the time, a number of other issues relating to the provisioning of the DTH services have also come up for consideration and may require further consultation with the stakeholders. A list of such issues is also being enclosed for the consideration and the recommendation of the Authority.

3. It is requested that as per the provisions of Section 11 of TRAI Act, the Authority may after considering this reference may kindly furnish their recommendations the suggested modifications to enable the Government take a decision in the matter.

Encl: As above.

With regards,

Yours sincerely,

Sushma Singh
(Sushma Singh)

Shri Nripendra Mishra
Chairman,
Telecom Regulatory Authority of India,
Mahanagar Doorsanchar Bhawan,
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New Delhi - 110 002.

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MINISTRY'S VIEWS ON TRAI'S RECOMMENDATIONS DATED 25TH AUGUST 2006 ON THE LICENSING ISSUES RELATING TO DTH NAMELY :- (A) Personal Video Recorders and Interoperability; (B): Uplinking and Platform Services; and (C): Multiple Dwelling Unit Technology and other proposals

Recommendations of TRAI	Ministry's Views	Proposed changes in DTH Guidelines
(1)	(2)	(3)
A: Personal Video Recorders and Interoperability		
<ul style="list-style-type: none"> There should not be any amendment in Articles 7.1 and 7.2 of the DTH License Agreement, which mandate technical interoperability among DTH service providers. 	<p>This recommendation together with the subsequent recommendation on Interoperability and other issues relating to DTH Dated 30.1.08 is under consideration of the Ministry. Broadly the Ministry is of the view that the specification of the STBs should be so designed as to ensure effective interoperability both 'intra' and 'inter' between DTH operators using both MPEG-2 and MPEG-4 technologies.</p>	
<ul style="list-style-type: none"> The license conditions should be amended to provide for casting an obligation on the service provider to inform and educate the consumers about the limited technical interoperability of the Set Top Boxes with Personal Video Recorders/Digital Video Recorders. 	<p>Acceptable. The changes as proposed in Column 3 can be made in the DTH guidelines.</p>	<p>Under Article-7 (Technical Standards and Other Obligations) of the License Agreement following clause may be added after 7.1. "7.1A The Licensee shall inform and educate the consumers about the limited technical interoperability of the Set Top Boxes with Personal Video Recorders/ Digital Video Recorders."</p>
<ul style="list-style-type: none"> The DTH Service Providers should also be encouraged to 	<p>No further action is required as it has already been taken care of under of the Direct to Home Broadcasting Services (Standards of Quality of Service and Redressal</p>	



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<p>provide Basic or Advanced Set Top Boxes to consumers under rental schemes, but there should be no dilution in the technical interoperability conditions as they exist today.</p>	<p>of Grievances) Regulation, 2007 dated August 31, 2007.</p>	
<p>B: Uplinking and Platform Services</p>		
<p>The Guidelines for uplinking from India should be amended to exclude DTH platform services aimed at enabling the subscribers to utilize the platform efficiently and informing them of platform functionality and services. The license conditions for DTH service providers should be amended to lay down the following norms for platform services which do not require approval/permission under the Guidelines for uplinking from India:-</p> <ol style="list-style-type: none"> 1. The platform services available on the DTH licensee's system should be only to inform and help the subscriber and should lead to channels which 	<p>Acceptable. The changes as proposed in Column 3 can be made in the DTH guidelines.</p> <p>As explained in detail later, from the newspaper reports it is understood that DTH operators want to utilize this channel for placing advertisements. One of the issues that needs to be debated is whether placement of such advertisements by the DTH service provider makes him a 'Broadcaster'. If that is so then because of crossholding restrictions between broadcasting companies and DTH players he will not be able to do so. The other alternative is that placing of advertisements on the channel for platform services is not treated as a broadcasting activity. TRAI is requested to give its recommendations.</p>	<p>After Article-7 (Technical Standards and Other Obligations) of the License Agreement following Article may be Added .</p> <p>"Article- 7A Platform Services</p> <p>7A.1 The Licensee may provide platform services to the consumers. Such Platform Services shall only be for the purposes of informing and helping the subscriber regarding the platform functionality and the services of the DTH platform and lead them to channels which are</p> <p>:-</p> <p>(i) Approved/registered under the uplinking/downlinking guidelines; or</p> <p>(ii) Other exempted platform services, if any.</p>

<p>are</p> <p>(a) Approved/registered under the uplinking/downlinking guidelines; or</p> <p>(b) Other exempted platform services, if any.</p> <p>2. The service provider shall furnish a list of such services being offered to the Licensor annually and also within 15 days of any change in the services.</p> <p>3. The service provider shall comply with the Programme Code and Advertisement Code, as laid down by the Ministry of Information & Broadcasting from time to time in respect of these Services.</p>		<p>7A.2 Such platform services will not require permission / registration under the Guidelines for uplinking /downlinking.</p> <p>7A.3 The Licensee shall furnish a list of such services being offered to the Licensor annually and also within 15 days of any change in the services.</p> <p>7A.4 The Licensee shall comply with the Programme Code and Advertisement Code, as laid down by the Ministry of Information & Broadcasting from time to time in respect of these platform services also.</p>
<p>C: Multiple Dwelling Unit Technology</p>		
<p>The DTH license conditions should be amended to specifically permit use of MDU technology subject to the following conditions:</p>	<p>Ministry is in receipt of various representations including those from COFI and CODA, on whether to permit the use of MDU technology as per TRAI recommendations. It is felt that further deliberation and clarity is required on the following issues.</p> <p>(i) The recommendation that MDU technology should not carry the content from any other service provider</p>	

<p>a. The DTH service provider should not insist on any exclusive arrangement for installation of MDU technology to the detriment of other distributors of TV channels;</p> <p>b. Signals from the MDU technology shall not be provided to a consumer outside the multi-dwelling unit building, where the MDU technology is installed;</p> <p>c. The MDU technology should not carry the content from any other service provider other than the DTH service provider; and</p> <p>d. The DTH operators shall obtain written consent from those subscribers living in a multiple dwelling unit who are desirous of availing the facility of MDU technology, before installing the same. A general</p>	<p>other than the DTH service provider would mean that any other DTH service provider will have to provide a separate MDU system. With 7 DTH operators now if everyone of them is required to put up a separate MDU, this will have its own problem.</p> <p>(ii) How will it be ensured that the agreements with the society are non-exclusive? How will it be monitored that the DTH service provider is seeking written consent from each and every household in a society and not wiring up the building by luring a few office bearers of the society?</p> <p>(iii) Workers of different service providers may disturb each others network to win over subscribers.</p> <p>(iv) Electronic interference between different systems carrying the same frequency may create problems for the consumers.</p> <p>(v) Who will be responsible for the maintenance of the network of MDU after initial installation?</p> <p>(vi) How should a multiple dwelling unit be defined so that there is no ambiguity wrt its interpretation and it is ensure that the DTH service provider does not take over the role of a cable operator.</p> <p>(vii) What is going to be the impact of allowing the use of MDU technology on the cable services?</p>	
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permission obtained from office bearers of the Residents Welfare Association/ Group Housing Society will not be considered sufficient.		
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OTHER ISSUES REQUIRING CONSIDERATION FOR SUITABLE AMENDMENTS TO DTH GUIDELINES:

1- Provisioning of Services like Movie-on-Demand, Video-on-Demand, Pay-per-view, Near Video-on-Demand :

As per Article 6.7 of the Schedule to the DTH license agreement "no licensee shall carry or include in his DTH Service any television broadcast or channel which has not been registered by the Central Government for being viewed within the territory of India." It has been observed that most of the DTH operators are providing services like Near Movie on Demand, wherein customer can send a request through SMS or telephone or may be through internet and then gets authorized to view the selected movie at a predetermined time for which a DTH service providers keep separate channels with varying numbers depending on the capacities available. Apart from the movies the DTH service is capable of providing videos other than movies ALSO ON DEMAND. There can be various variations of this service. Such channels by and large are not approved as a TV channel registered with the Ministry as per the provisions of Uplinking and Downlinking Guidelines. Article 1.4 of the DTH license agreement provides a restriction on cross holding as follows: " The Licensee shall not allow Broadcasting Companies and/or Cable Network Companies to collectively hold or own more than 20% of the total paid up equity in its company at any time during the License period." Article 5.1 also lays down that a DTH service provider shall ensure adherence to the Programme Code (PC) and Advertisement Code (AC), laid down by the Ministry of Information & Broadcasting from time to time. In the light of the above the following issues arise for consideration:-

- (i) Is the Movie-on-Demand or a Video-on-Demand or a pay-per-view channel (known by whatever name) should be recognized as a broadcast TV channel ?
- (ii) If yes, then a DTH service provider will become a broadcaster and therefore will be in violation of the cross-holding restriction imposed by Article 1.4. He will also be in violation of Article 6.7 since such channels are not registered with the Ministry. This further implies that for a DTH service provider to include such services on his platform, permissions for such services will have to be obtained separately by independent companies under the Uplinking and Downlinking Guidelines and such companies will be required to provide them on a non-discriminatory basis to any DTH service provider who demands such services. Which further means that the existing DTH service providers will have to reorganize their business and discontinue such services. The other alternative is that they can be given a time frame to reorganize business. This would also mean that all DTH service providers will have similar offerings in terms of content and there will be not much to distinguish one service provider from the other by way of availability of content. This approach is in line with the general policy of must provide and a non-discriminatory offering of channels as consumer is not burdened with subscribing to different service providers for different popular channels. Will such an approach seriously affect the business models of the existing DTH service providers?
- (iii) If No, and the provisioning of such a channel is exempted from the requirement of seeking permission under the Uplinking or Downlinking Guidelines, then though there will be no violation of the DTH license conditions but what

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would prevent such a channel from becoming a traditional broadcast channel thus bypassing the requirements of permissions which otherwise would have been required under the uplinking and downlinking Guidelines. How will the consumer interest be protected? Since a DTH service provider is bound to comply with programme and advertisement codes, it can be argued that concerns with respect to content automatically get addressed.

- (iv) What is the best way forward, so that a suitable regulatory framework is put in place to full reap the benefits of various services enabled by the technological developments in the interest of the Industry as well as the subscribers.

2- Provisioning of other value added/interactive services:

As per Article 10 of the Schedule to the license agreement "the DTH facility shall not be used for other modes of communication, including voice, fax, data, communication, Internet, etc. unless specific license for these value-added services has been obtained from the competent authority." It has been observed that various DTH service providers are providing services like Active Stories, Active Sports, Active Wizkids, Active Learning, Active Matrimony, , Active Games, Active Cooking, Active Astrology, ICICI Active, News Active. This Ministry has not issued any separate permission/ License to provide these services. The questions and issues raised with respect to movie/video on demand also become relevant here. Should they be treated as broadcast or non-broadcast services? Should separate permission be required before starting each valu-added-service or should they be permissible automatically under a given set of guidelines? What would be the amendments required in the present DTH Guidelines/terms and conditions of license agreement?

3- Emerging New business models in DTH services:

Newspaper reports mention various business models being considered by the DTH operators. First to sell advertisement space on Platform Services/Electronic Programme Guide and on value added/ interactive service and movie/video on demand channels. . Secondly, a separate clean feed of the Satellite TV channels for DTH platform is also being conceived which can then have different advertisements, than on the routine channel. Many policy implications will need to be addressed before these business models can be enabled.

(i) What to do with the cross-holding since a DTH service provider becomes a broadcaster in so far as he is creating and inserting advertisements. Should we do away with cross-holding or should we say that insertion of advertisements will not be a broadcasting activity?

(ii) Who will ensure the compliance of programe and advertisement code? In the present context, the responsibility of both these codes wrt a satellite TV channel is that of the broadcaster. If advertisements are allowed to be inserted by the platform service providers then perhaps the view will need to be taken that the responsibility wrt programmes will be that of the broadcaster and the responsibility wrt advertisements will be that of the platform service provider.

(iii) The question of getting a clean feed from the broadcaster and insertion of advertisement by the DTH operator will also need to be looked at from the point of view of their permissibility in uplinking guidelines. As per the present understanding, a channel consists of both the programming as well as the advertising content. The present proposal will mean that a TV channel will have to be more clearly defined/redefined. Should a channel mean a clean feed of programmes on which different advertisements can be inserted for different platforms or for different regions on the Globe or within our own country. OR should we treat the same feed of programming containing different advertising insertion as different channels? If we treat them as different channels and insist on separate permissions from the Ministry, this would mean that if all the 7 DTH operators or the IPTV operators or tomorrow the HITS operators want to have different advertisement insertion, there would be as many permissions required.

4- Carrying of Radio Channels on DTH services

Guidelines for DTH services as of now do not specifically enable the carriage of radio channels. Apart from the citybased private FM radio channels there is no system for registration of a private radio channel. Satellite Radio Policy under formulation provides for a system of registration of satellite radio channels which can then be carried on Satellite radio services. Some of the existing operators are providing AIR channels, some others are carrying non-AIR channels also while some others are proposing to provide the channels of World Space Radio. This issue also needs deliberation as to whether radio channels should be allowed to be carried on DTH services, if so what should be the regulatory framework?

Net-worth Requirements & FDI Limits

S.No	DPO	Net-worth	FDI
1	DTH		% of FDI Cap/Equity = 74% (Entry route: Automatic up to 49%). Government route beyond 49% and up to 74%)
2	HITS	The Company should have a minimum Net worth of Rs. Ten crores.	% of FDI Cap/Equity = 74% (Entry route: Automatic up to 49%). Government route beyond 49% and up to 74%)
3	IPTV	<p>Telecom service providers (UASL, CMTS) having license to provide triple play services and ISPs with net worth more than Rs. 100 Crores and having permission from the licensor to provide IPTV or any other telecom service provider duly authorized by the Department of Telecom will be able to provide IPTV service under their licenses without requiring any further registration. Similarly cable TV operators registered under Cable Television Network (Regulation) Act 1995 (referred as Cable Act hereafter) can provide IPTV services without requiring any further permission.</p> <p>Telecom Services {(including Telecom Infrastructure Providers Category – I) - All telecom services including Telecom Infrastructure Providers Category-I, viz. Basic, Cellular, Unified Access Services, Unified license(Access services),Unified License, National/ International Long Distance, Commercial V-Sat, Public Mobile Radio Trunked Services (PMRTS), Global Mobile Personal Communications Services (GMPCS), All types of ISP licences, Voice Mail/Audiotex/UMS, Resale of IPLC, Mobile Number Portability services, Infrastructure Provider Category – I (providing dark fibre, right of way, duct space, tower) except Other Service Providers}; FDI Cap/ Equity = 100% (Entry route: Automatic up to 49%. FIPB beyond 49%.</p>	

S.No	DPO	Net-worth	FDI
4	MSO & LCOs	None	<p>Cable Networks (MSOs) operating at National or State or District level and undertaking upgradation of networks towards digitalization and addressability) - % of FDI Cap/Equity = 74% (entry route: Automatic up to 49%. Government route beyond 49% and up to 74%)</p> <p>Cable Networks (Other MSOs not undertaking upgradation of networks towards digitalization and addressability and Local Cable Operators (LCOs)</p>
5	Uplinking/ Downlinking Guidelines	<p>As per the Downlinking guidelines, the applicant company should have a minimum net-worth of Rs. 5 Crore for downlinking of first (Non-News or News & Current Affairs) television channel and Rs. 2.5 Crore for downlinking of each additional television channel.</p> <p>As per Uplinking Guidelines, for 'non - news and current affairs TV channel' the company should have minimum Net Worth of Rs. 5 crore for first TV channel and Rs. 2.5 crore for each additional TV channel. For 'news and current affairs TV channel' the company should have minimum Net Worth of Rs. 20 crore for first TV News and Current Affairs TV</p>	<p>For uplinking of TV channels of the 'non - news and current affairs' category and downlinking of channels, 100% FDI is permitted. The Uplinking Guidelines for 'news & current affairs' category of channels provides that:</p> <p><i>"The total direct and indirect foreign investment including portfolio and foreign direct investments into the company shall not exceed 26% at the time of application and during the currency of the permission. The methodology of calculation of the direct and indirect foreign investments would be as per the extant policy of the Government. The Company, permitted to</i></p>

S.No	DPO	Net-worth	FDI
		channel and Rs. 5 crore for each additional TV channel.	<i>uplink the channel shall certify the continued compliance of this requirement through its Company Secretary, at the end of each financial year. Approval of Foreign Investment Promotion Board (FIPB) shall be required for any existing or proposed foreign investment in the company.”</i>

Penal Provisions for Downlinking of TV Channels

“6.1 In the event of a channel found to have been/being used for transmitting any objectionable unauthorized content, messages, or communication inconsistent with public interest or national security or failing to comply with the directions as per Para 5.8 or Para 5.16, the permission granted shall be revoked and the company shall be disqualified to hold any such permission for a period of five years, apart from liability for punishment under other applicable laws. Further, the registration of the channel shall be revoked and the channel shall be disqualified from being considered for fresh registration for a period of five years.

6.2. Subject to the provisions contained in Para 6.1 of these guidelines, in the event of a permission holder and/ or channel violating any of the terms and conditions of permission, or any other provisions of the guidelines, the Ministry of Information and Broadcasting shall have the right to impose the following penalties: -

6.2.1 In the event of first violation, suspension of the permission of the company and/or registration of the channel and prohibition of broadcast up to a period of 30 days.

6.2.2. In the event of second violation, suspension of the permission of the company and/or registration of the channel and prohibition of broadcast up to a period of 90 days.

6.2.3. In the event of third violation, revocation of the permission of the company and/or registration of the channel and prohibition of broadcast up to the remaining period of permission.

6.2.4. In the event of failure of the permission holder to comply with the penalties imposed within the prescribed time, revocation of permission and /or registration and prohibition to broadcast for the remaining period of the permission and disqualification to hold any fresh permission and /or registration in future for a period of five years.

6.2.5. In the event of suspension of permission as mentioned in Para 5.8, 5.16 or 6.2, the permission holder will continue to discharge its obligations under the Grant of Permission Agreement including the payment of fee.

6.2.6 In the event of revocation of permission and /or registration the fees paid will be forfeited.

6.2.7. All the penalties mentioned above shall be imposed only after giving a written notice to the permission holder.”

Excerpts from “Recommendations on Issues related to New DTH Licenses”

Restructuring of cross-holding/’control’

- 3.17 There should be uniformity in the policy on cross-holding/’control’ between broadcasters and Distribution Platform operators (DPOs), and amongst DPOs, in the broadcasting and distribution sectors.

Definition of ‘control’

- 3.18 An entity (E1) is said to ‘Control’ another entity (E2) and the business decisions thereby taken, if E1, directly or indirectly through associate companies, subsidiaries and/or relatives:

- (a) Owns at least twenty per cent of total share capital of E2. In case of indirect shareholding by E1 in E2, the extent of ownership would be calculated using the multiplicative rule. For example, an entity who owns, say, 30% equity in Company A, which in turn owns 20% equity in Company B, then the entity’s indirect holding in Company B is calculated as 30% * 20%, which is 6%.; Or
- (b) exercises de jure control by means of:
 - (i) having not less than fifty per cent of voting rights in E2; Or
 - (ii) appointing more than fifty per cent of the members of the board of directors in E2; Or
 - (iii) controlling the management or affairs through decision-making in strategic affairs of E2 and appointment of key managerial personnel; Or
- (c) exercises de facto control by means of being a party to agreements, contracts and/or understandings, overtly or covertly drafted, whether legally binding or not, that enable the entity to control the business decisions taken in E2, in ways as mentioned in (b) (i) (ii) and (iii) above.

For this purpose:

- (i) The definitions of ‘associate company’, ‘subsidiary’ and ‘relative’ are as given in the Companies Act 2013.

- (ii) An 'entity' means individuals, group of individuals, companies, firms, trusts, societies and undertakings.

Relevant Market

- 3.19 The State, with certain exceptions as mentioned in the Table 2.1, should be considered as the relevant market for assessing market share/ market dominance of MSOs (including HITS) in the TV channel distribution market.
- 3.20 In the case of DTH operators, the relevant market for assessing market share/ market dominance should be the entire country.
- 3.21 The market share of a DPO would be the number of active subscribers of that DPO, as a percentage of total number of active subscribers of that category of DPOs, in the relevant market. Here, active subscribers of a DPO would mean the subscribers who are registered with that DPO for provisioning of TV services and availing the same.

Broadcasters and DPOs to be separate legal entities

- 3.22 Broadcasters and DPOs should be separate legal entities.

Vertical/Horizontal integration

- 3.23 Rationalized and regulated vertical integration may be permitted between broadcasters and DPOs.
- 3.24 The vertically integrated broadcaster or DPO, as the case may be, shall be subjected to an additional set of regulations vis-à-vis the non-vertically integrated broadcasters and DPOs.

Restrictions on Vertically Integrated entities

- 3.25 The entity that controls a broadcaster or the broadcaster itself, shall be permitted to 'control' only one DPO (of any category i.e. either an MSO/HITS operator or DTH operator) in a relevant market and vice-versa.
- 3.26 The entity that controls a vertically integrated DPO or the vertically integrated DPO itself, shall not be allowed to 'control' any other DPO of other category.
- 3.27 If a vertically integrated DPO, while growing organically or inorganically, acquires a market share of more than 33% in a relevant market, then the vertically integrated entities will have to restructure in such a

manner that the DPO and the broadcaster no longer remain vertically integrated.

- 3.28 A vertically integrated broadcaster can have only charge-per-subscriber (CPS) agreements with various DPOs which should be non-discriminatory.
- 3.29 A vertically integrated broadcaster shall file its RIO for its approval by the Authority. The RIO should cover all scenarios for interconnection and interconnection agreements should be only on the terms specified in the RIO.
- 3.30 A vertically integrated DPO will have to declare the channel carrying capacity of its distribution network. And, at any given point in time, it shall not reserve more than 15% of this capacity for its vertically integrated broadcaster(s). The rest of the capacity is to be offered to the other broadcasters on a non-discriminatory basis.
- 3.31 A vertically integrated DPO shall publish the access fees for the carriage of channels over its network. The access fee so specified shall be non-discriminatory for all the broadcasters. DPO shall file the specified access charge, with justification, with the Authority.

Restrictions on Horizontal Integration

- 3.32 Any entity controlling a DPO or the DPO itself should not 'control' any DPO of other category. However, MSOs and HITS operators can have cross-holding/'control' amongst them, subject to market share restrictions, as specified from time to time.

Time period for Compliance

- 3.33 Vertically integrated entities be allowed a period of one year to comply with the amended cross-holding/'control' requirements.
- 3.34 The policy decision on cross-holding/control to be appropriately reflected in all the existing rules/ policy guidelines/ licenses in the broadcasting and distribution sectors.
 - After the decision of the Government on these recommendations, the Authority would finalize the additional set of regulations and disclosures for regulating the vertically integrated entities.

Legend:

- *For the purpose of cross-holding/’control’, a broadcaster includes the broadcaster itself, its subsidiary companies /associate companies/ companies of its relatives, its holding company and subsidiary companies /associate companies/ companies of its relatives of its holding company and any other broadcaster in its ‘control’.*
- *For the purpose of cross-holding/’control’, a DPO includes the DPO itself, its subsidiary companies /associate companies/ companies of its relatives, its holding company and subsidiary companies /associate companies/ companies of its relatives of its holding company and any other DPO in its ‘control’.*
- *Vertical integration means a common entity, which can be a Broadcaster itself or a stakeholder having ‘control’ over the Broadcaster, “controls” a DPO in the same relevant market and vice versa.*
- *Horizontal integration means that a common entity, which can be a DPO itself or a stakeholder having ‘control’ over the DPO, “controls” the two categories of DPOs in the relevant market.*
- *Cross-holding means vertical integration; horizontal integration; or both.*
- *The two categories of DPOs are – (1) MSO/HITS operator and (2) DTH operator.*