

07 November 2023

By Email

Telecom Regulatory Authority of India

Mahanagar Doorsanchar Bhawan
Jawaharlal Nehru Marg (Old Minto Road)
New Delhi - 110002

**Subject: Response to TRAI's Pre-Consultation Paper on Inputs for Formulation of
"National Broadcasting Policy" dated 21 September 2023**

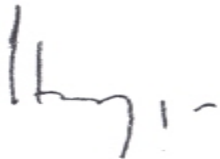
Kind Attn: Mr. Anil Bhardwaj, Advisor (B&CS)

Dear Sir,

We thank the TRAI for this opportunity to express our views on the above captioned Pre-Consultation Paper.

Tata Play's response to the same is attached for your ready reference.

Yours faithfully,



Harit Nagpal
Managing Director and CEO

Enclosed: As above

TATA PLAY'S RESPONSE DATED 07 NOVEMBER 2023 TO TRAI'S PRE-CONSULTATION PAPER ON INPUTS FOR FORMULATION OF "NATIONAL BROADCASTING POLICY" DATED 21 SEPTEMBER 2023

Q1. Stakeholders are requested to provide their comments on the possible structure and content for National Broadcasting Policy, clearly outlining the specifics along with the justification. The comments may explicitly include the following titles/heads:

- Preamble
- Vision
- Mission
- Objectives:
 - I. Goals
 - II. Strategies

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

TATA PLAY COMMENTS:

The National Broadcasting Policy should be carved out keeping in mind the following:

- Ease of doing business.
- Efficiency in processes.
- Building level playing field.
- Ensuring speed of approvals.
- A light touch uniform regulation.

Uniform Regulatory Structure:

- OTT Platforms are conducting a similar and substitutable function as of the Licensed and Registered DPOs. However, such OTT platforms are not presently governed by TRAI Regulations.
- The regulatory imbalances and pricing structure relating to OTT Platforms need to be addressed in the National Broadcasting Policy for a level playing field in the market.
- Regulating OTT platforms will promote healthy market competition as it will ensure that all platforms provide the best services to the subscribers at best prices.
- Further, The Ministry of Electronics and IT (MeitY) has notified the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (IT Rules, 2021) and amendments thereto whereby strict compliance obligations have been placed on earlier unregulated OTT platforms like Social Media Platforms and Social Media Intermediaries. Similarly, we urge the Authority to also pull in the OTT Platforms

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distributing content in competition with the DTH industry, under the same regulatory regime as the DTH sector.

DTH License:

- The DTH Operators have been issued a License by MIB for operating DTH services in India.
- On expiry of the said DTH License Agreement, all DTH Operators were operating on an interim permission granted by the MIB, year on year which restrained investments in the industry.
- While the Cabinet approved of revised DTH Guidelines on 23 December 2020 after which provisional Licenses were granted to all DTH Operators but final License Agreements with final terms and conditions are yet to be signed with MIB by the DTH Operators.
- TRAI has released recommendations on 'License Fee and Policy Matters of DTH Services', however, in the new draft agreement received from MIB, no such recommendations have been included or executed.
- We would urge that a system is established, and processes are put in place to execute the final DTH Licenses at the earliest with the abovementioned TRAI recommendations included, so that there is no ambiguity in terms and conditions of DTH License enabling the investors to invest in this sector.

DTH License Fee:

- The DTH Industry is levied an exorbitant 8% of Gross Revenue as License Fee but OTT Platforms, while providing the same service to end customers, are not burdened with any license fee.
- DTH platforms distribute both Pay and FTA channels, just as MSOs of Cable and HITS platforms do; pay License Fee at the rate of 8% of AGR, while the MSOs and HITS platform do not, despite being licensed by the MIB and regulated by the TRAI with respect to pricing and packaging.
- Imposing License Fee on DTH industry while not imposing on others, seems like an attempt to discourage one technology while encouraging others.
- TRAI, on 21 August 2023, has released Recommendations on 'License Fee and Policy Matters of DTH Services' whereby it is recommended, *inter alia*, that the DTH Licensee Fee should be brought down to 3% of AGR (Adjusted Gross Revenue). TRAI further recommended that the License Fee for DTH Operators should be zero in three years.
- We urge the Authority that the said Recommendations be implemented at the earliest and shall be made uniform across all distribution platforms, including OTTs, MSOs and HITS Operators.

Entertainment Tax:

- With the transition to GST, the industry truly believed in the consolidation of all indirect taxes and for creation of ease of tax processes. However, Entertainment tax has been left within the purview of the local and municipal authorities.

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- While the intent may have been of consolidation and reduction of tax liabilities, leaving Entertainment Tax out of GST has not achieved this goal of consolidation of all indirect taxes and has instead increased the tax liabilities of the assesseees by leaving it to the local and municipal bodies.

Timebound Authority approval (MIB, WPC, NOCC) for various operational issues:

- The DTH Operators are mandated to seek prior approvals from various Authorities like MIB, WPC and NOCC for providing DTH services to the customers.
- With respect to the satellites that are owned and controlled by the Indian government, no approval should be required from any government authority since it unnecessarily delays the process and causes hinderance to the business of the DTH operator. This also conflicts with the idea of ease of doing business for the DTH operators.
- The DTH operators are also liable to seek 'prior approval' for any changes made in the equity/ share-holding structure, appointment of Directors and Key personnel some of which form part of our routine day-to-day activity.
- The new policy should mandate time bound processes for all such authority approvals from MIB, WPC, NOCC etc. and in case where approvals are to be taken, there should be a fixed period of 7 days for granting such approvals, beyond which the matter should be considered 'deemed approved'.

Mobile operators carrying TV channels:

- Broadcasters have been providing the signals for their linear/live TV channels to Mobile operators at, as per our understanding, very inexpensive rates to the detriment of the legacy Distribution Platform Operators.
- This is leading to a shift in the television viewing pattern of subscribers towards mobile devices.
- There must be a mechanism to regulate such agreements and maintain level-playing field.

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

i. Public Service Broadcasting

- a) Requirement, Relevance and Review**
- b) Support and Validation**
- c) Content Priority**
- d) Mandatory Sharing of television programmes**
- e) Enhance global reach**

ii. Policy and Regulation

- a) Satellite Broadcasting**
- b) Terrestrial television Broadcasting**
- c) Radio Broadcasting**

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- d) Print media
- e) Digital Media

- iii. Promotion of Local Content
- iv. Piracy and Content Security
- v. Technology innovation & Standardization
- vi. Convergence
- vii. Specific Regulatory Authority for Broadcasting
- viii. Robust grievance redressal mechanism
- ix. Role of Broadcasting during Disaster
- x. Audience Measurement System:
- xi. Social Goals
- xii. Environmental Responsibility
- xiii. Animation, Visual Effects, Gaming and Comics (AVGC) segment

Detailed comments may please be provided.

TATA PLAY COMMENTS:

i. Public Service Broadcasting:

- Regulatory compliances should be made applicable to non-addressable distribution platforms like DD Free Dish, to maintain parity and level playing field amongst all platforms.
- DD Free Dish is owned and operated by Prasar Bharti. One of the prime mission and objectives of Prasar Bharati as per the Prasar Bharati Act, 1990 is *'to safeguard the citizen's right to be informed freely, truthfully and objectively on all matters of public interest, national or international, and to present a fair and balanced flow of information including contrasting views without advocating any opinion or ideology of its own.'*
- Prasar Bharati was therefore formed to provide accurate factual information to the masses at affordable prices in the national interest.
- However, the role of Prasar Bharati through DD Free Dish seems to have deviated over a period of time to furthering the interests of some private Broadcasters who are ready to pay the auction money to get more viewership in order to gain advertisement revenue. This defeats the very foundation of Prasar Bharati as the viewership of government channels is not being promoted. If one compares the ratio of Doordarshan channels versus the private channels, then the viewership of the DD channels is far less.
- Over years the DPOs are losing subscribers to DD Free Dish due to availability of pay channels on DD Free Dish without any costs.
- Many pay channels are offered free to the subscribers of DD Free Dish while for the same channels, the DPOs must charge subscription fees from their subscribers and pay the subscription fees to the broadcasters. This amounts to discrimination not only to the DPOs but also to the subscribers of DPO's platform.

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- Applying Tariff Order 2017, Interconnection Regulations 2017, and Quality of Service Regulations 2017 to non-addressable distribution platforms like DD Free Dish would have advantages as below:
 - **Piracy:** Currently DD Free Dish is non-addressable as majority of the STBs through which its service is accessed, are unencrypted. There have been instances in past wherein the footfall of channels on DD Free Dish has been distributed in an illegal and unauthorized manner. Once addressable, and within the regulatory ambit, the piracy would stop.
 - **Level Playing Field:** Applying regulations across all distribution platforms could promote consistency and level the playing field in terms of pricing, channel availability and quality of service. With this there will be parity between subscribers of DD Free Dish and other DPOs.
 - **Advertising Revenue:** DD Free Dish now is as commercial as any other DPO. The applicability of TRAI Regulations would help them becoming addressable and calculate their exact subscriber base which can get them more advertising revenue.
- We therefore request that DD Free Dish must not carry private channels and should restrict themselves to Doordarshan channels which honestly educate the masses on matters of public interest.

ii. Satellite broadcasting- Policy and Regulations:

Price Forbearance:

Network Capacity Fee (NCF):

- NCF is an artificial cap created by the TRAI during consultation process for the New Tariff Order in 2016.
- The regulations pertaining to NCF are also only applicable to DTH Operators and not OTT platforms or DD Free Dish.
- Prior to the NTO Consultation Process, there was no concept of NCF, and the businesses were blooming, and subscribers had no confusion. The subscribers were given a combined figure which was easier for them to understand.
- Subscribers do not understand NCF on top of MRP which leads to unnecessary confusion.
- In case NCF is not removed, then DPOs should be allowed to have variable NCF for different bouquets/plans. Variation as per regional classification (State/ City/ Town/ Village) will enable service providers to offer tailored packages that align with varying consumer preferences.
- DPOs understand the subscriber's behaviour the best and can devise plans closest to subscribers' paying capacity and interests.
- Market competition will keep a check so that the subscribers do not have to pay more.
- Implementing variable NCF would:
 - Promote healthy market competition.
 - cater to diverse consumer needs.
 - enable greater consumer choice.

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- promote ease of doing business

Carriage Fee:

- Capping on carriage fee should be removed and forbearance for the same should be introduced for level playing field between the DPOs and the broadcasters.
- Broadcasters have been given the freedom to price their channels and collect advertising revenues without any regulatory capping and are not mandated to share their advertising revenue with the DPOs.
- DTH operators which continue to invest heavily on better consumer experience, are incurring heavy losses in view of this provision.
- Pricing forbearance will also enable competitive offerings by DPOs to compete with other platforms like OTT and DD Free Dish.
- Even DD Free Dish conducts auctions to give their channel slots to the highest bidders. But the DPOs' capacity is capped for HD to two times that of SD channels. In terms of carriage fee, DPOs are again capped at one HD for only twice of SD. There appears to be clear discriminatory approach being taken by the Authority.

Level Playing Field:

- To maintain a level playing field amongst all platforms, either all such platforms should be regulated (including OTT Platforms and DD Free Dish) or none should be regulated. A uniform regulatory structure is the need of the hour.
- The subscriber base of DTH platforms is alarmingly reducing as the DTH Operators are unable to compete with the packaging and price offerings of OTT and DD Free Dish, which are outside the purview of TRAI Regulations.
- To maintain parity in the current scenario, the calculation of License Fee for the DTH sector should be at par with the DoT Amendment for Telecom License Fee and the subsequent clarifications issued thereunder. License fee for DTH Operators should be applicable only to revenue generated by services provided under the scope of their MIB license.
- In view of the above, we request the Authority to bring in the National Broadcasting Policy with uniform licensing and regulatory framework in terms of License Fee, Regulatory compliances and adherence to applicable statutes, for all distribution platforms/DPOs including DD Free Dish and OTT.

Any other issue

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

TATA PLAY COMMENTS:

No comments.

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