

Response by Indian Broadcasting and Digital Foundation (“IBDF”) to TRAI’s Consultation Paper on Regulatory Framework for Ground-Based Broadcasters dated 18.10.2024

I. Introduction

1. At the outset, IBDF expresses its sincere appreciation to the Telecom Regulatory Authority of India (“TRAI”) for initiating this important consultation on the regulatory framework for Ground-Based Broadcasters (“GBBs”) and providing the stakeholders an opportunity to provide input on the Consultation Paper on Regulatory Framework for Ground-Based Broadcasters dated October 18, 2024 (“**Current Consultation Paper**”). This consultation provides an opportunity to revisit and refine the regulatory approach to GBBs, taking into account significant technological and market developments since TRAI’s initial recommendations on this subject in 2014.

II. Background and Historical Context

2. In 2013, the Ministry of Information and Broadcasting (“MIB”) requested TRAI’s recommendations regarding local ground-based channels of cable TV operators (“**Platform Services**”). This initial request resulted in TRAI releasing the Consultation Paper on Regulatory Framework for Platform Services in 2014 (“**2014 Consultation Paper**”). Although the 2014 Consultation Paper primarily addressed platform services offered by cable TV operators (MSOs and/or LCOs), TRAI’s subsequent Recommendations dated November 19, 2014 (“**2014 Recommendations**”) expanded beyond this scope by including *suo motu* recommendations for GBBs without conducting prior consultation with the relevant stakeholders.
3. The 2014 Recommendations proceeded to erroneously equate GBBs with Satellite-Based Broadcasters (“**SBB**”), despite acknowledging within the same document that GBBs primarily provide services more akin to Distribution Platform Operators’ (“**DPO**”) platform services. TRAI’s 2014 Recommendations specifically noted that *“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.”*

III. Critical Oversights in Current Consultation

4. The MIB in its current reference dated May 22, 2024, has recognised that the context in which these recommendations were made has substantially changed, necessitating a fresh examination of the issue. However, the Current Consultation Paper, rather than addressing the issue afresh, continues to build upon this incorrect understanding of GBBs emanating from the 2014 Recommendations. Several crucial questions remain unaddressed:
 - (a) The fundamental question of whether GBB services are more appropriately comparable with platform services of DPOs or with channels of SBBs requires thorough examination.

- (b) The issue of whether GBB services constitute an entirely distinct category of service, different from both platform services and traditional broadcasting channels, requires careful consideration.
 - (c) The consultation must explore whether GBB services, if found comparable to platform services, should be subject to the same regulatory framework as platform services.
 - (d) The question of whether these services become comparable to SBB channels merely because their providers are designated as ‘broadcasters’ requires examination.
 - (e) The consideration of how classification and regulation might differ if these service providers were designated as ‘third-party platform service providers’ warrants discussion.
5. In the absence of these crucial considerations, the Current Consultation Paper lacks transparency and fails to address all relevant aspects of the issue. In view of the above, we request that the present consultation be treated as a preliminary consultation paper, enabling TRAI to formulate a comprehensive consultation paper on GBBs.

IV. Need for Comprehensive Study

6. We strongly recommend that TRAI conduct a comprehensive study of the GBB sector before finalising any regulatory framework. TRAI should consider including the following points in this study:
- (a) A detailed mapping of existing GBBs and their services.
 - (b) Analysis of content production and acquisition strategies.
 - (c) Examination of current licensing frameworks and their effectiveness.
 - (d) Economic analysis of the GBB business model.
 - (e) Assessment of market challenges and opportunities.
 - (f) Evaluation of potential impacts of different regulatory approaches.

V. Fundamental Distinctions between GBBs and SBBs

7. We submit that the regulatory framework must recognise three distinct categories of services, however, it cannot be premised on the 2014 Recommendations since, each may have its own unique characteristics and requirements:
- (a) **Ground-Based Broadcasting Services** represent channels that may be owned and/or operated by GBBs or by DPOs. With respect to these channels, the legal rights and responsibility for content may rest entirely with the GBB, or with DPOs, as the case may be. These services may be advertisement-free or with advertisements, and any revenue generated from subscription and/or

advertising may accrue only to DPOs and/or GBBs, or may be shared between the two, depending on their agreed commercial arrangement. Further, usually, the content may be distributed to the relevant DPO only, making it comparable with platform services. The transmission occurs through terrestrial means, utilising various modern technologies.

- (b) **Platform Services** constitute programming services specific to each distribution platform, where content rights and responsibility rest solely with the DPO. These services are designed to be exclusive to the DPO's subscribers and cannot be shared across platforms. Any advertising revenue generated through these services accrues to the DPO, establishing a clear distinction from GBB services.
 - (c) **Traditional Satellite Broadcasting** continues to operate under existing Uplinking/Downlinking Guidelines with its own well-established regulatory framework. These services represent the conventional model of broadcasting that has historically dominated the sector.
8. This three-way distinction is crucial as it forms the foundation for developing appropriate regulatory frameworks that acknowledge the unique characteristics, challenges, and operational models of each category. Each type of service requires specific regulatory consideration that addresses its particular operational requirements while ensuring fair competition and consumer protection.
9. In this regard, it may be noted that the 2014 Recommendations and the Current Consultation Paper do not deal with or address the ownership structures and revenue-sharing models within GBB-DPO relationship. As highlighted, there may be varied arrangements between GBBs and DPOs, where responsibilities and financial benefits can be distributed in multiple ways. The aforesaid two documents fail to delve into these complexities and offer only a cursory analysis of rights ownership and revenue sharing. Furthermore, the lack of real-world examples illustrating the diverse relationships between GBBs and DPOs weakens any meaningful evaluation, assessment and recommendations.
10. The fundamental distinctions between GBBs and SBBs manifest across several critical dimensions:
- (a) **Coverage and Reach Characteristics**
 - (i) GBBs serve a distinct market need by primarily providing localised services that cater to specific DPO demands, creating a marked contrast with the national reach of SBBs.
 - (ii) The coverage of GBBs remains inherently limited due to their reliance on terrestrial transmission infrastructure, while SBBs broadcast over extensive geographical areas using satellite technology. This fundamental difference in reach and coverage capabilities directly influences their operational models, market approach, and economic viability.

(b) **Content Focus and Programming Strategy**

- (i) GBBs have developed specialised expertise in creating and curating local content that addresses specific community needs and interests.
- (ii) This focused approach stands in contrast to SBBs, which must cater to broader, more generalised audience preferences across national markets.
- (iii) The ability to provide targeted, culturally relevant content represents a unique value proposition that distinguishes GBBs within the broadcasting ecosystem.

(c) **Platform Service Enhancement Capabilities**

- (i) GBBs offer unique value to DPOs through their ability to create and curate specialised content. DPOs can effectively outsource their platform service requirements to GBBs, leveraging their expertise in content creation and curation.
- (ii) This strategic relationship enables DPOs to offer diverse and localised content to their subscribers without investing in additional content creation resources, which may fall outside their core competencies.

(d) **Content Diversity and Media Plurality**

GBBs serve as essential contributors to media plurality and content diversity through several important functions:

- (i) They play a crucial role in promoting and preserving local content, contributing significantly to cultural preservation and media diversity.
- (ii) Their active engagement with local communities fosters civic participation and local diversity.
- (iii) They serve as critical information disseminators during emergencies, particularly in areas prone to natural calamities or those with limited communication infrastructure.

(e) **Economic Impact and Market Development**

The presence of GBBs generates substantial economic benefits for local communities:

- (i) They create employment opportunities by nurturing local creative talent and supporting content production capabilities.
- (ii) Their operations support local businesses through targeted advertising opportunities and content partnerships.

- (iii) The implementation of differentiated legal and regulatory frameworks, similar to those established for platform services, would encourage new market entrants and foster healthy competition.
 - (iv) Their business model supports sustainable local content production ecosystems.
- (f) **Consumer Choice and Access**
- GBBs enhance consumer choice through:
- (i) The provision of diverse, locally relevant content choices that reflect community interests and cultural preferences.
 - (ii) Improved access to local information and entertainment options.
 - (iii) Enhanced emergency information dissemination capabilities at the local level.
 - (iv) Preservation and promotion of local cultural elements through specialized programming.

VI. Regulatory Recommendations

11. We submit that GBBs and SBBs operate in fundamentally different and incomparable spheres of the broadcasting ecosystem. The attempt to equate these distinct services in regulatory treatment would prove counter-productive for both sectors. Such equivalence could potentially threaten the very survival of GBBs due to disproportionate financial and regulatory compliance burdens that fail to account for their unique operational characteristics and market role.
12. The conventional concept of a 'level playing field' becomes inappropriate when considering GBBs and SBBs, as each category possesses its own unique set of advantages, challenges, and market opportunities. We submit that attempting to create artificial parity between these distinct services through regulatory mechanisms would harm market development and reduce consumer choice.
13. We strongly advocate for the implementation of differentiated regulations for GBBs vis-à-vis SBBs that recognize the unique characteristics of GBBs, while keeping the regulations for GBBs akin to those for Platform Service. These regulations should:
 - (a) Ensure GBBs remain competitive while preserving consumer choice and media diversity in the broadcasting sector.
 - (b) Establish GBBs as viable and accessible platforms for local talent to showcase their creativity, directly addressing the critical issue of limited talent pool development in the Indian creative economy.
 - (c) Modify and apply the existing regulatory framework for platform services to GBBs, including the extension of the five percent DPO network capacity currently allocated for platform services to GBB channels.

14. While maintaining our primary position that GBBs constitute a distinct category requiring separate regulatory treatment, and without prejudice to our submissions in this regard including the potential for unfair competition if GBBs are allowed to operate and compete with SBBs, albeit with less stringent legal, licensing and regulatory stipulations than those applicable to SBBs, we present the following alternative considerations should the TRAI determine to treat GBBs as comparable to SBBs:
 - (a) GBBs should be treated at par with SBBs, establishing a unified regulatory framework becomes essential for all broadcasters to ensure consistency and avoid market fragmentation.
 - (b) If GBBs are to operate as alternatives to SBBs, then establishing genuine competitive parity becomes critical.
 - (c) Any new regulatory framework must ensure protection of substantial investments made by existing broadcasters in infrastructure and content.
15. We emphasise that these concerns extend beyond merely safeguarding existing broadcasters. Rather, they address fundamental issues of fair competition, content quality maintenance, and preservation of national cohesion that deserve serious regulatory attention.

VII. Requirement of A De-Novo Comprehensive Review

16. We strongly urge TRAI to conduct a de-novo review of all issues concerning GBBs, approaching the matter without being influenced by the 2014 Recommendations. This comprehensive review must encompass several critical aspects:
 - (a) **Assessment of Operational Characteristics:** The review should thoroughly examine the unique characteristics of GBBs, including:
 - (i) Their inherently limited geographical reach and the implications for regulatory obligations.
 - (ii) The specialised focus on local content creation and distribution.
 - (iii) Their crucial role in nurturing local talent pools and supporting regional creative economies.
 - (iv) The potential for meaningful collaboration with Distribution Platform Operators.
 - (v) Their natural alignment with platform services rather than traditional satellite broadcasting models.
 - (b) **Market Impact Analysis:** The review must include a detailed assessment of:
 - (i) The economic impact of GBBs on local markets and communities.

- (ii) Their contribution to media plurality and content diversity.
- (iii) The potential effects of various regulatory approaches on market development.
- (iv) The implications for consumer choice and access to local content.

VIII. **Conclusion**

17. We submit that the current regulatory approach to Ground-Based Broadcasting requires fundamental reconsideration. This reconsideration should:
 - (a) Acknowledge the distinct nature of Ground-Based Broadcasting services and including their limited geographical reach, focus on local content, nurturing of local talent pool, potential for collaboration with DPOs and importantly, their comparability with platform services of DPOs (as against they being force-fitted with channels of SBBs).
 - (b) Align with the Ministry of Information and Broadcasting's reference under Section 11(1)(a) of the TRAI Act 1997 (as amended), which specifically requests a fresh examination of these matters.
 - (c) Support the Government of India's ambitious goal of establishing India as a global content hub by fostering diverse and innovative broadcasting models.
 - (d) Create a balanced regulatory approach that promotes innovation and competition while ensuring consumer choice and media diversity.
 - (e) Establish appropriate safeguards for content quality and regulatory GBBs.
 - (f) Ensure that any evolution in the broadcasting sector preserves the stability and quality standards established through significant investments by existing broadcasters while promoting innovation in localised content delivery.
18. We believe this comprehensive approach will create a robust and sustainable framework for Ground-Based Broadcasting that serves the interests of all stakeholders while supporting the broader objectives of India's broadcasting sector development.
19. At this stage, we are submitting our preliminary objections and recommendations to the Current Consultation Paper, however, we crave leave for submitting detailed issue-wise comments and additional submissions at a later stage.