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To

Agneshwar Sen,
Advisor (B&CS),
Telecom Regulatory Authority of India,
Jawaharlal Nehru Marg,
New Delhi – 110 002.

Sir.

Sub : Comments to the consultation paper.

Ref : Your CP No. 7/2014 (Tariff Issues Related to Regulatory Frame work for Platform Services)

Kindly find the enclosed comments for the afore said consultation paper.

Thanking you

Yours truly,

R.L.Saravanan

Comments from R.L.Saravanan....

Preliminary Submission:

Whereas the Reference from the Ministry of Information and Broadcasting vide D.O. No. 9/16/2013-BP&L dated 17-01-2014 would mean to seek recommendations on the issue of putting in place a regulatory framework for ground based channels being operated at the level of Cable TV operators and its significance in view of Digitalisation of Cable TV services.

Further the said reference is a continuation to the recommendations of TRAI on 'Restructuring of Cable TV Services' dated 25-07-2008 and the whole of the 4 page reference would evolve around MSO, LCOs, local or ground based channels. In more particular there is no say about any other TV distributors namely DTH, HITS or IPTV.

The possible reason behind such exclusion of other distributors is that they are *per se* not allowed by their respective guidelines and Grant Of Permission Agreement (GOPA) to transmit any such channels in their network.

PS in DTH:

The Genesis of DTH in India can be traced from the notification of the Central Government in GSR 18 (E) dated 9/01/2001, Department of Telecommunication where it has stated that it would be limited to reception and distribution of TV channels in Ku band. Thus, there is no room for PS therein.

Further the DTH guidelines and the GOPA of DTH expressly prohibits any DTH operator to introduce any channel of their own, *inter alia* in Article 6.7 and 10.1 of the Terms and Conditions prescribed in Schedule to FORM-B.

PS in HITS:

A similar restriction is being placed in HITS guidelines dated 26/11/2009 in Article 6.2 and 12.1 which otherwise prohibits the provision of PS in HITS platform.

PS in IPTV:

IPTV can be provided by both Cable Operators and Telecom Licensees, While the guidelines of IPTV dt. 8/09/2008 in Article-V allows cable operators to be governed under the provisions of The Cable TV Network (Regulation) Act, 1995, at the same time places bar for the Telecom Licensees in Articles VI, VII and VIII for provision of any PS.

In as much the cable TV network is concerned, The MSOs are permitted to run ground based channels under Rule 2(C) definition read with rule 6(6) of The cable Television Networks Rules, 1994. The transmission of ground channels were further ratified by the hon'ble TDSAT in petition no. 132 (c) of 2010.

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Be it so, I wonder how the authority has skewed itself to bring in DTH, HITS and IPTV within the ambit of the extant consultation paper and created a new definition called DPO.

Hence, inclusion of DTH, HITS and IPTV (run by telecom lisencces) would go beyond the corner stones set by the reference of MIB dated 17-01-2014, as such PS are not currently permitted to such distributors and any regulation on an illegal issue would go un-constitutional within the meaning of Artcile-3 of the Constitution.

In sum and substance, the Authority shall replace the word MSO wherever the term DPO occurs in the issues of the consultation paper.

ISSUE BASED COMMENTS:

1. Do you agree with the following definition for Platform Services (PS)?

If not, please suggest an alternative definition:

“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.”

No I do not agree with the afore stated definition of Platform Services for the following reasons:

- For the reasons cited above in the “preliminary submissions” the word **“Distribution Platform Operators (DPO)”** shall be substituted with the words **“Multi System Operators (MSO).**
- The above definition would restrict the transmission of PS to the DPO or MSO alone. However, in practice we find thousands of Private Local Channels operators (PLC) which are operated by persons who are not MSOs but transmit those PLC through an arrangement with the MSOs.

The present definition would mercilessly kill the smallest media industry namely PLC, which is the bread and butter for thousands of young entrepreneurs with creative talents. We often find these channels as a gateway or bounce pad for many rural talents who later would excel in leading TV channels.

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Hence the PLC s should be included in the definition. Thus the words **“or by Private Local Channel operators,”** shall be inserted after the words “Multi System Operators (MSO)” and “exclusively”.

- “Own Subscribers” would mean only to DTH operators and the definition cannot go fit to MSO, Where the MSO himself has own subscribers in a marginal share and morefully would feed to the subscribers of Cable operators. Hence the words **“or subscribers of their linked cable operators”** shall be inserted between the word ‘subscribers’ and the word ‘and does not’.
- Whereas the definition gives immunity, to Doordarshan channels and permitted TV channels under downlinking guidelines and ignored to include Lok sabha and Rajya sabha channels hence the words **“does not include Doordarshan channels and TV channels permitted under downlinking guidelines”** shall be substituted with the words **““does not include Doordarshan channels, Lok sabha channel, Rajya sabha channel and TV channels permitted under downlinking guidelines”**

Hence to sum up the definition shall be:

“Platform services (PS) are programs transmitted by Multi System Operators (MSOs) or by Private Local Channel Operators, exclusively to their own subscribers or subscribers of their linked cable operators and does not include Doordarshan channels, Lok Sabha channel, Rajya Sabha channel and TV channels permitted under downlinking guidelines.”

2. Kindly provide comments on the following aspects related to programs to be permitted on PS channels:

1. PS channels cannot transmit/ include

2.1.1 Any news and/or current affairs programs,

NO, the PS shall be allowed to transmit news or current affairs contents. In practice the PLCs transmit local news are being highly appreciated by the general public which acts as the only visual media to know the happenings around the neighborhood. It would go without saying that the Satellite channel cannot cover every news in every part of the country. However, PLCs would efficiently cover the local news. For the purpose of illustration any function of inaugurating a new infrastructure at Municipality level would

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never go to the notice of TV channels but the same would be the headlines in the PLC news.

By blocking news in PS the Authority shall not be a party to infringe the fundamental right of the citizen as guaranteed by the Constitution under article 19 (1) (a) which includes the right of the freedom to receive or view the expressions at local level.

However, the Authority may place restrictions on such NEWS coverage, limiting to the coverage at district level.

2.1.2 Coverage of political events of any nature,

No, NEWS would include political events of any nature and hence banning of any political event would go against democracy and block the plurality of views to the consumers.

Further, there are no such restrictions in place with respect to News transmitting TV channels under the down linking guidelines. Hence, in the equity of Justice and to the true spirit of Article 14 of the Constitution, PS shall be allowed to cover political events of any nature.

2.1.3 Any program that is/ has been transmitted by any Doordarshan channels or TV channels permitted under uplinking/ downlinking guidelines, including serials and reality shows,

Under the copy right Act, 1957, the term of copy right for “broadcast reproduction right” shall be restricted to 25 years from the next new year date to that of the date of transmission of the said program. Accordingly famous serials like JUNOON transmitted in early 80’s would be available in the public domain as the same is free from copyright term.

Further, the practice of issuing copy right license for serials and reality shows to be dubbed in other languages and broadcast the same is prevailing.

Hence, placing a restriction on such transmission would be in derogation to the copy right act, 1957 and the PLCs would be handicapped to transmit any programmes available on public domain free from copy right or by proper copy right license.

Thus the restriction shall be subject to permission of copyright issues.

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2.1.4 International, National and State level sport events/tournament/ games like IPL, Ranji trophy, etc.

The above events are subject to copy right and beyond the reach of PS channels and hence may be agreed.

2. PS channels can transmit/ include

2.2.1 Movie/ Video on demand

2.2.2 Interactive games,

2.2.3 Coverage of local cultural events and festivals, traffic,weather, educational/ academic programs (such as coaching classes), information regarding examinations, results, admissions, career counseling, availability of employment opportunities, job placement.

2.2.4 Public announcements pertaining to civic amenities like electricity, water supply, natural calamities, health alerts etc. as provided by the local administration.

2.2.5 Information pertaining to sporting events excluding live coverage.

2.2.6 Live coverage of sporting events of local nature i.e. sport events played by district level (or below) teams and where no broadcasting rights are required.

The above may be permitted, subject to strict adherence to the Programme code.

3. What should be periodicity of review to ensure that the PS is not trespassing into the domain of regular TV broadcasters?

By restricting the operation and coverage of the PS within the given district it shall operate in local level and hence there shall not be any trespassing into the domain of regular TV broadcaster, as such the review is not necessary.

4. Should it be mandatory for all DPOs to be registered as Companies under the Companies Act to be allowed to operate PS? If not, how to ensure uniform legal status for all DPOs?

In accordance to the reference of MIB dated 17-01-2014, the present consultation paper shall be to bring in a regulatory regime to the ground based local channels being transmitted in the network of MSOs.

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The present legal frame work as envisaged in “The Cable TV Networks (Regulation) Act, 1995” and the rules framed therein would allow any person not limited to an individual, proprietary firm, Partnership firm, LLP or a company under Companies Act to obtain Registration as an MSO. PS being an entity to be networked under an MSO the entity status of a PS shall not be imposed anything above to that of MSO.

Thus the PS shall not be necessarily a Company. However, in a later event where the Cable Act is amended to issue MSO registration only to companies, in such an event PS may also be compelled to be a Company.

5. Views, if any, on FDI limits?

Considering the lowest investment required to start a PS/PLC channel which is less than an investment of a petty shop, there shall not be any FDI allowed in PLCs.

6. Should there be any minimum net-worth requirement for offering PS channels? If yes, then what should it be?

As told earlier PLCs are operated by first generation entrepreneurs with less investment and at the same time provide local taste to the viewers.

Further, “The Cable TV Networks (Regulation) Act, 1995” and the rules framed therein has not mandated any minimum net-worth requirement for registration of an MSO. Be it so PS/PLC who would be at one step below in hierarchy in the vertical integration of cable sector, mandating minimum net-worth requirement would go otiose.

However, in a later day where minimum net-worth is prescribed for any MSO for registration under the said Act, in such a situation, PS may have a minimum net-worth of 3 lakhs.

7. Do you agree that PS channels should also be subjected to same security clearances/ conditions, as applicable for private satellite TV channels?

PS/PLC channels are meant for local geographical area. Any operation of such micro proposition may not have a bearing on the nation's security.

Further, the cable operators are also required to declare every year by way of FORM 2 that they are not been convicted for a criminal offence. Since, there is a check already provided to verify the criminal antecedent of a cable operator they are not subject to security clearance.

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Further, there are over 20,000 PLCs operating in the country at present. Mandating security clearance for such micro level operation shall not only be a futile exercise and at the same time overload the Ministry of Home affairs.

Hence, by restricting the operation of a PS/PLC to a District, no security clearance shall be necessary instead they may be mandated to additionally register as a cable operator.

However, security clearance may be mandated for the districts in border areas.

8. For the PS channels to be registered with MIB through an online process, what should be the period of validity of registration and annual fee per channel?

The move to have online registration is a welcomed one and validity shall be for 10 years.

At present the MSO is not charged any annual fee or any one time fee. Hence the PS/PLC shall also be spared from any annual fee and the Ministry may charge a onetime processing fee of Rs. 50,000/- while according the registration.

9. What is your proposal for renewal of permission?

Renewal may be done for a like term of the registration.

10. Should there be any limits in terms of geographical area for PS channels? If yes what should be these limits.

The PS/PLC channels are to give a taste of local flavor to the consumers, hence the geographical limits in all logics shall be a **district**.

11. Should there be any limits in terms of geographical area for PS channels? If yes what should be these limits.

In the state of Tamil Nadu, We have an MSO with virtual monopoly operated by the State Government. They have allowed 10 Private Local Channels in taluk/town/district level in their network. They have hundreds of PLC s in their network and based on the experience I feel an MSO/DPO may be permitted to have a maximum of 10 PS/PLC channels.

12. Do you have any comments on the following obligations/ restrictions on DPOs:

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12.1. Non-transferability of registration for PS without prior approval of MIB;

Yes the same may be in place.

12.2. Prohibition from interconnecting with other distribution networks for re-transmission of PS i.e. cannot share or allow the re-transmission of the PS channel to another DPO;

Interconnecting any channel with other distribution networks are prohibited for any TV channels with respect to the issue of copyright and the same would tantamount to piracy.

I do agree with the proposal of the authority for a ban on interconnecting. However, we see in practice that many of PLCs in the virtual monopoly network of Tamil Nadu operate in more than one location. Thus the authority may permit PS/PLCs to operate in multi location with a restriction on news/current affairs programs restricted to respective districts.

12.3. Compliance with the Programme & Advertisement Code and TRAI's Regulations pertaining to QoS and complaint redressal.

The sad fact remains that both PLCs and TV channels with downlinking permission does not follow programme and advertisement code and the action under Section 20 of the said cable Act, is too little and too late Self regulation is pseudo mechanism to support broadcasters.

The PS/PLCs should be subject to strict compliance of Programme and Advertisement Code and other Regulations of TRAI.

13. What other obligations/ restrictions need to be imposed on DPOs for offering PS?

The very restriction imposed by the present issue is that only DPOs can offer PS.

DPOs according to the consultation paper shall include all distributors of TV channels namely cable MSO, DTH, HITS and IPTV.

The bandwidth and the availability of satellite transponders in Ku and C band is the limitation for DTH and HITS operators apart by statutory bar.

Hence, in rational possibility they cannot have a PS to cater the local need and their PS shall be for the whole of nation/state which would trespass in to the domain of a regular TV broadcaster.

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Thus, the primary restriction shall be that PS shall not be operated by DTH, HITS or IPTV operators.

14. Should DPO be permitted to re-transmit already permitted and operational FM radio channels under suitable arrangement with FM operator? If yes, then should there be any restrictions including on the number of FM radio channels that may be re-transmitted by a DPO?

The permission of a FM channel is limited to broadcast of audio signals in a main carrier on the allotted frequency within the permitted city. The definition clause of "Broadcast service" under article 1.4 read with other definitions of GOPA of FM channel would go to say that FM radio is allowed to propagate only through electro magnetic waves and not through any other medium.

The present practice of linking FM radio to internet is *per se* illegal and hence the Authority shall not take the same as a precedent to continue such illegality in MSO/DPO also.

Further, I wonder how the hyperactive copyright society "PPL" would allow seamless transmission of FM radio without any boundaries which is otherwise a piracy.

Further Section 2 (g) definition of "Programme" as adumbrated in The 1995 Act, would define only a television broadcast as a programme and there is no space for a Radio broadcast.

Hence, I suggest that FM radio channels shall not be allow to be networked with MSO/DPO.

15. Please suggest the mechanism for monitoring of PS channel.

The PS/PLC channel may be monitored by an autonomous district level committee, independent to the authorized officer of the 1995 act.

16. Do you agree that similar penal provisions as imposed on TV Broadcasters for violation of the terms and conditions of their permissions may also be imposed on PS? If not, please suggest alternative provisions.

Assessing from their size of operation and business they cannot be compared with TV broadcasters.

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By mandating the PS/PLCs to register themselves as a cable operator under Section 4 of the Act, they can be brought under the ambit of The Cable Television Networks (Regulation) Act, 1995 which is a minor criminal Act.

17. What amendments and additional terms & conditions are required in the existing registration/ guidelines/ permission/ license agreements w.r.t. DPOs for regulating the PS channels?

In first instant DPO shall mean a cable MSO alone and such MSOs shall be either permitted to directly run a single PS channel and allow Private Local Channels (PLC) to an extent of 9 channels to be carried in their networks, restricted to a district.

18. What should be the time limit that should be granted to DPOs for registration of the existing PS channels and bring them in conformity with the proposed regulatory framework once it is notified by MIB?

DPO/MSO along with PLCs shall be allowed to register as PS provider and a time limit of 6 months may be given for registration under new regime.

19. Stakeholders may also provide their comments on any other issue relevant to the present consultation including any changes required in the existing regulatory framework.

As told earlier.

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