

SITI Cable Network Limited

Essel House, B-10, Lawrence Road,
Industrial Area, Delhi - 110 035, India

Tel. : +91-11-47502600

Fax : +91-11-27184709

Website : www.siticable.com



RESPONSE BY SITI CABLE NETWORK LIMITED TO THE CONSULTATION PAPER ON REGULATORY FRAMEWORK FOR PLATFORM SERVICES

❖ **PRILIMINARY SUBMISSIONS:**

- (i) At the outset, we welcome the consultation paper floated by the Authority wherein the Authority intends to have a holistic view from all stake holders so as to formulate a robust Regulatory framework for Platform Services (PS). The issues related to PS are very important and we strongly feel that all issues should be widely debated and all arguments be addressed of all stakeholders before giving final recommendation by the Authority.

However we are constraint to state that the Authority's proposals seem far too invasive for locally generated channels, video on demand and gaming services. Equating these to a full-fledged satellite new or entertainment channel is not warranted at all specially considering their reach..

In the current era, any internet Video content or entire TV channels will soon be streamed on to our mobile phones and even TV sets using wireless 4G services. There are currently no restrictions on internet content, and such curbs would be difficult if not impossible to implement. Further, technology will always provide means to deliver to the consumer what he wants, despite conservative or restrictive government laws. The internet is almost impossible to throttle and the world is moving away from Control regime to democratic set up.

- (ii) The proposed exclusion of necessary services like news/current affairs programme, coverage of political events of any nature etc. is not only against the very basic framework of constitutional rights but also entails subscriber's right to watch and get such information at local level. As per TRAI, the situation

1 |

prevailing with respect of PS is similar to that of FM radio networks and accordingly makes it as a basis to recommend similar restrictions on PS. Unfortunately, the said view is erroneous and contrary to its earlier recommendation on Licensing Issues Relating to 2 Phase of Private FM Radio Broadcasting wherein the Authority itself has categorically recommended that :

“The current restriction on coverage of News and Current Affairs should be reviewed keeping the policies in other media segments in view. These restrictions should be lifted once the security implications of this step are adequately addressed”

- (iii) It is a well known fact that the industry is getting better organized around key MSOs in each of the regions, and most of them are launching new specialty cable channels to offer rich contextual and localised content as part of their bouquet of Basic Service Tier that reaches all homes. , These offerings would not only strengthen the relationship with viewers but also boost the viewership position that cable regional category enjoys. Local customised content has been the main attraction for television viewers in all parts of the world, and India being one of the more diverse countries in terms of languages, cultures, history, customs, festivals, climate and socio-economic composition needs, more of such localised content having local flavor and relevance.
- (iv) By proposing to make it mandatory for all DPOs to be registered as Companies, the Authority has taken the step in the right direction to grant uniform legal status for all DPOs and so far as question of FDI limit is concerned, which is relevant only for PS having News and Current Affairs content there is an urgent need to review the existing provisions.
- (v) With respect to proposed issues regarding minimum net worth requirement for offering PS channels and also that these PS channels should be subjected to

same security clearances/conditions, as applicable for private channels it is stated that there is absolutely no need for proposing any minimum net worth requirement for offering PS channels as these services would be offered as a part of their licensing conditions and whatever networth is prescribed for obtaining the license for operating the platform, that would cover platform services as well. Further as stated hereinabove, and the said DPOs cannot be equated to satellite channels. So far as the question that these PS channels should be subjected to same security clearances/conditions, as applicable for private channels is concerned it is stated that the said procedure is already being followed and it is mandatory for all DPOs to obtain mandatory security clearances at the time of applying for their operating license.

- (vi) With the successful implementation of digitalization in DAS notified areas of Phase I and II, India is ready for the advent of digitalization in rest of the country by 31-12-2014 and in such scenario, the entire cable industry is being organized and streamlined, giving ample opportunities to all DPOs to compete and act responsibly so far as its local cable channels are concerned. In view of the same, the proposal that all PS channels be registered with MIB through an online process is indeed a welcome step. In our view, as the entire system would be online, the period of validity of registration may be kept for the same duration as the license for operating the platform with reasonable annual fee per channel. The channels registered with MIB should be granted automatic renewal, unless any of them has violated the advertisement and programming code as given under the Cable TV Act and/or any other stipulated terms & conditions in the permission.
- (vii) There should not be any geographical restriction as almost all the leading MSOs have laid down extensive fiber network across the cities and States and it is possible to deliver the signals from a single headend via IP/broadband etc. In such a scenario imposing any kind of restriction based on geographical area would be a retrograde step. As the content would be mainly "local", by its very

nature, it will not have much relevance outside a particular geographical boundary. However, it is not desirable to impose any kind of restriction by way of regulatory stipulation as with the new technological dispensations the entire State can be served with a single digital cable headend.

- (viii) There is no need to limit the number of PS channels which can be operated by a DPO as the digital cable has enormous bandwidth. and no capacity constraints.

There is no need to put any other obligations/ restrictions which need to be imposed on DPOs for offering PS.

- (ix) In the era of technological confluence wherein technology has made it possible to receive all entertainment on one device, the proposal that the DPOs (DTH already providing FM channels) should be permitted to re-transmit already permitted and operational FM radio channels under suitable arrangement with FM operator will be a welcome step, consumer being the ultimate beneficiary. There should be no restrictions including on the number of FM radio channels that may be re-transmitted by a DPO.

- (x) It is our considered view it is stated that like broadcasting and print media, self regulation is the need of the hour and all stakeholders should join together and form a Self Regulating Authority like News Broadcasting Standards Authority (NBSA) and Broadcast Content Complaint Council (BCCC) and self regulate the mechanism for monitoring of PS channel and for redressing grievance of viewers. As such the regulatory mechanism which is already in place to monitor and penalize the satellite channels is more than enough, if a PS provider violates any terms and conditions of the permission granted to it.

Apropos the above, the issue for consultation is,

1. **Do you agree with the definitions for “Platform Services (PS)?**

RESPONSE:

1.1 "Platform Services":

In so far, as the definition proposed by the Authority with respect of "Platform Services" is concerned it is submitted that PS are totally on different footing viz-a-viz satellite channels for which the Government has laid down elaborate terms and conditions including minimum net worth and other uplinking/downlinking conditions. As the Authority wants to make sure that PS does not trespass the domain of the satellite channels it is imperative to suitably modify the definition of platform services. The main difference between PS and satellite channels is that PS primarily caters to the local needs of particular area/locality and their targeted audiences are the subscribers of that particular area where it is transmitted by the DPO through cable where as in case of satellite channels, they have PAN India presence where the signals are beamed through satellites. Bearing the said fact in mind, in our view the definition should be modified to read as follows:

"Platform Services (PS) are programs transmitted by DPOs exclusively to their own subscribers in a particular area/locality catering to the local needs/demand of the subscribers of that area/locality and does not include Doordarshan channels and TV channels permitted under downlinking guidelines."

1.2 It was held by the Hon'ble Supreme Court in The Secretary, Ministry of Information and Broadcasting v/s Cricket Association Of Bengal 1995 SCC (2) 161 that:

"Broadcasting freedom involves and includes the right of the viewers and listeners who retain their interest in free speech. It is on this basis that the European courts have taken the view that restraints on freedom of

broadcasters are justifiable on the very ground of free speech. It has been held that freedom of expression includes the right to receive information and ideas as well as freedom to impart them.

1.3 Therefore, the Authority should protect the rights of the viewers to have access to the local information, events, news, political event etc. It is a well known fact that the industry is getting better organised around key MSOs in each of the regions, and most of them are launching new specialty cable channels to offer rich contextual and localised content as part of their bouquet of Basic Service Tier that reaches all homes, which would only strengthen the relationship with viewers and boost the viewership position that cable regional category enjoys. Local customised content has been the main attraction for television viewers in all parts of the world, and India being one of the more diverse countries in terms of languages, cultures, history, customs, festivals, climate and socio-economic composition, is sure to celebrate its diversity with the availability of more localised broadcast media and specialty content on their television sets.

2. PS channels cannot transmit/include:

- **any news and/or current affairs programs;**
- **Coverage of political events of any nature;**
- **Any programme that is/has been transmitted by any Doordarshan channels or TV channels permitted under uplinking/downlinking guidelines, including serials and reality shows;**
- **International, National and State level sport events/tournament/games like IPL, Ranji Trophy etc.**

PS channels can transmit/include:

- **Movie/Video on demand**
- **Interactive game**

- Coverage of local cultural events and festivals, traffic, weather, educational/academic programs (such as coaching classes), information regarding examinations, results, admissions, career counselling, availability of employment opportunities, job placement.
- Public announcements pertaining to civic amenities like electricity, water supply, natural calamities, health alerts etc as provided by the local administration.
- Information pertaining to sporting events excluding live coverage.
- 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.

RESPONSE:

- 2.1 SITI Cable vehemently opposes any idea of excluding the above mentioned programmes as proposed by the Authority without any justifiable basis. The two fold basis provided by the Authority to exclude the abovementioned programmes is that firstly, the situation prevailing with respect of PS is similar to that of FM radio networks and keeping that in view, the Authority has recommended similar restrictions on PS and secondly, the Authority proposes that to ensure PS channels remains distinct from the registered TV channels and do not trespass the domain of broadcasters either overtly or covertly, certain provisions should be there regarding the composition of PS channels.
- 2.2 In our view, the above two fold basis is wholly erroneous and misplaced. At the outset, it is stated that the analogy with FM is totally irrelevant and application of similar provisions is also without any substance. The nearest analogy which can be drawn is with small local daily newspapers which carry the contents in written and pictorial form. Today even a small newspaper with a meagre circulation of 200-300 can carry out news and other articles. There are local newspapers which are weekly and they have the permission to carry news and current affairs.

2.3 Be that as it may, assuming the analogy of FM-PS channel, as proposed by Authority to be true, then also the same cannot be made basis to exclude the transmission of programmes as proposed by the Authority and with respect of making provisions barring the PS channels to enter the domain of satellite channels, there is need to frame separate policy after consulting all stake holders. In any case, SITI Cable is not in any favour of putting any embargo on the PS to transmit any news and/or current affairs programs and coverage of political events of any nature because of the following reasons:

2.3.1 There is absolutely no need to exclude any news and/or current affairs programs and coverage of political events of any nature as the said proposal is without any basis and infact contrary to the Authority's own recommendation as the Authority vide its recommendation on Licensing Issues Relating to 2nd Phase of Private FM Radio Broadcasting itself has categorically recommended that :

"The current restriction on coverage of News and Current Affairs should be reviewed keeping the policies in other media segments in view. These restrictions should be lifted once the security implications of this step are adequately addressed."

2.3.2 In fact, the purported justification to exclude such programs from the ambit of FM channels, which has become the basis in the present consultation paper has been challenged before Hon'ble Supreme Court vide Public Interest Litigation and the same is pending for adjudication before Hon'ble Supreme Court. There is no logical reason why private radio channels should be barred from broadcasting news when private TV channels are allowed to do so. Radio reaches a segment of society that satellite TV does not quite reach even today.

Ironically, while Indian-owned channels can't broadcast news, dozens of overseas radio and TV channels, including BBC, Voice of America, CNN, Fox News and even PTV are free to broadcast to Indian homes.

No other democratic country has similar curbs. None of America's 14,000-plus radio stations, 2,000-odd stations in Spain or the 1,000-plus each in Italy, France, Greece and Australia are barred from airing news and cultural affairs. In fact, many stations are solely news channels, including specialised ones for community radio.

2.4 Furthermore, SITI Cable is also not in any favour of curtailing the rights of DPOs with respect of transmitting any programme that is/has been transmitted by any Doordarshan channels or TV channels permitted under uplinking/downlinking guidelines, including serials and reality shows and International, National and State level sport events/tournament/games like IPL, Ranji Trophy etc because of the following reasons:

2.4.1 In this regard, it has to be borne in mind that any programme/content for which the broadcaster/content owner including Doordarshan has the copyright and grants such license to DPO to transmit such programmes on PS, then certainly it is purely a legal contractual matter and excluding such content from the ambit of PS platform is not only unwarranted but also against the law of the land. If any of the above content which is owned by any broadcaster is transmitted on PS without appropriate copyright license then the same would be wholly illegal and will amount to piracy. It is further submitted that the content owner is the absolute owner of the content and has the supreme right to assign the copyright of such content to anybody and the Authority cannot recommend to curtail the legal right of the DPOs to enter into any commercial contract with such content owners/IPR right holders. Once such rights are obtained by PS providers from their owners, there is no justification whatsoever to exclude them from the ambit of platform services.

2.4.2 The same argument holds good for International, national and state level sport events/tournament/games like IPL, Ranji trophy etc. provided the concerned DPO has obtained all necessary licenses and copyrights to broadcast such sports event/tournament/game. We fail to understand what is the basis for such

embargo and curtailing the fundamental rights of DPO. In this regard, we wish to draw your attention to the observation made by Hon'ble Supreme Court in the *Secretary, Ministry of Information and Broadcasting v/s Cricket Association of Bengal (supra)* wherein the Hon'ble Court was pleased to hold that:

"It has been held by this Court in Life Insurance Corporation v. Manubhai Shah that the freedom of speech and expression guaranteed to the citizens of this country "Includes the right to propagate one's views through print media or through any other communication channel, e.g., the radio and the television. Every citizen of this free country, therefore, has the right to air his or her views through the printing course to permissible restrictions imposed under Article 19(2) of the Constitution". It has also been held in the said decision that "the print media, the radio and the tiny screen play the role of public educators, so vital to the growth of a healthy democracy. Freedom to air one's views is the lifeline of any democratic institution and any attempt to stifle, suffocate or gag this right would sound a death-knell to democracy and would help usher in autocracy or dictatorship..... It follows that a citizen for propagation of his or her ideas has a right to publish for circulation his views in periodicals, magazines and journals or through the electronic media since it is well known that these communication channels are great purveyors of news and views and make considerable impact on the minds of the readers and viewers and are known to mould public opinion on vital issues of national importance." To the same effect is the holding in Odyssey Communications referred to supra. Once this is so, it follows that no monopoly of this media can be conceived for the simple reason that Article 19(2) does not permit State monopoly unlike clause (6) of Article 19 vis-a-vis the right guaranteed by Article 19(1)(g).

204. All the Constitutional Courts whose opinions have been referred to hereinbefore have taken the uniform view that in the interest of ensuring plurality of opinions, views, ideas and ideologies, the broadcasting media

cannot be allowed to be under the monopoly of any one - be it the monopoly of Government or an individual, body or Organisation. Government control in effect means the control of the political party or parties in power for the time being. Such control is bound to colour and/or the electronic media subject of and in some cases, may even distort the news, views and opinions expressed through the media. It is not conducive to free expression of contending viewpoints and opinions which is essential for the growth of a healthy democracy. I have said enough hereinbefore in support of the above propositions and we do not think it necessary to repeat the same over again here. I have also mentioned hereinbefore that for ensuring plurality of views, opinions and also to ensure a fair and balanced presentation of news and public issues, the broadcast media should be placed under the control of public, i.e., in the hands of statutory corporation or corporations, as the case may be. This is the implicit command of Article 19(1)(a). I have also stressed the importance of constituting and composing these corporations in such a manner that they ensure impartiality in political, economic and social and other matters touching the public and to ensure plurality of views, opinions and ideas. This again is the implicit command of Article 19(1)(a). This medium should promote the public interest by providing information, knowledge and entertainment of good quality in a balanced way. Radio and Television should serve the role of public educators as well. Indeed, more than one corporation for each media can be provided with a view to provide competition among them (as has been done in France) or for convenience, as the case may be.

- 2.4.3 As stated above, in the Preliminary Submissions, SITI Cable welcomes formation of any self regulatory mechanism as being followed by satellite channels wherein any viewer who feels offended by any content of the programme can complaint and the said self regulated body investigates the complaints and if necessary, takes strict action against the errant broadcaster.

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

RESPONSE:

In our view, if the Authority suitably modifies the definition of PS and recommends for a mechanism to allow the PS catering to particular area/city, then there would be no need for any review to ensure that PS is not trespassing as the demarcation between a PS and regular TV broadcaster will be there in the very definition of PS. In any event in order to ensure the compliance with the terms & conditions of the permission, we recommend a half yearly review.

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,**

RESPONSE:

We completely agree with this proposal that all DPOs should be registered as Companies under the Companies Act to be allowed to operate PS which is necessary for ensuring uniform legal status and to make these DPOs more accountable.

5. **Views, if any, on FDI limits?**

RESPONSE:

- 5.1 According to SITI Cable, there is an urgent need to bring uniform policy by the Government for FDI limits for all DPOs. A very pertinent question being raised

by the Authority is regarding the present policy being adopted by the Central Government wherein the Government has allowed 26% in private Satellite news channels, however, MSOs registered under the Companies Act can access FDI upto 74% with 49% under automatic route and under such circumstances if such MSOs operate local news channels, the FDI limits in some cases might exceed the permissible limit of 26% leading to an anomalous situation which needs to be addressed.

- 5.2 In this context, we reiterate that excluding news and current affairs category from the programs permitted on PS is not a solution and the same is without any basis. In this regard it may be pointed out that almost all the operational areas of MSOs have local News channels and these are immensely popular amongst local population because of their localised content. **Instead, Authority may recommend to the Government to frame separate FDI norms for PS as the said FDI cap of 26% is with respect to satellite channels and not PS.**
- 5.3 Till the time the above mentioned modifications are carried out in the FDI policy norms, the MSOs having FDI upto 26% in any event cannot be barred from providing platform services containing News and Current Affairs. In case the MSOs having FDI levels exceeding 26% wish to provide the News and Current Affairs PS, they should bring the levels of FDI below 26%. In no circumstance we would recommend and agree with the proposal of the Authority to not allow the News and Current Affairs platform services on local cable channels.
6. **Should there be any minimum net-worth requirement for offering PS channels? If yes, then what should it be?**

RESPONSE:

There is absolutely no need to have any minimum net-worth requirement for offering PS channels. Platform services are a part of platform operations. The networth requirements which have been prescribed for grant of platform licences cover platform services also and no additional requirements are warranted . As it

is with the advent of digitalisation, the DPOs especially MSOs without any subsidy are struggling hard to be in business and serve the subscribers. Please be assured that all MSOs are being given license by the Ministry of Information and broadcasting after due scrutiny only serious players are allowed to be in the field. In case, any MSO is not complying with licensing terms and fails to fulfil its obligations under the license conditions, Ministry has acted strictly against such defaulting MSO and its licenses to operate as MSO has been cancelled. Keeping, the same in view, the present structure is more than sufficient to ensure that only serious players come into the field of cable industry and there is absolutely no need for any minimum net-worth requirement for offering PS channels.

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

RESPONSE:

In this context, it is clarified that the security clearances/conditions which are applicable for private satellite TV channels are otherwise applicable on MSOs when license to operate MSO platform is obtained from the Ministry. Thus the said security clearance is obtained by the Ministry of Information and Broadcasting at the time of granting license to DPOs. Keeping the same in view, PS channels, whose reach would be limited to a geographical area and for every geographical area, DPOs may start new PS channels frequently, it would be neither practical nor feasible to obtain security clearance every time when a new channel is launched, as is the case of private satellite TV channels.

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?**
9. **What is the proposal for renewal of permission?**

10. Should there be any limit in terms of geographical area for PS channels? If yes, what should be these limits. Please elaborate your response with justifications.

RESPONSE:

- 10.1 With the successful implementation of digitalization in DAS notified areas of Phase I and II, India is ready for the advent of digitalization in rest of the country by 31-12-2014 and in such scenario, the entire cable industry is being organized and streamlined and giving ample opportunities to all DPOs to compete and act responsibly so far as its local cable channels are concerned. In view of the same, the proposal that all PS channels be registered with MIB through an online process is indeed a welcome step. In our view, as the entire system would be online, the period of validity of registration may be kept for the same duration as the license for operating the platform with reasonable annual fee per channel. The channels registered with MIB should be granted automatic renewal, unless any of them has violated the advertisement and programming code as given under the Cable TV Act and/or any other stipulated terms & conditions in the permission.
- 10.2 There should not be any geographical restriction as almost all the leading MSOs have laid down extensive fiber network across the cities and States and it is possible to deliver the signals from a single headend via IP/broadband etc. In such a scenario imposing any kind of restriction based on geographical area would be a retrograde step. As the content would be mainly "local", by its very nature, it will not have much relevance outside a particular geographical boundary. However, it is not desirable to impose any kind of restriction by way of regulatory stipulation as with the new technological dispensations the entire State can be served with a single digital cable headend.

- 11. Should there be a limit on the number of PS channels which can be operated by a DPO? If yes, then what should be the limit?**

RESPONSE:

There is no need to limit the number of PS channels which can be operated by a DPO as the number of PS channels will depend on the demand of the local subscriber. In any case, if the range of such PS channels would be limited to one geographical location then obviously, new PS channel will be required to cater to other geographical areas.

- 12. Do you have any comments on the following:**

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

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 channels to another DPO; and

12.3 Compliances with the Programme and Advertisement Code and TRAIs Regulations pertaining to QoS and complaint redressal.

RESPONSE:

12.1 With regard to proposal of non transferability of registration for PS without prior approval of MIB it is submitted that SITl Cable agrees for the said proposal but the said approval should be through automated route wherein a time line should be fixed to decide on all such applications for transfer within the stipulated timeframe.

12.2 SITl Cable is of firm view, that any Prohibition from interconnecting with other distribution networks for re-transmission of PS i.e.non-sharing or allowing the re-transmission of the PS channels to another DPO will tantamount to infringement of the legal rights of the DPOs to enter into business contracts amongst themselves. In any case, any such prohibition without any basis will also

indirectly infringe the rights of the consumers to watch any PS channel/content. Thus we do not agree with the said proposal of Authority.

12.3 We fully agree with the proposal that all PS channels should adhere to the compliances with the Programme and Advertisement Code and TRAI Regulations pertaining to QoS and complaint redressal.

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

RESPONSE:

In our view, there is no need for any restrictions to be imposed on DPOs for offering PS. The present rules and regulations give ample power to the Government, TRAI and district administration to impose restrictions on DPOs, if they are found flouting any law of the land.

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?

RESPONSE:

Again, this should be left to the market forces to decide whether they wish to enter into such arrangement. In any case, DTH at present is providing FM channels and if there is suitable business understanding between the parties as per the law of the land, the DPOs should indeed be permitted to re-transmit already permitted and operational FM radio channels. Also, there should be no restrictions including the number of FM radio channels that may be re-transmitted by a DPO.

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

RESPONSE:

- 15.1 In our submission, the present mechanism for monitoring of PS channel is adequate. The local administration has been given enough powers under the Cable TV Act to act against any erring cable operator including MSO if they are found violating law of the land including the programme and advertisement code prescribed under the Cable TV Rules.
- 15.2 Apart from the above, SITI Cable welcomes formation of any self regulatory mechanism as being followed by satellite channels on the lines of NBSA and BCCC wherein any viewer who feels offended by any content of the programme can compliant and the said self regulated body investigates the complaints and if necessary, takes strict action against the errant broadcaster.

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 with full justification.

RESPONSE:

We fully agree with the proposal for similar penal provisions as imposed on TV broadcasters for violation of the terms and conditions of their permissions may also be imposed on PS.

17. 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?

RESPONSE:

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 should be between 8 months to one year. This time period is much needed to put into place all the compliances viz-a-viz the PS channels.