June 28, 2022

Shri Anil Kumar Bhardwaj
Advisor (Broadcast & Cable Services)
Telecom Regulatory Authority of India (TRAI)
Mahanagar Doorsanchar Bhawan
Nehru Marg (Old Minto Road)
New Delhi, 110 002
To: advbcs-2@trai.gov.in
cc: jtadvbcs-2@trai.gov.in

Re: USIBC Comments on Consultation Paper on Issues relating to Media Ownership

Dear Shri Bhardwaj,

Since our inception in 1975, the U.S.-India Business Council (USIBC) has tirelessly promoted an inclusive bilateral trade environment between India and the United States, and consistently advocates for a strong, strategic bilateral relationship in support of entrepreneurship, job creation and economic growth. We participate in stakeholder dialogue to ensure that India's digital economic growth flourishes on par with the global digital and e-market ecosystem. As you may know, USIBC is an integral part of the U.S. Chamber of Commerce, the largest business advocacy organization in the world, operating in over 50 countries to promote free enterprise and advance trade and investment, representing companies of every size and from every sector. USIBC directly represents some 200 companies based in India, the United States, Europe, and friendly Asia nations.

Our membership includes broadcasters, telecom operator, equipment manufacturers, systems integrations, and companies reliant on secure, trusted and efficient global communications networks. Our members also include e-commerce, sharing economy, and a diverse set of digital enterprises, as well as the technology service providers and product producers that support and enable India's rapidly expanding digital economy and telecom manufacturing sectors. In short, USIBC promotes a broad set up digital policies focused on promoting bilateral trade and commerce, creating a transparent and attractive investment environment, and the general ease of doing business.

USIBC has a long history of working with the Telecom Regulatory Authority of India (TRAI). Most recently, we hosted the TRAI Chairman at our West Coast Digital Summit which focused on new technology and start-ups in coordination with the Ministry of Electronics and Information Technology (MeitY) Start-up Hub (MSH). As a U.S. co-chair of the U.S.-India Information and Communications Technology Working Group (ICTWG), we also develop strategies for long-term,

1615 H Street, NW, Washington, DC 20062 | 202-463-5679 | info@usibc.com | usibc.com

multi-stakeholder cooperation. We support technical interactions, such as 5G, quantum computing, artificial intelligent, and other strategic technologies.

Focusing on the consultation paper at hand, at the outset, we would like to take this opportunity to thank TRAI for bringing out the much-needed discussion about media ownership.

Upfront, USIBC and members underscore that the Consultation Paper (CP) uses a set of assumptions that are either untrue or lack evidence, and we emphasize that the Government of India has a clear enforcement regime via the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (IT Rules). Further, the CP asks whether digital services belong in the same relevant market as other media. Data collected by online platforms on user interaction and viewership metrics are confidential in nature and protected under the Copyright Act, 1957 (Copyright Act). Any regulatory framework that mandates sharing of such data would restrict a platform's ability to monetize its intellectual property (IP) and violate the Copyright Act. Finally, plurality and diversity are inherent to the content strategy of over-the-top (OTT) platforms that look to expand their subscription base by creating content that appeals to both mass and niche audiences. Collectively, the mischaracterization of these foundational element of the CP skews the overall thrust of the analysis and recommendations, suggesting the need of a pre-consultation process with stakeholders to ensure that TRAI utilizes factually accurate underlying assumptions.

Our submission below outlines a few fundamental concerns with the CP.

1. Concern Regarding Core Assumptions Used within the Consultation Paper

In Para 2.30 of the CP, TRAI asserts that self-regulatory mechanisms have a limitation because they are not enforceable, suggesting there are no enforcement tools/corrective action when a non-abiding entity ignores the prescribed rules/guidelines. This is untrue in case of OTT platforms. In fact, the Central Government prescribed the IT Rules last year. The rules provide that grievance redressal is to be undertaken through a three-tier mechanism, which is primarily self-regulatory in nature, and several businesses are already compliant with these rules. Reports suggest that as many as 51 OTT platforms already follow the law and have sent their details to the Ministry of Information and Broadcasting (MIB).

In Para 2.3, the CP alludes that the decline in traditional media and entertainment (M&E) segments' revenue is attributable to technological convergence. However, market data indicates that the M&E sector is growing at a healthy rate, except for the disruption caused by the pandemic. The media landscape today is significantly different from what it was five years ago, and even more different from what it was 15 years ago. The threshold for entering the media business has only reduced with time due to the increased availability of resources, a widening talent pool, and a rising consumer base with means to access different types of media among other factors. These changes erode the basis for suggesting any market intervention.

1615 H Street, NW, Washington, DC 20062 | 202-463-5679 | info@usibc.com | usibc.com

Growth of digital segments in M&E do not lead to severe disruptions in the market share. Digital segments have gained market share because of increased mobile penetration and cheap data which is in line with the government's *Digital India* push. The growth of the internet has expanded the variety of content from both number of sources as well as increasing modes of consumption and access.

Digitalisation has significantly lowered entry barriers for information dissemination, leading to the entry of diverse and plural opinions and a democratized media landscape. The key drivers of the OTT industry include growing internet and smartphone access, rising investment in content creation for creating targeted niche products, significant increase in online content consumption and increasing ad technology and format innovations. Data indicates that the M&E sector is growing in an orderly fashion and digital segments are contributing significantly to the growth story. The follow is a table that supports this growth story, noting that OTT as a percentage of the overall markets is growing rather steadily, but still accounts for less than 10% of the overall sector.

Year	Television (%)	Print (%)	Gaming (%)	OTT(%)	Search and Social (%)	Audio (%)	Cinema (%)	Animation, VFX, Post Production (%)	OOH and others (%)
2015	46	27	1	1	4	3	11	4	2
2019	37	25	6	4	6	5	10	5	2
2020	37	25	8	6	7	6	6	3	1
2021E	33-35	22-25	9-10	7-9	7-9	5-7	5-7	2-4	1

Source: CII Big Picture Summit, 2021

In Para 2.5., the TRAI adopts a different position and attributes the decline of the TV broadcasting segment's growth to "*the adverse impact of the pandemic in the economy and absence of sufficient fresh content on TV post mid-April 2020*".

In fact, data shows significant growth across the media landscape between the last consultation on media ownership and the current one.

The Evolution of the Media Landscape

	Media Sources		Consumption	
	Past CP	Current CP	Past CP	Current CP
Print[1]	99,660 (Registered Publications in 2013)	1,44,520 (Registered Publications in 2021)	45 Cr. (Circulation in 2013)	52.05 Cr (Circulation in 2018-2019)
Television	2462 (News Channels in 2010)	3883 (News Channels in 2021)	73.1 Cr. (TV Viewing Individuals in 2012)	89.2 Cr. (TV Viewing Individuals in 2021)

[1] *The Office of the Registrar of Newspapers for India (RNI)*
[2] *MIB; FICCI-EY M&E Reports*
[3] *MIB; FICCI-EY M&E Reports*

1615 H Street, NW, Washington, DC 20062 | 202-463-5679 | info@usibc.com | usibc.com

Digital Media	-	24004 (News websites and Video Platforms)	12.45 Cr. (Digital Reach in 2012)	49.76 Cr. (Digital Reach in 2021)

2. Adequacy of Pre-Existing Regulators

Pre-existing regulators have the expertise to address issues arising from concentration of media ownership. In our view, concentration of media ownership is not inherently problematic for end-users, because concentration is not an automatic proxy for properly evaluating competition. One can have both a highly competitive and relatively concentrated market. If there is an abuse of dominant position or anti-competitive practices in the media sector, the Competition Commission of India (CCI) is already sufficiently empowered to investigate the same and issue relevant directions. The CCI is not only statutorily required to balance consumer welfare and promote competition but is also empowered to consult with other regulators on issues where their input may be required.

Apart from the antitrust perspective through which the CCI can undertake evaluations, the Securities and Exchange Board of India (SEBI) is also empowered to examine changes in control over enterprises to protect shareholders and ensure the financial integrity of the securities market and transparency in company affairs.

Thus, existing regulators are well-equipped to deal with any market distortions, and further regulation is likely to be counterproductive. Imposing any further restrictions is likely to disincentivize investment in the growing media sector, hinder the ability of companies to launch novel and additional services and platforms, and adversely affect consumer choice and viewpoint plurality.

3. Relevant Market and Evidence-based Regulation

Determining the 'relevant market' is the responsibility of the CCI. Section 2(r) of the Competition Act, 2002 (*Competition Act*) defines 'relevant market' as "*the market which may be determined by the commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets*." It is clear from this definition that the CCI has the statutory ability and expertise to *determine* the 'relevant market'. The CCI typically undertakes such determinations of 'relevant market' on a case-by-case basis and refrains from being overly prescriptive.

In the event that TRAI seeks to provide a parallel framework to determine the 'relevant market', there is a possibility that the same set of facts will be evaluated by different regulators under diverging frameworks, thereby leading to uncertainty about business outcomes and an adverse impact on the ease of doing business in India.

[4] Media Report
[5] *FICCI M&E Reports 2022 & 2013*
[6] *FICCI M&E Reports 2022 & 2013*

1615 H Street, NW, Washington, DC 20062 | 202-463-5679 | info@usibc.com | usibc.com

Further, a market study should precede market interventions and regulators should prove a clear link between the actions it takes and the market failure it looks to solve. In this case, TRAI has not conducted a market study or shown evidence of market failure. Relevant markets cannot be delineated without a market study.

Market studies are used to identify issues in the market and predict emerging ones. They explore reasons behind a harm or a market failure and lists the policy options available to regulators. Regulators may then decide their strategy and address concerns from a competition policy, enforcement, regulatory, or other policy perspective. Market studies could also propose solutions to mitigate consumer harm, promote competition, and reduce the possibilities of violations.

In fact, according to the Organization for Economic Cooperation and Development (OECD), "*Market studies assess whether competition in a market is working effectively and identify measures to address any issues that are identified. The most common market study outcomes are recommendations for regulatory changes, calls for firms to change their behaviour, or law enforcement interventions*".

TRAI in the Consultation Paper on Market Structure of Multiple System Operators (MSOs) observed that '*in a well-functioning market, where firms are competing on fair terms and there are no artificially erected barriers of entry, there is no need to impose restrictions. However, if there is little or no competition or in case where barriers to entry exist, there is the distinct possibility of abuse of dominance by the service providers*'.

TRAI in its 2009 Recommendations to MIB on Media Ownership said that "*A detailed market study and analysis may be carried out by the MIB for identifying/determining the safeguards. The results of such analysis may be put in public domain and discussed before finalizing the safeguards*."

The CCI is sufficiently empowered to undertake relevant market studies to assess whether regulatory intervention is required to address antitrust issues and to determine the 'relevant market' for such evaluations.

In any event, we note that as a result of the very high level of demand-side substitutability in the media landscape, free TV channels, pay-TV channels, video-on-demand (VOD)/subscription VOD (SVOD) services and other forms of audiovisual media all exist with each other to acquire and distribute the best possible content (movies, as well as documentaries, series, kids content, etc.). In short, all video services providers, whether they provide pay-TV services, free-TV services, SVOD/VOD services, cost-free video platforms, online music platforms, or social media services, compete with one another for consumer's time and money on a daily basis.

1615 H Street, NW, Washington, DC 20062 | 202-463-5679 | info@usibc.com | usibc.com

4. Definition of Control in the Media Sector

No separate definition or criteria is needed for 'control' in relation to companies in the media sector. From an antitrust perspective, the need to develop a separate definition of 'control' specifically for the media sector does not arise as the definitions and principles embodied in the Competition Act can be applied by the CCI to the media sector in its investigations, if any. Additionally, SEBI can also examine concerns of takeovers and change in control over listed companies from perspectives apart from antitrust.

Further, there already exists uncertainty arising out of the diverging standards laid down by CCI and SEBI in relation to 'control'. If TRAI formulates yet another definition for 'control', it will create further parallel jurisprudence, leading to even more business uncertainty which is likely to adversely impact the ease of doing business in India.

5. Data on viewership is proprietary

Viewership metrics and other data on user interaction collected by digital businesses are confidential in nature and protected under the Copyright Act. Government access to such data without adequate safeguards could affect India's global competitiveness, especially in the M&E sector.

In Para 4.37 of the CP, TRAI asserts that there is a need to create a new mechanism for measuring the volume of consumption and reach of digital platforms. We submit that any such metric should not require private businesses to share intangible property they hold in the form of datasets and algorithms.

Businesses deploy various strategies to acquire customers and rely on data insights to improve consumer experience and retain their interest. These intangible IP assets are essential for an online video streaming service to thrive in a competitive ecosystem.

The Copyright Act protects data insights which are trade secrets. Further, datasets and source code could reveal sensitive information about business strategies. Creation of IP assets also involves considerable investment of time and resources.

Europe which has a thriving digital ecosystem specifies that governments may ask for mandatory data access only in case of a market failure or specific harms that the government identifies in the European Strategy for Data.

6. Viewpoint on Plurality and Online Curated Content platforms

OTT platforms engender plurality and diversity organically in their content strategy. Measuring media plurality is a complex exercise which involves various tools to measure the level of plurality in a given territory. The focus in this context is particularly on news content which is in general not relevant to OTT services that do not carry news content. The UK communications regulator Ofcom has developed a Measurement Framework for Media Plurality which can serve as a positive example of how such assessments can be made (see in particular pp 11-14).

1615 H Street, NW, Washington, DC 20062 | 202-463-5679 | info@usibc.com | usibc.com

In any event, plurality and diversity of content is an imperative for OTT platforms. Expansion of one's subscriber base is a crucial element of the content commissioning strategy of an SVOD platform. It is necessary to balance consumer preferences for mass entertainment movies, niche and/or indie content, and regional content when an online platform makes content available on its platform.

A platform with more diversity and plurality widens and deepens the platform's reach. A research commentary on 'The Effect of Information Technology on Product Variety and Sales Concentration Patterns' makes two findings that support this:

- Platforms organically offer a diversity of products as it gives them a competitive advantage towards their competitors.
- Online platforms offer a wide repertoire of niche products and supply the relevant filters to discover these products

Even in case of advertising-based VOD (AVOD) platforms, a recent report by Nielsen finds that "*brands seek out platforms that authentically engage a diverse customer base and avoid content that is not well received by the diverse audiences represented in storylines.*"

Key trends in the OTT segment also shows the segment's expansion into regional markets, a sign of the segment's movement towards more diversity. As a case in point, many language OTT products like aha (Telugu), Koode (Malayalam), Letsflix (Gujarati) and City Shor TV (Gujarati) entered the market in 2020. The share of regional languages in overall OTT video content will double from 27% in 2020 to 54% by 2024. Currently there are more than 40 OTT platforms (51 according to some reports), of which around 12-15 consist of exclusive regional language platforms. According to the EY FICCI report, more than 50% of the total time spent on OTT platforms will be on regional content in India.

7. User Generated Content (UGC)

UGC should be kept out of the purview of any potential regulatory framework. USIBC believes that no further regulatory framework is required to oversee media ownership. However, in the event that TRAI seeks to establish a separate framework, we submit that UGC should be kept out of its purview. UGC has an existing regulatory framework under the IT Act and the IT Rules where MeitY has responsible for regulating UGC and is regularly assessing sufficiency of the existing regulatory provisions (see example Public Comments on the proposed draft for amendment in Part-I and Part-II published on 6 June 2022).

8. India Already Has a Framework to Monitor All Issues Around Ownership and Control and There Is No Need for a Separate Regulator

There is already an all-encompassing statutory framework enacted by the Parliament of India for monitoring ownership and control in markets including media – the Competition Act, 2002 ("Competition Act"). Considering the fact that the Competition Act occupies the legislative field on the subject matter under consideration, an important question before the TRAI

1615 H Street, NW, Washington, DC 20062 | 202-463-5679 | info@usibc.com | usibc.com

considers ex-ante sectoral regulation is whether any separate regulatory framework can be introduced and if so, whether it would add any value.[7]

Additionally, other agencies monitor and regulate mergers, acquisitions and takeovers as highlighted below. There are also limitations placed on ownership and control of media companies through the Foreign Direct Investment (FDI) Policy.

Competition Law: CCI is designated as the regulator and subject matter expert to regulate, investigate and act upon any anti-competitive activity across sectors. The CCI's oversight over consolidation covers **all mergers that significantly affect competition**. It has the authority to take suo-motu cognizance of issues under Section 19 of the Competition Act, to enquire into an alleged contravention of Section 3 (anti-competitive agreements) or Section 4 (abuse of dominant position) if it causes or is likely to have an appreciable adverse effect on competition. The CCI also defines the 'relevant market' when identifying competitors for a product or service that could throttle competition.

The CCI has also in the past demonstrated its ability to understand the nuances of the media sector. It looked into seven merger notifications in the media, entertainment, and broadcasting space between 2011 and 2019, adopting a holistic approach and conducting a case-by-case assessment for each. For example, the CCI used different fit-for-purpose parameters to understand market share when looking at different types of media. The CCI used 'gross office receipts' to understand the film production and supply market, and 'number of TV channels and viewership data' for the TV market to understand the combined market share of the Walt Disney Company and Twentieth Century Fox.[8] In the Sony Pictures/Aqua Investment combination[9], the commission adopted a different approach for calculating market share in the sports broadcasting businesses. The CCI examined bidding data for a 5-year period and examined the market share of the transacting parties in terms of number and value of the contract, Gross Rating Points (GRPs) and advertising revenue. When looking at broadcasting, in the matter between DishTV and Videocon, the CCI looked at the substitutability of various categories of distributors (MSO, DTH, IPTV, and HITS) and concluded that they are not substitutable.

The CCI has also proven its ability to conduct appropriate market studies when analysing competitive behaviour in the media. In the Prime Focus Limited/Reliance MediaWorks Limited combination[10], the competition regulator conducted a market investigation and concluded that there were no AAEC concerns due to the presence of several competitors. In 2017, the CCI approved the combination between AT&T Inc. and Time Warner Inc.[11] and observed that there

[7] Strowel, A. and W. Vergote (2016), "Digital Platforms: to Regulate or Not to Regulate? Message to Regulators: Fix the Economics First, Then Focus on the Right Regulation", Responses to the Public Consultation on the regulatory environment for platforms, online intermediaries, data and cloud computing and the collaborative economy.
[8] Combination Registration No. C-2018/07/583.
[9] Combination Registration No. C-2016/09/436.
[10] Combination Registration No. C-2014/08/198.
[11] Combination Registration No. C-2016/11/456.

were several players in the streaming services market and in the audio-visual content distribution market thereby providing a choice to customers.

In addition to investigative experience and depth, the CCI maintains a strong consumer welfare perspective. In a note by India on *Vertical mergers in the technology, media and telecom Sector* for the OECD, it was acknowledged that when assessing vertical mergers, the CCI considers efficiency gains while "ensuring that the consumers not lose out"[12].

Company Law: Under Chapter XV of the Companies Act, the National Company Law Tribunal (NCLT) examines issues related to the rights of shareholders and stakeholders before approving a merger or amalgamation. Under this framework, the NCLT has the power to send a notice to sectoral regulators and other authorities and seek their opinions before approval.[13]

Securities Law: The Securities Exchange Board of India (SEBI) under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 may mandate public disclosures, open offers, and decide the minimum price in case an acquirer acquires more than 25% voting rights or 'control' of a company.

Foreign Direct Investment: Under the Consolidated FDI Policy 2020, for Broadcasting Content Services, 100% FDI is allowed for uplinking of non-news and current affairs TV channels through the government approval route, while 26% is allowed for uplinking news and current affairs as well as terrestrial broadcasting FM through the approval route. The MIB recently extended this FDI restriction to digital news. For Broadcasting Carriage Services, up to 49% FDI is allowed for DTH through the automatic route and with further (49%-74%) requiring approval. For cable networks FDI through the automatic route is allowed up to 49%.

Transfer of uplinking/downlinking licenses: The Uplinking/Downlinking Guidelines do not allow transfer of license between two companies. In case of a merger or acquisition, the licensee can transfer the license only after security clearance, NCLT approval, and approval from other authorities like SEBI.

All the above shows that authorities in India are already comprehensively monitoring issues related to ownership and control throughout the economy, including the media sector. There is no need for a separate / additional monitoring framework specifically for the media, particularly when it has not been shown that the existing systems have failed in any way. Creating additional regulatory structures would be a drastic overstep, especially in the absence of proven market harms or institutional failure.

[12] *Organisation for Economic Co-operation and Development, Directorate for Financial and Enterprise Affairs – Competition Committee, "Vertical mergers in the technology, media and telecom sector – Note by India", 2019*
[13] *Section 230(5), Companies Act, 2013.*

1615 H Street, NW, Washington, DC 20062 | 202-463-5679 | info@usibc.com | usibc.com

9. There Is No Evidence to Support Restrictions on Vertical Integration in the Broadcasting and Cable Services (B&Cs) Sector

TRAI has failed to demonstrate that restrictions on vertical integration would benefit media plurality. In fact, restrictions on vertical integration have created anomalies in the B&CS sector.

- Restrictions on vertical integration break the natural complements between *broadcast networks* and *distribution networks*

Generally, the main concern with vertical integration in the broadcasting segment is the potential abuse of market power, so regulatory measures on vertical integration may be introduced when there is no framework to regulate any anti-competitive integration. The DTH Guidelines have had a restriction on vertical integration since 2001. The HITS Guidelines in 2009 also replicated the language in the DTH Guidelines and restricted broadcasting companies and DTH operators from owning more than 20% paid-up equity capital in the HITS license applicant. The existing stipulations on vertical integration were made when the sector was nascent, and it wasn't certain how competitive it would become. The experience of more than a decade shows that it is time for these separate stipulations to be removed – the B&CS sector has matured considerably, and the competition law framework has solidified with the Competition Commission evaluating several mergers in the sector since relevant provisions of the Competition Act came into force in 2011.

Competition in the sector today vitiates all of these ***potential concerns*** that may have existed in 2001 and hence there is no need for any restriction on vertical integration in B&CS today. Hence any such restriction is but an artificial barrier that prevents these natural complementary services from playing out in the industry to the benefit of consumers and growth of the industry.

B&CS is a hypercompetitive landscape comprised of multiple industry stakeholders

Content production	Broadcasters	Distribution Platform Operators (DPOs)	Consumers
• 45 lacs directly and indirectly employed in the creative sector comprising millions of artists, writers, composers line producers, cine workers, sportsmen, commentator etc.	• 350 private TV broadcasters produce content or acquire the broadcasting rights for the 901 TV channels. • The 901 channels are further divided into 327 pay channels and 574 Free-to-Air (FTA) channels • One public broadcaster, i.e., Doordarshan.	• 1724 MSOs • 60,000 odd cable operators • Four Direct-To-Home (DTH) operators • DD Free Dish	• 89.2 crore TV viewers or 21 crore households

1615 H Street, NW, Washington, DC 20062 | 202-463-5679 | info@usibc.com | usibc.com

Technological advancements such as interoperability, broadcast-broadband convergence, cable TV digitization, and 5G make an integrated contented value chain possible. Initiatives like infrastructure-sharing, STB interoperability, and adoption of the ATSC 3.0 standard anticipate this integration and seamless delivery of content. Another positive that arises from this situation is the ability to provide interactive content, but to achieve this there is an urgent need to review artificial barriers on content delivery pipes.

Vertical integration leads to efficiencies such as productivity gains and better quality of services.[14] The vertically integrated entity could combine the overhead, R&D, sales, or other costs of two related products (broadcasting and distribution) and achieve efficiency from joint production and sale.[15] It helps both consumers and the industry. Integration between upstream and downstream services lead to enhanced coordination and seamless delivery of content. It leads to cost saving for the consumer and enables them to offer better services to consumers for a lower cost. Further, services will compete on price, quality of content, and quality of service and this will lead to better outcomes for consumers.

Vertical integration could maximize economies of scale in the broadcasting segment. Marginal cost is the cost incurred by a distributor in supplying television to one extra consumer and average cost is the total cost of producing television content and distribution divided by the audience.[16] If one entity has control over both costs, then it is possible to lower marginal cost below average cost.

Vertical integration could also lead to alignment of incentives across the value chain and prevent freeriding. The broadcasting segment in India is extremely litigious and there is constant friction between broadcasters and distributors. Broadcasting and distribution are natural complements and vertical restrictions create an artificial barrier that distorts incentives.

The TRAI should evaluate these positive externalities that arise from forbearance on vertical integration restrictions and review existing restrictions. This would help unlock the potential of the broadcast segment and make it globally competitive.

[14] *Jeffrey Church, 'The Competitive Effects of Vertical Integration: Content and New Distribution Platforms in Canada ' [27 April 2011] 30.*
[15] *Fiona Röder, 'Strategic Benefits and Risks of Vertical Integration in International Media Conglomerates and Their Effect on Firm Performance' (DEco thesis, University of St. Gallen 2007) 89.*
[16] *Ibid.*

In light of the above, we would like to present our detailed comments and reforms required in the regulatory processes, policies, practices, and procedures to create a conducive business environment in India. Accordingly, USIBC provides direct responses to the consultation questions below, and has attached our previous submission to MIB on proposed reforms to the broadcasting sector. Should you have any questions, please do not hesitate to contact me or my staff: Jay Gullish, jgullish@usibc.com in Washington, D.C. Meanwhile, USIBC is committed to enhancing commerce and investment between India and the United States and appreciate that our submission will be given due consideration.

Sincerely,

Warm regards,

Ambika Sharma

Ambika Sharma
Managing Director
U.S.-India Business Council, India

1615 H Street, NW, Washington, DC 20062 | 202-463-5679 | info@usibc.com | usibc.com

USINDIA BUSINESS COUNCIL

September 10, 2019

Shri Vikram Sahay
Joint Secretary (P&A)
Ministry of Information & Broadcasting
A Wing, Shastri Bhawan
New Delhi - 110001

Re: USIBC Recommendations on the Framing of the National Broadcast Policy

Dear Shri Sahay,

Let me start by thanking you for giving us the opportunity to provide recommendation on the development of India's National Broadcast Policy (NBP). The U.S.-India Business Council (USIBC) really appreciates the Ministry of Information and Broadcasting's (MIB) willingness to engage and consult with industry stakeholders as it embarks on drafting India's National Broadcast Policy. The Media and Entertainment (M&E) industry is a key growth driver for the Indian economy. The sector grew at a compound annual growth rate (CAGR) of 10.9% from FY17-18; and is expected to grow at a CAGR of 13.1% to touch $38 billion by FY23 from $20 billion in FY18.[1] India is one of the fastest growing M&E markets globally due to the increase in device penetration, digitization, lower data tariffs and demand for fresh content, and thus, it is an opportune time to draft a broadcast policy which lays down a long-term roadmap to enable the orderly growth of the sector.

As you may know, USIBC is an integral part of the U.S. Chamber of Commerce, the world's largest business federation representing more than 3 million businesses of all sizes, and sectors, as well as U.S. state and local chambers, and other industry association members. Internationally, USIBC is one of 25 country and regional business councils, and we directly represent 250+ companies based in India, the United States, Europe, and Asia. Our membership includes entrepreneurial, small, medium and large corporations from across sectors highly critical to the digital economy and the M&E industry. Our membership also includes India's top information technology (IT) companies as well as an innovative array of financial investors, global software, equipment, IT services, telcos, e-commerce, social media, and sharing economy innovators, all of which are central to India's digital transformation. Together, we strongly support the *Digital India* initiative, and related efforts around *Make-in-India* and *Start-up India* programs.

In this letter, we offer recommendations for framing the NBP in line with international best practices, and also suggest reforms that would help the policy succeed in achieving India's digital economy goals. The following represent USIBC's top recommendations which can function as the guiding principles for the forthcoming NBP:

[1] Media ecosystems: The walls fall down', FICCI-KPMG Media and Entertainment Report 2018, available at https://assets.kpmg/content/dam/kpmg/in/pdf/2018/09/Media-ecosystems-The-walls-fall-down.pdf (last accessed on 30 May 2019)

1615 H Street, NW, Washington, DC 20062 | 202-463-5679 | info@usibc.com | usibc.com

U.S. CHAMBER OF COMMERCE

- ***Ensure a light touch approach to regulation***: To take the Indian M&E sector to the next level, a light touch regulatory approach is required to ensure regulatory flexibility, certainty and predictability, and importantly, leaves the aspects like tariff, discounting, and cable rentals to consumer choice and market forces. USIBC also recommends a three-year moratorium from any further regulatory interventions for the cable and satellite sector that might negatively impact consumers, and cause economic hardship to other stakeholders.

- ***Facilitate a robust content ecosystem***: The NBP should provide a springboard to attract capital, creativity and innovation towards higher-quality content. The aim should be to facilitate the creation of new, high quality content and carriage services for the consumers at affordable prices as well as to enable greater monetization of content by the content creators.

- ***Statutory Recognition to Self-Regulatory Codes:*** The self-regulation of content by the Indian broadcasting industry has proved to be successful, and has become a good practice internationally. Given that the broadcasting industry today, is competing with the wider digital content economy, prescriptive content regulation is likely to negatively impact the creative eco-system. Therefore, USIBC recommends that the NBP propose a statutory recognition of Broadcasting Content Complaints Council (BCCC) and News Broadcasting Standards Authority (NBSA) codes as approved/endorsed oversight mechanisms just like the Advertising Standards Council of India (ASCI) code for advertisements.

- ***Ensure consistency and fair access:*** The objective of the NBP should be to lay down a consistent framework that will enable growth of the broadcasting sector in light of evolution and convergence of technology. To achieve this, it is imperative that there is **consistency** between NBP and some of the government's other policies and regulatory framework that include certain provisions that either overlap with, or have an impact on, the media sector such as National Digital Communication Policy (NDCP) 2018 and the Personal Data Protection Bill (PDPB). The NBP should reflect ***core principles such as network neutrality, voluntary infrastructure sharing and spectrum efficiency*** as delineated in the NDCP, 2018. Similarly, the NBP should refer all the aspects of data and privacy to the upcoming PDPB.

USIBC stands committed to assist you in your efforts and we hope that our comments will be given a timely and sympathetic consideration. We welcome an opportunity to meet you at your convenience, and are happy to provide further information or clarification in relation to the issues in this representation. In the meanwhile, please do not hesitate to contact me or my staff: Jay Gullish, jgullish@usibc.com, in Washington, D.C., and Abhishek Kishore, akishore@usibc.com, in New Delhi. Once again, I would like to personally thank you for your leadership, and the Council and its members hope to discuss these recommendations at your convenience.

Sincerely,

Nisha Biswal
President, U.S.-India Business Council

Current Status and Challenges of the Indian Broadcasting Sector

The Indian broadcast industry, made up of print, electronic, television, radio, and outdoor segments, has witnessed significant change with the penetration and use of modern digital communications. The broadcasting sector has become indispensable in the current economic and social environment and has reached markets worldwide by way of reducing costs, expanding efficacy, and promoting economic growth.

India's television industry grew from $8.5 billion in FY17 to $9.1 billion in FY18, thereby registering a growth of around 9.5 percent.[2] India is now the world's second largest TV market in the world after China. With the implementation of Phase III of licensing, the FM radio industry grew at 15.3% in 2015 and is projected to grow at over 16% for the next five years.[3] The overall radio segment increased by around 6.5% in 2017, on the back lingering effect of demonetization between November 2016-2017 and the impact of the goods and services tax (GST).[4] The overall Indian M&E industry provides employment to 3.5 - 4 million people, including both direct and indirect employment as of 2017.[5]

The transformation in the broadcasting sector is, *inter-alia*, due to convergence of mediums of content delivery as well as content consumption platforms since traditional linear TV content is now also available through handheld devices and personal computers and online content can be viewed on connected TV sets. Further, co-axial and fiber optic cable can deliver converged services such as voice, video and data. Therefore, the lines between platforms for delivery of content are blurring.

As broadcasting evolves it is no longer confined to technological boundaries. Over the years broadcasting has become very complex and demands sizable investments. Broadcasters are compelled to invest in rich content delivery services that are relevant to users of traditional television as well as to users of smart technology (such as smartphones, tablets etc.) that is constantly evolving. Hence, the competition is not just limited to traditional broadcasters but now includes online content providers as well.

As consumers become more driven to personalized experiences, platforms need to keep up with dynamic content. In this extremely dynamic and fluid environment, some of the challenges that the broadcasting industry is facing are as follows:

- Changing content delivery models;
- Sharp evolution of content distribution technologies;
- Changing viewer behavior and preferences;
- Demand for new and innovative content;
- Lack of a robust and transparent audience measurement system that can measure viewership across platforms;
- Multiple laws governing individual aspects of the sector;
- Regulatory delays and burden of compliance;
- Content protection and piracy;

[2] Ibid.
[3] Ibid.
[4] India Today Annual Report 2017-18, available at http://specials.indiatoday.com/aajtaknew/download/TV_TODAY_AR_2017-18.pdf (last accessed on 30 May 2019)
[5] Indian Media and Entertainment Industry Report, March 2019, India Brand Equity Foundation, available at https://www.ibef.org/download/media-and-entertainment-mar-2019.pdf

1615 H Street, NW, Washington, DC 20062 | 202-463-5679 | info@usibc.com | usibc.com

- Inability to attract new investment;
- Inability to share infrastructure and the consequent effect of burgeoning costs;
- Lack of skilled manpower and,
- Lack of effective cyber security.

Despite the above challenges, the Indian broadcasting sector has seen robust growth and has been a big employment generator in the last decade. Hence, to a relook at the matters impacting the sector is important to ensure that this sector continues to grow and becomes a strong pillar of the overall Indian economy. Accordingly, we recommend that the vision of the National Broadcast Policy should be seek to lay out a ***long-term roadmap to enable orderly growth of the sector backed by a robust content eco-system and deployment of latest technologies to give Indian consumers the freedom to access content of their choice*.** In fact, a policy construct in the broadcasting should be geared towards maximising consumer choice, which entails providing consumers with high quality, diverse content and in turn create scope and avenues for greater investments, skilling and overall content eco-system augmentation.

1615 H Street, NW, Washington, DC 20062 | 202-463-5679 | info@usibc.com | usibc.com

Proposed Core Pillars for the National Broadcast Policy

1. Establish Centrality of Intellectual Property

- **Alignment of Broadcasting Regulations with the National IPR Policy and International Treaties:** The sectoral regulations ought to be aligned with the objectives of national policies such as the National IPR Policy 2016 which specifically calls for rationalisation of extant laws with intellectual property framework, and enabling monetisation of intellectual property. Also, since India is a party to international obligations under instruments such as the Berne Convention, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), and World Intellectual Property Organization (WIPO), we recommend that the NBP should aim to harmonise the extant economic regulation of copyrighted works with commitments to granting copyright protection under these treaties.

- **Curbing Piracy:** Although India has made significant improvements in intellectual property (IP) protection and has jumped to 36th position (out of 50 jurisdictions) in the U.S. Chamber of Commerce's International IP Index[6] (and included as an annex in our submission), we recommend that the NBP focus on curbing piracy via strong enforcement mechanisms for copyright related metrics. In this context, key institutions like the Intellectual Property Appellate Board (IPAB) require greater institutional capacity. Further, piracy continues to plague the content eco-system where TV channel signals (including live sports telecasts) are particularly vulnerable to signal leakages through piracy by multiple System Operators (MSOs) and Local Cable Operators (LCOs). USIBC is greatly appreciative and supportive of the anti-piracy efforts of the Maharashtra Cyber Digital Crime Unit (MCDCU),[7] and building upon this success, ***USIBC recommends the NBP to promote a national enforcement agency, and empowering it to deliver appropriate anti-piracy measures.***

2. Focus on Making India a Content Creation and Export Hub

- **Grant Infrastructure Status to the Broadcast Sector:** USIBC recommends the NBP to lay the foundation of granting infrastructure status to the broadcast sector. Broadcasting is a capital-intensive business that requires constant infusion of funds in both content creation as well as its dissemination. A sizeable investment in the sector has been made by private stakeholders without much support from the government. For the broadcast infrastructure to develop and grow further in line with global standards, large-scale capital is required. Investments in content creation and its dissemination are substantial and have a high gestational return period. Further, on account of high taxation, few incentive programs, and a high regulatory burden, there is little appetite for meaningful investments in the sector. The lack of investment impacts the overall growth of the sector. Granting the broadcasting sector 'infrastructure status' will encourage investments in the sector by improving profitability, and will in turn, have a cascading effect that will accelerate the development of content production eco-system, lead to the development of content distribution infrastructure, create opportunities for employment in content production, distribution and broadcasting services and will lead to the overall growth of the economy.

[6] https://www.uschamber.com/report/us-chamber-international-ip-index
[7] https://www.theglobalipcenter.com/u-s-chamber-recognizes-maharashtra-cyber-unit-as-2019-ip-champions-in-india/

1615 H Street, NW, Washington, DC 20062 | 202-463-5679 | info@usibc.com | usibc.com

Giving the broadcasting sector infrastructure status would entitle the broadcasting sector to the following benefits:

(i) Tax benefit under section 80-IA (tax holiday) and section 72A (carry-forward of losses), could lead to classifying the broadcasting sector as a priority sector by the Reserve Bank of India (RBI);

(ii) Could reduce the cost of financing, and

(iii) Could result in enhanced rights of way for laying optical fiber networks by state governments and municipalities.

Further, aligning the bilateral double taxation avoidance agreements with various countries could permit some costs such as satellite transponders, et al., to be treated as royalties so that foreign parties. By preventing double taxation, broadcasting sector costs would be reduced.

- **Self-Regulation of Content:** The Indian M&E industry is a fast growing sector which caters to wide linguistic diversity and has massive opportunities to access international markets. This export potential is unrivalled, and accordingly, flexible, light-touch regulation would enable Indian content to more readily be broadcast internationally. The NBP should thus incorporate the linguistic and cultural aspects of India's diversity, and promote this cultural expression through regulatory forbearance and self-regulation in the first instance. These policies would of course stimulate content development, and its distribution, and hence stimulate investment, job creation, innovation, and exports. Oppositely, any excessive content regulation would thwart the potential of investment in the M&E sector. ***Hence, we urge the NBP to promote self regulation of content which is performed in a responsible and transparent manner along with ensuring the protection of consumer interest. Therefore, USIBC recommends that the NBP propose a statutory recognition of Broadcasting Content Complaints Council (BCCC) and News Broadcasting Standards Authority (NBSA) as approved/endorsed oversight mechanisms just like Advertising Standards Council of India (ASCI) code for advertisements.***

  The Policy should consider international best practices around film certification, and allow the self-regulatory bodies to frame rules around uniform rating of content.

- **Creation of Content Ecosystem:** India's diverse population is increasingly demanding and consuming original content. Demand for content is expected to drive the next phase of growth of the broadcasting sector as well as online content platforms in India. Therefore, a healthy environment to support innovation, freedom of speech and expression backed by a strong self-regulatory framework will promote the growth of content production and content distribution eco-system. Also, the audio-visual sector has been identified as one of India's 12 Champion Services Sectors. Exports from the broadcasting industry can be promoted under this modality. ***USIBC recommends the NBP to emphasize the setting up of an Export Promotion Council for the broadcasting industry to give further impetus***

1615 H Street, NW, Washington, DC 20062 | 202-463-5679 | info@usibc.com | usibc.com

U.S. CHAMBER OF COMMERCE

to the M&E sector including the establishment of strong regional movie production centres across India.

- **Employment Generation and Skilling:** The broadcast sector is expected to grow manifold with the growth of online content platforms, consequently an increase in demand for trained manpower for content production and distribution is expected. The NBP should promote media and technical institutes that are linked to the industry to facilitate development of industry relevant curriculum and industry ready human resources that will help in accelerating the growth of the sector. Training manpower to create world-class content should utilize the best available technologies and partner with global leaders.

  Accordingly, the NBP should promote skilling of manpower to supplement the Make-in-India concept a success and facilitate growth in the broadcasting sector.

  The NBP should:

  - ***Promote media and technical institutes that are linked to the industry to facilitate development of industry relevant curriculum for skilling of manpower in technical as well as content production areas which will help in accelerating the growth of the sector and employment;***

  - ***Introduce dedicated four year courses at the Indian Institutes of Technology (IITs) and the National Institutes of Technology (NITs) for the broadcasting sector akin to specialised courses for the IT and telecommunication sectors; and.***

  - ***Promote among the National Law Universities to offer special courses dealing with IPR issues in the broadcasting sector.***

3. Promote Foreign Direct Investment by Improving Ease of Doing Business

Foreign direct investment (FDI) inflows into the information and broadcasting sector during March 2016 to June 2018 rose to US$ 7.2 billion.[8] Demand growth, supply advantages and policy support have been the key drivers in attracting FDI. FDI in the Indian broadcasting sector has generated employment, boosted foreign exchange reserves, and provided wider choice for Indian consumers in carriage and content services.

FDI not only brings the best technology from leading economies to India, but it also provides an impetus to local manufacturers and content producers to create jobs in India. The broadcasting industry in India has benefited from mergers and acquisitions owing to the expansion and diversification of services offered by private companies. To promote FDI, the Government has put in place an investor-friendly policy, where most sectors have been opened for 100% FDI under the automatic route. Sectoral cap on broadcasting sector has been raised across various activities, which has attracted investment and innovation. Policy and regulatory frameworks in this regard has seen a trend of liberalization over the years, which has enabled consumers to avail a variety of high quality content and services. However, some artificial investment restrictions still exist

[8] Supra 5

such as 20% cross holding restrictions in the licensing guidelines for direct-to-home (DTH) and Head-end in the Sky (HITS) issued by MIB, which have created barriers for fresh investments coming into the sector. Additionally, FDI is restricted to 49% with government approval in the uplinking of news/current affairs channels and FM radio. This is despite the Department for Promotion of Industry and Internal Trade (DPIIT) permitting 100% FDI through the automatic route in the broadcast distribution verticals. ***USIBC recommends the NBP to focus on continuing to further liberalize and deregulate FDI across all activities in the broadcasting sector.***

The Government has also introduced various reforms aimed to make doing business in India easier, however, there is scope for improvement. India now ranks at 77 out of 190 nations as per the World Bank's Doing Business Report 2018.[9] Several legislative and administrative changes have helped identify bottlenecks in processes such registration/incorporation and compliance requirements for companies in India.

To facilitate the ease-of-doing-business (EODB) in the broadcasting sector, ***simplifying the uplink-downlink guidelines is of utmost importance***. Processes under these guidelines are characterised by a multiplicity of approvals spanning various Ministries/Departments such as the MIB, the Department of Space, the Ministry of Home Affairs, the Wireless Planning & Coordination (WPC) Wing and the Network Operations and Control Centre (NOCC) under the Ministry of Communications.

Additionally, it is important that the procedural framework for grant of permission/registration/licenses is simplified and made less restrictive. Pursuant to this, MIB has launched a portal called 'Broadcastseva.gov.in' which provides a single window facility to applicants of various permissions, registrations, licenses, etc. to be granted by MIB for broadcast services. *However, since regulatory compliances continue to restrict players from entering the sector,* ***USIBC recommends the NBP to encourage the use of digital processes such as Broadcastseva along with adopting a self-certification and self-compliance modality after a one time full due -diligence to allow for mature broadcasters to benefit from seamless broadcast seva services. Additionally, redundant processes and timelines should be streamlined using improved IT and digitized processes.***

4. Promote Make-in-India

India is a market of close to 200 million television households and still growing. However, Indian set top boxes (STB) manufacturers have been unable to produce quality STBs or TVs at globally competitive costs, therefore majority of STBs deployed in Indian homes are imported.

Due to the convergence of technologies, gradual rise in demand for upgrading to high definition services and potential for return path data (RPD) capable STBs, a surge in demand is expected for STBs. Therefore, domestic STB producers maybe incentivized by policy changes in terms of duties and levies to make them more competitive. In addition to the above, manufacturing of equipment, networks and digital communication devices is lacking in India.

As previously mentioned, ***USIBC recommends that the NBP grant the broadcasting sector 'infrastructure status', tax benefits/sops, creating special broadcasting/economic zones/parks, rebate of duty for import of setting up a manufacturing plants, developing research centers, reducing the entry barriers for start-ups by reducing the initial cost and compliance burden, especially for new and innovative segments and services will***

[9] Doing Business 2019, World Bank, available at https://www.worldbank.org/content/dam/doingBusiness/media/Annual-Reports/English/DB2019-report_web-version.pdf (last accessed on 30 May 2019)

all help in giving the government's Make-in-India policy a success, lead to creation of employment and boost the broadcasting sector.

It will also maximize India's contribution to global value chains, by focusing on domestic production, increasing exports and reducing the import burden. Accordingly, the government should:

- ***Rationalize taxes, impose levies and differential duties to incentivize local manufacturing of equipment, networks and devices to the extent of domestic value addition;***
- ***Introduce a manufacturing program for identified product segments in digital communication technologies;***
- ***Attract and incentivize global original equipment manufacturer (OEMs) and generic component players to setup manufacturing bases in India;***
- ***Encourage research and development (R&D) and promote design led manufacturing in India by leveraging best in class software/ R&D capabilities;***
- ***Ensure the availability of essential background IPR in a fair, reasonable and non-discriminatory (FRAND) manner required for promoting local manufacturing;***
- ***Incentivize fab and/or fab-less design and manufacturing of chips and system on a chip (SOC) for network and devices in emerging technologies;***
- ***Attract global talent from Indian diaspora to create best in class enterprises; and,***
- ***Incentivizing private operators to buy domestic broadcast products***.

5. Promote Efficient and Effective Spectrum Allocation and Utilization

Satellite spectrum is a crucial and expensive overhead of broadcasters. Therefore, it is important that spectrum be utilized in the most efficient and cost-effective manner. The NBP should promote an open sky policy for C-band, Ku-band and Ka-band and efficient utilization of pre-contracted international satellite spectrum.

Broadcasters that have long-term bulk C-band spectrum and contract with international satellite operators are being pressured into uplinking new channels over Indian satellites by the Indian Space Research Organisation (ISRO). This is leading to financial burden on broadcasters on account of set-up of additional uplink chains, costs attributable to satellite migration like recalibration of distribution platform operators' (DPO) reception eco-system and unutilized pre-contracted satellite spectrum. An open sky policy for C-band, Ku-band and Ka-band will enable broadcasters to negotiate spectrum directly from satellite operators and will help reduce costs for news gathering and promote efficient utilization of satellite spectrum. Accordingly, the NBP should introduce an open sky policy.

To promote efficient and cost-effective allocation and utilization of satellite spectrum, the NBP should be aligned with the National Digital Communication Policy 2018.

1615 H Street, NW, Washington, DC 20062 | 202-463-5679 | info@usibc.com | usibc.com

The Policy should also encourage and facilitate:

- ***Sharing of bandwidth and Earth station/teleport;***
- ***Sub-leasing of bandwidth to promote efficient utilization of unused/underutilized spectrum;***
- ***Additional capacity from private players to be contracted to overcome capacity deficit;***
- ***The SATCOM bandwidth prices be reduced substantially so as to ensure competition;***
- ***New technologies, namely, Ka band, high-throughput satellites (HTS), low- and medium-Earth orbit (LEO, MEO) constellations, etc. be permitted for usage at affordable prices; and,***
- ***Harmonize use of spectrum across the country under the National Frequency Allocation Plan.***

6. Promote Infrastructure Sharing

TV and broadcast distribution networks and systems involve physical infrastructure and communication networks comprising of active and passive infrastructure such as buildings, power supply, antennas, transmission systems, optical fiber network, satellite transponders, right of way, etc. Sharing of infrastructure in TV broadcasting would entail shared use of distribution networks and services for delivery of services to consumers. Voluntary sharing of infrastructure in TV broadcasting distribution network can reduce the cost per subscriber of network establishment, operations and maintenance, accelerate geographical expansion of services, and reduce the rural-urban digital divide. In this regard, the recommendations by the Telecom Regulatory Authority of India (TRAI) too recognize that voluntary sharing of infrastructure will help enhance the available distribution capacities, reduce capital and operative expenditure, which will in turn help bring down the prices of broadcasting services to consumers. The NBP should promote voluntary sharing of infrastructure amongst the broadcasting sector to reduce cost impact by using un-utilized/underutilized resources. Sharing of infrastructure between TV broadcasting distribution networks is being proposed to be done only on a voluntary basis so to enable broadcasters to assuage themselves that proposed infrastructure sharing between distribution platform operators will not *inter-alia* result in compromising of systems security, revenue leakages and/or illegal retransmission of content.

In this respect, the NBP should promote voluntary sharing of infrastructure:

- ***Across platforms and sectors in the converged environment;***
- ***With public service broadcasting networks;***
- ***With other departments like Department of Telecom etc.; and,***
- ***Including head end across various distribution platforms.***

1615 H Street, NW, Washington, DC 20062 | 202-463-5679 | info@usibc.com | usibc.com

Changing of teleports by broadcasters between pre-approved teleports should only involve intimation (and not an approval process) as all parameters are already verified to avoid duplicity of work, enhance efficiencies and rationalization of costs.

7. Prescribe Minimum Net-Worth or Entry Fee Requirements for MSOs

With an aim to discourage fly-by-night MSOs from foraying into the field of distribution of broadcasting services, it is submitted that NBP should provide for introduction of mechanism to prescribe entry fee or minimum net-worth requirements for MSOs. Paving the way for prescribing benchmark entry fee or net-worth requirements for entities to become eligible to register themselves as MSOs will also pave the way for providing level-playing field between MSOs vis-à-vis DTH and HITS operators. In this regard, it may be noted that while there is no entry fee or minimum net-worth requirements for MSOs however, an entry fee of $1.4 million (approx.) has been prescribed for DTH operators and entry-level minimum net-worth of requirement of $ 1.4 million (approx.) has been prescribed for HITS operators. Prescription of entry fee and/or minimum net-worth requirements will ensure that only financially stable and serious players enter the business of distribution of broadcasting services.

8. Incentivize Sports Broadcasting

With growth of the sports broadcasting eco-system, sports viewership is on the ascendency in India. This can help enhance overall growth potential of not only the broadcasting sector but contribute substantially for building a viable and self-sustaining sports eco-system in the country. As outlined in the U.S. Chamber Releases Study on Intellectual Property in the Global Sports Economy[10] (and included as an annex in our submission), the potential of the sports economy is truly massive, ranging from broadcasting, gate sales, merchandise and advertise – both domestically and internationally. Most Indian sports bodies and associations depend heavily on sports broadcasters for revenues. To enhance the sports economy and its impact on broadcasting, ***the NBP should consider promoting:***

- ***Replacing mandatory sharing of sports broadcasting signals with a fair framework founded on commercially viable constructs;***

- ***Remove processing fees and time-consuming approvals for live broadcasting of sporting events; and,***

- ***Empower rights-holders to monetize sporting events by discarding burdensome restrictions/caps on advertising revenues.***

9. Incentivise Weather Broadcasting

With climate change and extremities witnessed in India with weather perils, the growth of the weather broadcasting eco-system, weather viewership is on the ascendency in India. This can help enhance overall growth potential of not only the broadcasting sector but contribute substantially for building a viable and self-sustaining weather eco-system in the country. With the treatment of the current broadcasters on static content (temperatures in cities or disaster reporting), the spread of weather advisory is growing on social

10

1615 H Street, NW, Washington, DC 20062 | 202-463-5679 | info@usibc.com | usibc.com

media.

Every market has its own kind of disruptive weather. India had five cyclones in 2018 and two so far in 2019. Yet every television station should be able to present forecasts, detect and visualize that weather for their audience in their own way, reflecting their own news brand. Today's technologies and products allow weather stations and broadcasters to go beyond other TV weather graphics software. Broadcasters should have the liberty to choose from among the most advanced sets of weather data, broadcast production tools and visualization features for any platform ever created. Channels should be given flexibility to pick only the capabilities they need to produce the weather solution they want basis their audience.

Most businesses like retail, health, life style, aviation, energy depend heavily on weather change which can affect their revenues. If the weather advisory in broadcast sector was to flourish, ***the NBP should consider promoting:***

- ***Replacing current static treatment of reactive weather reporting;***
- ***Mandatory reporting local weather events and advisory;***
- ***Get to more story telling of the events and advisory; and,***
- ***Train more meteorologist and environment graduates to take weather reporting as a profession.***

10. Market Research and Audience Research:

There is an imminent need for increasing the sample size to measure the viewership patterns of the diverse population of the country and minimise sample tampering. Return Path Data (RPD) enabled STBs can quickly scale up the sample size for audience viewership measurement and also neutralise the effects of sample tampering.

The NBP should promote audience viewership measurement metrics that captures viewership patterns, has a diverse, robust, tamper proof and large sample size, has a transparent methodology and encourages competition in the sector.

***The Policy should*:**

- ***Encourage equal participation by all stakeholders;***
- ***Mandate increase in sample size to have more accurate measurement;***
- ***Introduce a comprehensive and tamper proof system of sampling such as by way of return path data;***
- ***Move to a regime of real time data measurement and analysis; and***
- ***Encourage competition in the audience measurement sector.***

11. Enable Disaster Relief Management System:

1615 H Street, NW, Washington, DC 20062 | 202-463-5679 | info@usibc.com | usibc.com

The NBP should ensure that Disaster Relief Management System (DRMS) and protocols are put in place for both on-air (satellite) assets and land (teleport/playout) assets for the broadcasting sector.

12. International Treaties:

India is yet to sign the WIPO Treaty on cross border protection for broadcast signals for several years now despite several rounds of discussions with stakeholders. Reciprocal initiatives with other countries are required to establish India as a global hub in the M&E industry. ***Hence, USIBC recommends the NBP to encourage India becoming a member of multi-lateral treaties on broadcasting and protection of intellectual property rights, which could also positively impact its ranking in the International IP Index***.

13. Use of Standards and Best Practices to Improve TV Delivery and the Consumer Experience

To facilitate the delivery and reception of different types of broadcast services through terrestrial, cable, DTH and internet, TVs being sold in India should be mandated to follow the Bureau of India (BIS) standard for integrated digital TV (IDTV) receivers. This will ensure that all TVs being sold in India would be capable of receiving TV services through various broadcast delivery systems without the need for a STB.

The broadcast industry is heavily affected by varying levels of audio and lack of audio quality in all content, including ads with widespread consumer dissatisfaction with audio. There are multiple reasons for this, which need to be addressed through the setting and implementation of a national standard on broadcast loudness, as has been done in many markets including the U.S., Europe, etc.

Set and implement standards for improving accessibility and intelligibility of television content through features like dialogue adjustability, audio description and personalization.

Set and implement standard for hybrid broadcast and internet services to enable delivery of interactive content and programming on television.

1615 H Street, NW, Washington, DC 20062 | 202-463-5679 | info@usibc.com | usibc.com