NEWS BROADCASTERS & DIGITAL ASSOCIATION
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Telecom Regulatory Authority of India
4th, 5th, 6th & 7th Floor, Tower-F,
World Trade Centre, Nauroji Nagar,
New Delhi: 110029

Re: TRAI Consultation Paper on Framework for Service Authorisations for provision of Broadcasting Services under the Telecommunications Act, 2023

Dear Sir,

The News Broadcasters and Digital Association (NBDA) is an association of 24x7 television broadcasters and digital media entities/platforms who broadcast and/or publish news and current affairs programmes and content. NBDA represents several important and leading national and regional private news and current affairs broadcasters who run news channels and digital platforms in Hindi, English and Regional languages.

The Telecom Regulatory Authority of India (TRAI) on 30.10.2024 has issued a Consultation Paper (CP) seeking comments/ feedback from stakeholders on the draft authorisation framework and the terms and conditions of broadcasting service authorisations to be included in the Rules to be made under the Telecommunications Act, 2023.

At the outset, NBDA submits that the basic premise of including broadcasting services within the authorization regime under the Telecommunication Act, 2023 is flawed and incorrect. All the questions posed in the CP appear to be predicated on an implicit assumption that "broadcasting services" are inherently integrated within the scope of "telecommunication services".

In view of the above, it is submitted that the TRAI should withdraw the CP for the reasons given herein below:

I. Broadcasting Service cannot be clubbed under the umbrella of Telecommunication Services:

1. That historically broadcasting services were brought under the definition of telecommunication services just for extending the jurisdiction of regulatory authority TRAI on the television distribution services.

2. That with the massive growth of the private broadcasting services in the late 1990s and early 2000 and with the augment of DTH broadcasting, there was a need felt to bring the broadcasting services (primarily the television distribution services) under a regulatory authority. Since there was no decision taken on establishment of an independent regulatory authority to regulate the broadcasting distribution services, it was decided by the Government of India to bring the broadcasting distribution services under the ambit of the existing Regulatory Authority entrusted with the telecommunications i.e., TRAI.

3. That the Government notified broadcasting services and cable services to be telecommunication services vide its notification dated 9th January 2004. This inclusion automatically extended the jurisdiction of TRAI to broadcasting services. This was sought to be a stop gap arrangement till the time an independent regulatory authority for broadcasting services was established. However, this did not imply that the broadcasting services are telecommunication services or *akin* to telecommunication services. Even at present, TRAI has separate divisions to handle the telecom and broadcasting sectors, which also suggests that the two fields are entirely different and independent.

4. That without prejudice to the foregoing, there is no merit or benefit to undertake the exercise of migration of existing permissions to new authorization regime as contemplated in the CP.

5. That the broadcasters of television channels are required to obtain permission from the Ministry of Information and Broadcasting (MIB) under the Uplinking and Downlinking Guidelines. They are not required to obtain any license under Section 4 of the Indian Telegraph Act, 1885 (Telegraph Act) as noted in the CP, nor can such permission be construed as grant of license under Section 4 of the Telegraph Act.

6. That MIB has been granting permission for uplinking and downlinking of TV channels for over the last two decades. There are specific requirements of referring the applications to certain ministries like Ministry of Home Affairs, Department of Space, Ministry of Revenue etc. basis the type of applications submitted. With the adoption of the Broadcast Seva Portal, the process has been streamlined at MIB's end. There may be further finetuning and smoothening of the process which can be done by MIB. However, bringing broadcasting services within the authorization regime under the Telecommunications Act is uncalled for and may completely dilute the presence of broadcasting services in the country.

7. Even otherwise, the present regime under the Telecommunication Act, 2023 is itself not settled – various provisions of the Act are under challenge, and are sub-judice before various courts of law. The CP is premised on the

seamless integration of broadcasting services under the Telecommunication Act, however, there exists several loose ends. Under such circumstances and lack of any procedural or legislative clarity, bringing broadcasting services within the ambit of the authorization regime under the Telecommunication Act can further complicate the process and yield no benefit.

II. Legislative Revision and Exclusion of Broadcasting Services

1. The initial draft of the Telecommunications Bill circulated in September 2022 did include "broadcasting services" within its ambit. The same read as under:-

> *"telecommunication services" means service of any description (including broadcasting services, electronic mail, voice mail, voice, video and data communication services, audio, text services, videotex services, fixed and mobile services, internet and broadband services, satellite based communication services, internet based communication services, in-flight and maritime connectivity services, interpersonal communications services, machine to machine communication services, over-the-top (OTT) communication services) which is made available to users by telecommunication, and includes any other service that the Central Government may notify to be telecommunication services".*

2. That the language at the time was broad and all encompassing and included an array of services such as broadcasting, email, voice and video communications, and even OTT services. However, following substantial opposition from various stakeholders—including NBDA—it became evident that such inclusion was erroneous. Stakeholders raised well-founded concerns about overlapping regulatory jurisdictions, potential content regulation conflicts, and the fundamental distinctions between telecommunications and broadcasting services, which serve vastly different public and commercial interests.

3. Stakeholders, particularly NBDA, in its initial response voiced several key objections regarding the inclusion of broadcasting within telecommunications. These included:

    i. **Content vs. Carriage Regulation:** Telecommunications primarily facilitates data and voice carriage, while broadcasting is content-focused, subject to distinct content codes and self-regulatory bodies like NBDSA, ASCI, and BCCC.

    ii. **Distinct Service Characterization:** Telecommunication relates to person-to-person communication, while broadcasting disseminates programming to a general audience. Conflating the two disregards the unique nature of broadcasting.

iii. **Increased Regulatory Burden:** Including broadcasting within telecommunications would impose additional licensing requirements, further complicating an already heavily regulated sector.

4. Responding to these robust arguments, the revised draft of the Telecommunications Bill (issued for consultation in December 2023) appropriately removed broadcasting from its scope. The final definitions of "telecommunication" and "telecommunication services," as passed by Parliament, now exclude broadcasting and OTT services, preserving their distinct regulatory frameworks. This is an intentional exclusion, which aligns with the feedback from stakeholders and respects the clear functional separation between telecommunications and broadcasting. Under the new updated legislation, the relevant definitions read as under:

"Telecommunication service" means any service for telecommunication".

"telecommunication" means transmission, emission or reception of any messages, by wire, radio, optical or other electro-magnetic systems, whether or not such messages have been subjected to rearrangement, computation or other processes by any means in the course of their transmission, emission or reception".

5. That broadcasting is currently intended to be regulated under the Uplinking and Downlinking Guidelines and Cable Television Networks Regulation Act, 1995, both under the MIB. Notably, TRAI's present consultation disregards these developments, suggesting an approach that could reintroduce similar requirements under the Telecommunications Act—potentially in a more restrictive form. This appears to be an attempt to impose telecommunication-style authorizations on broadcasting, an incongruity that suggests the need for TRAI to collaborate with MIB on a coherent, unified broadcast regulation strategy.

III. Convergence is a technological construct

1. That there is a fundamental difference between broadcasting and telecommunication. The convergence between telecommunications and broadcasting services is incorrectly assumed in the CP. The convergence, if any, is only at the delivery mode in *some* distribution mediums and not all. The telecommunication services only transmit the voice / data from one person to another, and does not, in any way relate to generating the content of that voice/data. In contrast, broadcasting services involve generation of content which appeals to a wider audience and is done in a one-to-many manner as against one-to-one in telecom.

2. That "convergence" is a technological construct and does not in any manner convey that the underlying functions have also merged. There is a dramatic difference in the types of services offered and that does not call for any form

of convergence of laws, regulations etc. For example, e-commerce, e-finance or e-health has got nothing to do with telecommunication, and it does not mean convergence of health, banking and finance into telecom. Similarly, broadcast is communication to public and the world at large whereas telecommunication is communication between two or more individuals. The mere possibility of offering telecommunication services using a broadcast infrastructure or vice versa cannot be the cause and reason to converge the ministries and laws.

3. That convergence was first conceived in an era where the homes were connected through fixed telephone lines. Convergence was conceptualized for making the voice-data-video services to consumers at home in form of "triple play" when technologies were only limited to cable/fiber connected homes. The DTH services were not available in the country at that point of time. With the opening of the DTH broadcasting services, the broadcasting transmission got a shot in the arm and the last mile connectivity issues were taken care of, especially in the far-flung areas and difficult terrains in the country. The DTH services also brought in digital addressability in distribution. The triple play which was contemplated started taking a back seat due to the evolvement of alternate technology and the advancement in technology. One of the key constituents of "triple play" was fixed line voice telephony service. There has been a massive de-growth in the fixed line services in the country due to phenomenal growth in the usage of the mobile telephony. Hence, one constituent of the "triple play" has already been highly compromised, leaving only the broadband and television services in the foray. For TV services, the dependency of cable has reduced greatly as the cable service in homes has also taken a backseat. There are a greater number of households now connected with the DTH services than the cable services. Apart from four private pay DTH players, there is a government owned Free Dish, the DTH Service of Prasar Bharti which reaches almost 43 million households free of cost. The cable connected homes are only 40% of the total TV homes and 60% are connected by Pay DTH and Free Dish. The DTH services are one way communication services and disseminate TV and Radio signals. Hence, the convergence of broadcasting service which is one-way and used for dissemination of information and telecommunication service which is a two-way communication service will not be appropriate. Broadcasting service cannot just be seen as technological service, as it is much more than that. There cannot be a situation wherein the equipment, hardware and related software is installed and the broadcasting services become operational. The content is the mainstay of the broadcasting services. It requires soft skills and cannot be solely made dependent on technologies as is possible in the telecommunication service.

4. That whatever convergence of technologies was required has already happened to a great extent in the last decade and MIB and TRAI have handled

all the legal, regulatory and policy requirements due to such technological changes.

5. That one of the key goals in moving to a converged regulatory framework is to achieve technology neutrality. This term is intended to convey the meaning that a licensee retains the ability to choose the technology and equipment it will use to provide the licensed service. The main objective of the unified licensing framework should be to promote ease of doing business and sustain competition. However, an integrated framework for the regulation of carriage of broadcasting services will lead to monopolies in the sector, ongoing economies of scale and scope.

6. That considering the development in the technologies, there are various industries which are evolving which are based on the internet, satellite services. Media and Entertainment (M&E) services and telecommunication services are independent sectors and important business verticals in the present environment. The M&E sector has grown leaps and bounds from print, movies, magazines, terrestrial television channels to private television channels and their OTT's/digital hubs. There are various stakeholders of broadcasting industries such as content providers/producers/creators, technology service providers, broadcasting channels, distribution platforms, rating agencies, self-regulatory bodies. Likewise, there are various specialised Acts enacted for regulating the broadcasting sector such as Cable Television Networks Regulation Act 1995 (Cable TV Act), Telecom Regulatory Authority of India Act 1997, Copyright Act 1957, Information Technology Act 2000, and Trademarks Act 1999, various regulations notified by TRAI, various self-regulatory guidelines/advisories issued by the sector regulator/self-regulatory bodies etc.

7. That because the M&E sector uses certain common services such as internet bandwidth and making the content available on mobile phones, it cannot be the only reason for combining the regulations of two different business sectors such as "broadcasting" and "telecommunication" into one. Merging broadcasting with telecommunication will adversely impact broadcasting as an independent sector in terms of its recognition in the eyes of regulators, financial institutions, its audiences etc.. Only because some of the technologies are commonly used and the services are provided on the mobile phones cannot be the reason for convergence because with this logic all e-commerce, e-medicine, e-payments businesses/services which are accessed through mobile phones shall be merged in telecommunication sector.

8. That progressing on this line could have a black hole effect and any attempt to bring these stakeholders of M&E industry under the telecom licensing regime or to subject them to comply with any other similar licensing obligations by treating them like telecom operators in the guise of

convergence would lead to a catastrophic impact. It would result in effectuating and administering regulatory euthanasia to the broadcast and cable sector, making it an unaffordable business to continue.

9. That it may be noted that some of the 'Open Internet' principles as proposed to be enshrined in the Digital India Act may also be contrary to the ideas of convergence. The convergence may result in creation/concentration of market power by wiping off most of the competing smaller broadcasters or distribution platforms and may facilitate and promote gatekeeping practices whereas the 'Open Internet ideas' attempts to prevent them. If convergence of "telecommunication" and "broadcasting" is to take place in one, with a mandate that broadcasters need telecom licence to operate or need to pay for the spectrum or buy it in an auction directly or indirectly, it would mean most of the broadcasters out of around 900 players would not be in a position to either buy spectrum in auction or even afford to make licence fee / spectrum charges payments, and that would mean broadcasting would become an exclusive privilege in the hands of a chosen few rich who have deep pockets to afford provision of broadcast services. This would be promoting concentration of market power in the name of convergence and eliminating other forms of distribution and technologies by creating a non-level playing field.

10. That there should not be any self-triggered regulatory changes which act as a catalyst in wiping off of certain products and services as currently being offered by traditional TV broadcasters, who already have suffered heavily on account of side effects of drastic regulatory changes.

11. That the broadcasting sector, for one, must be governed by a separate policy framework. With a converged policy framework, there is (a) the risk of "false equivalence" being drawn between the sectors; and (b) the risk of regulation of certain sectors by people who are not experienced or specialized enough to deal with sector-specific issues. Convergence is a technological construct and as such, it must not be misconstrued to converge the policy and regulatory framework of telecommunication services and broadcasting services.

IV. Broadcasting is an exercise of freedom of speech and expression

1. That broadcasting is an exercise of freedom of speech and expression vis-à-vis licenses issued under Section 4 of the Telegraph Act by the Government. Thus, it is an important question which needs to be examined as to whether bringing "broadcast" in the ambit of "telecommunication" would result in Government control and influence on media, which would result in redefining the very philosophy of "free speech" and make it subject to licensing terms. Broadcast of free speech cannot be construed as an act which requires licensing from Government.

2. That there is no rationale to include broadcasting services under telecommunication services and the distinct identity of broadcasting services should be maintained. The broadcasting industry is dependent on human creative abilities whereas the telecommunication industry is driven by technical advancements and technology.

3. That Section 3(1) of the Telecommunications Act, 2023 may at best be applied to the entities like the teleport operators, DTH service providers etc. However, this section cannot apply to the broadcasting companies. The medium of delivery, at best can fall under the licensing regime of telecommunications (that too till the time the broadcasting services are delinked from telecommunication services), but covering all aspects of broadcasting under Telecommunications Act, 2023 is unwarranted and uncalled for.

4. That the premise of alignment of broadcasting services with telecommunication services is incorrect. The DTH Guidelines, HITS Guidelines, IPTV Guidelines have been working fine and there is no need to have a common framework as all these distribution mechanisms are different and a common framework without considering the nuances of each mechanism may not work in the interest of the industry as a whole. One-Size-Fits-All approach underlying these changes will bring more complications instead of promoting ease of doing business. Simplifying and fine tunings in the regulatory framework could be done and should be a continuous process. Applying the same terms and conditions under the Telecommunications Act to broadcasting services may not serve any purpose as there is no rationale for making rules for television broadcasting under the Telecommunications Act.

5. That frequent and numerous changes in the key regulatory provisions have far reaching consequences, which not only disturbs the working of the industry but also results in consumer angst and ire towards the stakeholders in the industry and the consumer frustration also results in migration of consumers to alternative medium or technology. Hence, TRAI should move towards light touch regulations wherein it promotes healthy growth of the industry and the consumers are benefitted by the state-of-the-art technological offerings, innovations at affordable costs.

6. That the Indian television industry not only caters to the viewers in India, but also reaches the Indian diaspora in almost all the countries of the world. This is a shining example of globalization of the Indian business. Hence, the need is not to stem the growth but to give it an enabling environment where it can flourish and contribute in India's emerging position as a soft power in the changing world order.

7. That the broadcasting industry is already under stress due to various reasons and any such onerous requirements may further enhance the stress level for the industry especially for the smaller and medium sized broadcasters.

V. Questioning the Assumptions of the Consultation Paper:

1. That the CP appears to be based on a fundamental misconception, presuming that "broadcasting services" could seamlessly align within the legal construct of "telecommunication services." Notably, the Telecommunications Act explicitly delineates and excludes broadcasting services from the purview of telecommunications, further highlighting the distinction intended by the legislature. This clearly indicates a legislative intention to treat broadcasting services as a distinct category. Any departure from this intent could introduce substantial regulatory conflict and confusion.

VI. Pending Judicial Review

1. That the Uplinking and Downlinking Guidelines 2022 have been challenged by the NBDA before the Hon'ble Kerala High Court, which has granted an interim order vide its Order dated 16th October 2023. This judicial intervention indicates that many aspects of these Guidelines remain legally contentious and under challenge, specifically in relation to Public Service Broadcasting obligations, penalties, and ambiguous language used in the Programme and Advertising Codes. In light of these legal proceedings, it is surprising that TRAI would seek to realign broadcasting services under the Telecommunications Act without awaiting judicial resolution of the issue.

2. That consequently, in the background of the interim order having been granted in respect of the Uplinking and Downlinking Guidelines by the Hon'ble Kerala High Court and the withdrawal of the Broadcasting Services (Regulation) Bill 2024 indicates that there are still aspects of the broadcasting sector which are being discussed and deliberated upon. Introducing proposed rules may lead to duplication and/ or confusion, *both* regarding substance (i.e. overlap between the telecom and broadcasting sector) and process (i.e. competent authority for deciding aspects of the framework which are crucial to smooth functioning of the broadcasting sector). It may be noted that the authority competent to deal with the aforementioned Guidelines and Bill is the MIB.

VII. Spectrum Allocation

1. That another point of significance relates to spectrum allocation. Broadcasting relies on satellite spectrum, which is not typically auctioned but is administratively allocated, a principle reaffirmed in TRAI's recent recommendations and reiterated by the Telecom Minister. This approach supports the co-existence of stakeholders by preserving broadcasting spectrum for public and commercial broadcasting.

VIII. Unwarranted Alterations in the existing definitions

1. That while reserving the right to submit further comments to each issue raised in the CP, it is submitted that the proposed definitions under the CP can lead to ambiguity and confusion. For instance, Digital Satellite ***News*** Gathering is now defined as Digital Satellite ***Content*** Gathering. However, the word *content* in relation to broadcasting is not clearly defined under the CP, nor under any other legislation.

2. That therefore, by making such alterations, the CP: (i) arbitrarily increases the scope and; (ii) attempts at providing new meaning to the term "content", without any legal or logical basis.

IX. Issues in the proposed approaches to migration

1. That the CP recommends two approaches to migrate from the existing regime to the proposed terms and conditions under the Telecommunications Act. However, it provides that till the term of their license, the already authorised entities will be allowed to function under the extant regime until such term expires. Such an arrangement would definitely lead to the existence of two parallel regimes. Therefore, different broadcasters would be subject to different terms and conditions for their functioning, despite being in the same sector. This would hamper the level playing field in the market and would also place certain broadcasters at an unfair advantage over others. Moreover, it will also create administrative uncertainty and confusion.

X. Unclear breach terms

1. It is stated that the existing penal provisions for breach of terms and conditions of permission by the broadcasters are sufficient for regulating the sector and do not warrant any regime shift, to align with the provisions of the Telecommunications Act. These provisions have brought about a sense of accountability among the broadcasters and are being complied with to the fullest. Introducing a different penal regime would not add any value to the present system. On the contrary, it will only create a sense of confusion and chaos, which would adversely impact the overall regulation of the broadcasting sector.

In sum, it is recommended and reiterated that the existing authorization regime for the broadcasting sector must not be tinkered with to converge the broadcasting and telecommunication sectors. As stated above, even under the new Telecommunication Act, many key issues are under deliberation and in the middle of it, if the broadcasting sector is also brought within its ambit, then it would further render the law inconsistent and incoherent. It would also create operational differences between the telecommunication and broadcasting sectors – which are inherently distinct and must be dealt with separately.

This CP's assumptions about broadcasting's classification within telecommunications appear both unfounded and counterproductive, given prior legislative and consultative efforts to maintain their separation.

Accordingly, it is reiterated that TRAI should suspend this consultation and, instead, assist in developing broadcasting-specific legislation that would more appropriately address the unique needs of the broadcasting sector without the unnecessary convergence with telecommunication regulation.

In the event that a consultation is held with the stakeholders, kindly send the intimation to facilitate NBDA to participate in the consultation process.

This response is being submitted on behalf of the Members of NBDA.

Thanking you,

Yours faithfully,

Annie Joseph
Secretary General