DIGITAL NEWS PUBLISHERS ASSOCIATION

Comments from DNPA on TRAI's Consultation Paper on "Regulating Converged Digital Technologies and Services – Enabling Convergence of Carriage of Broadcasting and Telecommunication services".

The Digital News Publishers Association (DNPA), an apex association of the country's leading 17 digital media entities which publish news and current affairs programs and content. They include Dainik Jagran, Dainik Bhaskar, The Indian Express Group, Malayalam Manorama, Eenadu Television, India Today Group , Amar Ujala , Hindustan Times , Zee Media, ABP Network, Lokmat, The Times of India Group, NDTV, The New Indian Express Network, Mathrubhumi, The Hindu and Network 18.

At the outset, DNPA would like to state that the objective behind the issuance of this CP is unclear. Before commenting on the issues raised therein, DNPA would like to place on record, that it is not in favour of any legal, administrative, regulatory and licensing framework for the convergence of carriage of broadcasting services and telecommunication services.

DNPA's concerns in respect of the CP are summarized below:

Overview:

The basic precept underlying the CP is flawed. Mere convergence of devices, services or networks does not warrant drawing of the conclusion that there is "convergence" of telecom and broadcasting services. All bundled services --even if offered by one service provider-- are still separate services and cannot be construed to be "convergence".

- Broadcasting services are very different from telecommunication services. Telecommunication services deal with voice and data services, whereas Broadcasting services offer programming services and content to the consumers. Telecommunication services only provide the pipeline through with the broadcasting services deliver its content. Hence, both are independent and entirely distinct sectors. In any case, a mere bundling of services cannot be construed to be "convergence".

- At present, broadcasting services are regulated by various legislations like the Cable Television Networks (Regulation) Act, 1955, the Cable Television Network Rules, 1994, Guidelines for Uplinking and Downlinking of Satellite Television Channels, 2022, and self-regulation by News Broadcasting & Digital Standards Authority (NBDSA). Their digital arms are bound by the IT Act the most recent changes to which were Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. Apart from the above, the content of both broadcasters and their digital arms are subject to Indian Penal Code, 1860, CrPC as well as 30-40 subject-specific laws. Right to broadcast content is part and parcel of the freedom of speech and expression guaranteed under Art. 19 (1) (a) of the Constitution of India, whereas Telecom is the exercise of License Powers derived from parting of privilege of Sovereign powers by the State for a quid pro quo.

  Hence, the already over-regulated broadcasting sector should not be subjected to further regulation merely because the broadcasting sector and its digital arms use telecommunication services such as internet bandwidth for making the content available on mobile phones, etc. Infact, the guiding principles to regulate telecommunications services and broadcasting services should be distinct and separate regulatory frameworks for carriage and content, no intervention without evidence of market failure or harm and activity-based regulation, or "same service same rules".

- Further, Internet/digital services are different from telecom services and ought to be regulated by specialized legislations like IT Act 2000. It is also evident that OTT services are not substitutable services vis-à-vis telecom services as the former is totally dependent on the latter, and not vice versa. Laws already exist in the form of IT Act and three new laws to regulate the sector are proposed in the form of Digital India Act apart from the Indian Telecommunication Bill, 2022 and the Digital Personal Data Protection Bill, 2022. Their main objectives are to establish a comprehensive central framework that would, among other concerns, address issues surrounding data protection, regulation of intermediaries and digital crimes. There is hence absolutely no need for even contemplating yet another regulation as posited in the CP which would overlap and only lead to chaos. Thus it is submitted that a converged legal, administrative, licensing, and regulatory regime would be absurd as all these sectors are substantially different and are already being substantially regulated by sector-specific regulations.

- Instead of focusing on so-called convergence through a converged regulator, TRAI must be instead concerned about the monopolistic tendencies through vertical integration wherein large entities especially in the telecom and

technology sectors are present in a big way in broadcasting as well as distribution of content, data, and information.

- What was equally important for this consultation was to await the outcome of three major legislations namely the Telecommunication Bill, the Digital Personal Data Protection Bill and recently announced Digital India Act (DIA). Also, is there any "problem statement", which is intended to be addressed by carrying out this consultation? Isn't the need of the hour not the convergence of ministries and law but a harmonisation of the law? A question also arises if it has even been examined that this could lead to facilitating favourable business atmosphere only for a select few and that too at the cost of causing regulatory death / elimination of several others.

- The consultation at several places highlights the concern of working in silos and the question that arises is whether the consultation itself is a step taken in silos without first addressing and bringing a quietus to the conflict between the DoT and the IB ministry or by ignoring the exact scope of the Telecommunication Bill, or for that matter the recent Digital India Act 2023. Interestingly, 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 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 (now proposed to be converged under telecommunication services). This would be promoting concentration of market power in the name of convergence and eliminating other forms of distribution and technologies to fight their battle in non level playing field condition and compete in the market and may be promoting only a few modes of distribution. Even assuming the same is to facilitate broadband through satellite then whether the same is getting done at the cost of displacing broadcasting services or whether it would be permitted through non satellite means?

- Further, it may also lead to a situation that any communication or content OTT platforms can thrive and survive on the internet only if they are able to fulfill the demands of the Internet Service Providers (ISP) who would act as gatekeepers and prevent any innovation or technological advancement which can be a potential threat of becoming substitutable to the services which they offer or are permitted to offer by availing telecommunication licences. The same could even have drastic market consequences and may make the communication & content services unaffordable to the consumers and thus may not be in the interest of consumers and may result in most of M&E stakeholders exiting the market.

- New age tech companies like Google and Facebook control a majority of market revenue share through their monopolistic power and are facing anti-trust and anti-competitive actions in various countries including India. Dominance and control by tech giants are an indicator of potential abuse of dominance and any step by TRAI to bring in a converged regime will only enable creation of monopolies by a few cash rich telecom companies.

- TRAI must focus on ensuring level playing field for all participants especially the traditional media like the broadcasting sector and to prevent vertical integration, which could only lead to dominance by a few and abuse of dominant position. There are only three major telecom companies in India whereas the broadcasting sector has many players like over 900 channels apart from many DTH operators, MSOs, and LCOs running into more than 60,000 operators, which not only enable plurality of media but also upholds free speech through diversity of opinions, and views which is the sentinal on the qui vive of Indian democracy.

- Further, CP does not highlight benefit of convergence. TRAI is already the common regulator both telecom and broadcasting services, however, benefit on account of converged regulator has not been witnessed. Telecom and broadcasting services are distinct services requiring separate licensing and regulatory requirements. In any event there are separate ministries for each of the services/areas which are ably administering to the various parts of the ICT sector. Thus, telecommunication entities should continue to be with DoT whereas, broadcasting (broadcasters, DTH, cable, HITS & IPTV) should continue with the Ministry of Information and Broadcasting (MoI&B) even as digital media should continue to be under the ambit of MEITY. This point has been echoed by MoI&B as well, which is in any case, working on amending CTN Act to bring all broadcasting carriage platforms under a unified Act. Indeed TRAI must have

highlighted this difference of opinion to the Telecom Ministry and should have asked for the Ministries to internally resolve and to come to a consensus before having circulated it for public consultation.

- Moreover, DoT reference to TRAI was limited to convergence of carriage of broadcasting and telecom services but CP goes beyond its remit as also outside the ambit of the TRAI Act.. Consultation ought to be restricted to DOT's reference; in 2006, TRAI had itself taken a view that for content regulation, personnel with different skillsets are required when compared with carriage regulations. MIB too has echoed similar view in its response to TRAI and DOT. Further, content regulation is subject only to Article 19(2), which is not the case for carriage regulation.

  In the light of the above, we request TRAI not to proceed with its consultation paper on regulating "Converged Digital Technologies and Services – Enabling Convergence of Carriage of Broadcasting and Telecommunication services". TRAI response to the reference should now be two fold one which highlights the MIBs difference of opinion and second the same not being the need of the hour or a premature exercise and definitely not to be pursued in the present market situation with the License / permission structure already in place and keeping in mind the different types of stakeholders as also the detailed reasons spelt out in this response.

1. **<u>There should be no convergence of Broadcasting Services and Telecommunication Services frameworks in any manner whatsoever:</u>**

A. Difference between Broadcasting Services and Telecommunication Services:

(i) "Broadcasting services' are a very different and distinct service/category in comparison to 'telecommunication services', as the latter is concerned with voice and data services while the former involves offering of programming services and content to the consumers. Mere convergence of devices, services or networks does not warrant drawing of the conclusion that there is "convergence" of telecom and broadcasting services. Reference to example of Smart TVs in the CP is misplaced, since they account for only 10% of TV sets in the country. All bundled services --even if offered by one service provider-- are still separate/different services and does not amount to convergence of services.

(ii) Further, unlike telecom services, broadcasting services involve issues relating to freedom of speech and expression (Article 19(1)(a)) as well as copyright-related issues –among many other differences.

(iii) Moreover, at present, the content of broadcasting services is regulated by the MoI&B under the Cable Television Networks (Regulation) Act, 1995 ("Cable Act), the Cable Television Network Rules, 1994 ("Cable Rules"), Guidelines for Uplinking and Downlinking of Satellite Television Channels in India, 2022 (Guidelines 2022), and by the various guidelines/advisories issued by the self-regulatory bodies. The aspect of carriage is regulated by TRAI under the Telecom Regulatory Authority of India Act, 1997 ("TRAI Act"). In view of the above, it is clear that broadcasting services are already adequately regulated. Therefore, there can be no justification for combining the legal, licensing and the administrative framework of the two sectors merely because the broadcasting sector is using certain common services such as internet bandwidth, for making content available on mobile phones.

(iv) Merely because telecommunication, broadcasting and data service are at a time delivered through common delivery platforms, the same cannot be interpreted as convergence of such services and/or a reason to advocate for a converged legal, administrative, licensing and regulatory regime for sectors which are substantially different. If this logic were to be applied to all services which are provided through a converged delivery platform like mobile phones,

it would imply that even services like e-commerce, teleconsultation etc., which are accessed through mobile phones and have nothing even remotely in common with telecommunication services should be merged with the telecommunication sector.

(v) It is relevant to note that "convergence" is merely a technological construct, which has happened due to evolution of alternate technology. However, convergence of technology does not imply that the telecom and broadcasting sectors have to be merged or that the underlying functions they perform have to be merged. As stated, there is a substantial difference in the types of services offered by the broadcasting sector and the telecom sector, which does not call for any form of convergence of laws, regulations etc. Broadcast involves communication to public and the world at large whereas telecommunication is communication between two or more individuals. Therefore, the mere possibility of offering telecommunication using a broadcast infrastructure or vice versa cannot be a cause and/or reason to converge the regulating authorities and the legislations.

(vi) It is relevant to note herein that there are only three telecom operators who directly cater and provide telecom services such as voice, data, SMS, broadband services, etc. to the end consumers in the country. However, there are more than 900 channels which are made available to the consumers through the licensed distribution platforms namely cable, MSOs, DTH, IPTV, HITS, etc. All these further have their digital website versions.

(vii) In fact, TRAI would be well aware of the different business models employed in the broadcasting sector and the telecom sector. Within the broadcasting sector itself, a broadcaster can be a pay broadcaster which depends on subscription and advertising revenue or a Free- To-Air (FTA) broadcaster, which depends on advertising revenue alone. Similarly, even distributors like cable and DTH operators have different sources of revenues like subscription revenues from the last mile customers which ranges from Rs. 200/Rs. 300 to Rs. 800, revenue in the form of Carriage Fee which is charged from Members and the revenue earned from Landing Page, Barker, Boot-up Screen, etc. They can also earn advertisement revenue through the route of 'Platform Services'. Telecom operators, on the other hand, have an entirely different methodology of earning revenue by monetizing data consumption i.e., by maximising consumption of data while not charging for content at all. For example, IPL may be streamed by the telecom operators for free however, the same content is offered on linear platforms by charging a subscription fee.

Therefore, any form of convergence of licensing, ministries, etc., which would result in making one stakeholder -ie broadcasters and their digital websites- being grossly disadvantaged, must be avoided.

B. Difference in the Licensing of the Broadcast Sector and Telecom Sector:

a) While licenses are granted under Section 4 of the Indian Telegraph Act, 1885 ("the Act") to teleport operators and Direct To Home ("DTH") by the MoI&B, all other services pertaining to broadcasting require permissions/registrations. The CP itself has noted that the 'permission' to uplink and downlink television channels is governed by the Guidelines for Uplinking and Downlinking Television Channels in India issued by MoI&B. It is submitted that these Guidelines are neither a creation of any Statute nor a license under Section 4 of the Act.

b) While Government has exclusive privilege in respect of telegraphs under the Act and has the power to grant licenses to teleport holders for a consideration and subject to the terms of contract as may be deemed fit, however, it is unclear as to how 'broadcasting services' can be construed to be an "exercise of sovereign functions of the Government" and in that respect be brought within the ambit of licensing by the Executive. Since broadcasting is an exercise of the right of freedom of speech and expression of the media, it cannot be subject to any licensing pursuant to licensing of sovereign rights particularly on disproportionate and unreasonable terms and conditions, as the same would not pass muster of Article 19(2) of the Constitution.

c) The DTH sector is already suffering heavy losses as DTH operators are required to obtain a license under Section 4 of the Act which results in imposition of conditions like license fee and thereby creates a non-level playing field vis-à-vis their competitors namely the MSOs/LCOs and HITS, who are not subject to any such obligations as they are not required to obtain a license under Section 4 of the Act. In order to ensure survival of the broadcasting sector, TRAI's attempt should have been to completely segregate and separate the telecom and broadcasting sector and it should have considered removing stakeholders like DTH from the onerous obligations for grant of license under Section 4 of the Act. In other words, it should have attempted to bring level playing field conditions in the broadcasting sector by permitting all stakeholders to compete in a fair and non-discriminatory manner. However, on the contrary, it appears that through the present consultation, an attempt is being made to strangulate the already ailing broadcasting sector and their websites with a regulatory framework which would result in these sectors turning sick.

d) TRAI must appreciate that any attempt to coerce a broadcaster to get multiple licenses for extended activities of its main businesses by paying huge license fees would cause severe adversity to the broadcaster and may cast an unfair burden on

the broadcaster making its business unviable. The broadcasting/Media & Entertainment industry caters to a large mass of creators and also generates employment for millions of households and therefore, any attempt to bring them within the ambit of telecom license would be fatal and would result in loss of millions of jobs, both direct and indirect. It would especially adversely impact small news organizations and all websites with broadcasting arms.

C. Differences in spectrum allocation between the Broadcasting Sector and Telecommunication Sector:

a) In respect of spectrum management, the policy of "one size fits all" cannot be applied. There is a need to accord differential treatment to different types of entities considering that some entities make minimal or no use of spectrum for providing their services. In respect of satellite TV channels, it may be noted that there is no limitation in the bandwidth spectrum available for satellite TV channels which is available in abundance and will continue to increase as the number of satellites increases from time-to-time. Further, in any event, satellite location and frequency are determined by the International Telecommunications Union (ITU) and no satellite can be launched without the ITU's consent- all of which makes satellite frequency quite different. Therefore, there is a need to appreciate that satellite broadcasters warrant entirely differential treatment, especially considering that they do not use any 'scarce resources' unlike the telecom spectrum.

(viii) In view of the above and in view of the fact that the kind of services which get delivered through broadcasting are in the nature of exercise of freedom of speech and expression, DNPA submits that auctioning of satellite bandwidth/broadcast spectrum should not even be a matter for consideration. The status quo in respect of auctioning for telecommunication services and administrative allocation of satellite spectrum for broadcasting services should be maintained. The principle of same service -same rule is also not applicable to Internet-based entities.

D. Difference between Telecommunication and Internet-based service providers:

(a) It is submitted that legislation that compels online services to get government permission to launch will jeopardise both (a) the neutrality of the Internet; (b) the idea of Digital India; and (c) the government's aim to promote Ease of Doing Business ("EoDB").

(b) Moreover, it appears that TRAI has failed to take into account the fact that services provided by Telecommunication service providers ("TSPs") are vastly distinct in nature from the services provided by Internet based service providers. While TSPs own and operate telecom and communication infrastructure for providing voice and data services, Internet based services do not have any communication infrastructure of their own and are dependent on TSPs to make their services available to consumers viz internet through mobile data or broadband. TSPs, Internet Based and OTT communication service, offer divergent services and operate in different markets, and therefore cannot be regarded to be similar services.

(c) It is important to note that TSPs enjoy a totally different position in the telecommunication industry by virtue of having exclusive rights to commercialize a limited public resource, i.e., spectrum. TSPs are granted this privilege only by paying the appropriate charges and acquiring the appropriate rights from the Government. The licensing regime for TSPs is crucial to ensure that this limited public resource is distributed and used efficiently and in an appropriate manner. TSPs also own and control what is considered to be critical infrastructure and resources in the country. The Government's National Digital Communications Policy, 2018 – which seeks to enable a competitive telecom market in India by the establishment of resilient and affordable digital communication infrastructure and services – recognizes telecommunication infrastructure / systems and services as essential connectivity infrastructure at par with roadways, railways, waterways, airlines, etc. for the development of India. Therefore, any adverse effect on the network that TSPs administer could cripple the communication network in the country. On the other hand, digital content entities do not have any control over nor do they contribute to such critical infrastructure as they merely provide their services on the application layer facilitated by such infrastructure. Thus, the accountability that TSPs are required to ensure, cannot be equated with the responsibility of other service providers that offer services that are not similarly critical or essential.

(d) The inherent lifecycle of services provided by TSPs compared to digital content entities is quite distinct. TSPs enjoy license terms from the DoT which span approximately 20 years. Such license terms are beneficial for the services operated by TSPs as the technologies underpinning such services take significant amount of time to develop. However, the services offered by digital content entities are far, far more dynamic in nature and are constantly evolving every few weeks.

(e)By suggesting that online services should be regulated in the present CP, TRAI neglects to consider that one of the core pillars of an information-driven society is to promote the spirit of entrepreneurism. This allows stakeholders to

make decisions based on economic rationale and also allows stakeholders in the value chain to arrive at more efficient outcomes cooperatively and to reduce the number of litigations in sectors such as broadcast, which have mainly been a result of ad-hoc and skewed regulatory interventions.

(f) Herein, it should also be flagged that OTT services are not substitutable services vis-à-vis telecom services. The former is totally dependent on the latter, and not vice versa. Also, telecommunication entities act as gatekeepers since access to OTTs is only through telecommunication entities . Laws already exist in the form of IT Act and new laws are proposed in the form of Digital India Act. Further, in any event there are separate ministries for each of the services/areas, and no meaningful purpose can be achieved in case of a so-called "converged" scenario.

2. **Content must be removed from scope of consultation; content and carriage can never be regulated by same entity:**

(a) In the CP, TRAI has observed that "the existing regulatory oversight framework for content regulation, which is patchy and inadequate at its best, may need a complete overhaul in a converged era in line with many other nations, where a converged regulator regulates carriage and content". In this regard, it is relevant to state herein that the aforesaid observations made by TRAI in the CP falls outside DoT's references dated 20.10.2021 and 12.8.2022 to TRAI wherein recommendations have only been sought on the following issues: (a). Amending license regimes to enable convergence of carriage of broadcasting and telecom services; (b). Establishing a unified policy framework and spectrum management regime for carriage of broadcasting services and telecom services; (c). Restructuring of legal licensing and regulatory framework for reaping benefits of convergence of carriage of broadcasting and telecom services; (d). Revising regulatory regime in respect of DTH and cable TV services holistically addressing all institutional, regulatory and legal aspects.

(b) The aforesaid statement made by TRAI in the CP also fails to take into account that in 2006, TRAI had itself taken a view that for content regulation, personnel with different skillsets are required when compared with carriage regulations. MoI&B too has echoed similar view in its response to TRAI and DOT. Further, content regulation is subject only to Article 19(2), which is not the case for carriage regulation.

(c) Moreover, TRAI contention is not valid as news content is over-regulated with four-five layers of rules relating to content already in place and being well followed in each individual media segment. For digital news, for instances, DNPA members follow –apart from IPC/CrPC—30-40 different

laws that impinge on content in addition to Press Council and Cable Act regulations for Print and TV arms respectively, apart from the content-related clauses of the IT Act. This apart, all its news publishers follow self-regulatory entities at association levels.

(d) It is strongly believed that news media in India, across platforms and technologies, must be governed by the principles of self-regulation. There already exists robust self-regulation mechanisms across the media sector relating to content and the need of the hour is to strengthen and give more power to the self-regulatory bodies rather than to formulate additional layers of regulations in the media sector. Keeping in mind the already heavy regulation as well as robust self-regulation system in the broadcasting and digital sectors, there is absolutely no requirement for any new measures to converge broadcasting services and telecommunication services, whether in content or carriage. This kind of convergence is not comprehensible as they are entirely separate sectors.

(e) In any event, content regulation touches upon the right of freedom of speech and expression guaranteed to the media by Article 19(1)(a) of the Constitution, which is only subject to reasonable restrictions under Article 19(2). Therefore, regulation of content is vastly different from regulation of carriage and should not and cannot be subject of the present consultation process.

3. **Converging common ownership of content and carriage results in creation of Monopolies:**

(a) As per EY FICCI 2022 report, India is the world's second largest smartphone market behind China with 954 million users. India has a user base of 1.18 billion telecom subscriptions and of this, approximately 68% subscribers use 4G technology, which is an indicator of how easy access to digital content on mobile phones has become. The traditional media industry (all newspaper readership plus all TV channel viewership) put together does not reach as many people. In fact, telecom companies are the biggest media players today.

(b) However, telecom players are not limited to merely providing telecom services. Today, they already have the unique advantage of being: (a) the providers of mobile communications (b) ISPs i.e., internet service providers.(c) Creators and owners of news and entertainment content on both these platforms (d) Distributors of the content via OTT/IPTV platforms and € Advertising platforms.

(c) Moreover, with the advent of OTT, telecom companies have been aggressive in pushing OTT content through their distribution chains, something which the broadcasting sector has not been able to do. According to FICCI-EY Report 2021, digital subscriptions rose by 49% in 2020. Digital and OTT sectors registered a growth of 26%, the highest amongst other Media entertainment segments. According to the PwC Report of Global Entertainment and Media Outlook 2020-2024, with a CAGR of 28.6%, India will be the fastest growing OTT market. It predicts 16% year-on-year decline in TV ad revenue and 59% year-on-year decline in box office revenue while predicting a 16.1% growth in digital newspaper and circulation revenue. The OTT players have been successful in controlling and influencing the entire media distribution chain, primarily due to (1) Lower service costs as compared to cable and satellite services; (2) Leveraging the distribution pipe provided by telecom players more effectively; (3) Direct delivery of services to the consumers. On the other hand, broadcast companies incur much high costs for distribution of their content through cable operators and DPOs. They are thus further hobbled with regard to investments in their digital operations.

(d) The linear broadcasting sector is facing the same and stiffer challenges from OTT players and does not have the liberty or the freedom under extant regulations to effectively deal with this challenge. Any horizontal integration restrictions would effectively deprive the broadcast sector from meeting the OTT challenge even on the other hand, as telecommunication entities have been given a free hand to deal with OTT competition apart from ensuring the demise of independent media distribution entities since telecommunication entities are allowed unrestricted ownership of any content and any distribution platforms, unlike the broadcast sector.

(e) Allowing telecommunication entities allowed unfettered rights to own both content and carriage –and that too, across mobile, broadband and broadcasting-- is already becoming a huge issue. It is generally acknowledged that companies that own “pipelines” (distribution platforms) should not be allowed to own the content that is ploughed into these pipelines. Earlier experience in India itself in the Cable TV business has shown that this leads to abuse of power. This situation must be prevented on the Digital platforms as well.

(ix) The risk of domination is further enhanced by the fact that there are only three TSPs nationally (compared to hundreds and thousands of media providers in traditional media). Each one of the TSPs has more than 250 million subscribers and such user numbers are vastly higher than what any one traditional media entity has in terms of readership or viewership.

(x) The government had, more than 20 years ago, recognised the dangers of allowing the same entity to control more than 20% of both content and carriage. That is why, since 2001, there are existing regulations to prevent common majority ownership of content (TV channels) and carriage (DTH/HITS) in broadcasting. Hence, MoI&B does not allow:

- A DTH licensee to allow broadcasting and/or cable network companies to collectively hold/own more than 20% of the total paid up equity in its company at any time during the license period –or vice versa.
- A vertically integrated DTH entity to reserve more than 15% of the operational channel capacity for its vertically integrated operator (content provider).
- Broadcasting company(ies) and/or DTH license company(ies) to collectively hold/own more than 20% of the total paid up equity in the HITS company at any time during the permission period.
- A HITS permission holder to hold/own more than 20% equity in a broadcasting company and/or DTH licensee company.
- Any entity/person holding more than 20% equity in the HITS permission holder company to own more than 20% equity in other broadcasting company(ies) and vice versa.

(xi) On the other hand, there are no such rules in place for telecommunication entities –which are allowed unlimited and unrestricted ownership of both content and carriage not only in mobile as well as broadband, but also in broadcasting! Hence, telecommunication entities are omnipresent with majority ownership in ALL types of both content and carriage across telecom, mobile and broadcasting. This is even more deeply problematic because not only is there vertical integration, but also common ownership of all forms of the critical distribution ie carriage platforms across mobile, broadband as well as broadcasting–with no limits, unlike for stand-alone broadcasters.

(xii) There is further lack of parity in the regulations and laws specifically in the distribution segment. This is evident from the fact that telecom sector is not subject to regulations such as the Interconnect Regulations and Tariff Orders apart from the 20% vertical integration rule and 15% cap in channel capacity on own channels etc. that broadcast media is currently subject to. TRAI must recommend this vacuum is addressed and that all the aforementioned laws incumbent on broadcasters are extended to telecommunication entities which

have moved into the broadcasting content and/or carriage space whether by owning TV channels and/or MSOs --and are thus today the biggest distributors of content, data and information in every form. This would not only bring in a level playing field but also address the issues of telecommunication entities monopoly and dominance. Hence, the only regulation change required is to extend the aforementioned 20% vertical integration law for broadcasters, DTH and HITS --to telecommunication entities , so that no telecom company can hold/own more than 20% in broadcasting and OTT companies whether content or carriage, and vice versa.

(xiii) On the other hand, if the regulatory framework as envisaged in the CP is brought into force, it will give preference or advantage to one stakeholder at the cost of the other and will create an imbalance and disturb the level playing field between the stakeholders. Hence TRAI should avoid formulating any legal and/or licensing framework in respect of the same which would result in giving undue advantage or which would lead to creation of monopolies or promote gatekeeping by the dominant players. In order to protect the free speech rights of the media, it is essential that such convergence does not come into force as it will lead to all broadcasting and their digital arms (TV channels, digital and distribution) as well as mobile and broadband services becoming the prerogative of a few cash rich telecom entities.

(xiv) In fact there has been enough instances in the recent past especially after the acquisition of IPL rights by different entities one being vertically integrated telecom operator and content provider and the other a linear rights holder. These conduct and behaviour , market trends needs to be studied and the rules which are formulated must factor the consequences that may arise as a result. It must also be appreciated that monopolization cannot be encouraged and the regulatory regime cannot be redirected to facilitate any such practice which can also potentially qualify as an abuse of dominance of anticompetitive practice. It is also to be appreciated that the market would not be remaining the same at all times and thus needs different treatment at different points of time. The proposal of convergence as being done in the recent consultation or the recent discussions / consultation on auctioning the broadcast spectrum or for that matter the carriage of linear content on digital platforms would definitely lead towards favouring one single entity at the cost of entire Industry.

(xv) It must be emphasized here that in the event, that a framework for convergence of legal, administrative, licensing and regulatory framework is imposed, the broadcast media sector and their digital arms will be unfairly singled out to bear the brunt of unreasonable restrictions arising out of purported control and dominance. Exclusionary market power concentrated with telecom companies that dominate the reach and distribution of content would be detrimental to the aim of plurality and diversity of content and outlets in the media market –and especially when the same distribution companies own the same content. It may also be not out of context here to mention that there are only a handful of players in the telecom sector and the public sector presence has been reduced to a great extent –and hence, this aspect is also a cause for concern.

(xvi) In sum, if a converged framework is brought into force, it will encourage complete vertically integrated ownership where the entire chain of content creation and delivery/distribution across multiple platforms like mobile, broadband and broadcasting will be controlled by the same entities using their own infrastructure and platforms. This aspect is crucial as it poses a threat to a fair and level playing market for all constituents. There are no regulations at present to put a check on such vertical integration by telecommunication entities and it is vital that TRAI looks at this challenge that poses a serious threat to the media broadcasting and digital segment. In fact, by not including or considering the impact of the telecom sector on media distribution, the TRAI is presupposing that media distribution will not be affected by the telecom companies if convergence happens --which is an incorrect premise.

(xvii) In view of the above, convergence of any kind is not desirable as it may tend to create monopolies. New age tech companies like - Google including Google search & YouTube and Facebook including Instagram & Whatsapp control majority of market revenue share through their monopolistic power & strong hold in supply chain. They use traditional Media houses' trustworthy content to distribute on their platforms without sharing adequate revenue with publishers. Indirectly, they are controlling and directing traditional Media houses to dictate and follow their rules for content distribution and revenue. The dominance and control exercised by tech companies like Facebook and Google (over 60%) is itself an indicator of the potential abuse and which gets further corroborated and re-enforced because of their non transparent behavior when it comes to revenue sharing of advertising revenue. There is already a CCI case pending on the said issue wherein Director General has been asked to investigate the unfair and monopolistic trade practices followed by

Facebook and Google and alleged abuse of dominance practiced by them. There are also amendments getting proposed in the competition act for addressing this menace which is also under consultation.

4. <u>Sharply decreasing revenues of news media companies:</u>

(xviii) Traditional news media companies and their digital arms are facing decreased revenues, as a result of several factors especially increased competition from Big Tech large global companies that have become the "go-to" destination for news and entertainment. Globally, print media is on the verge of a shut down with Indian newspapers following American and other Western newspaper markets in suffering significant reversals in readership and revenue. As a result, journalism is suffering from costcutting measures, reduced consumption, declining resources, consolidation and its accompanying challenges. The television sector is still grappling with the pandemic induced slow down and is yet to bounce back fully –but is now having to grapple with telecommunication entities which are controlling their content without any limits –as they have bought over many MSOs. With stagnant or slow growth, TV companies are under tremendous pressure to deliver quality content at high costs.

(xix) It is evident from the Indian media landscape specified above, that the revenues of traditional media (including television, print and radio) are decreasing at a fast pace. Under the circumstances, there is critical need to extend the 20% broadcasting limit to telecommunication entities , while any other regulation, legal, administrative or licensing if converged would debilitate the media sector.

(xx) Furthermore, it must be noted that technological development has made a big impact on the way news and information is delivered to the consumer. The world is witnessing the growth of alternative platforms for consumption of news in the form of mediums like blogs, social media platforms like Twitter, YouTube, Instagram, Facebook and platforms like Google that also disseminate news and information. News consumption is drifting away from Newspaper websites and other traditional forms of dissemination and more and more consumers are accessing their need for news and infotainment through such new mediums and aggregators.

(xxi) While it is understood that with evolution of technology there can be a gradual churn and shift in the mode of consumption or distribution/carriage of content as has also happened in the past, however, the same should happen on account of market dynamics and not because of any unwarranted regulatory regimes, which creates a non-level playing field.

5. Consultation at odds with harsh reality and views of ministries:

(xxii) Before undertaking this consultation process, TRAI should first study the adequacy of competition in the broadcasting sector and telecom sector and examine whether converging broadcasting sector and telecom sector under one license, legal or administrative regime would make sense or would the broadcasting sector be even more adversely affected than it is now.

(xxiii) Further, it is believed that since it is not the Government's intention to converge the broadcasting regime with the telecommunication regime, TRAI should wait for the revised draft Telecommunication Bill before undertaking the present consultation. In this regard, it may be relevant to note herein that while holding a discussion on the draft Telecommunication Bill, the Telecom Minister clarified that the intention of the Bill was to provide light touch regulation for OTT communication services like WhatsApp, Facetime, Telegram, Signal, etc. and it did not intend to include broadcasting services within the ambit of the Bill.

(xxiv) Moreover, different government departments have already written to TRAI expressing their concerns about the Consultation Paper. In this regard, it is relevant to note that in its letter dated 4.10.2022 MoI&B has stated that MoI&B and TRAI have so far effectively handled all legal, policy and regulatory requirements arising out of technological changes. In respect of content regulation, MoI&B stated that separate skill sets of creative and artistic persons who can factor the impact of content on sensibilities, morals and values of society and not that of technocrats and economists were required for regulation of content. Therefore, it reiterated that the policy relating to content and content regulation should continue to be dealt with by it. In the letter, MoI&B also noted that while there are multiple agencies involved in the process of clearance in the broadcasting sector like Ministry of Home Affairs for security; DoT for wireless and spectrum clearance; DOS for satellite

allocation; Ministry of External Affairs, Department for Promotion of Industry and Internal Trade for FDI and foreign executives working in broadcast entities; MEITY for digital use and OCC and Ministry of Corporate Affairs for company matters; however, it effectively coordinates with each one of them and thus shifting of licensing to DoT would not only be counterproductive but would also impact the EoDB.

(xxv) Through the letter dated 4.10.2022, MoI&B has essentially opposed any form of re-look into the license terms which may only bring inconvenience and complications. Therefore, before proposing any legal regime to deal with convergence of carriage of broadcasting services and telecommunication services, TRAI must also acknowledge this internal separation of business among the Ministries and should not delve into any of the issues raised in the CP in view of the reasons stated herein above.

6. Recommendation:

- Broadcasting services, digital publishers and OTT services are totally distinct from telecommunication services in respect of content and carriage. Hence, it is unacceptable to club these entities and their services with telecom services. Mere convergence of devices, services or networks does not warrant drawing of conclusion that there is convergence of telecom and broadcasting services. All bundled services, even if offered by one service provider, are still separate services.

- TRAI is already common regulator for telecom and 'carriage' in respect of the broadcasting sector. Telecom and broadcasting services are distinct services requiring separate licensing and regulatory requirements. Telecom sector should continue to be with DoT whereas, broadcasting sector (broadcasters, DTH, cable, HITS & IPTV) should continue with MoI&B.

- Content regulation should be outside the scope of the CP. DoT reference to TRAI was limited to convergence of carriage of broadcasting and telecom services. ". Consultation ought to be restricted to DoT's reference and such remarks overlook institutional learnings as well as learnings from self-regulatory bodies (e.g., NBDSA, BCCC, DNPA, etc).

- Telecom service providers need to be restricted to ensure a level playing field for all players and stop the creation of monopolies across mobile, broadband and broadcasting. Currently only broadcasters are regulated because the DTH Guidelines restrict broadcasting companies and/or cable network companies from owning more than 20% of the total equity of the DTH company and vice versa. Likewise, the HITS Guidelines restricts broadcasting companies and/or DTH companies from owning more than 20% of the total equity of the HITS company and vice versa. However, there are no such restrictions on telecom companies and in order to ensure level playing field, the only regulation change required is to extend the aforementioned 20% vertical integration law for broadcasters to telecommunication entities , so that no telecom company can hold/own more than 20% in broadcasting and OTT companies whether content or carriage, and vice versa.

Responses to specific questions in CP:

Q. 1 Whether the present laws are adequate to deal with convergence of carriage of broadcasting services and telecommunication services. If yes, please explain how? OR Whether the existing laws need to be amended to bring in synergies amongst different acts to deal with convergence of carriage of broadcasting services and telecommunication services? If yes, please explain with reasons and what amendments are required? OR Whether there is a need for having a comprehensive/converged legal framework (separate Comprehensive Code) to deal with convergence of carriage of broadcasting and telecommunication services? If yes, provide details of the suggested comprehensive code.

Answer: In view of the submissions made above, there is no need for converged legal framework. Present legal / regulatory frameworks adequately regulate all relevant aspects. In any event, telecom and broadcasting services are distinct services. In fact, there is no requirement for convergence of carriage of broadcasting services and telecommunication services. Therefore, there is no requirement for a comprehensive/converged legal and/or licensing framework to deal with convergence of carriage of broadcasting services and telecommunication services, for the following reasons:-

(i) It is reiterated that not only are the two services entirely different but they also perform different functions. Therefore, since broadcasting services and telecommunication services are not similarly placed, it would not be correct to compare the two services, advocate for their convergence and/or to have a

comprehensive/converged legal framework to deal with convergence of the two distinct services.

(ii) As stated herein above, convergence of technologies which has already happened to a great extent in the last decade has been effectively handled by MoI&B and TRAI who have been able to address all legal, regulatory and policy requirements which emerged on account of such technological changes.

(iii) Since the absence of a converged legal and regulatory regime has not resulted in the stunted growth of the sectors or hindered the growth of technology in the sectors or resulted in higher cost to the consumers or caused any other difficulties to the other stakeholders, TRAI must answer what problem it seeks to address by proposing a converged legal, licensing and administrative framework.

(iv) It is reiterated that the broadcasting sector must be regulated by a separate regulator. The problem with establishing a converged regulator 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 out of depth and lack specialised knowledge and understanding which is a pre requisite to deal with sector-specific issues. Therefore, the question of comprehensive/converged framework in any aspect cannot arise.

(v) Instead of introducing a regulation that converges regulators and regulations, the departments and agencies tasked with various aspects of governing the areas that comprise telecom and broadcast sectors should be enabled to remove redundancies of filings, permissions and timelines for completion to give effect to EoDB.

(vi) If a converged legal regime for broadcasting and telecommunication is brought into force, it is apprehended that it may result in concentration of power in the hands of a few existing players and increased dependence of users on few service providers, which may ultimately result in opaque pricing and restrictions on fundamental right of speech and expression due to information being disseminated by a few entities, thereby may create a monopoly by certain stakeholders.

(vii) The only regulation which needs to be changed, is to extend the existing 20% vertical integration rule for broadcasters/DTH/HITS-- to telecom service providers so as to ensure a level playing field for all players and stop the creation of monopolies across mobile, broadband and broadcasting. Currently, only broadcasters are regulated because the DTH Guidelines restrict broadcasting companies and/or cable network companies from owning more than 20% of the total equity of the DTH company and vice versa. Likewise, the HITS Guidelines restricts broadcasting companies and/or DTH companies from owning more than 20% of the total equity of the HITS company and vice versa. However, there are no such restrictions on telecom companies and in order to ensure level playing field, the only regulation change required is to

extend the aforementioned 20% vertical integration law for broadcasters to telecommunication entities , so that no telecom company can hold/own more than 20% in broadcasting and OTT companies whether content or carriage, and vice versa.

Q.2. Whether the present regime of separate licenses and distinct administrative establishments under different ministries for processing and taking decisions on licensing issues, are able to adequately handle 22 convergence of carriage of broadcasting services and telecommunication services? If yes, please explain how? If no, what should be the suggested alternative licensing and administrative framework/architecture/establishment that facilitates the orderly growth of telecom and broadcasting sectors while handling challenges being posed by convergence? Please provide details.

Answer: Same as above. Further, separate administrative oversights should be continued with.

The present regime of separate licenses and distinct administrative establishments under different Ministries for processing and taking decisions on licensing/permission issues, is able to handle broadcasting services adequately in all its aspects. Therefore, there is no requirement for convergence of carriage of broadcasting services and telecommunication services or for a comprehensive/converged legal, administrative and/or licensing framework to deal with convergence of carriage of broadcasting services and telecommunication services, for the reasons stated herein:-

(i) One of the key goals for advocating a converged licensing 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 he or she will use to provide the licensed service. The main objective of the unified licensing framework should be to promote EoDB and sustain competition. However, an integrated licensing framework for the regulation of carriage of broadcasting services may lead to creation of monopolies in the sector, ongoing economies of scale and scope, and the ability of some enterprises to abuse their control of key gateways.

(ii) Therefore it must be kept in mind that no such conditions should be imposed which makes the broadcasting/media & entertainment sector unviable or unsustainable or which amounts to an unreasonable restriction on freedom of speech and expression.

(iii) In view of the above, the entire licensing/permission system and the manner in which they operate is different for telecom services and broadcasting services

and both sectors require a separate skill set to function. It is reiterated that the present regime of separate licenses/permission and distinct administrative establishments under different ministries for processing and taking decisions on licensing/permission issues is able to handle broadcasting services adequately.

Q3. How various institutional establishment dealing with – (a) Standardization, testing and certification. (b) Training and Skilling. (c) Research & Development; and (d) Promotion of industries under different ministries can be synergized effectively to serve in the converged era. Please provide institution wise details along with justification.

Answer: No Comments

Q4. What steps are required to be taken for establishing a unified policy framework and spectrum management regime for the carriage of broadcasting services and telecommunication services? Kindly provide details with justification.

Answer: No unified policy framework for spectrum management is required to be made, for the reasons given below:-

Telecom and broadcasting services are distinct services. Instead of introducing a new / unified framework and spectrum management regime, the existing framework should be streamlined and strengthened for better coordination and timely reverts. Process of administrative allocation of satellite spectrum for broadcasting services should continue, which would be in line with international practice. Satellite spectrum used for broadcasting services allows multiple satellite service providers to operate in the same geographic area – so there is no constraint on satellite spectrum availability, whereas telecom services offered over terrestrial spectrum block frequency bands in such a way that it can only be used by a single operator and cannot be shared. This fundamental difference results in satellite spectrum never exclusively assigned as opposed to terrestrial spectrum. Telecom services primarily use the terrestrial horizontal spectrum whereas the broadcasting services use the vertical space spectrum. For all these reasons, the services are not similar at all, and hence placing different services under a common policy will severely hamper and adversely impact the broadcasting services in the country. Thus the present framework in respect of allocation of spectrum should be followed and the status quo should be maintained.

Q5. Beyond restructuring of legal, licensing, and regulaty frameworks of carriage of broadcasting services and telecommunication services, whether other issues also need to be addressed for reaping the benefits of convergence holistically? What other issues would need addressing? Please provide full details with suggested changes, if any.

Answer: In view of the submissions made above this question requires no answer. However, it is pointed out that at present there are over 350 different broadcasting companies, 4 private DTH players, 1500 MSOs and about 60000 Local Cable Operators and the sector is highly diversified and the ownership is also highly fragmented. If broadcasting services are converged, the few players over a period of time will gain dominance in the market and will indulge in anti-competitive practices. The consumer interest will be further compromised as now s/he will be forced to depend on such entities for more of his requirement. The pricing of consumer will further become opaque through complicated plans offered by telecommunication entities .

8. **Conclusion:**

DNPA submits that there is no requirement for convergence of carriage of broadcasting services and telecommunication services. Therefore, there is no requirement for a comprehensive/converged legal, licensing and/or administrative framework to deal with the supposed "convergence" of carriage of broadcasting services and telecommunication services. Further, before undertaking the present consultation process, TRAI should wait for the draft Telecommunication Bill, Digital Personal Data Protection Bill and the Digital India Act and other sectoral legislations to be finalized. Therefore, this Consultation Paper appears to be premature and unwarranted at this point of time as the need of the hour is not the convergence of ministries/legislations but a harmonization of the same.

The only regulation which needs to be changed, is to extend the existing 20% vertical integration rule for broadcasters, to telecom service providers so as to ensure a level playing field for all players and stop the creation of monopolies across mobile, broadband and broadcasting. Currently, only broadcasters are regulated because the DTH Guidelines restrict broadcasting companies and/or cable network companies from owning more than 20% of the total equity of the DTH company and vice versa. Likewise, the HITS Guidelines restricts broadcasting companies and/or DTH companies from owning more than 20% of the total equity of the HITS company and vice versa. However, there are no such restrictions on telecom companies and in order to ensure level playing field, the only regulation change required is to extend the aforementioned 20% vertical integration law for broadcasters to telecommunication entities , so that no telecom company can hold/own more than 20% in broadcasting and OTT companies whether content or carriage, and vice versa.