

Indian Broadcasting & Digital Foundation’s (“IBDF”) preliminary response to Consultation Paper dated July 20, 2022 on Renewal of MSO Registration (“Consultation Paper”) issued by Telecom Regulatory Authority of India (“TRAI”)

1. We thank TRAI for according us the opportunity to provide our inputs to the Consultation Paper. Registration of Multi System Operators (“MSOs”) and Local Cable Operators (“LCOs”) that are in compliance with all applicable laws is imperative for the orderly growth of the broadcasting and cable service sector and to ensure that the consumer interest is not adversely impacted in any manner. At present there are 1,762 MSOs who have been provided MSO registration by Ministry of Information and Broadcasting (“MIB”) up to March 2022 out of which nearly 900 MSOs have active agreements with pay TV broadcasters¹. As per the above information, there is still a gap of approximately 800 MSOs who do not have active agreements with broadcasters. Further, only 363 MSOs have conducted the mandatory audit in 2021. Non-compliance on the part of the MSOs is having an adverse effect on the industry and results in the following:
 - (a) Under-reporting of subscriber numbers – leads to revenue leakage for other stakeholders in the value-chain and loss to public exchequer (including GST revenue and unpaid taxes).
 - (b) Possibility of certain MSOs not upgrading their infrastructure – results in non-compliance on the part of the MSO and diminishes the quality of service that consumers receive.
 - (c) Usage of substandard systems (including CAS, SMS and Set Top Boxes) by certain MSOs – has severe privacy and security implications.
 - (d) Illegal distribution of foreign channels by certain MSOs in India – pose huge security implications.
 - (e) Possibility of certain MSOs pirating Indian channels – aid such MSOs to indulge in illegal activities.

2. Keeping the above in mind, it is vital that registration should only be renewed for compliant MSOs who are serious players to eliminate fly-by night operators indulging in unethical and non-transparent business practices, which in turn adversely impacts broadcasters, scrupulous competing DPOs, consumer interests and also causes loss to government exchequer.

¹ TRAI Consultation Paper dated July 20, 2022 on Renewal of MSO Registration.

3. **Preliminary Submissions:**

- (a) It is essential that the renewal of registration for any MSO be considered only upon compliance with the extant regulatory framework and the terms and conditions of their registration. In addition, it is important that the credibility of the MSOs seeking renewal of their licenses be taken into account. In case the above-mentioned criterion is not considered there is a possibility of non-serious and non-compliant players entering the industry who in turn may indulge in unethical and non-transparent business practices and regulatory framework. Such non-compliances can inter-alia be in the form of absence of adequate level of infrastructure, poor quality of consumer services, absence of consumer redressal system, non-submission of subscriber reports/submission of doctored subscriber reports / under-declaration, non-maintenance of adequate books of accounts, non-maintenance of appropriate systems (*including conditional access and subscriber management systems*), piracy, non-compliance with Schedule III & IX, not conducting audit, non-submission of audit reports, non-payment of subscription fees to broadcasters, failure to enter into written agreements with local cable operators, failure to maintain call centers and websites, failure to issue bills to consumers, etc.
- (b) Renewal of registration of MSO license must be considered in light of the compliance of applicable law and license conditions so as to ensure that the registration of any non-compliant MSO is not renewed.
- (c) TRAI has notified Tariff Order, Interconnection Regulations, QoS Regulations and Register Regulations and Audit Manual (collectively, “**TRAI Notifications**”), and it is important that MSOs are verifiably in compliance with TRAI Notifications before their license is renewed.
- (d) Further, TRAI has prescribed reporting requirement for all stakeholders under TRAI Notifications and by virtue of such reporting requirements (on the BIPS Portal), TRAI maintains records relating to filing of Interconnection Agreements between DPOs and Broadcaster, filing of carriage RIOs, DRP of a-la-carte and Bouquets, NCF, etc. Further, under the Audit Manual, the Auditor is required to submit the audit report to TRAI about the details of audits carried out by the Auditor, as per the format prescribed by TRAI from time to time. It is suggested that the TRAI and MIB on an annual basis publish in public domain status report provided on submission of Audit Reports to TRAI by MSOs for preceding calendar years, filing of Interconnection Agreements between DPOs and Broadcasters, filing of carriage RIOs, DRP of A-la carte and Bouquets, NCF, etc. by the MSOs.

Strict action ought to be taken against MSOs not in compliance with regulatory framework.

- (e) The MSOs should be mandated to submit a self-declaration at the time of filing application for renewal of registration declaring that the MSO is in compliance of the TRAI Regulations, terms and conditions of MIB registration, Cable Television Act ("**CTN Act**") and rules frame thereunder ("**Rules**"), that there are no complaints relating to piracy and unencrypted transmission / retransmission of signals pending before any forum, and that the signals of the MSO have not been disconnected by the respective broadcaster for any non-compliance, proof that the MSO's System is capable of generating System generated MSR and a copy of latest invoice and/or "No Objection Certificate" issued by the respective broadcasters. It has been observed by TRAI in the Consultation Paper that "*there is a significant gap in reporting of compliance by these MSOs despite continuous monitoring efforts by TRAI.*" As per the Consultation Paper, only 363 MSOs have undergone the mandatory audit in 2021. It has been further observed that similar shortfalls are also being observed by the MIB regarding compliance of the terms & conditions of the MSO registration granted by MIB. Therefore, while renewing MSO registration it is important that the compliance of the MSO in respect of audits as prescribed in the extant regulatory framework be one of primary deciding factors for such renewal. It is important to consider that the correct subscriber base reporting depends solely on the integrity of the CAS and SMS systems ("**Systems**") that are managed and controlled by the MSOs and discrepancies/manipulation, if any, can only be caught by way of audits. Additionally, the compliance status report from TRAI, self-declaration from the MSO, report of the Authorised Officers, complaints against defaulting MSOs filed with MIB and the data updated on the MIS of MIB will enable MIB to make an informed decision at the time of renewal of registration.
- (f) One of the primary conditions to be considered while renewing registration of MSOs is that the MSO must not be an offender whose signals have been disconnected for non-compliance including but not limited to non-payment of outstanding subscription fees, re-transmission of signals in unencrypted manner, indulging in piracy, manipulation/non-submission of subscriber reports and any complaints pending in this regard with MIB and/or the Authorised Officer². The MIB can seek status report from the Authorised Officers basis the data available with the Authorised Officers in relation to complaints filed against MSOs. Such

² Section 11 of the CTN Act reads as under:

"If an authorized officer has reason to believe that the provisions of section 3, section 4-A, section 5, section 6, section 8, section 9 or section 10 have been or are being contravened by any cable operator, he may seize the equipment being used by such cable operator for operating the cable television network"

data should be made readily available to MIB by the Authorised Officer at the time of renewal of registration of any MSO or as required from time to time. In addition to the status report from the Authorised Officers, MIB should also consider the data available with the MIB in respect of any complaints filed against offending MSOs prior to renewal of registration.

- (g) It is imperative that the Registration of LCOs with MIB must be mandated to enable better diligence and line of sight for the industry. We recommend that the registration of LCOs and the renewal of such registration be via an online application process under Broadcast Sewa portal. At present, prior to availing signals of TV channels from MSOs, LCOs are required to apply for registration from the registering authority³ (i.e., *Head Post Office of the area within whose territorial jurisdiction the office of the cable operator is situated*). Resultantly, the exact number of active LCOs in existence as on date is not known. Mandatory registration of LCOs with MIB will enable MIB and other stakeholders of the industry to keep a track of active LCOs and ensure elimination of any non-compliant/non-serious players. It is suggested that a list be published on MIB's website that includes details of registered LCOs, status of application of LCOs who have applied for registration and names of LCOs whose registration has been cancelled.
- (h) Corporatization of MSOs⁴ is the way forward especially from compliance, credibility and transparency perspective. This will ensure that all MSOs are treated at par as regards to maintenance of proper records which are easily accessible, adherence to requisite quality parameters, effective control mechanism, penalties for defaulters (*as envisaged under the Companies Act, 2013*) being made applicable to the cable TV industry. Further, this would also complement the non-discriminatory vision of TRAI since broadcasters, DTH operators and HITS operators are mandated to be registered as companies. In order to promote greater transparency and effect better regulation, MSOs may be advised to register themselves at least as a 'One Person Company' (if not as a Company) under the Companies Act 2013 wherein the process has been greatly simplified and expedited.

³ clause (h) of section 2 of the Cable Television Networks (Regulation) Ordinance 1994 - The Head Post Master of a Head Post Office has been notified as the Registering Authority, vide S.O. 718 (E) dated 29.9.1994

⁴ As per the Consultation Paper there are – "1762 MSOs who have been provided MSO registration by MIB up to March 2022. Further, as per inputs from leading broadcasters, nearly 900 MSOs have active agreements with pay TV broadcasters."

- (i) It is imperative that all MSOs have their independent Systems (specially, their own / independent CAS, SMS, STBs and finger printing mechanisms). Failure to do so will *inter-alia* result in piracy, under-declaration of subscribers, audit issues and an increase in disputes with broadcasters as well as inter-se MSOs on account of hopping of MSOs using infrastructure from one MSO providing infrastructure to another at short intervals.

4. Please find below our inputs on the issues raised for consultation -

Issue 3.1: What should be the period of extension/renewal, to be prescribed in the Cable Television Networks (Regulation) Act, 1995 /Cable Television Networks Rules, 1994, on the expiry of the initial period of permission of MSO registration? Please elaborate your response with justification.

IBDF Response:

The Cable industry in our country is maturing and needs to become more professional. We suggest that each MSO should get its registration extended/ renewed once in every three (3) years. This will help MIB / TRAI as well as the other stakeholders to assess the status of the MSO network properly. In the event it is found *inter-alia* through the audit conducted of the of the MSO's System that MSO is not in compliance with the legal and regulatory framework, then the same should be treated as a Red Flag and renewal should not be proceeded with. It is imperative that compliances are taken seriously by MSOs. Ten years of extension or renewal period would be too long and would bring in non-compliances and entire eco-system would become lethargic.

Issue 3.2: Whether a one-time fee should be levied at the time of renewal of the MSO registration? If yes, please suggest amount of fee for such renewal to be prescribed in the Cable Television Networks (Regulation) Act, 1995 /Cable Television Networks Rules, 1994. Please provide detailed reasoning for your comment.

IBDF Response:

Yes. Renewal Fee should be levied on each renewal. The amount should not be marginal such as, the current license fee of Rs.1 Lakh for a ten year license since, such marginal license fee encourages fly-by-night and unscrupulous small operators to take license. Further, their activities not

only adversely impact revenues of broadcasters but also creates a challenge for scrupulous competing MSOs.

Issue 3.3: **Should a time window be prescribed before the expiry of MSO registration, within which the MSO shall apply for renewal of the MSO registration?**

IBDF Response:

Yes, process for renewal of MSO registration should commence at least six (6) months prior to the expiry of the existing registration period and ought to be completed at least three (3) months prior to expiry of license period. All decisions where license has not been renewed ought to be made available in public domain and also intimated to industry associations (including IBDF). This is important since the Broadcaster cannot continue to provide signals to the MSO in case the MSO's registration is not renewed.

Issue 3.4: **In case an MSO has applied for renewal, and the final decision on renewal is pending, what should be the provision to ensure continuity of service for the consumers on expiry of previous registration?**

IBDF Response:

In the event the MSO has applied for renewal of registration and the said application is pending approval due to unforeseen circumstances, then a provisional extension of not more than three (3) months can be granted to the MSO. A copy of such provisional extension ought to be published in public domain as well as provided to industry associations (including IBDF).

Issue 3.5: **In case an MSO hasn't applied for renewal before the expiry of its registration:**

3.5.1 **What should be the status of services by such MSO after the expiry of registration? As per extant guidelines/ regulations an MSO with valid registration only can get the signals of a television channel. Should a broadcaster disconnect the television channels for such MSOs whose registration has expired?**

IBDF Response:

Yes. In the event the MSO has not applied for renewal of the registration within the expiry period of the existing license, the Broadcaster should be entitled to deactivate the signals of their channels to such MSO's network forthwith upon expiry of the MSO license's registration period. It is submitted that MSOs should not be allowed to operate if they fail to apply for renewal of registration prior to its expiry as it is mandatory for broadcasters to provide services only to registered MSOs. This would also be consistent with the extant TRAI Regulations as well, which provide that the Broadcaster cannot provide signals to MSO without a valid licence. Section 3 of the Cable Television Networks (Regulation), Act, 1995 prescribes that *"no person shall operate a cable television network unless he is registered as a cable operator under this Act."*

- 3.5.2 Should existing registered operational MSOs be provided with an extended time beyond the original registration period for applying for renewal? What should be the maximum time after expiry up to which an application for renewal can be entertained by MIB?**

IBDF Response:

No. Existing MSO should not be given additional time beyond the original registration period for applying for renewal.

- 3.5.3 Should there be an additional fee for such applications that are received after the expiry of registration period?**

IBDF Response:

The registration of an MSO should stand cancelled if the MSO does not apply for renewal on or before the expiry of the existing license period. This renders the present issue for consultation regarding levying of additional fee for such applications received after the expiry of registration period redundant.

Issue 3.6: **Should some qualifying conditions be prescribed for renewal of MSO registration, under which the MSO, along with the application for renewal, shall be required to submit its compliance status with the terms and conditions of registration and the extant regulatory framework?**

IBDF Response:

Yes, compliance status in the form of self-declaration should be submitted alongwith the renewal application by the MSO and importantly, the self-declaration ought not be accepted on its face value and should be verified and compared with complaints / adverse findings received against MSO (if any).

Further, the self-declaration to be submitted by the MSOs applying for renewal should be by way of an affidavit declaring that they are in compliance of the TRAI Regulations, terms and conditions of MIB registration, CTN Act and Rules, that the signals of the MSO have not been disconnected by the respective broadcaster for any non-compliance, proof that the MSO's System is capable of generating System generated MSR that there are no complaints relating to piracy and unencryption pending before any forum including but not limited to MIB, Authorised Officers and Court of law and copy of latest invoice and/or "No Objection Certificate" issued by the respective broadcasters.

TRAI and the Authorised Officers should submit Compliance status report (comprising of timely submission of audit reports, submission of certificates issued by TEC for Systems, timely submission of Monthly Subscriber Reports ("MSR"), timely payment of subscription fees, compliance with requirements prescribed in Schedule III, Schedule IX and the Audit Manual for Systems, retransmission of signals in encrypted mode, compliance of QoS norms, refrain from indulging in piracy) to MIB.

MIB should take into consideration such compliance status report while granting renewal of registration. It is also imperative that the registration of MSOs with pending recovery petitions and with a history of insolvency should not be renewed. TRAI in the Consultation Paper has stated as follows:

"Apart from this, many of MSOs who have been issued MSO registration by MIB after 2017, are yet to comply with the

provisions of the CTN Act/Rules including the extant regulatory framework.”

In this regard, an Advisory dated 21.02.2022 has been issued by MIB mandating MSOs to regularly update subscriber base data on the Management Information System (MIS) of the MIB.

From the above, it is evident that there has been a failure on the part of MSOs in respect of compliance. Therefore, it is vital that prior to renewal of registration for any MSO, MIB should refer to the self-declaration, compliance status report submitted by TRAI and the Authorised Officers, the complaints against defaulting MSOs filed with MIB and the data updated on the MIS of MIB.

Please provide the details of:

- (i) List of necessary compliances that should be mandatory for considering renewal of MSO registration,**

IBDF Response:

All compliances as contemplated in TRAI Notifications, CTN Act and Rules as well as MIB's permission to operate as MSO should be considered before renewal of MSO registration.

- (ii) List of documents, which may include, but may not be limited to, self-certifications, NOCs from TRAI/MIB/licensing authority, audit reports etc. that would be required to be submitted for verification of such compliances at the time of application,**

IBDF Response:

It is submitted that self-certification with regard to the MSO's Systems will not have any significance. All the System related certifications should be provided by the Auditors along with the Standard certifications issued by Telecommunication Engineering Centre so that compliance with Schedule III and Schedule IX of the interconnect regulations may be ascertained.

- (iii) **Any other mandatory requirements for verification of status of compliances of the MSOs before grant of renewal of registration.**

Please elaborate your suggestions with reasons for the mandatory requirement of each compliance in tandem with ease of doing business in the television distribution network.

IBDF Response:

It is submitted that the MSO should be mandated to submit the proof that the MSO's System is capable of generating System Generated MSR. If the MSO's System fails to provide the same, then the renewal should be withheld. It has been observed that presently substantial number of MSOs are providing the MSRs only in excel sheet and not system generated as mandated under the Interconnect Regulations.

- Issue 3.7: Should there be any additional terms and conditions for renewal of the permission for MSO registration? Please elaborate.**

IBDF Response:

It is submitted that at the time of filing of the application for renewal of registration, it should be made mandatory for the MSO to submit the latest invoice and/or "No Objection Certificate" issued by the respective broadcaster which shall signify that there are no arrears or amount due and payable by the MSO to the broadcaster in respect of subscription fees as on date of the renewal of the registration. This requirement/condition should be a part of the application for renewal of registration.

- Issue 3.8: Stakeholders may also provide their comments on any other issue relevant to the present consultation.**

IBDF Response:

TRAI should take concrete steps to ensure continued compliance of new regulatory framework / TRAI Notifications by all MSOs.
