

**Counter comments to TRAI Consultation on
'Regulatory framework for Ground-based Broadcasters'**



TRAI/FY24-25/061

Dated: 06 December 2024

To,

Shri Deepak Sharma,
Advisor (B&CS) – II,
Telecom Regulatory Authority of India,
4th, 5th, 6th & 7th Floor, Tower-F,
World Trade Centre, Nauroji Nagar,
New Delhi: 110029

Subject: Airtel's counter comments on TRAI's Consultation on the "Regulatory Framework for Ground Based Broadcasters"

Ref:

1. Airtel's Comments to CP vide letter bearing no. TRAI/FY 24-25/058 dated 22 November 2024.

Dear Sir,

This is in reference to TRAI's Consultation Paper on "**Regulatory Framework for Ground Based Broadcasters**" dated 18 October 2024.

In this regard, please find enclosed our **counter comments** for your kind consideration.

Thanking You,

Yours' Sincerely,

For Bharti Telemedia Limited

Rahul Vatts

Chief Regulatory Officer

Encl: a.a

Copy to:

1. **Chairman, TRAI**
2. **Secretary, TRAI**
3. **Principal Advisor (B&CS), TRAI**



❖ **Executive Summary**

Airtel thanks the Authority for the opportunity to provide its counter comments to the responses received on the Consultation Paper on the '**Regulatory Framework for Ground-based Broadcasters**'. These counter comments are an extension of the arguments previously presented in the main response to the paper. For the sake of continuity, an overview of the key submissions made earlier are as under:

- New technologies, such as ground based broadcasting will inevitably compete with satellite based broadcasters. Given the lower capital costs associated with ground based broadcasting while offering comparable viewing experiences makes **it imperative that their regulatory treatment mirrors that of Satellite based broadcasters, excluding only those provisions that are satellite specific.**
- **All content related regulations such as MIB's Programme Code and the Advertising Code as well as TRAI's regulations (Tariff Order, the Interconnection Regulations, and the Quality of Service Regulations) and its principle of Must Carry, Must Provide should equally apply to ground-based broadcasters.**
- The framework should be future proof, in so far as it should be able to address emerging challenges that arise as technology continues to evolve while ensuring that the regulatory environment promotes and maintains a level playing field.

❖ **Need for equitable guidelines for Digital Platforms (OTT) delivering broadcast content via broadband or mobile services**

Concerns have been raised by certain stakeholders regarding the disparity in regulatory oversight between Digital Platforms (OTT) delivering broadcast content via broadband or mobile services and traditional DPOs. These Digital Platforms are offering live channels to consumers, similar to those offered by traditional broadcasters without the same regulatory scrutiny, which distorts the level playing field for Pay TV operators.

As highlighted by certain stakeholders, these Digital Platforms are, in essence, functioning as ground-based broadcasters and should therefore, be recognized as such. Consequently, we believe that the regulatory framework for ground-based broadcasters should be expanded to include clear guidelines for the distribution of live channels through these Digital Platforms.



Airtel has long been arguing that there exists a need to address the issue of the unequal playing field that has emerged between Digital Platform (OTT) delivering broadcast content through broadband / mobile and traditional distribution platform operators.

We therefore, urge the Authority to proactively formulate clear and equitable guidelines for OTT broadcast services, to ensure that the law remains adaptable and responsive to technological advancements.

❖ **Counter Comments**

In the following section, Airtel submits its counter comments on certain assertions made by some of the stakeholders in their submissions to the captioned consultation paper:

1. Ground-based broadcasting (GBBs) are fundamentally distinct from Satellite-based broadcasting (SBBs), however, are similar to Platform Service channels. Hence, they should be regulated in the same manner as Platform Service Channels.
2. TRAI's regulations i.e., the Tariff Order, the Interconnection Regulations and the Quality of Service Regulations, as well as the principle of Must-Carry Must-Provide should not apply to ground-based broadcasters.

We submit that the aforementioned assertions are misconceived. We strongly oppose these arguments and seek to set the record straight. In this regard, please find our detailed response countering these assertions and substantiating our position.

1. Ground-based broadcasting (GBBs) are fundamentally distinct from Satellite-based broadcasting (SBBs), however, are similar to Platform Service channels. Hence, should be regulated in the same manner as Platform Service Channels are.

Airtel's Counter Comments

Airtel strongly disagrees with the claim that ground-based broadcasting is similar to Platform services. The argument appears to be based on the assumption that since ground-based broadcasters are expected to cater to local audiences and air regional programmes, they are similar to Platform services, which also primarily offer local content. **However, to consider an isolated aspect of content type to determine the entire regulatory framework for ground based broadcasters is unfounded and illogical.**



The primary aspect that must be considered while determining a regulatory framework is the manner of operations of a service. Ground-based broadcasters share a similar business model as satellite-based broadcasters, differing only in transmission methods. The Authority itself referred to ground-based broadcasters as “*de facto broadcasters*,” in its consultation paper noting they are “*channel operators that produce and own the rights to programming content of ground based channels and largely follow the same processes to create, assemble and distribute these channels as the traditional satellite-based channels.*”

Furthermore, equating ground-based broadcasting with platform services is a flawed comparison particularly as both services have fundamental differences. Distribution platform operators (DPOs) are mandated to ensure exclusivity of their content i.e., they are restricted from offering their platform service channels to anyone but their own subscribers and can reserve no more than 5% of their channel capacity for platform service channels. In contrast, ground-based broadcasters have no such exclusivity requirements; they can distribute their content to multiple platforms without limitations or capacity capping.

Therefore, in light of the above, Airtel believes that ground based broadcasters operate in a manner closest to satellite based operators, with the only difference being the mode of transmission. Therefore, both ground-based and satellite broadcasters should be subject to the same regulatory framework, except for specific obligations related to satellite operations, such as spectrum usage permissions from the Department of Space (DoS) and the Wireless Planning & Coordination (WPC) Wing.

This would mean that all content-related regulation such as the Programme Code and Advertising Code prescribed by the Ministry of Information and Broadcasting as well as TRAI’s regulations governing satellite-based broadcasting and distribution including the Tariff Order 2024, the Interconnection Regulations 2024 and the Quality of Service Regulations 2024 – should equally apply to ground-based broadcasters (GBBs). This approach will ensure that all broadcasters, irrespective of the medium used for content delivery, are held to the same standards of content quality.

Additionally, given that ground-based broadcasters will inevitably compete with satellite-based broadcasters by providing comparable viewing experiences with lower capital costs, it is crucial that the regulator takes decisive action to ensure that a level playing field is maintained and prevent any undue advantage from being afforded to them.



2. TRAI's regulations i.e., the Tariff Order, the Interconnection Regulations and the Quality of Service Regulations, as well as the principle of Must-Carry Must-Provide should not apply to ground-based broadcasters.

Airtel's Counter Comments

These assertions are being countered in a two-pronged manner as under:

- Applicability of TRAI's Regulations [Tariff Order, Interconnection Regulations, Quality of Service Regulations]

Certain stakeholders have argued that the TRAI regulations i.e., the Tariff Order, the Interconnection Regulations and the Quality of Service Regulations should not apply to ground based broadcasters. Their position is based on the rationale that ground-based broadcasters have a smaller reach as compared to traditional broadcasters offering regional channels and hence, with their limited viewership, they should not be subjected to the same stringent regulations as larger satellite broadcasters. **However, we believe that the regulatory framework governing the aspects of service provision should remain consistent for similar services, irrespective of the size and reach of the broadcasters.**

Exempting ground-based broadcasters from the same regulatory standards as satellite-based broadcasters, especially when the only difference between them is the mode of transmission, would not only create an uneven playing field but would also negatively impact content quality and ultimately adversely affect consumers.

Given the above, Airtel is of the opinion that there is no requirement for a separate regulatory framework for ground-based broadcasters at this stage, particularly since the Cable Television Networks (CTN) Act, 1995 and the Guidelines for Uplinking and Downlinking of Satellite Television Channels in India, 2022 already address key areas like permissions, content regulation, approvals, etc. These regulations can simply be extended to include ground based broadcasters within their ambit.

However, if the Ministry of Information and Broadcasting (MIB) decides to introduce new guidelines for ground-based broadcasters, they should align it with the existing standards for Satellite-based broadcasters. Any differences in regulations could create an unfair competitive advantage for ground-based broadcasters, thereby disrupting the market landscape.

In light of the above, Airtel is of the firm opinion that TRAI's regulations i.e., the Tariff Order, the Interconnection Regulations and the Quality of Service Regulations should apply equally to



ground-based broadcasters as they do to Satellite-based broadcasters. This approach will ensure that all broadcasters, irrespective of the medium used for content delivery, are held to the same standards.

- **Applicability of TRAI's Must-Carry, Must-Provide Principle**

As established hereinabove, ground-based broadcasters are similar to Satellite-based broadcasters and should be treated at par with each other. Therefore, the Tariff Order, Interconnection Regulation and Quality of Service regulations, as laid down by TRAI should apply uniformly to both.

This established framework by TRAI also includes principles such as "Must Carry" and "Must Provide". The "Must Carry" provision requires DPOs to include specific channels on their platforms on fair terms, while the "Must Provide" provision mandates that broadcasters make their channels available to DPOs under equitable terms. These provisions are designed to foster a fair, competitive broadcasting landscape and ensure broad consumer access to diverse content.

Without the mandate of Must Provide, for instance, there is a possibility of denial of ground based channels by GBBs that would essentially have the effect of exclusivity, which is the fundamental difference between platform service channels from ground based channels. Therefore, in order to maximize the reach and growth of ground based channels, it is essential that their content is distributed on a non-exclusive basis across all distribution platform operators.

In light of the above, and since the "Must Carry" and "Must Provide" obligations are integral to TRAI's regulatory framework and apply to all broadcasters, it is essential that the same principles be extended to ground-based broadcasters.

Any additional costs incurred to comply with these provisions should be shared by the parties involved, based on mutual agreement. However, if a consensus on cost allocation cannot be reached, the following should apply for "Must Carry" provisions, broadcasters should cover the cost of bandwidth or any other additional costs required, while for "Must Provide," DPOs should bear the associated costs.

Lastly, in the event it is not feasible for a ground based broadcaster to provide its channels in certain areas due to technical or other constraints, the same may be denied in line with the provisions of the extant Interconnection Regulations.

*Counter comments to TRAI Consultation on
'Regulatory framework for Ground-based Broadcasters'*



In both cases, it is vital that the principles of Must-carry, Must-provide are enforced for Ground-based broadcasters in the same manner as for Satellite-based broadcasters, ensuring a level playing field and promoting fair competition within the sector.

We remain hopeful that TRAI will consider our submissions alongside our referenced response to the consultation paper.