

**Preliminary Response of Indian Broadcasting & Digital Foundation (IBDF) to TRAI's  
Consultation Paper dated 02 April 2024 on Inputs for formulation of National Broadcasting  
Policy-2024**

**1. Background**

- 1.1 The Telecom Regulatory Authority of India (TRAI) released a Consultation Paper on Inputs for formulation of National Broadcasting Policy-2024 (CP) on 2 April 2024. The TRAI had earlier sought stakeholders' views on the said issues in a pre-consultation on 21 September 2023 after it received a reference letter from the Ministry of Information and Broadcasting (MIB) on 13 July 2023.
- 1.2 We thank the TRAI for undertaking a public discussion on the National Broadcast Policy (NBP) and for providing stakeholders with an opportunity to raise their concerns and contribute towards the formulation of a National Broadcast Policy (NBP).
- 1.3 We are concerned about several aspects of the current consultation process by TRAI, which inter-alia are as under:
- a) Pre-consultation submissions: TRAI has not considered nor dealt with stakeholder inputs from the earlier pre-consultation stage.
  - b) Limited window for sending comments: The lack of an extension for sending comments on the current communication restricts our ability to respond fully since, the allocated time is insufficient.
  - c) Absence of opportunity to send counter-comments: The opportunity to provide counter-comments on received submissions is missing.
  - d) **The instant CP does not disclose the reference letter issued to TRAI by the MIB, or any other communications between the Ministry and the regulator, which forms the basis of this consultation, thus the scope of the reference is not clear to the stakeholders.** This is in stark contrast to a longstanding practice of the TRAI disclosing the reference letters of the MIB or other Ministries in relevant annexures to the CP. However, in both the present CP as well as the pre-consultation paper on the NBP, the reference letter from the MIB has not been disclosed. In our estimation, and without prejudice to any of the other points made in this response to the CP, the failure to disclose the reference letter from the MIB is also against the mandate under Section 11(4) of the TRAI Act under which TRAI is required to maintain transparency in discharge of its functions. It has been consistently held by the Hon'ble Supreme Court in several judgments in *Cellular Operators Association of India v. Union of India*, (2016) 7 SCC 103, that a transparent followed has to be followed by the TRAI while framing any regulation.
- 1.4 The aforesaid departures from past practices adversely impact the stakeholders. We urge TRAI to address these issues first before proceeding further. We also take this opportunity to reiterate

our previous submissions from the pre-consultation process and request them to be considered as preliminary issues. For clarity, the present preliminary submissions are being made without prejudice to the foregoing.

## 2. Preliminary Submissions

- 2.1 At the outset, we would like to submit that the IBDF has preliminary concerns and objections about the scope, ambit, and topics covered in the CP, as we believe that on the vast majority of issues, the CP goes beyond TRAI's jurisdiction. These are important jurisdictional issues that go to the core of the CP and should be decided as preliminary issues at the outset before proceeding further with the exercise. As the broadcast sector is already facing an existential crisis due to misplaced priorities it is imperative that the submissions made hereunder may be considered by the MIB while formulating the NBP.

### Regulation Of Content Outside Purview Of TRAI

- 2.2 The present CP goes beyond the power and remit of the TRAI under the Telecom Regulatory Authority of India Act, 1997 (“**TRAI Act**”). The TRAI has consistently taken a stand, *inter alia*, in various explanatory memoranda to the its regulations, consultation papers, etc., that regulation of content is beyond the scope and power of the TRAI. Broadcasting, being a medium of expression, is an integral part of Article 19(1)(a) of the Constitution. It gives a medium to citizens to express their creativity. This freedom to broadcast, as well as make available information/ knowledge and/ or content is essential for an informed democracy and to safeguard the fundamental rights of the viewers to access, and choose the content and /or the information/ knowledge that they wish to watch. Any restriction on the dissemination of content in any manner would amount to curtailment of the freedom of speech and expression which is a cherished right under the Constitution.
- 2.3 The regulation of content distinctly falls outside the jurisdiction of the TRAI. In the case of **Star India Pvt. Ltd. vs. Dept. of Industrial Policy & Promotion**,<sup>1</sup> it was held that the content is not being touched upon by TRAI. This case explicitly clarifies that TRAI's responsibilities are confined to the pricing and regulation of television channel carriage, not the content those channels broadcast. This demarcation stems from the legislative intent and framework of the TRAI Act, which is structured around the transmission aspects of broadcasting rather than the content conveyed.
- 2.4 In particular, the broadcaster's rights, regarding the content they choose to air, are not governed by the TRAI Act, which is focused solely on the aspects of carriage. This is evidenced by the Statement of Objects and Reasons and the Preamble of the TRAI Act, in particular Section 2(1)(k), 11 and 36. These provisions collectively affirm that the TRAI's regulatory scope is carriage centric and is limited to regulation of service in transmission alone and does not extend to or include the subject matter or content of the transmission.<sup>2</sup>

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<sup>1</sup> *Star India (P) Ltd. v. Deptt. of Industrial Policy & Promotion*, (2019) 2 SCC 104.

<sup>2</sup> Para 8, *Star India (P) Ltd. v. Deptt. of Industrial Policy & Promotion*, (2019) 2 SCC 104.

- 2.5 Moreover, the definition of ‘telecommunication service’ under Section 2(1)(k) of the TRAI Act reinforces this limitation, enabling TRAI to only regulate transmission or reception of broadcasting services, which essentially relates to regulatory measures taken for carriage of these signals.<sup>3</sup> This legal structure indicates that any regulatory measures imposed by TRAI are meant to address the carriage of signals, not the content or messages those signals carry. As mentioned earlier, this position is further affirmed by the recently enacted Telecommunications Act, 2023.
- 2.6 The TRAI has also acknowledged that it does not have the jurisdiction to regulate content in multiple instances in the past (please see table below).

Relevant TRAI Consultation Paper	TRAI’s stance on content regulation
<p><b>TRAI CP on Accelerating Growth of Internet and Broadband Penetration (November 2003)</b></p> <p>The Consultation Paper refused to address the area of fostering local content development by stating that the issue does not pertain to TRAI</p>	<p><b>No to content regulation.</b></p>
<p><b>TRAI CP on Issues related to Convergence &amp; Competition in Broadcasting and Telecommunication (January 2006)</b></p> <p>TRAI acknowledged that regulation of carriage and content should be separated, as the skill sets required for the two are grossly different. It sought comments on the same.</p>	<p><b>No to content regulation.</b></p>

OTT is outside the purview of TRAI

- 2.7 It is an admitted position that OTT is not governed by the TRAI. TRAI, has consistently taken the stand that OTT platforms are beyond the purview of TRAI Act as evident from, *inter alia*, the affidavits filed before various forums. The present CP intends to bring OTTs within the ambit of broadcasting which is contrary to TRAI’s own position. In view of the foregoing, the remit of the present CP should be confined to broadcasting services as notified under Section 2(1)(k) of the TRAI Act.
- 2.8 The TRAI has no jurisdiction over the digital platforms. Section 11 of the TRAI Act does not empower the TRAI to make recommendations on digital services. Section 11(i)(a) of the TRAI Act empowers the TRAI to make recommendations, either *suo moto* or on the request of the licensor on the need and timing for the introduction of a new service provider. Section 2(1)(j) of the TRAI Act defines the term service provider as meaning the Government as a service provider and includes a licensee. OTT services do not require any license from the MIB. The meaning of the

<sup>3</sup> Para 6, *Star India (P) Ltd. v. Deptt. of Industrial Policy & Promotion*, (2019) 2 SCC 104.

term 'service provider' cannot be enlarged to include services that are not envisioned within the scope of the TRAI Act.

*NBP is being framed to align it to the Draft Broadcasting Services (Regulation) Bill, 2023*

- 2.9 We further submit that this CP has come somewhat out of turn as it follows the consultation on the Draft Broadcasting Services (Regulation) Bill, 2023 ("**Draft Bill**"). Usually, the process of framing a policy must be concluded before introducing any legislation as the policy lays down the foundation for the legislation. However, in this case, the Draft Bill was brought out before the consultation process on the NBP is complete, and it appears that the NBP is being framed in a manner to align it to the Draft Bill. We humbly submit that neither the Draft Bill, nor the contours for the policy suggested in the CP address the concerns that IBDF has highlighted to the Government time and again, which include but are not limited to the health of the industry, the restrictions upon freedom of speech and expression, the problem of prescriptive, heavy-handed price regulations / over-regulation, and lack of clarity and certainty of regulatory framework. Rather, both the Draft Bill and this CP disproportionately emphasize upon the ancillary issues, *inter-alia*, social goals, content requisitioning, viewership measurement, and casting the obligations of public broadcasting on the private sector, while ignoring the primary issues and needs of the broadcasting industry which have been brought to TRAI's attention time and again in past consultation papers. Both the Draft Bill and CP also seek to bring digital media within the purview of broadcasting without appreciating the marked distinction between broadcasting industry and digital media platforms. We suggest that both the policy, as well as any prospective legislation, should focus on promoting the growth of the cable and satellite television broadcasting industry for the sector to achieve its full potential.

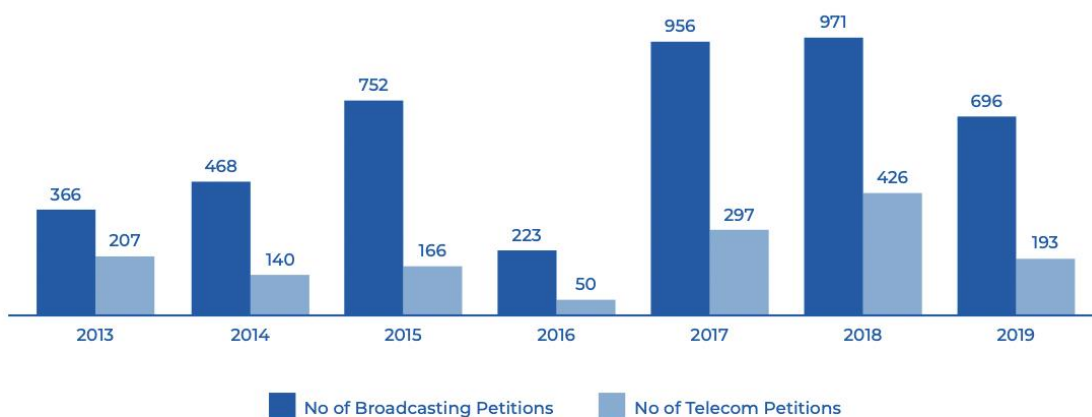
*NBP Should Be A Principle-Based Policy*

- 2.10 IBDF proposes that the Government considers a principle-based policy and vision statement to iterate high-level goals, rather than dealing with individual aspects. A principle-based policy can be designed to be flexible enough to be applied to a wide range of situations, and to allow for innovation and creativity in how the policy is implemented. Moreover, any broadcasting policy should not seek to provide any encompassing set of regulations, rules, or guidelines for the broadcasting industry. Rather, it should set out objectives for wings of Government (ministries and administrative agencies) such as economic targets for the sector, investment etc. In this context, the economic target of USD 1 trillion set by the Prime Minister for the digital economy is encouraging. A similar target can be set by the Ministry of Information and Broadcasting in consultation with relevant stakeholders. Further, The NBP should embody the principle of 'Minimum Government, Maximum Governance,' reinforcing minimal regulatory intervention and trust in self-regulatory mechanisms, and ensuring a predictable operating environment for all stakeholders.
- 2.11 The above suggested principle-based policy could confine policy recognition to:
- (i) A robust self-regulatory framework and forbearance on economic regulation;
  - (ii) The need to nurture creativity in content production and foster innovation in distribution technologies;
  - (iii) The need to protect freedom of speech and expression;

- (iv) The importance of market-driven licensing and negotiation;
- (v) The need for flexibility and adaptability to changing consumption patterns and technological innovations in sectoral and regulator capabilities; and
- (vi) The need to recognise, protect and uphold the primacy of intellectual property rights protection in content-driven industries and the need for sector-specific copyright enforcement measures.

2.12 **The CP does not address key existential concerns faced by the sector:**

2.13 **Economic Regulation is damaging the commercial prospects of the Cable and Satellite TV Broadcasting Sector:** The broadcast, cable & satellite industry is one of the fastest growing segments of the economy, with a projected CAGR of 7.85 percent through 2029.<sup>4</sup> These commercial windfalls come despite significant headwinds from regulatory uncertainty, and regulatory over-reach in the sector. Since the TRAI has overseen the sector, it has come out with at least 51 regulations (including amendments), not including QOS regulations and CAS related notifications. As of 2019, there were 696 petitions related to broadcasting disputes before the TDSAT, compared to only 193 in telecommunications. Notably, the number of disputes peaked in 2017, owing to the introduction of a major regulatory intervention, the New Regulatory Framework 2017 which encompassed the New Tariff Order 2017 (NTO), the New Interconnection Regulation (NIR) and the New Quality of Service Regulations 2017.



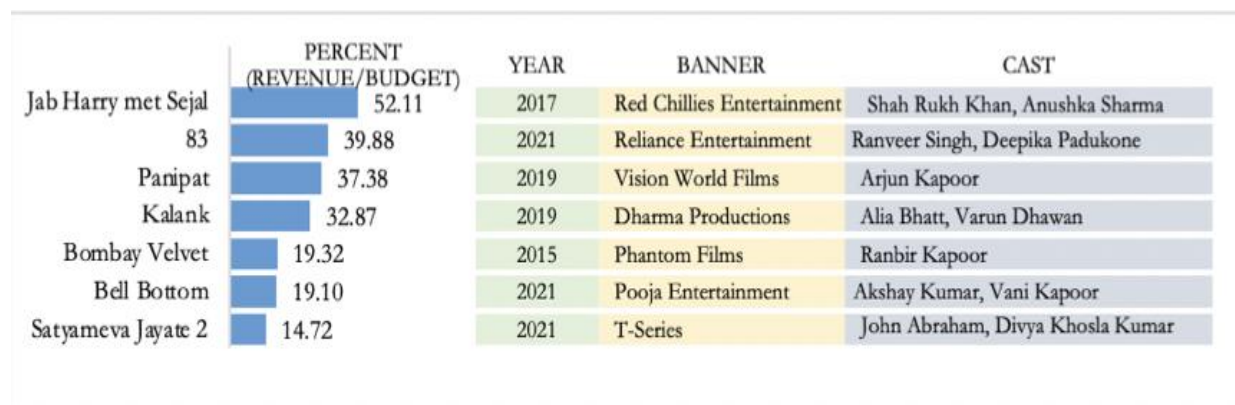
Source: TDSAT

2.14 **The current scheme of regulation in place in the cable and satellite broadcasting industry, namely price ceilings and bundling restrictions, militates against the fundamental economics of the sector.** Illustratively, a market study on the film distribution chain notes that content creators and distributors (such as service providers in the broadcasting industry) must focus on

<sup>4</sup> <https://www.techsciresearch.com/report/india-broadcasting-and-cable-tv-market/3281.html>

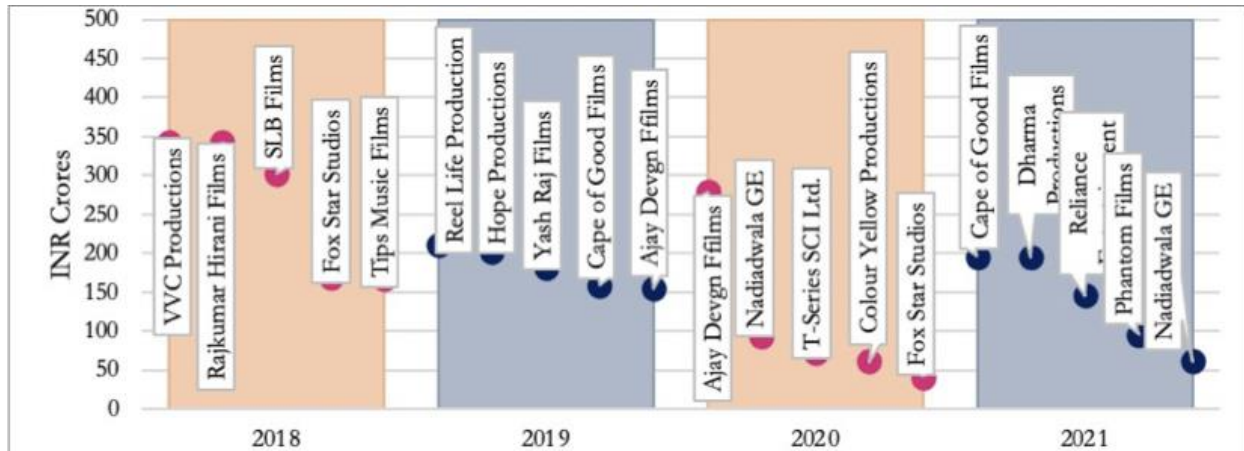
monetisation because their business is inherently risky. The relevant portions of the study are reproduced below. Please note that the principles set forth in the CCI study apply equivalently to broadcasting as it is a content industry like film. In fact, the CCI market study expressly mentions broadcasting in the course of its observations around bundling and how it is a necessary practice for these service providers as well as consumers of broadcasting<sup>5</sup>:

- 2.15 The inherent risk to content industry business models emanates from three considerations:
- Non-rivalry and partial excludability of programming content** add a dimension of risk, because the extent of ring-fencing against theft (piracy) and other leakages of value is limited.
  - Ease of piracy:** Technological advances have brought down the transaction costs of sharing/pirating programming content. Economists note that if it is expensive to reproduce and share content, there is less incentive to pirate and share content. Conversely, if the transaction costs of sharing content come down to near zero, as is currently the case, with the ubiquity of digital technology, the chances of piracy increases.
  - Demand for programming content is unpredictable, as consumer preferences for content are dynamic.** There are limited ways to gauge how a TV programme will perform until it is released. There are also limited formulaic guarantees to success and returns on investment. Illustratively, big budget movies by large studios, with star casts, do not always fare well at the box office (see figures below). Thus, broadcasters are creating products (films) for which the market size is both unpredictable and largely unknowable.



Source: CCI Market Study on Film Distribution Chain

<sup>5</sup> Please see <https://www.cci.gov.in/images/whatsnew/en/market-study-on-the-film-distribution-chain-in-india1665747371.pdf>, Pgs 11 - 15.



Source: CCI Market Study on Film Distribution Chain

2.16 Consequently, stakeholders in content industries like film and broadcasting must focus on recoupment of investment and risk mitigation. Towards these ends, industry stakeholders focus on models that allow them to maximize revenues to enable them to absorb the shock of any lackluster performances by a given film. Some of these business models/strategies (these are not mutually exclusive) are set out below:

- a) Dynamic pricing through diverse business models enables stakeholders in the industry to charge consumers in accordance with the value they ascribe to content. Thus, it enables producers, distributors, and exhibitors to come as close to meeting consumers' demands and preferences as possible, while accounting for the risk of the business.
- b) Stakeholders in the industry often rely on complements to cross- subsidize content costs. **Bundling offers stakeholders across the value chain to cross-subsidize content offerings by enabling easier recoupment of investment.** Consumers benefit from bundling as it enables content producers and distributors to offer greater variety. Information complements such as advertisements offer one means of cross-subsidy for content. **Broadcasters will bundle channels and sell them to both advertisers and consumers.** Consumers get value for money and variety through a bundle, whereas advertisers get more eyeballs for their ads. Theaters supplement ticket sales with physical complements such as food and beverages. Variability in subscription pricing therefore also acts as a content cross-subsidy, as do pairings with information complements.

The excerpts from the CCI market study reproduced above clearly establish that broadcasters, like other content producers, require economic freedom in the pricing and packaging of their products to remain commercially viable. The current regulatory scheme of price ceilings and packaging restrictions is therefore, not in keeping with the economic fundamentals underpinning the sector and must be done away with. Even otherwise, any such restriction affects the broadcaster's freedom to choose the means to express itself, viz. the choice of packaging so as to achieve the widest possible circulation and dissemination of the films and programmes on their TV channels, thereby curtailing the freedom of speech and expression guaranteed to a broadcaster under Article 19(1)(a) of the Constitution. Such a restriction also curtails the freedom of business of the broadcasters under Article 19(1)(g) of the Constitution.

- 2.17 In this context, it is imperative that the foremost priority of any broadcasting policy ought to be forbearance. Like the CCI, the TRAI must recognize the inherent risk and uncertainty involved in monetizing intangible assets like content (unlike sectors like manufacturing or infrastructure services etc.) by broadcasters. As the CCI report indicates, the success rate in broadcasting depends on several externalities. Flexibility and freedom in pricing and packaging allows broadcasters and other stakeholders in the ecosystem to navigate these externalities successfully. Conversely, restrictions on pricing and packaging, as has been the case in broadcasting for the last 20 years, only lead to decline in investment in content and innovation, harming both the industry's commercial health and prospects, and consumer choice in terms of content.
- 2.18 **Forbearance was a key factor for growth of the Telecom Sector and will have similar impact on the broadcasting Sector:** In its response to the TRAI Consultation Paper on Review of Policy of Forbearance in Telecom Tariffs, the Cellular Operators Association of India (“COAI”) contended that the tariff forbearance policy in the telecom sector had allowed the operators to cater to the demand of various consumer segments by creating special package as per the need of the customers. Concomitantly, COAI also noted that any regulation of tariff would take away that flexibility and result in limited choices to the consumer. It also highlighted that tariff forbearance policy adopted by the Government in 1999 has been a key factor in the growth of the telecom sector, which saw the number of wireless telco subscribers increase from 1.2 million in 1999 to 908 million in 2012. Today, the sector boasts of 1052.08 million wireless subscribers. According to the COAI, forbearance had also ushered in lower prices for consumers.
- 2.19 In addition, on various past occasions, the TRAI itself has acknowledged that it is not possible to determine channel pricing given input variability and a one-size-fits-all pricing is not viable. TRAI, in its Explanatory Memorandum in its Tariff Order dated 22.11.2022 had noted that broadcasters should be given full freedom and business flexibility to monetise their channels. TRAI had noted that channels consist of number of programmes, the cost of production of which varies based on the actors, set-up cost, script, copyright, etc. As programmes on TV channels change dynamically, therefore it is difficult to determine price of a television channel and the same should be left to the broadcasters.
- 2.20 India's broadcasting sector, particularly linear television, stands at a critical juncture with significant potential for growth. Despite being the second-largest television market in the Asia-Pacific region, a substantial number of Indian households still lack access to television. This gap presents a considerable opportunity for expansion in the broadcasting industry. The reason for linear broadcasting sector not achieving its full potential could be attributable to heavy handed and prescriptive regulatory approach, and fragmentation of the industry leading to contradictory stands / demands of each of the verticals within the broadcasting sector. There is an urgent need to address these issues so that the broadcasting sector is able to achieve its true potential and we believe that this can be achieved through forbearance.
- 2.21 The broadcasting sector has the potential to be a major contributor to India's GDP and a significant source of employment. With proper support and regulatory forbearance, it can harness this untapped market, driving economic growth and creating numerous job opportunities. Drawing parallels from the telecom sector, which has seen remarkable growth due to a light touch



regulatory approach, similar forbearance in broadcasting could yield substantial benefits. The telecom sector's success was largely due to the government's decision to let market forces play a more decisive role, allowing the industry to innovate and expand rapidly.

- 2.22 It is imperative that the government adopts a similar forbearing regulatory framework for the broadcasting sector as it has for telecommunications. Allowing market forces to prevail could lead to enhanced competitiveness, greater innovation, and increased consumer choice, ultimately replicating the telecom sector's success.
- 2.23 By adopting a strategic and flexible regulatory approach, India can ensure that its broadcasting sector not only catches up to its global peers but also becomes a pivotal player in the nation's economic landscape.

**In light of the above, we strongly recommend that the first point of order for any intervention to stimulate growth in the cable and satellite television broadcasting sector must be forbearance on economic regulation.**

### **3 Definition of Broadcasting Services cannot include Digital Media Services like OTTs**

- 3.1 The CP relies on the definition of 'Broadcasting Services' provided in the Draft Bill, to define these services to mean "the dissemination/transmission of information in the form of audio, video or both to a wider audience via any distribution medium". By doing so the CP, like the Draft Bill, attempts to club distinct technologies under the definition of broadcasting. The CP brings within its fold OTT platforms which are curated video-on-demand services offered directly to viewers via the internet, and do not deploy any broadcasting cable or/and satellite services.<sup>6</sup> This approach erroneously assumes that OTT services are substitutable with traditional broadcasting, both from consumer and product standpoint.
- 3.2 **Differentiation between OTT and TV Broadcasting:** In reality, TV and digital media services like OTTs are not substitutable due to key differences: the timing of content availability; the varied settings in which consumers engage with content; and the distinct methods of content delivery. TV broadcasting is distinct from OCCPs/digital media as it uses satellite and needs distribution platform operators to transmit content. TV broadcasting content is meant for public viewing. In contrast, OCCPs make their content available on the internet, on their own platforms, that users can access only through a website or application. Their content is non-linear, on-demand and not intended for public exhibition.<sup>7</sup> Recently, the Telecom Disputes and Settlement Appellate Tribunal (TDSAT) held that such services are

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<sup>6</sup> Irene Calboli, Legal Perspectives on the Streaming Industry: The United States, The American Journal of Comparative Law, Volume 70, Issue Supplement\_1, October 2022, Pages i220–i245, <https://doi.org/10.1093/ajcl/avac021> <https://www.trai.gov.in/sites/default/files/OTT-CP-27032015.pdf>.

<sup>7</sup> Tansimul Hassan, 'Digital Divide: Is Big Brother Trying to Control the Booming Internet Space?' The Leaflet, 5 March 2021, available at: <https://theleaflet.in/digital-divide-is-big-brother-trying-to-control-the-booming-internet-space/>

not akin to TV channels, based on several distinctions between the two, and the separate laws that govern either service.<sup>8</sup> Importantly, a similar position has been maintained by TRAI itself.

3.3 Pipelines / modes, manner of offering and business models for broadcasting and OCCPs/digital media are distinct, and one size fits all approach is bound to be counterproductive and regressive.

3.4 Clubbing linear television broadcast with OCCPs would amount to ‘reverse discrimination’ inasmuch as that it is a settled position in law that ‘unequals cannot be treated equally’. Article 14 of the Constitution, which is considered the basic feature of the Constitution, enshrines principles of equality where equals and unequals are treated differently. Article 14 would be violated if unequals are treated equally and there is no basis for grouping them together. The principle of equality does not mean that the law must have universal application for all platforms that are not by nature in the same category and require separate treatment owing to their differences.

3.5 The distinction between the two modes has also been highlighted in the **2022 market study on the Film Distribution Chain in India by the Competition Commission of India found that television and OTT operate in distinct relevant markets**. It noted that the TV and OTT were distinct in several ways, including<sup>9</sup>:

- a) **Temporality:** Traditional broadcasters like television and radio follow a ‘push-based’ model where the timing and type of content are pre-determined, thereby limiting viewer control. This format necessitates viewers to adhere to the broadcaster’s schedule to access their favorite shows, restricting their ability to revisit previous segments or curate personalized content lists. Conversely, OTT services operate on a ‘pull-based’ model, giving consumers the freedom to choose their content from a library of available content and viewing times. This model significantly broadens user choices, allowing for a more tailored viewing experience. Unlike traditional broadcasting’s uniform content and rigid scheduling, OTT platforms enable users to skip, fast-forward and select content as per their preferences, thus offering a heightened level of flexibility and personalization.<sup>10</sup>
- b) **Mode of delivery of content and regulatory rationale:** Another key distinction between traditional broadcasting services like TV and radio and OTT services lies in their content delivery models. Traditional broadcasters utilize satellites . In contrast, OTT services provide content access via the public internet directly to users connected through any electronic device. The content is transmitted via a high-speed internet connection rather than through cable or satellite providers.
- c) **The setting within which a consumer wishes to watch content also differs:** Television is seen as a family medium and has a high- proportion of co-viewing among one’s friends and family. According to a report by BCG, approximately 98 per cent of households in

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<sup>8</sup> All India Digital Cable Federation vs. Star India Pvt. Ltd., Broadcasting Petition/217/2023, available at: [https://tdsat.gov.in/Delhi/services/daily\\_order\\_view.php?filing\\_no=NDM2MzM=](https://tdsat.gov.in/Delhi/services/daily_order_view.php?filing_no=NDM2MzM=)

<sup>9</sup> Competition Commission of India, ‘*Market Study on the Film Distribution Chain in India*’, October 2022

<sup>10</sup> ‘*Wynk Ltd. & Anr. vs. Tips Industries*’, Bom HC, COMAP-424-2019

India which, on average, comprise 4.25 individuals<sup>11</sup>, own a single TV.<sup>12</sup> The BIF-CUTS International survey found that 38 percent of consumers watch television as a family bonding exercise.<sup>13</sup> The content on traditional broadcasting is thus meant for public viewing. In contrast, OTT content is predominantly viewed by individual users over their smartphones.<sup>14</sup>

- d) **Type of content:** Consumer preferences for content choices vary through different mediums. Consumers may prefer to watch niche or small-budget content on OTT platforms and prefer theaters and television for major releases.

3.6 The TRAI regulates carriage services, and its jurisdiction covers entities authorized under the Telecommunications Act, 2023 and registered cable networks as defined in the Cable Television Networks (Regulation) Act, 1995 (CTN Act), as per Section 59 of the Telecommunications Act. OTT services are not categorized as ‘telecommunication’ or ‘telecommunication services’ by the Telecommunications Act, 2023, nor are they authorized entities under this legislation. Furthermore, they are not covered under the CTN Act. Under the TRAI Act, the MIB as a licensor can only ask for recommendations for service providers that require a license from MIB. However, OTT services do not require any license from the MIB. Consequently, the reference from the MIB could not have included OTT within its ambit. As explained above, OTTs do not fall within the regulatory ambit of the TRAI and therefore TRAI could not have undertaken the present exercise.

3.7 Given these differences, it is conceptually flawed to equate broadcasting with OTT services. The said flaw is also extended while bringing online gaming within the purview of the broadcasting. Online gaming services, which are available over the internet, are not in any way similar to linear broadcasting. Clubbing broadcasting with either OTTs or online gaming platforms would not only be discriminatory but would also violate Article 14 of the Constitution.

3.8 Moreover, an emerging industry like OTT needs minimal government or regulatory intervention and the policies on OTT content regulation should not create unnecessary hurdles. A balance needs to be struck between the government’s regulatory power and the people’s right to creatively express their ideas and tell their stories. This balance is achieved by the existing governance framework surrounding digital applications.

3.9 Accordingly, the inclusion of OTT services overall, and Online Curated Content Providers specifically within the present CP, is not justified. In any event, during the pre-consultation, industry stakeholders expressed these concerns and urged the regulator to remove OTT services from the scope of the NBP. Despite this, the current CP still includes issues relating to OTT services.

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<sup>11</sup> Ad Gully. ‘[BARC India 2018 Survey Analyses Impact of Co-Viewing on TV Viewership](#)’, 13 October 2018.

<sup>12</sup> BCG-CII, “[Blockbuster Script for the New Decade: Way Forward for Indian Media and Entertainment Industry](#)”, BCG-CII, December 2021

<sup>13</sup> A. Kulkarni, S. Narayan, and V. Sinha. ‘[Towards Effective Choice: A Nation-Wide Survey of Indian TV Consumers](#)’, CUTS International and Broadband India Forum (2022)

<sup>14</sup> BCG-CII, “[Blockbuster Script for the New Decade: Way Forward for Indian Media and Entertainment Industry](#)”, BCG-CII, December 2021

#### 4. Statutory Recognition to the Self-Regulatory Framework of IBDF

- 4.1 We would like to invite your attention to the existing self-regulatory framework of IBDF and the members which is in place to ensure that the programmes broadcast on their network are compliant with the extant laws and regulations. The members of IBDF have appointed grievance redressal officers for redressal of the complaints filed by any viewer. In June 2011, the IBDF initiated and supported the set-up of an independent self-regulatory body for non-news and current affairs channels, namely, the Broadcasting Content Complaints Council (“BCCC”). The Broadcasting industry has set up a very effective self-regulation mechanism and framework including self-regulatory and content guidelines reinforcing the BCCC administering an established industry-wide grievance redressal mechanism that is headed by a former retired member of the senior judiciary, and which governs the members of the IBDF in all matters and addresses grievances related to the content available on non-news channels.
- 4.2 The extant framework already has a tiered grievance redressal mechanism that facilitates two accountable levels of checks and balances. At the broadcasters’ level, the respective members of the IBDF ensure grievance redressal by way of well-established Standards and Practices (S&P) for the programme content aired on their TV channels to deal with the complaints that come directly to the channels in respect of the content aired on their respective TV channels. At the industry level, the primary purpose of the BCCC is the examination and redressal of the complaints, and /or appeals, regarding the content aired/broadcast on television channels received from the viewers or any other sources, including NGOs, associations or group of persons, MIB, etc. The BCCC’s primary responsibility is to ensure that the programmes broadcast on television are strictly in conformity with the self-regulatory content guidelines. Any person or group of persons may, from anywhere in the country, and either individually or jointly, file a complaint before the BCCC, against any programme broadcast on any of the non-news and current affairs TV channels. It is pertinent to note that the BCCC was formed after detailed deliberations, taking into account the views and concerns of various stakeholders, including civil society, the industry and MIB.
- 4.3 Under the two-tiered mechanism, broadcasters have willingly established a system to moderate their content and follow a set of standards while creating their content. The self-regulatory mechanism of the broadcasters has not only been applauded by the Nariman Committee Report as a process that could be built upon both at the broadcasting service provider level as well as the industry level but also by the Hon’ble Supreme Court in *Re: Destruction of Public and Private Properties vs. State of A.P.*, (2009) 5 SCC 212.
- 4.4 IBDF submits that there should be no governmental interference in the self-regulatory structure. Given that the self-regulatory body of broadcasters is headed by a retired judge, there is no question of adding a third-tier being headed by the executive to sit in appeal over the decisions of such a judicial body. This would be in direct conflict of the doctrine of separation of powers, which is impermissible in law and contrary to the judgment of the Hon’ble Supreme Court in *Union of India v. K.M. Shankarappa*, (2001) 1 SCC 582.

4.5 In view of the above, we request the MIB to give statutory recognition to the self-regulatory structure and the same should be free from any governmental interference to foster the growth of the broadcasting sector and for protection of artistic freedom.

Online content is already comprehensively regulated under Indian laws

4.6 Without prejudice to our submission that online content does not amount to broadcasting, we would like to draw your attention towards the existing self-regulatory framework for the OCCPs which addresses content issues as well as grievance redressal mechanism which has been principally recognised under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (“IT Rules”). The IT Rules envisage a framework which is somewhat similar to the extant television self-regulatory framework, both in respect of OCCPs as well as other OTTs and news publishers. The said self-regulatory framework, comprising platform self-regulation supervised by an industry level oversight body, is effective and efficient, and as such, need to be accredited and encouraged for within the acknowledged tenets governing the freedom of expression and the constitutional limitation therein. Accordingly, instead of having a prescriptive regulation, the MIB may consider strengthening the self-regulatory structure which is working efficiently and has also been acknowledged by the MIB.

4.7 It is further submitted that, in addition to the above, OTT platforms are also governed under various other statutes, *inter alia*, as under:

Information Technology Act, 2000

With respect to the regulation of content, the IT Act,2000 provides for various sections: Section 67- punishment for publishing or transmitting obscene material in electronic form; Section 67A, 67B and 67C provide for a penalty as well as imprisonment to be imposed on anybody who has published or transmitted any kind of obscene material, any sexually explicit material including those where children are depicted in sexual acts. Further, Section 69A of the IT Act grants power to the government to remove any content that is objectionable or harms India’s sovereign interests but does not give it the power to restrict it arbitrarily.

Intermediary Guidelines, 2021

The government has also formulated a three-tier grievance redressal mechanism under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (Intermediary Guidelines) & Amended Cable TV Rules – though the validity and applicability of the same is pending the outcome of certain proceedings before the Hon’ble courts challenging the provisions of the Intermediary Guidelines and the Amended Cable TV Rules.

### Protection of Children from Sexual Offences Act, 2012 (POCSO)

Under POCSO, there is a prohibition against using a child in any form of media (including electronic media) for the purposes of sexual gratification. Another provision prohibits reports in any media from disclosing the identity of a child by revealing the name, address, photos, family, school, neighborhood or other information that may disclose identity.

### Indian Penal Code 1860

Under the erstwhile Indian Penal Code, there are various provisions which are applicable to OTT platforms. These include Section 295A - which criminalizes Acts intended to outrage religious feelings. This can also apply to the content displayed on OTT platforms. Moreover, to prevent defamatory content from reaching the highly impressionable minds of people in India, Sections 499 and 500 of the IPC keep a check on preventing defamatory content from being published on such platforms.

### Indecent Representation of Women (Prohibition) Act, 1986

Prohibits the publication of any media that indecently represents women. Exemptions include content in the interest of science, literature, art, or learning or other objects of general concern and religious purposes.

### Emblems and Names (Prevention of Improper Use) Act, 1950

Prohibition improper use of certain emblems and names for the purpose of any trade, business, calling/profession/in the title of any patent/in any trade mark/design, any name/emblem specified in the Schedule or any colourable imitation thereof without the previous permission of the Central Government or of such officer of Government as may be authorised in this behalf by the Central Government.

## **5. The CP Makes Assumptions Concerning Requisition By Public Service Broadcasting**

**5.1 The CP makes assumptions concerning requisition by public service broadcasting, and indicates an intention to impose additional social responsibility, and environmental responsibility obligations on the broadcasting industry as well as OTT service providers.**

5.2 'Public service broadcasting' is the primary and exclusive remit of the public broadcaster, and Prasar Bharti-owned Doordarshan channels and All India Radio (AIR) should take the lead in public service broadcasting, achievement of social goals, and environmental responsibility. Section 12 of The Prasar Bharati (Broadcasting Corporation of India) Act, 1990 ("**Prasar Bharati Act**") lists the functions of the public broadcaster, and guiding objectives that it should follow. These include, among other things, paying special attention to the fields of education and spread of literacy, agriculture, rural development, environment, health and family welfare and science and technology, promoting social justice and combating exploitation, inequality and such evils as untouchability and advancing the welfare of the weaker sections of the society, and taking special steps to protect the interests of children, the blind, the aged, the handicapped and other vulnerable sections of the people. Social goals and other public related objectives in broadcasting fall squarely in the public broadcaster's

domain, for which the lead and responsibility/ accountability ought to be shouldered by the public broadcaster.

- 5.3 The broadcasting industry responds to consumer demands for plural and diverse content and also fulfils its core social objectives, as necessary. An inorganic requirement to mandatorily allocate and invest resources towards meeting the public broadcaster's objectives diminishes the broadcaster's programmatic autonomy and the broadcaster's ability to cater to the diverse needs of TV consumers. Such a mandate upon the private broadcaster also impinges upon its editorial discretion. It is for the private broadcaster to choose the content to be broadcasted on its platform. Any such restriction on the freedom of the broadcaster to choose the content to be telecast on its channels would be an encroachment upon the broadcaster's rights under Article 19(1)(a) of the Constitution.
- 5.4 Private broadcasters cannot stand in for the public broadcaster, which already receives statutory funding to broadcast and lead broadcasting objectives in the public interest. On several aspects, the public broadcaster is in a privileged position compared to private broadcasters. For example, Prasar Bharati charges heavy fees for carrying the channels of the private broadcaster by way of a "slot fee" through its auction process thereby trying to maximise its profits. Further, private broadcasters also assist the public broadcaster by mandatorily sharing feeds on sports and events of national importance. There is a need to bring in more transparency which is more aligned to the goals for which Prasar Bharati is established instead of just focusing of revenue maximisation.
- 5.5 Sports channels are subject to mandatorily sharing feeds under the Prasar Bharti (Mandatory Sharing of Sports Signals) Act, 2007. We understand the objective of the law, which is to ensure that sporting events of national importance reach the widest possible section of the society. The IP right is balanced against the access objective to ensure access to those who cannot pay for TV services. However, the application of the law should be proportionate and confined to achieving the end only with due respect to the primacy of intellectual property protection.
- 5.6 As such, the methodology of selecting events/programs of "national importance" should be streamlined with the involvement of stakeholders. As the sporting rights are expensive and cyclical in nature and the rights holders need to recoup their investment within a short period of time, Prasar Bharati should not expand the scope of the Sports Act which will discourage private sports broadcasters to acquire rights.
- 5.7 Such a balanced approach would help broadcasters acquire sports rights which will help the nation to build a sustainable sports eco-system to encourage more youth participation in sports and bring medals to the country.

## **6. Other concerns of the Broadcasters:**

- 6.1 IBDF would like to submit that the NBP should be framed in order to support the broadcasting sector and its stakeholders. While we maintain our stance that the policy should be high-level, and without prejudice to that submission, we request that existing issues be addressed. In this regard, IBDF would like to bring to the attention of the TRAI that:

- a) The advisory issued by the MIB on 21<sup>st</sup> October 2022 on Issues relating to Broadcasting and Distribution Services by Central Government/ Ministries/ Departments/ State Governments and other institutions/ bodies should be implemented wherein the TRAI had recommended that no Central Government/ Ministries/ Departments and other entities should enter into the business of broadcasting and distribution services and the same should be done through the Prasar Bharati route only.
- b) Commercial subscribers have to be kept outside the ambit of TRAI regulations particularly considering that the experience of attempting to regulate commercial subscriber has been that the attempt to regulate them has been ineffective and commercial subscribers have largely remained non-complaint while broadcasters have suffered on account of treating the commercial subscribers at par with domestic subscribers.
- c) The broadcasters, on a daily basis, face multiple issues in relation to the DPOs not providing them with the accurate number of subscribers for their channels which, in turn, is leading to loss of revenue for the broadcasters. The broadcasters have consistently raised the issue with the TRAI that DPOs deliberately obstruct the process of gathering reliable SMS data, deny access to the SMS, and do not provide any assistance, leading to disputes in revenue transactions. There is need for a robust and a transparent mechanism to review and audit the subscriber management system. Accordingly, The restriction upon the broadcaster under Regulation 15(1) of the TRAI Interconnection Regulations 2017 should be removed.
- d) There must be a defined window of payments that must be made to broadcasters so that the latter do not face business uncertainty and can continue with their operations in a smooth manner.

**Without prejudice to the foregoing, we are making the following submissions. We reserve our right to respond to any future consultation paper on this subject and also request that any future draft of the NBP must be put out for consultation before it is finalized.**

**Q1. Stakeholders are requested to provide their inputs in framing the Preamble, Vision, Mission and Broad Objectives for the formulation of the National Broadcasting Policy (NBP).**

**IBDF's Response:**

Please see below our suggestions on the preamble, vision, mission and objectives of the NBP.

**(a) Preamble.**

The NBP should:

- (i) seek to acknowledge the integral role of broadcasting in India's economic landscape particularly its contribution to the creative economy.
- (ii) aim to champion the constitutional guarantee of freedom of speech and expression, ensuring that broadcasting remains a potent tool for widespread dissemination of information, education, and entertainment.



- (iii) seek to propel the broadcasting sector as a catalyst for intellectual property creation, connectivity for the Indian diaspora, and a generator of employment opportunities, positively influencing tourism and related industries and recognise the importance of soft power it gives to India's standing amongst the comity of nations
- (iv) aim to leverage India's favourable position in broadcasting, having maximized access to communication technologies, to harness the country's economic strengths, such as abundant labour, a large domestic market, and competitive creative industries.
- (v) aim to introduce policy certainty and predictability in policy formulation and regulation and establish a strong foundation for an enabling environment that supports orderly growth. Recognizing the significant investments made by broadcasters and media organizations in content creation and delivery, providing a clear and stable policy framework is paramount. This ensures a virtuous cycle of investments and growth.
- (vi) aim to embody the principle of 'Minimum Government, Maximum Governance,' advocating for minimal regulatory intervention and trust in self-regulatory mechanisms, ensuring a predictable operating environment for all players. This approach will enable better resource allocation, support the industry in developing long-term strategies, foster market-led competition, and innovation, benefiting both the industry and the consumers.
- (vii) aim to underscore the paramount role of broadcasting in the dissemination of entertainment and information and its substantial contribution as a vital development tool.
- (viii) recognize that an informed society is a precondition for sustainable development and democratic governance, and broadcasting plays a central role in this information ecosystem. By ensuring the availability of reliable and diverse content, broadcasting nurtures an environment that stimulates intellectual growth, innovation, and progress, fostering the overall development of the nation.
- (ix) be resolute in its aim to nurture a public broadcaster that operates with unwavering fairness, reasonableness, and a non-discriminatory approach, while creating, producing, and showcasing its own distinct content.

#### **(b) Vision**

The NBP should outline a long-term vision for the broadcasting sector with separate policy roadmaps for growing the distribution/carriage infrastructure and broadcasting/content services. A globally competitive and locally driven broadcasting sector that meets consumer demands and attracts investments should be the key objective of the NBP. Systemic reforms to engender predictability in regulation, incentivise creation of high-quality content, maximize opportunities to monetize intellectual property created in India, and build a resilient infrastructure backbone are the building blocks that the NBP should espouse. The NBP should seek to grow the segment's social and economic contribution towards nation-building and set new global benchmark in terms of both broadcasting distribution technology and high-quality globally resonant content.

**(c) Mission.**

**The mission of the NBP should be to:**

- (i) Introduce a structural basis for transitioning towards agile sectoral governance with evidence-led government intervention in the market and maintaining oversight and prescribing guardrails to ensure fair, transparent, and competitive interaction of market forces.
- (ii) Create a future-ready policy ecosystem grounded in principles of certainty and predictability.
- (iii) As the broadcasting industry landscape evolves, the NBP should set a goal for a five year period that will allow the policy makers to review and reset the policy objectives taking into account the lessons learnt.
- (iii) Encourage symbiotic co-existence and mutual trust among diverse stakeholder groups, and harmonious dispute settlement in business-to-business interactions through consultation, mediation, and negotiation.
- (iv) Provide a roadmap to bolster public sector efforts and support private sector initiatives to generate high-quality high-demand content for local and global audiences and undertake state-of-the-art infrastructural upgrades and expansion for enhanced consumer quality of experience.
- (v) Provide a sustainable model for public broadcasting with the ability to meet evolving consumer needs for content on themes of national importance; adequately cater to the government's public information dissemination objectives; expand infrastructure in remote and unconnected areas; and produce and acquire content with due respect to intellectual property and labour involved in content creation.
- (vi) Enhance domestic capacity to cater to global demands for Indian content and skilled labour in specialised production techniques, rationalise approvals, permissions, and taxation, and adopt and implement global benchmarks for content protection to make India a preferred destination for content production and exports.
- (vii) Position India as a world leader and the first country to create a broadcasting ecosystem that innovates and experiments with emerging and new communication technologies, promotes and adopts sustainable social and environmental initiatives, and adheres to accountability and transparent data integrity practices.

**(d) Objectives.**

The objectives of the NBP ought to be to promote:

- (i) self-regulatory framework and forbearance,
- (ii) nurture creativity and foster innovation,
- (iii) recognize and nurture creative freedom of speech and expression,
- (iv) underscore the importance of market-driven ecosystem,
- (v) provide for flexibility and adaptability to changing circumstances,
- (vi) recognise, protect and provide ecosystem for enforcement of intellectual property rights.

- Q2. There exist data gaps in ascertaining contribution towards economy, revenue generation, employment generation, subscription figures etc. in the broadcasting sector which relies heavily on industry studies to carry out research and estimates. What should be the parameters, targets and institutional framework for measurement? Provide your comments with detailed justification. Also provide the indicative metrics used for calculating the targeted figures, if possible.**
- Q3. Please suggest the strategies to be adopted by the Government and industry for propelling the growth of broadcasting sector w.r.t. the following: i. Provisioning of affordable television services in 'TV Dark' households; ii. Augmenting R&D capabilities and promoting indigenous manufacturing of broadcasting equipment; iii. Employment generation with emphasis on skill development; iv. Promotion of innovation led Start-ups and SMEs; v. Any other related area/strategy. Please elaborate with detailed reasoning.**

**IBDF's Response:**

We suggest the following approaches:

1. Fund economic studies to assess the current and future economic impact of the sector on the GDP;
2. Evaluate the non-tangible benefits of broadcasting to the information and knowledge economy using qualitative research methods;
3. Set future objectives for TV and radio, deriving these from current data, in coordination with industry stakeholders and experts;
4. Work with relevant skill councils to continuously update and review Qualification Packs (QPs) and National Occupational Standards (NOS), aiming for alignment with global standards;
5. Develop upskilling programs in collaboration with recognized educational and vocational institutions to establish National Centres of Excellence in audiovisual technologies and production methods;
6. Engage with public institutions like SRFTI and FTII and collaborate with private entities to create specialized training courses for professionals in the TV, distribution, and radio sectors.

- Q4. What other policy and regulatory measures should be adopted in the policy for creation and expansion of quality Indian content to make India the 'Global Content Hub'? Further, suggest how to extend support to local talents and content developers in terms of training, infrastructure and incentives. Provide your comments with detailed explanation.**

**IBDF's Response:**

Content related aspects are outside the purview of TRAI's jurisdiction. Without prejudice to the foregoing statement, the NBP should avoid mandating local content quotas for TV and OTT content producers as it:

**Violates fundamental rights under 19(1)(a) of these platforms:** The said requirement to mandatorily carry DD channels on TV or OTT platforms impinges upon the freedom of speech and expression of the these platforms under 19(1)(a) since 'compelled speech' is an infringement of the right to freedom of speech and expressions it interferes with their editorial discretion.

The said obligation upon the broadcasters to ‘must carry’ content relating to national importance and of social relevance amounts to restricting their freedom of speech as it coerces them to carry a content which they may have chosen to exclude. It impinges upon the fundamental rights of the broadcasters guaranteed under Article 19(1)(a) of the Constitution.

As held by the Constitution Bench judgment in the seminal case of *Express Newspapers (Pvt.) Ltd. & Anr. vs. Union of India & Ors., (1959 SCR 12)*, the freedom of speech and expression under Article 19(1)(a) includes within its scope, at the least, the following four aspects:

- a) The freedom to choose the content of the expression;
- b) The freedom to circulate and disseminate the expression to the widest extent possible;
- c) The freedom to choose the means of exercising the right; and
- d) The freedom to be independent such that restrictions do not undermine its independence and drive it to seek government aid.

**Violates fundamental rights under 19(1)(g) of the TV broadcasters and OTT platforms:** Further, such a requirement to telecast specified content would amount to the TV channel cutting into its business time and the OTT platform cutting into its business space and be violative of Article 19(1)(g) of the Constitution.

In addition, the broadcaster would also be required to procure the said content expending time and money and ensure that such content is of right mix aligned with look and feel of the relevant channel.

**The Indian audience demonstrates a strong preference for local and regional content, which has been met by TV and OTT services through significant production investments.** The availability and accessibility of Indian content in the market are well-supported by investment data, suggesting there is no market failure or necessity for mandated local content quotas.

Consumers readily access regional content on platforms tailored to regional and language-specific audiences, with regional OTT services seeing their market share rise from 47% in 2021 to 52% in 2023.<sup>15</sup> (Please see tables below)

Regional content carried by major OTT platforms:

	Sony	Hotstar	Netflix	Prime	Zee5	JioCinema
<b>Malayalam</b>	Y	Y	Y	Y	Y	Y
<b>Telugu</b>	Y	Y	Y	Y	Y	Y
<b>Tamil</b>	Y	Y	Y	Y	Y	Y
<b>Kannada</b>	Y	Y	Y	Y	Y	Y
<b>Bengali</b>	Y	Y	Y	Y	N	Y
<b>Hindi</b>	Y	Y	Y	Y	Y	Y
<b>Marathi</b>	Y	Y	Y	Y	Y	Y

<sup>15</sup>[https://assets.ey.com/content/dam/ey-sites/ey-com/en\\_in/topics/media-and-entertainment/2024/ey-in-india-s-media-entertainment-sector-is-innovating-for-the-future-03-2024-v1.pdf](https://assets.ey.com/content/dam/ey-sites/ey-com/en_in/topics/media-and-entertainment/2024/ey-in-india-s-media-entertainment-sector-is-innovating-for-the-future-03-2024-v1.pdf)

	Sony	Hotstar	Netflix	Prime	Zee5	JioCinema
<b>Punjabi</b>	Y	N	Y	Y	Y	Y
<b>Gujarati</b>	Y	N	Y	Y	Y	Y

Major OTT platforms also offer dubbed content in regional languages:

	Sony	Hotstar	Netflix	Prime	Zee5	JioCinema
<b>Regional Content dubbed in Hindi</b>	Y	Y	Y	Y	Y	Y
<b>English/Hindi content dubbed in other regional languages</b>	Y	Y	Y	Y	Y	Y

Several Indian OTT platforms primarily cater exclusively to regional content:

Platform	Language
Aha	Tamil & Telugu
Addatimes	Bengali
Chaupal	Bhojpuri, Haryanvi & Punjabi
CityShor TV	Gujarati
HoiChoi	Bengali
Koode	Malayalam
ManoramaMax	Malayalam
Neestream	Malayalam
Nammaflix	Kannada
SunNXT	Tamil, Telugu, Malayalam, & Kannada
Planet Marathi	Marathi
Stage	Haryanvi & Rajasthani
Tarang Plus	Odia
Olly Plus	Odia

On TV, regional languages account for 56% of viewership while Hindi comprises 43%, with English viewership at only 1%.

Market dynamics and robust competition encourage content producers to innovate and develop regional OTT services and TV channels. Imposing local content quotas would be an unnatural market interference that could undermine the distinct appeal offered by regional content services.

Additionally, technological advancements such as the provision of subtitles and audio in various Indian languages make global content readily accessible to Indian viewers, regardless of the original production language.

We suggest that the Government work towards creating an enabling environment conducive to content generation and distribution with an underlined principle of “Minimum Government and Maximum Governance”. On the demand side, the government could provide policy support in the form of promotion of Indian audio-visual content in international markets through participation in film festivals, trade fairs, and other events and include promotion of cross-border flow of Indian audio-visual content in trade agreements. On the supply side, the government should focus on an enabling and predictable regulatory environment and give industry the opportunity to make long-term investment strategies and to support skilling initiatives.

Promotion of local content is also inherently linked to the extent of media and journalistic freedom in a jurisdiction. As such, the Government must encourage local content production by giving content creators and broadcasters the widest latitude for diverse content creation.

- Q5. Suggest the measures to promote the uplinking of television channels owned by foreign companies from India, which is now permitted by the Government to make India an ‘Uplinking Hub’.**
- Q6. What broad guiding principles, measures and strategies should be considered in the NBP to strengthen India’s public service broadcaster (i.e. Prasar Bharati) to promote quality content creation, dissemination of DD and AIR channels and maximizing its global outreach? Also suggest, what support and measures should be provided for the proliferation of television and radio broadcasting services provided by the public service broadcaster in fulfilment of its mandate?**

**IBDF’s Response:**

Content producers naturally satisfy consumer demand for diverse and pluralistic content, achieving key social objectives on their own. Imposing artificial requirements to allocate resources and meet the goals of public broadcasters can restrict creative freedom and hinder their ability to serve a diverse audience. Private content producers are distinct from public broadcasters, who are already funded by statutory means to produce content in the public interest.

As mentioned above, public service broadcasting is the primary and exclusive remit of the public broadcaster. The urgent need is to engender accountability in the functioning of the public broadcaster and bolster its ability to meet statutory objectives. The NBP should aim to enable Prasar Bharti to fulfil its objectives by reforming its governance structure, establishing a review process to ensure that the public broadcaster meets objectives, and focus on capacity building within the public broadcaster.

The CP suggests that registered OTT services should be required to include DD channels to support Indian content, a mandate that is also reflected under Section 6 (1) of the Draft Bill, as published by the MIB. Such regulatory mandates to compulsorily allocate resources for public broadcasting objectives can undermine creative freedom and the ability to meet the diverse preferences of OTT audiences. Moreover,

as mentioned earlier, it violates the fundamental rights of OTT platforms under Article 19(1)(a) and 19(1)(g). The CP references Prasar Bharati's MoU to carry DD channels abroad as an instance of a voluntary licensing agreement. In line with this, any agreements between private services and the public broadcaster should be negotiated on terms that are fair, reasonable, and non-discriminatory, consistent with global practices.

In this context, without prejudice to our aforementioned points, we recommend the following:

- a) Enhance the transmission and reception infrastructure in border and remote areas;
- b) Conduct audits to identify opportunities for utilizing underused and unused spectrum;
- c) Encourage Prasar Bharati to identify and nurture creative talents across the country to produce quality content of its own;
- d) Foster public-private partnerships and develop market-based collaborations for promoting diverse content;
- e) Decentralize content production further by the public broadcaster to create engaging regional language programming for local audiences and regularly assess regional content creation;
- f) Investigate new monetization strategies, including content development funds, subscription fees for specialized programming, and other approaches, coordinated by a high-level committee;
- g) Establish a Standard Operating Procedure for commissioning and purchasing content to provide more certainty in commercial transactions and prioritize the intellectual property rights of creators;
- h) Continue to enhance international presence through partnerships with national broadcasters in other countries.

**Q7. What policy measures and regulatory aspects should be adopted in the NBP to nudge the growth of Indian regional content through OTT platforms?**

**IBDF's Response:**

The TRAI does not have jurisdiction either over content regulation or OTT platforms. Moreover, the scope of an NBP cannot include digital media. Without prejudice to the aforementioned statement, **the Indian audience demonstrates a strong preference for local and regional content, which has been met by TV and OTT services through significant production investments.** Please see our response to Q.4 for further details.

**Q8. What new strategies and measures should be envisaged in the policy for the film industry to enhance audience engagement, infrastructure development, upskilling artists, reduce piracy, increase foreign direct investment or any other aspect? What steps are required to make India a preferred filming destination? Provide your comments with detailed justification.**

**IBDF's Response:**

The film industry does not fall within the purview of the TRAI and should not be included in the scope of a consultation on the NBP. Without prejudice to the preceding statement, we suggest the following on:

**Piracy and Content Security:** Broadcasting is a content-driven industry, and it is important to prioritise strong protection for intellectual property. Piracy inter-alia causes the Government to lose tax revenue

and contributes to the growth of cash transaction-based economy, which is susceptible to be misused. There is limited legal recourse for broadcasters against piracy under cable TV regulations / TRAI regulatory framework. Legal recourse primarily lies under the Copyright Act. Copyright enforcement is undertaken by local law enforcement agencies under state governments and policy direction on intellectual property protection by the Department for Promotion of Industry and Internal Trade (DPIIT). The need of the hour is to foster inter-ministerial cooperation (IMC) and lay the groundwork for dedicated IMC task forces to address specific challenges, such as cable television piracy, and introduce severe penalties for violations.

There is an urgent need to create a regulatory framework to address, clarify, and resolve content protection issues that stem from system / equipment providers (conditional access system (CAS), subscriber management system (SMS), set-top-box (STB) and digital rights management (DRM) providers) (“System / Equipment Providers”). We believe that this can be achieved by making system and equipment providers responsible for inter-alia following Schedule III and Schedule IX requirements of the TRAI's interconnection regulations as well relevant provisions quality of service regulations. Concerns regarding QoS and subscription management can be addressed through an accountability framework for technical and service standards compliance by DPOs.

It is imperative to create explicit obligations that (i) prohibits the provision and deployment of non-compliant system / equipment to any DPO and (ii) makes it mandatory for DPOs to report instances of tampering (including any attempts to tamper) to the TRAI, MIB, broadcasters, and broadcasting associations. Importantly, strict penal consequences (including penalties) ought to be prescribed in case of non-compliance of obligations by System / Equipment Providers. It is submitted that these issues have been raised with the TRAI earlier, and we request the regulator to provide us an opportunity to make separate detailed submissions on piracy related issues.

**Audience Engagement:** It is not the place of the TRAI or any policy to interfere or suggest how businesses may increase audience engagement. Without prejudice to the foregoing, allowing the broadcasting industry the widest latitude in freedom of speech and expression and economic forbearance would go a long way towards enhancing audience engagement.

**FDI:** FDI in the broadcasting industry has been hindered by regulatory uncertainty and over-regulation over the past twenty years. Again, allowing the broadcasting industry the widest latitude in freedom of speech and expression and forbearance on economic regulation would go a long way towards enhancing audience engagement.

**Q9. Online gaming being a rising sector holds potential for contributing to the economy, what policy and regulatory aspects should be adopted for the orderly growth of online gaming in India? Further, suggest measures to support local game developers to compete and grow. Also suggest safeguards to protect the general public (especially underage players) from negative and psychological side effects, while promoting healthy gaming.**

**IBDF's Response:**

The TRAI does not have jurisdiction over online gaming. Moreover, online gaming does not fall within the scope of broadcasting, and therefore should not be included in a consultation on the NBP. In addition,



online gaming is completely distinct from linear broadcasting and is comprehensively governed under the IT Act and the rules made thereunder.

**Q10. What further steps and initiatives should be adopted by the Central and State Governments and the industry for the growth of animation, VFX and post-production segment? Provide your comments with detailed reasoning and justification.**

**IBDF's Response:**

Content related aspects such as animation, VFX, and post-production do not fall within the TRAI's remit. Without prejudice to the preceding statement, the uptake of animation and VFX in cable and satellite TV broadcasting is limited and hindered by the economic regulations of the TRAI. Animation and VFX are costly endeavours and broadcasters investing in programming involving them are unable to recoup investments because of the pricing and packaging restraints set out under TRAI regulations. As such, we recommend forbearance on economic regulation to improve the uptake of VFX and animation programming in the broadcasting industry.

**Q11. What strategies and measures should be included in the policy for the music segment to enhance infrastructure development, upskilling artists, financial certainty and to resolve other challenges being faced by artists? What steps should be taken to encourage the global promotion of Indian music and artists? Please provide your comments with detailed reasoning.**

**IBDF's Response:**

The IBDF does not represent the music industry. However, it is imperative to bear in mind that music falls outside the purview of broadcasting and the TRAI's jurisdiction.

**Q12. What measures and strategies should be included in the National Broadcasting Policy to encourage expansion and ensure orderly growth and sustainability of FM Radio Stations and Community Radio Stations in the various cities of country including hilly and border areas? In what ways the policy can facilitate the integration of digital radio technologies into the existing FM radio infrastructure to improve audio quality, functionality and spectrum Efficiency?**

**IBDF's Response:**

Please see our response to Q.6

**Q13. With the continuous advancement of technologies and convergence of the telecom, information technology and broadcasting sectors, what policy and regulatory measures are required, beyond the existing ones, to facilitate the growth of the broadcasting sector with ease of compliance? Elaborate your comments with proper reasoning and justifications to the following issues: i. To enable healthy and competitive environment amongst the existing and emerging services and ensuring parity among comparable distribution mediums, while being technology neutral. ii. To allow and encourage infrastructure sharing among the players of broadcasting and that with the telecommunication sector. iii. Any other suggestion for policy and regulatory framework.**

**IBDF's Response:**

The regulatory framework for content should be kept distinct and separate from regulatory framework of carriage as the principles for regulating carriage and content are different, and the skill sets required to implement and oversee regulation of each are also disparate. The TRAI is a carriage regulator and should oversee carriage and the MIB should oversee content. There is no need for a specific regulatory authority, but existing processes need to be streamlined. The government should limit its intervention in the sector to identifying the principles for governance, where required, prescribing only the essential guardrails, and trust industry with self-regulation. We believe that this can be achieved inter-alia by streamlining licensing and permission requirements, as well as reporting and compliance requirements, and endeavouring towards self-regulation.

There is limited evidence that there is any kind of device convergence. As mentioned earlier in this response, a 2022 market study by the Competition Commission of India on the Film Distribution Market found that there is only a small subset of premium users within the bracket of households that use television for private viewing and streaming, as there are reportedly only 10 million smart television connections in the country. Many of these may be in the same household or in offices.

There is also not any concrete evidence of service convergence, and the market structure of broadcasting and digital services does not seem to suggest any widespread trend towards the same. Moreover, there is no evidence of market failure that suggests any need for a converged framework for broadcast and telecom carriage. Further, within the media and entertainment sector itself, each service / medium has different capabilities, challenges and caters to different needs.

Mere bundling of different services (like TV, broadband and voice) into one offering does not imply that both the services have converged. Such offering only enables a service provider to provide multiple services as a bundled offering and each service within the said bundle remains distinct. Since telecommunication services and broadcasting services are distinct therefore the licensing frameworks must be kept separate and the administrative government units overseeing the licensing and statutory frameworks should also be kept separate, as is currently the practice in the country.

India is different from other countries that have converged regulatory frameworks in that it has different ministries and regulators dealing with different aspects of governance – in line with their years of expertise and experience. The current allocation of business and frameworks for telecom, broadcasting, and information technology are adequate for the industries and areas of governance as assigned under their separate purviews.

Broadcasting Content and carriage require separate policy attention under the NBP as telecommunication services and broadcasting services are distinct. Broadcasters produce and package content that distributors carry to consumer homes using their own networks. These are two distinct activities of the broadcasting supply chain. Policy and regulatory principles that apply to the two activities i.e., (i) installing and maintaining TV distribution networks; and (ii) producing content to be distributed on TV distribution networks are different. Broadcasting carriage policy and regulation must provide solve for competition and ease of doing business to promote orderly sectoral growth and ensure quality of service and effective choice in consumer interest. These are the statutory objectives outlined in the TRAI Act, 1997.

Broadcasting content policy and regulation should create incentives to produce novel and innovative content, generate IPs that add value to the Indian economy, and guarantee access to diversity and plurality of opinions.

The 1999 Sub-Group on Convergence (the Nariman Committee) discussed the need to separate content regulation from carriage regulation in broadcasting. Sub-Group I highlighted the TRAI's capacity constraints in broadcasting regulation and noted that the nature of the market and disputes in the broadcasting sector are different from the telecom sector, and the added responsibility over broadcasting would be cumbersome for this reason. Sub-Group III opined that it is imperative to separate broadcast carriage regulation and content regulation. Currently, the separation exists with the TRAI regulating carriage, and the MIB regulating content.

Telecommunication has a private nature of communication, and its markets are ruled by economic and technical issues, including network access, which is basically an infrastructure service. As a result, regulator's role, inter-alia, includes ensuring access. On the other hand, broadcasting is communication to the public and regulatory concerns in broadcasting are mainly to do with freedom of speech and expression. Content regulation is very different from carriage regulation. Content regulation deals with freedom of speech and expression as guaranteed by Article 19(1)(a) of the Indian Constitution, subject to restrictions under Article 19(2). As illustrated by TRAI itself in pages 28-29 of the consultation paper dated 30.01.2023 on Regulating Converged Digital Technologies and Services – Enabling Convergence of Carriage of Broadcasting and Telecommunication service, where TRAI has recognized that the regulatory framework for content is different for each media platform and has evolved from judicial interpretation of Article 19(1)(a) of the Indian Constitution. A similar view has also been reiterated by the MIB in its response to the TRAI dated 04.10.2022.<sup>16</sup>

**Q14. What additional measures should be adopted to combat piracy and ensure content security through copyright protection in the broadcasting sector? How can the technology driven solutions be developed and deployed to prevent unauthorised distribution and detection of the source of original content. Provide your comments with detailed explanations.**

***IBDF's Response:***

Please see our response to Q8.

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<sup>16</sup> Telecom Regulatory Authority of India, '[Annexure-III, Consultation Paper on Regulating Converged Digital Technologies and Services](#)', TRAI (January 2023)

**Q15. What policy and regulatory provisions would be required in the policy to enable and facilitate growth of digital terrestrial broadcasting in India. Stakeholders are requested to provide strategies for spectrum utilization, standards for terrestrial broadcasting, support required from the Government, timelines for implementation, changes to be brought in the current ecosystem and the international best practices. Please provide your comments with detailed justification and proper reasoning.**

**IBDF's Response:**

Doordarshan enjoys monopoly over DTT. In 2005, TRAI made a recommendation to the MIB to allow private broadcasting companies to peruse DTT technology. The regulator stated that there should not be any bar on allowing private broadcasters into terrestrial broadcasting as private TV channels are already widely available through both satellite and cable. This was reiterated by TRAI in 2017 in the 'Recommendations on issues related to Digital Terrestrial Broadcasting in India'. In 2017, following consultation, TRAI recommended the opening of DTT to private and phased implantation of the services to be completed by December 2023.

Private entry would enable competition, innovation and quality content and delivery, enable market-driven utilization of broadband, telecom and spectrum resources. DTT also provides an avenue to create localized plural content given that DTT is transmitted in a localized manner through radio waves. From the consumer's perspective private entry into DTT would mean more channels besides Prasar Bharti-owned Doordarshan channels.

**Q16. How the strategies with respect to audience measurement and rating system in National Broadcasting Policy can ensure, address and encourage: i. Establishment of a transparent, credible, and technologically equipped television audience measurement system that accurately reflects viewer preferences and behaviour ii. Expansion of the sample size to adequately represent the diverse landscape of television viewership, considering the anticipated growth in TV households iii. Integration of data from non-linear sources from digital media to cover cross-platform content consumption habits iv. Establishing a policy framework for conducting radio audience measurement in India v. Encouraging multiple agencies to ensure healthy competition and enhancing service quality of measurement and methodologies vi. Adoption and utilization of modern technologies**

**IBDF's Response:**

The TRAI does not have the authority to make recommendations on OTT services. Without prejudice to the foregoing statement, the CP suggests broadening the range of TV audience measurement to include cross-platform audience metrics that encompass OTT services. OTT platforms employ diverse techniques to gather insights on user behavior and customize content accordingly:

- a) OTT platforms use metrics such as Monthly Active Users (MAU) to determine the number of unique users interacting with the service each month. This metric helps track viewership changes over time. For subscription-based services, an effective way to measure viewership is by monitoring the total number of subscribers. Additionally, OTT services analyze consumption patterns using data on device usage, minutes watched, average session duration, churn rate, and traffic sources.

- b) AI and machine learning-driven recommendation systems analyze vast amounts of data to personalize content suggestions on OTT and social media platforms. These systems assess users' digital interactions, learn from these engagements, and refine algorithms through data analytics. They collect and process data using content-based filtering techniques to customize recommendations.
- c) To evaluate the effectiveness and reach of advertisements, OTT platforms utilize key metrics such as Cost Per Minute (CPM), Cost Per View (CPV), or Cost Per Completed View (CPCV). CPM and CPCV are crucial for assessing the performance of OTT advertisements and the overall marketing effectiveness. These metrics are instrumental in calculating the return on investment for OTT advertising campaigns.

Given the extensive range of measurement tools already in use by OTT services, the rationale for standardizing these methods with those used for TV audience measurement remains ambiguous and is absolutely unnecessary.

For TV, the existing mechanism as recognised and registered under the MIB's guidelines and led by the industry through the Broadcast Audience Research Council (BARC) has been reviewed and works well, and there is no need for any policy or regulatory changes.

**Q.17 What other strategies should be adopted in the policy document for ensuring a robust grievance redressal mechanism to address and resolve complaints with respect to content as well as services effectively? Provide your comments with proper explanation.**

**IBDF's Response:**

Content regulation falls outside the purview of the TRAI, as do OTTs and any and all forms of digital media. Without prejudice to the preceding statement, the present co-regulatory framework for broadcasting content works and there is no market or regulatory failure that necessitates a change in the existing framework. Consumer complaints regarding carriage follow extant regulation under the TRAI Quality of Service regulations. The government should prioritise enforcement of TRAI QoS regulations because the regulator does not have enforcement capacity at the last mile (state and local level).

**Q.18 What role the broadcasting sector should play to fulfil social and environmental responsibilities? Provide in detail the key focus areas and the strategies the sector should consider. Also provide strategies on the following specific issues: i. To empower Person with Disabilities (PwDs) to access the information and entertainment programmes ii. To encourage gender equality w.r.t. the participation and safety of the women workforce iii. To raise awareness about the issues of marginalized tribal communities, minorities and LGBTs iv. To adopt green broadcasting practices**

**IBDF's Response:**

We believe that social goals and environmental responsibility ought to be restricted to public broadcaster's remit and that no additional obligations should be imposed on the private sector in this regard, as they are met under various other statutes/policies.

**Q19. Keeping in mind the immense role of broadcasting during disasters, how can the latest technologies be effectively utilized to provide disaster alerts and timely updates on television/mobile/radio during disasters? Elaborate with proper justifications.**

**IBDF's Response:**

The use of broadcasting as rapid dissemination of early warning disaster notifications ought to be restricted to public broadcaster's remit and that no obligations should be imposed on the private sector in this regard. The government must support broadcasters in their endeavour to ensure that their channels still are on-air throughout the year without disruption. Satellites or teleports used for channel uplinks may meet contingencies like transponder failure, satellite failure, technical problems with the satellite etc. Teleports may become non-functional due to natural calamities, fire, force majeure conditions, local law & order situations, antenna losing its line of sight etc. It is imperative to ensure that channels can remain on-air in these situations, and it is important to bring in enabling provisions that allow licensed broadcasters and permitted teleports to shift their operations immediately and apply for post-facto regulatory approvals. It will help the service providers in such contingency situations to concentrate their efforts on continuance of services so that there is minimum downtime. Hence, if there is an untoward incident with satellite, the up-linking on contingency basis should be automatically permitted on other approved satellite or in case of any untoward incident to the approved teleport such that the teleport is unable to uplink the signal to satellite, the broadcaster should be allowed to uplink the same carrier from a different teleport within the footprint of the satellite. The government can consider a mechanism where service providers intimate all the authorities by seeking post-facto approvals by following the necessary procedures. This provision, while giving the required flexibility to service providers in certain extraordinary situations will also ensure regulatory compliances. Channels may also be allowed to uplink from more than one teleport on more than one satellite in order to meet business requirements and to align with International practices.

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