

Indian Broadcasting & Digital Foundation's ("IBDF") response to Telecom Regulatory Authority of India's ("TRAI") consultation paper on Regulating Converged Digital Technologies and Services - Enabling Convergence of Carriage of Broadcasting and Telecommunication services.

1. We would like to thank TRAI for giving stakeholders the opportunity to comment on its "***Consultation Paper on Regulating Converged Digital Technologies and Services - Enabling Convergence of Carriage of Broadcasting and Telecommunication services***" ("**Consultation Paper**"). We would like to submit our preliminary observations, issues with some paragraphs and conclusions in the Consultation Paper, and a broad set of principle-based recommendations to contextualise our responses to the questions and issues highlighted in the Consultation Paper.
2. Preliminary Observations/Recommendations –
 - (a) A timeline of less than two months has been provided by TRAI to respond to the Consultation Paper. The queries posed for consultation by TRAI require evaluation of the current carriage regulatory frameworks for broadcasting and telecommunication services, adequacy of the current administrative set up, current and best international practices, and feasibility of replicating best practices in the Indian context. This entire exercise would require time and detailed analysis. In view of the same, TRAI is requested to provide at least six months for stakeholders to respond.
 - (b) Telecommunication services and broadcasting services are distinct. 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.
 - (c) 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.
 - (d) Internet-based Services or Digital Services are distinct from telecommunication services. Internet-based services or digital services are services that are provided over the internet whereas telecommunication services are services provided by Telecommunication Service Providers (TSPs) and include fixed and mobile telephone services (including internet connectivity), carrier services, call management services, private network services and data transmission services. Hence, Internet-based Services or Digital Services should be regulated by specialised legislation and should have a separate regulatory framework distinct from the regulatory framework prescribed for telecommunication services.

- (e) It is submitted that there is no convergence in services between telecommunication services and broadcasting services. Moreover, the Consultation Paper lacks sufficient data that indicates convergence of carriage of broadcasting services and telecommunication services. Accordingly, regulation of broadcasting services and telecommunication services should remain separate.
- (f) Since there is no evidence of market failure or harm, there is no need for any intervention by TRAI. Convergence, in the manner suggested in the Consultation Paper, will entail re-examination of the legal, regulatory, licensing, administrative and institutional setup for both telecommunication services and broadcasting services which will not only disrupt the current equilibrium but may also have an adverse impact on the growth of both the sectors.
- (g) The fact that different services are being made available through the same platform does not imply that the services have converged and hence cannot be treated as same for regulatory purposes.
- (h) 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.

Our aforementioned submissions are elaborated below–

1. The timeline for the consultation

We agree with the TRAI's view that convergence has been "defined and interpreted in many ways". For instance, a content creator or a Digital Service Provider (DSP) would have a different perspective on convergence, compared to a Telecom Service Provider (TSP) or a broadcast carriage service provider like Direct to Home (DTH), Headend-In-The-Sky (HITS) or Cable Operators. Only from a user perspective, convergence is the ability to obtain multiple services, whether a telecommunication service or broadcasting service or a digital or internet Based service, on a single platform or device, and obtain any such given service on multiple platforms or devices.

To explain convergence, the Consultation Paper states that "***various technological developments in digital markets have resulted in the convergence of devices, services, and networks***". The Consultation Paper also delves into a broad range of issues from convergence in ***telecommunication services and broadcasting services, convergence between telecom and the IT sector due to convergence in IP based networks, and convergence between telecom and space sector***. The Consultation Paper then highlights the challenges caused by such convergence at the statutory, licensing, regulatory (*including content regulation*), administrative and institutional levels. Consequently, it seeks stakeholder responses on how India should respond to these emerging trends.

These are important and relevant questions. But unfortunately, TRAI has given stakeholders barely a month to respond. Responses to these questions would require stakeholders to

evaluate the current carriage regulatory frameworks for broadcasting services and telecommunication services, adequacy of the current administrative set up, current and best international practices, and feasibility of replicating best practices in the Indian context. Such exercises require time, and the TRAI should have given at least six months for stakeholders to respond.

2. **Telecommunication services and broadcasting services are distinct services, and they should remain so from a regulator's point of view.**

The Consultation Paper states that “*various technological developments in digital markets have resulted in the convergence of devices, services, and networks*” and explains device convergence, service convergence and network convergence.

While the Consultation Paper explains the term “convergence”, we would like to highlight the following regarding the explanation provided -

- (i) **Device convergence:** To support its description of device convergence, the Consultation Paper also refers to “smart devices” and describes smart TVs in detail. However, latest available data suggests that only around 22 million homes have internet-enabled smart TVs, making up around roughly 10% of all television households in the country. It is essential to consider whether 10% penetration is sufficient to conclude device convergence for a 1.4 billion people?
- (ii) **Service convergence:** The Consultation Paper in para 1.3(ii) states that broadcasting services and telecommunication services have converged into one service.

“In the media and telecommunications business, it may mean the tendency for services to merge into one offering that combines the features of the original services. Convergence of services allows operators to offer bundles of services to the end-users. Converged services include at least two different types of services, for example, double-play, triple-play, quadruple play bundled services.”

The Consultation Paper uses examples of *double-play, triple-play, and quad-play* to draw this conclusion. The Consultation Paper incorrectly suggests the bundling of telecommunication services with broadcasting services by a single service provider as convergence of services. It is important to note that bundling of different services (like TV, broadband and voice) into one offering does not mean that these services have converged. It only enables a service provider to provide multiple services as a bundled offering and each service within the bundle remains distinct. The fact that they are offered as a bundle or provided by one service provider does not mean that these distinct services have converged.

As rightly pointed out in para 1.17 of the Consultation Paper, telecommunication has a private nature of communication and its markets are ruled by economic and technical issues, including network access. As a result, regulators' 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.

Therefore, we recommend TRAI to create a clear distinction in the regulation of Telecommunication services from that of broadcasting services.

- (iii) **“Carriage convergence” (or “network convergence”)**: The Consultation Paper gives the example of *“integrated delivery, via a single delivery channel, of voice and other services, through a single network infrastructure that handles and distributes multiple types of media”* to explain network convergence. However, the networks for broadcasting and telecommunication services remain distinct, even if the services are available in a bundled offering for consumers. The Consultation Paper itself notes that technologies *“are being developed to enable convergence of broadcast and unicast infrastructure...”* (emphasis added). It cites Direct-to-Mobile, 5G Broadcast, and satellite networks for broadcast and telecommunication services as examples of this, *but what it describes are systems that could theoretically support convergence, rather than actual convergence taking place.*

The Consultation Paper appears to be basing the need for regulatory changes entirely on emerging trends, in order to ‘future proof’ the regulation. However, trends in certain urban pockets of the country like triple play and quad-play or anticipated developments like direct to mobile broadcasting, which have not been realised on any significant scale in India, cannot form the basis of policy changes that will impact 210 million TV home (or about 850 million TV viewers) and 1.2 billion mobile users in India.

3. **The regulation of content should be kept separate from the regulation of carriage and should be outside the scope of the Consultation Paper**

The Department of Telecommunication’s reference to TRAI dated August 12, 2021, is limited to “convergence of carriage of broadcasting and telecommunication services”. However, the Consultation Paper analyses the regulatory framework for content for OTT (news and non-news), Radio, TV (news and non-news), Films and Print and concludes that *“the existing regulatory oversight framework for content regulation, which is patchy and inadequate at its best, may need a complete overhaul in a converged era in line with many other nations, where a converged regulator regulates carriage and content”*.

We do not agree with such conclusive statements regarding the need for a converged regulatory framework for content across different platforms. Such remarks do not take into account institutional learnings from the Ministry of Information and Broadcasting (MIB), the role of self-regulatory bodies like the News Broadcasting Standards Authority (NBSA) and the Broadcasting Content Complaints Council (BCCC) in television and the Digital Publisher Content Grievances Council (DPCGC) and the Digital Media Content Regulatory Council (DMCRC) for OTT, as well as the 2021 amendment to the IT Rules to address the issues and challenges posed by digital platforms.

We would also like to take this opportunity to highlight that 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 in pages 28-29 of the Consultation Paper, 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.

We therefore recommend that the regulatory framework for content (within the confines of Article 19(2) of the Constitution of India) should be distinct and separate from the regulatory framework for carriage. For clarity, the regulatory framework for carriage should not result in impinging of rights guaranteed under Articles 19(1)(a) and 19(1)(g) of the Constitution of India. In fact, TRAI in its 2006 Recommendations on “Issues Relating to Convergence and Competition in Broadcasting and Telecommunications” acknowledges this distinction and recommended that the *“Regulation of carriage and content should be separated, as the skill sets required for the two are significantly different. Regulation of carriage is more or less concerned with technical and economical aspects/ repercussions of policies. Content regulation has to take into account the impact of content on sensibilities, morals and value system of the society. Artistic and creative persons from the fields of fine arts, drama, films etc. may be more suited for content regulation than technocrats or economists.”* The MIB adopts a similar view in its response to the DoT and TRAI on the issue; its letter dated 4th October 2022 echoes the TRAI’s 2006 recommendations.¹ The Ministry also says that existing mechanisms for content regulation are effective, and there is no need to disturb established practices or re-engineer business processes.

The premise for such distinction and separation of the regulatory frameworks for content and carriage still holds in today’s digitalised carriage eco-system.

Moreover, the principles for regulating content across different platforms (theatres, TV and OTT) are different owing to the fundamental differences in how content is consumed via these platforms. For example, content shown in theatres is being publicly exhibited, viewed by a wide range of viewers at the same time, and hence is governed by the Cinematograph Act and Rules. Television, by comparison, is relatively private and characterised co-viewing with scheduled programs (*push content*) and hence governed by the Cable Television Networks Regulation Act and Rules and the Self-Regulatory Framework. OTT on the other hand, is a characterised with private viewing in India with consumers making informed choice (*pull content*) about every content that they watch, and hence content on OTT is governed by Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, and the Self-Regulatory Framework including the certification process for identification of content and calibration of access.

The viewer’s ability to exercise choice in how they view the content, or indeed whether they view it at all, factors into the potential risks of providing content via a particular platform. Therefore, a converged or “one size fits all” framework for content regulation cannot be applied for all platforms.

¹ https://www.trai.gov.in/sites/default/files/CP_30012023_0.pdf#page=146

4. **Internet-based Services or Digital Services are different from telecommunication services and should be regulated by specialised legislation like the Information Technology Act, 2000**

Telecommunication services are services provided by Telecommunication Service Providers (TSPs) and include fixed and mobile telephone services (including internet connectivity), carrier services, call management services, private network services and data transmission services.

TSPs provide these services through a license granted by the Government which confers to them an exclusive right to acquire and exploit scarce natural resources like telecommunication spectrum, the right to obtain telecom numbering resources, and the right of way to set up infrastructure. TSPs also have access to a Public Switched Telephone Network (PSTN) (*or switched or non-switched networks in the case of mobile services*) for the transmission of voice, data and video to and from national and international destinations, and hence their service is primarily concerned with the transmission of voice and data. They are also often provided with crucial infrastructural assets, essential facilities, subsidies, concessions and territories necessary for their operations.

These exclusive privileges give TSPs economic advantages like high entry barriers, reduced competition and exclusivity in business operations, and are the premise for regulations in the form of net neutrality, revenue share, contributions to universal service obligations, investment mandates, tariff regulation and must carry obligations.

Internet-based services or digital services, as the name suggests, are services that are provided over the internet. The EU defines these as services sent and received by electronic equipment for data processing.²

Digital services include buying and selling, OTT communication and messaging services, OTT video streaming services, digital news, search services, navigation services, ride hailing services, dating services, delivery and logistics services delivered over the internet. On the supply side, new data networks, digital computing tools, and internet platforms enable service providers to digitalise their services and transform their modes of delivery. On the demand side, internet platforms and digital technology reduce transaction costs and allow access to a variety of goods and services. They also provide convenience and the ability to customise services. Such “digital markets”, and digital services / internet-based services are built on top of telecommunication services and characterised by hyper competition and low entry barriers.

From the above it is apparent that these digital services are different from the telecommunication services.

Of late, voice and messaging services of TSPs are being equated with services of DSPs. Accordingly, it is being claimed that voice and messaging services provided by TSPs are

² See Article 1(1)(b) of Directive (EU) 2015/1535, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015L1535>

substitutable with *internet-based communication services* and *OTT communication services* of DSPs and that these services be brought under the same rules that regulate TSPs' voice and messaging services.

It is crucial to understand that *internet-based communication services* and *OTT communication services* are not a substitute for TSPs' voice and messaging services. Terming the services as substitutable ignores the differences in the features offered by the two services.³

- (i) TSPs provide internet connectivity and facilitate the provision of services through the internet. As all internet access is controlled by TSPs, which DSPs need to build and provide their services, they are a dependent industry and not equal.
- (ii) The Australian Competition and Consumer Commission (ACCC) found that a technical shortfall of OTT communication is that it only facilitates communication within a particular app's ecosystem (*e.g., call only possible from WhatsApp to WhatsApp*), whereas a TSP enables communication between different operators (*e.g., call from Airtel to Singtel*). This limitation of OTT communication limits the substitutability of traditional communications and OTT communications.⁴ The ACCC report also concluded that there is "no basis for requiring equivalent regulatory treatment".
- (iii) Digital, or internet-based services cannot be treated on par with telecommunication services as their dependence is not equivalently mutual, i.e., while DSPs require the telecommunication services provided by TSPs, the reverse is not true.
- (iv) TSPs are gatekeepers of internet access, and hence gatekeepers to all digital services. To be considered as equal, the first requirement is for the services to be independent or mutually dependent. Neither is true and hence TSPs' voice and messaging services are not the same service as that of DSPs' *internet-based communication services* or *OTT communication services*.

Given this distinction, digital services require specialised legislation like the Information Technology Act, 2000 (*which, according to the Minister of State for MEITY, is currently being revamped to a Digital India Act*) and a separate regulatory framework distinct from the regulatory principles that govern and regulate telecommunication services. The Consultation Paper's claim in paragraph 1.33 that "The objective of promoting innovation, competition and growth of India's Digital Economy may not be fully achieved by just amending the India's Information Technology Act, 2000" overlooks the clear intent of the government to refine and further develop specialized legislation for digital services. Further, the respective Digital Services would be subject to the stipulations and provisions applicable to the service area (as prevalent in non-digital format), and do not necessarily require a 'one-size-fits-all'

³ Noyanika Batta. *Regulation of OTT Communications Services: Justified Concern or Exaggerated Fear?* January 2023, Esya Centre, available at https://static1.squarespace.com/static/5bcef7b429f2cc38df3862f5/t/63d8b49179bdf80b02924cc6/1675146395190/Esya_Centre_Report_Communications_OTT_Services.pdf

⁴ Australian Competition and Consumer Commission, *Communications Sector Market Study (April 2018)*, available at: https://apo.org.au/sites/default/files/resource-files/2018-04/apo-nid139446_1.pdf

overarching digital regulation, merely on account of being availed of, or otherwise impacted by digital delivery or digital access.

India has a unique institutional setup that favours specialisation to better manage administrative affairs. The intent to maintain distinctions between different areas of expertise is apparent in the fact that there are separate ministries for Communication, Information & Broadcasting, and Electronics & Information Technology and in the different responsibilities they have been allocated/entrusted with. The MIB in its letter dated 4th October 2022 has clearly stated that *“the need of the hour is not to bring in further disturbances but to re-engineer business processes such that there is ease and convenience of doing business for these entities.”* Accordingly, separate but coordinated licensing and regulatory frameworks are most appropriate for the Indian context. The Consultation Paper has not shown that there is any need for additional regulations, or that there is something to be “fixed” in the current regulatory frameworks: it does not highlight competitive outcomes that are not being achieved by the market, it does not indicate that there are unified technical standards that need to be enforced, nor does it suggest social benefits which could be realised.

5. Need for a detailed review on Convergence and competition issues across carriage services.

- 5.1 The CP in several paras suggests that convergence increases the level of competition. For instance, in para 1.4 the CP states that *“efficient utilization of resources, increased level of competition, more innovative user applications and technological developments are the main drivers of convergence”*. We find a similar conclusive statement in para 1.58 where it states that *“Convergence is a powerful force in bringing about greater competition”*. Similarly, para 1.7 highlights the benefits of convergence such as *“lower entrance barriers, promotion of competition, lower cost equipment, quicker market response, and new business opportunities”*. We would like to reiterate that converging ownership in the carriage of Broadcasting and Telecommunication services are emerging and **there is no data to suggest that they necessarily lead to increased level of competition or lower entrance barriers.**
- 5.2 With respect to convergence in carriage possibly leading to market concentration, TRAI has in para 1.19 of the CP noted – *“The convergence introduced new forms of competition and disrupted long-term governance relations. New services and new entrants are emerging, whilst established players are vertically integrating or even exiting the market. Providers are actively working to meet changing user needs, make effective use of business resources, and exploit synergies among various business activities by developing activities that transcend the barriers between telecommunications and broadcasting. Convergence may be disruptive as the changes in the market structure, competition, mergers and acquisitions are not to be seen much in individual markets but rather in a consolidated market. Horizontal integration of infrastructure, market and services may strengthen market power”*. However, It must be understood that the nature of investments differs from stakeholder to stakeholder. If the regulatory framework as envisaged in the Consultation Paper without proper assessment is brought into force, it will give

preference or advantage to one stakeholder at the cost of the others and will create an imbalance and disturb the level playing field between the stakeholders.

5.3 TRAI via its CP on “*Issues relating to Convergence and Competition in Broadcasting and Telecommunications*” looked into the issue in 2006 and recommended that “*the regulation of carriage and content should be separated*”. In respect of carriage, the regulator’s analysis of different telecommunication services vis-à-vis broadcasting services necessitates analysis of the distinct regulations and laws in relation to the distribution / carriage services. For example, the telecommunication services are not subject to regulations such as the broadcast and cable services Interconnect Regulations, Tariff Orders, etc. Within the broadcasting services regulatory framework, the conditions imposed on carriage service providers/ distribution services do not correspond to the conditions imposed on content service providers are different.

5.4 Therefore, the need of the hour is to ensure enforcement / strict adherence to fair and reasonable restrictions and guidelines within the value chain. Hence it is important to maintain neutrality to enable the level playing field, the absence of which may give rise to misconduct and discrimination by dominant service providers vis-à-vis other service providers within the sector.

5.5 As a general precept, IBDF does not support any blanket ex-ante prohibition on vertical integration between carriage and content or horizontal integration as such ex-ante regulations apply to all entities (large and small) and therefore results in treating of “*unequal as equals*”. However, with the objective to avoid adverse impact on the sector of any convergence of different carriage services, the authority may assess and address conduct of service providers that impairs the market and should consider evaluating all relevant aspects before evolving suitable guidelines that would be in the best interests of all stakeholders and preserve a fair level playing field. In view of the above, it is recommended that the monitoring and review of relevant services and sector by the regulator should be appraised against the market conditions and conduct that is found to be anti-competitive or susceptible to create monopolies ought to be appropriately addressed.

6. Recommendations

We would like to take this opportunity to submit that we do not agree with the Consultation Paper’s observation that there is convergence in services between telecommunication services and broadcasting services. Additionally, the Consultation Paper does not provide sufficient data to conclude that carriage of broadcasting services and telecommunication services have converged. Therefore, we recommend that the regulation of broadcasting services and telecommunication services remain separate.

A. Guiding principles to regulate telecommunications services and broadcasting services:

Based on these observations and conclusions, we recommend the following principles to guide the regulation of telecommunications services and broadcasting services:

(i) **Distinct and separate regulatory frameworks for carriage and content:**

As elaborated in point 3 above, the principles for regulating carriage and content are different, as are the skill sets required to implement and oversee such regulation. Similarly, within content regulation, there are different principles for regulating content on different platforms. The distinction in regulation of carriage and content must be clearly established for the telecommunications and broadcasting sectors and the regulatory framework for content should be kept distinct and separate from the regulatory framework for carriage.

(ii) **No intervention without evidence of market failure or harm:**

In paragraph 1.14 of the Consultation Paper, TRAI observes that *“In India too, in 2004, TRAI was entrusted regulation of broadcasting sector, in addition to telecom sector. However, the actual benefits of convergence could not be realized, as most functions were with ministries that did not converge. Areas that may be of concern for a regulator may be market access, pricing, investment, and merger approval, etc. motivated by a broad range of market failure concerns.”* From the above, it is apparent that the present exercise is merely based on ‘market failure concerns’ and is not backed by any data evidencing any actual market failure.

The Consultation Paper cites the growth of the telecommunications services and broadcasting sectors, as well promotion of innovation, competition, and growth of India’s digital economy as objectives. The only issue the Consultation Paper highlights is the issue of overlap between different ministries, which can easily be solved through better coordination between different authorities or amending existing regulations that overlap. Examples of such coordination include the division of roles between MIB and MEITY in the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, under which provisions relating to digital media are administered by MIB. The only instance of a market harm cited by the Consultation Paper is from a 2012 paper, which predates the telecom boom⁵.

Convergence, in the form the Consultation Paper suggests, will require overhauling the legal, regulatory, licensing, administrative and institutional

⁵ <https://www.sjpub.org/sjp/sjp-221.pdf>

setup for both telecommunication services and broadcasting services. This will disrupt the current equilibrium and could severely impact the growth of the telecommunication and broadcasting sectors. Multiple regulatory changes have reduced the thriving pay TV ecosystem, both in terms of the number of pay TV subscribers and the number of TV channels available per household and hampered its competitiveness with emerging platforms.

(iii) **Activity-based regulation, or “same service same rules”:**

It is crucial to understand the service as a whole, including its function and technological underpinnings, before determining if it is the “same” as another service. As stated above, the availability of different services through the same platform does not mean that there has been convergence of services. *For example, telecommunication services are primarily private in function, and broadcasting services are primarily public in function, and must be treated as distinct for regulatory purposes.* Similarly, all internet-based services run on top and are dependent on established telecom networks, and therefore cannot be considered substitutes or the “same service” as telecommunication services.

B. Regulation of carriage for telecommunication services and broadcasting services:

The Consultation Paper in several places mentions the need for a converged carriage regulator for telecommunication services and broadcasting services, and that such a converged regulator will “benefit” the stakeholders. However, the Consultation Paper does not mention what benefit a converged regulator would bring.

We would like to highlight that India already has a common regulator, TRAI, for the carriage of telecommunication services and broadcasting services. TRAI was established with effect from 1997 by an Act of Parliament to regulate telecommunication services, including fixation and revision of tariffs for telecommunication services which were earlier vested in the Central Government. TRAI was then entrusted with the regulation of the broadcasting sector in 2004.

Unfortunately, the Benefits of such a converged regulator particularly for the broadcasting sector are yet to be seen. Despite 18 years of regulation, there often emerges an ecosystem and lack of regulatory principles from a discernable gap in understanding some fundamentals that drive and impact the different aspects of the broadcasting industry, especially in context to the distinction from telecommunication services and with reference to the evolving conditions for the distinct aspects of content and carriage in broadcasting. While there have been efforts by TRAI to remedy issues prevalent in the broadcasting sector in the recent amendment to the Tariff Order and Interconnect Regulation, there are instances where TRAI’s carriage regulation continues to impinge on content, both in terms of freedom of speech and expression and broadcasters’ ability to monetize copyrighted content.

The Consultation Paper also highlights the need for convergence of licensing frameworks for telecommunication services and broadcasting services and calls for convergence between administrative government units overseeing the policy and statutory frameworks for telecommunication services and broadcasting services.

We do not believe that there is a need for convergence of licensing frameworks for telecommunication services and broadcasting services and between administrative government units overseeing policy and statutory frameworks for both. As mentioned above, telecommunication services and broadcasting services are distinct services and hence the licensing frameworks must be kept separate. Similarly, to maintain this distinction, we also recommend the administrative government units overseeing the licensing and statutory frameworks be kept separate as below.

Carriage services	Legislation / policy/ guidelines	Authorization Type	Administrative government unit
Telecommunication services⁶	Unified license under Telegraph Act	License	DoT
Broadcasting services	Guidelines for Uplinking and downlinking of TV channels	Permission	MIB
	Cable Television Networks (Regulation) Act & Rules	Registration	
	DTH Guidelines	DTH License	
	HITS Guidelines	Permission	
	IPTV Guidelines	IPTV License	

We note that the MIB in its letter to TRAI dated 4th October 2022 mentioned that it is in the process of amending the Cable Television Networks (Regulation) Act “to bring all broadcasting carriage platforms under its ambit in order to holistically address all institutional regulatory and legal aspects of broadcasting services under a unified Act.”

Such a unified act should clearly segregate the principles for the regulation of content from that of carriage and should not use licensing/registration/permission conditions to impose content regulations, particularly those that restrict freedom of speech and expression and a copyright holder’s ability to monetize content as per copyright principles.

⁶ Access Services (Telecom Operators), Internet Service Provider (ISP), Very Small Aperture Terminal (VSAT) Global Mobile Personal Communication by Satellite (GMPCS) Service, INSAT Mobile Satellite System Reporting Service (INSAT MSS Reporting Service), National Long Distance (NLD) Service and International Long Distance (ILD) Service

7. **RESPONSES TO ISSUES FOR CONSULTATION:**

Issue-1: Whether the present laws are adequate to deal with convergence of carriage of broadcasting services and telecommunication services? If yes, please explain how?

OR

Whether the existing laws need to be amended to bring in synergies amongst different acts to deal with convergence of carriage of broadcasting services and telecommunication services? If yes, please explain with reasons and what amendments are required?

OR

Whether there is a need for having a comprehensive/converged legal framework (separate Comprehensive Code) to deal with convergence of carriage of broadcasting services and telecommunication services? If yes, provide details of the suggested comprehensive code.

Response:

We do not think there is a need for having a comprehensive/converged legal framework (separate Comprehensive Code) to deal with convergence of carriage of broadcasting services and telecommunication services.

As mentioned above, telecommunication services and broadcasting services are distinct services and hence the laws to deal with the carriage of broadcasting services must be kept separate from laws that govern the carriage of telecommunication services.

However, many of the existing carriage regulations impinge on the content that is being broadcasted. We recommend that these policies and guidelines be amended so as to keep carriage regulation distinct from content regulation in broadcasting.

Issue-2: Whether the present regime of separate licenses and distinct administrative establishments under different ministries for processing and taking decisions on licensing issues, are able to adequately handle convergence of carriage of broadcasting services and telecommunication services?

If yes, please explain how?

If no, what should be the suggested alternative licensing and administrative framework/architecture/establishment that facilitates the orderly growth of telecom and broadcasting sectors while handling challenges being posed by convergence? Please provide details.

Response:

The Consultation Paper highlights the need for the convergence of licensing frameworks for telecommunication and broadcasting services and calls for convergence between administrative government units overseeing the policy and statutory frameworks for telecommunication and broadcasting services.

We do not believe that there is a need for convergence of licensing frameworks for telecommunication and broadcasting services and between administrative government units overseeing policy and statutory frameworks for both.

It may be noted that even MIB in its communication dated 04.10.2022 to TRAI (at page 142 of the Consultation Paper) has, in the context of broadcasting services, stated that – “... multiple agencies are involved for the purposes of company clearances like MHA for security clearance, DoT for wireless and spectrum clearance, DoS for satellite allocation to various licensees, MEA, DPIIT for FDI and foreign executives working in broadcasting entities, MCA for company matters, Meity for digital news and online curated content etc. and the MIB has established systems and processes to effectively coordinate with all these agencies”.

As mentioned, telecommunication services and broadcasting services are distinct services and hence the licensing frameworks must be kept separate. Similarly, to maintain this distinction, we also recommend the administrative government units overseeing the licensing and statutory frameworks be kept separate. The present regime of separate licenses and distinct administrative establishments under different ministries for processing and taking decisions on licensing issues, are best suited. Separate but coordinated frameworks are most appropriate for the Indian context.

Issue-3: How various institutional establishment dealing with –

- (a) Standardization, testing and certification.**
- (b) Training and Skilling.**
- (c) Research & Development; and**
- (d) Promotion of industries**

under different ministries can be synergized effectively to serve in the converged era. Please provide institution wise details along with justification.

Response:

For answering the question, we would restrict our comments to institutions responsible for standardization, testing, and certification only.

Currently, multiple institutions/bodies have been established under various Ministries for setting up standards, testing of equipment and for their certification. There exist overlaps between the activities being performed by the multiple institutions, there is a need to build

synergies amongst all such institutions/bodies. For instance, BIS has published an Indian Standard that specifies the requirements for digital set-top box (STB) used for DTH services. On the other hand, TEC has also released essential requirements for hybrid STBs.

We recommended that a single platform should be established where all institutions/bodies are integrated and collaborate for introducing standards. Additionally, there should be a single institution/body that should be responsible for all testing and certification of equipment. This would be in line with ease of doing business initiative and lead to improved consistency, efficiency, certainty, and quality offered across the sectors and industries.

Issue-4: What steps are required to be taken for establishing a unified policy framework and spectrum management regime for the carriage of broadcasting services and telecommunication services? Kindly provide details with justification.

Response:

There is no need for establishing a unified policy framework and spectrum management regime for the carriage of broadcasting services and telecommunication services. The current spectrum management regime adequately deals with carriage services offered in both broadcasting and telecom industry. “Saral Sanchar Portal” established by Department of Telecommunication (DoT) is a portal that simplifies the process for frequency allocation through Wireless Planning and Coordination Wing (WPC). For the broadcasting sector, MIB has established a single platform for the broadcasting sector in the form of “Broadcast Seva Portal” which also integrates DoT’s “Saral Sanchar Portal” for administrative allocation of spectrum.

Instead of introducing a new framework and spectrum management regime, we recommend that attempts should be made to strengthen this platform for all the processes/approvals pertaining to allocation of spectrum in a time bound manner through better coordination among different Government department.

As mentioned above, telecommunication and broadcasting services are distinct services, and, therefore, the spectrum management principles that apply to carriage of broadcasting services should be distinct from telecommunication services.

Fundamentally, satellite spectrum used for broadcasting services allows multiple satellite service providers to operate in the same geographic area – so there is no constraint on satellite spectrum availability. On the other hand, telecommunication services offered over terrestrial spectrum blocks frequency band in such a way that it can only be used by a single operator and cannot be shared. This fundamental difference results in satellite spectrum never exclusively assigned as opposed to terrestrial spectrum. This has been the prevailing standard for the allocation of satellite spectrum in India and worldwide. Few countries that have tried auctioning of satellite spectrum found major problems and later discontinued the process.



We recommend that the current process of administrative allocation of satellite spectrum for broadcasting services and auction for telecommunication services should continue and would be in line with international practice.

Issue-5: Beyond restructuring of legal, licensing, and regulatory frameworks of carriage of broadcasting services and telecommunication services, whether other issues also need to be addressed for reaping the benefits of convergence holistically? What other issues would need addressing? Please provide full details with suggested changes, if any.

Response: Please see Paragraph 5 in response above.