

Consultation Paper on Inputs for Formulation of “National Broadcasting Policy”

USISPF welcomes the opportunity to submit feedback on the TRAI Consultation Paper on the inputs for the formulation of “National Broadcasting Policy.”

Broadcasting is a key constituent of India’s dynamic Media & Entertainment (M&E) sector and holds immense potential for growth. An enabling policy framework will help the broadcasting industry capitalise on this potential aligning with the Government’s vision of a USD 5 trillion Indian economy.

As an overall framework, the National Broadcasting Policy should include guiding principles that boost the overall development of the broadcasting sector and increase its contributions to the Indian economy. In this regard, please see USISPF’s recommendations below:

Scope and Regulation:

The National Broadcasting Policy extends its ambit to Over the Top Services (OTT) along with other segments such as Media and Entertainment. We recommend that OTT Services should not be a part of the broadcasting segment for the following reasons:

- OTT Services are not a part of the broadcasting system as they are functionally different from TV and radio broadcasting as it includes a combination of “carriage” and “content”.
- The Telecom Regulatory Authority of India (TRAI) is the regulator for carriage under the garb of the Telecommunications Act, 2023 and the Cable Television Networks (Regulation) Act, 1995, whereas OTT services are not included in the definition of ‘telecommunication’ or ‘telecommunication services’.
- OTT is a sunrise sector that requires a forward-leaning approach for regulation whereas TV broadcasting requires a different regulatory approach.
- Specialized policy and regulatory oversight are necessary for infrastructure pipes that deliver broadcasting and OTT services, as they are distinct from each other.
- Push vs. Pull: Television is a push-based medium where viewers view content at a time scheduled by the broadcaster whereas OCCP’s are a pull-based medium allowing consumers to choose the kind of content that they will be viewing from the available content presented to them.

Content and Carriage:

Any changes to the current system of separation of content and carriage (in which TRAI regulates carriage and the Ministry of Information & Broadcasting regulates content) must be carefully evaluated. As the 1999 Sub-Group on Convergence (the Nariman Committee) highlighted, it is imperative to separate content and carriage, as most developed countries do. Even in countries that have a converged regulator, there is separation of content and carriage.¹

Bringing carriage and content under a single regulator is not recommended, since broadcasting content and distributing it are two entirely distinct activities of the broadcasting supply chain. Broadcasting regulation must address competition and ease of doing business, as outlined in the TRAI Act (1997). It must incentivise the production of a variety of novel, innovative, high quality content for the consumer. Meanwhile, the objectives of regulating carriage (access, pricing) are entirely different. A single regulator would not be able to solve for such disparate problems with ease.

¹ In Germany, for instance, state media authorities regulate broadcasting content, while the Federal Network Agency regulates telecommunications.

Levelling down on regulations for OTT's:

- It is recommended that the National Broadcasting Policy level down on the regulatory approach with regard to additional compliance requirements for OTT's. Distribution Platform Operators (DPO's) are essential for the broadcasting value chains, as they provide "carriage" services, whereas on the other hand OTT's rely on the telecom infrastructure for the same. It is recommended that deregulation of the broadcasting sector would solve ease of doing business challenges in the sector. Policy interventions have progressively liberalized regulatory frameworks in the interest of Ease of Doing Business. For example, the National Digital Communications Policy 2018 committed to *"remove regulatory barriers and reduce regulatory burden that hampers investments, innovation and consumer interest..."*²

Local Quota Requirements:

It is recommended that the National Broadcasting Policy should refrain from prescribing local quota requirements for the following reasons:

- OTT Services already tailor production strategies to meet consumer demand. There is already a strong demand for regional/local content. The demand for local content has been met with high levels of production investment, easily accessible local content, availability of multilingual content with the provision of subtitles and accessibility of global content regardless of the language that it is produced.
- The 2024 edition of the FICCI EY Media and Entertainment report reveals that in 2023, regional OTT volumes exceeded Hindi language content for the first time. The same report also indicates that the share of vernacular content produced in India is set to increase to 55% of total content produced.
- The market share of regional OTT services increased from 47% in 2021 to 52% in 2023.³ Consumers have easy access to regional content on services which cater to niche regional audiences.
- Additionally, quotas can deter the development of the local industry and prevent fair competition. Frontier Economics' analysis indicates that policies like quotas lead to a reduction in the export of audio-visual products, with countries that have greater policy restrictions tending to have lower levels of investment in content.

Public Service Obligations:

The Consultation paper proposes an obligation on registered OTT services to carry out Doordarshan channels to promote local Indian content. It is recommended that Regulatory requirements to mandatorily allocate and invest resources for meeting public broadcasting objectives impact creative autonomy and the ability to cater to the diverse needs of OTT consumers. Instances such as Prasar Bharati's memorandum of understanding (MoU) for the distribution of DD channels in international territories exemplify voluntary licensing agreements. Likewise, any arrangements between private broadcasters and the public service broadcaster should entail negotiations and licensing conducted on terms that are fair, reasonable, and non-discriminatory, consistent with global norms. Regulatory requirements to mandatorily allocate and invest

² 8, Preamble to the National Digital Communications Policy 2018, available at: https://dot.gov.in/sites/default/files/2018_10_29%20NDCP%202018_0.pdf

³ 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

resources for meeting public broadcasting objectives impact creative autonomy and the ability to cater to the diverse needs of OTT consumers.

Grievance Redressal Mechanisms:

- It is recommended that no new grievance redressal mechanism be prescribed under the National Broadcasting Policy, as there are adequate measures already being provided by the Information and Technology Rules 2021. An impact assessment study on the implementation of the Rules conducted in 2023 found that the self-regulatory mechanism was working well.⁴

Recommendations for Prasar Bharati

Prasar Bharati should leverage its expertise in running high-power high-tower networks (both TV and Radio) and leverage telecom operator investments on the low-power low-tower network, core network and disaster relief infrastructure to deliver terrestrial broadcast content. Additionally, it would be advisable to leverage the passive infrastructure and spectrum asset at its disposal to encourage bringing private investment into this sector. This would strengthen Prasar Bharati considerably, and incentivize it to develop the opportunities in this sector (along with private broadband/broadcast operators).

Best Practices in Digital Terrestrial Broadcasting

India is a sensitive market where any increase of cost to the consumer is momentous. For this reason, any policy and regulatory provisions would need to prioritise ease of adaptability, cost-effectiveness, and appeal to the consumer. For instance, India has experience with terrestrial broadcasting through DVB-T2 deployments. One of the reasons for the lack of popularity of the technology was the lack of a device ecosystem. This may be redressed in the future by prioritising broadcasting technologies that have the least resistance for adoption into mobile devices.

Any contemplated technology must also be compatible with multiple options including Wi-Fi and satellite, in order to deliver citizen-centric content more efficiently. It should be compatible with cellular networks, and be capable of delivering emergency warning messages. It should be able to seamlessly integrate with the telecom network to leverage investments already made in that sector. Ideally, it should be appealing to multiple markets in order to ensure that India can manufacture and export that technology. Finally, it must not lead to additional carbon emissions to ensure that the Government of India's greenhouse gas emissions targets are met.

Other Recommendations:

- It is recommended that "TV Dark" households should be able to get quick and easy access OTT content affordably, hence their price should not be increased.
- The government's current guidelines adequately address audience measurement for TV broadcasts, with ongoing monitoring and review of measurement frameworks, hence there is no need for additional regulations.
- To foster the growth of the broadcasting industry, it's crucial for India to align with global standards and begin manufacturing broadcasting equipment domestically. To achieve this, the Indian industry must focus on developing products that adhere to globally harmonized and widely adopted standards.

⁴https://www.iamai.in/sites/default/files/research/IT%20RULES%2C%202021%20-%20Part%20II_compressed.pdf

We recommend that the National Broadcasting Policy should focus on:

- Developing a vibrant and resilient broadcasting sector by enabling an ecosystem for high-quality content creation in a variety of languages and formats, and ensuring dissemination of reliable news and information
- Positioning India as a global hub for content production (including local content) and exporting Indian content to the world
- Creating a roadmap to recognise, protect and uphold intellectual rights protections
- Developing technical capabilities in emerging technology such as Animation and Visual Effects to meet global requirements for skilled labour
- Creating a globally competitive and growth-oriented broadcasting sector with enhanced ease of doing business, state-of-the-art infrastructure, seamless market entry, world-class distribution technology, enhanced content security with strong intellectual property protections and anti-piracy frameworks