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Pre-Consultation Paper on Inputs for Formulation of National Broadcasting Policy

AVIA welcomes the opportunity to comment on the Telecom Regulatory Authority (TRAI) of India's pre-consultation on the **"Inputs for Formulation of National Broadcasting Policy"**. AVIA is the trade association for the video industry and ecosystem in Asia Pacific. It serves to make the video industry stronger and healthier through promoting the common interests of its members. Our membership consists of a combination of local, regional and multi-national companies, many of which are substantial cross-border investors; creating and purchasing video content to meet rapidly expanding consumer demands and investing in India's communications and creative industries.

AVIA appreciates TRAI taking the initiative to consult the industry and the public on the important questions covered by this pre-consultation paper. AVIA believes it is important to keep in mind the goal of a National Broadcasting Policy document – such a document should set a framework for Government of India policies and actions aimed at promoting and regulating the national broadcasting industries, both public and private. It should set out the objectives that government ministries and agencies should seek to achieve and provide directional guidance for policymakers and regulators. As such, it is a document providing an administrative and regulatory apparatus and high-level orientations on issues.

We do not believe, however, that the National Broadcasting Policy should seek to provide an all-encompassing set of regulations, rules and guidelines for the broadcasting industry – rather, it should establish a framework and set the objectives that the administrators and regulators should seek to achieve, using that framework. Over time, it should be up to these official bodies to issue guidelines, licenses, policy statements, and other administrative decisions that implement the Broadcasting Policy's objectives and directional guidance.

This is all the more important because India has, as the pre-consultation paper noted, a dynamic and diverse broadcasting sector where both public and private enterprises have major roles. It is far more suitable for the regulators/administrators of such a diverse sector to operate under well-understood general policy guidelines that leave them the freedom to make specific proposals and decisions as time goes along, based on evolving technical, commercial and social conditions. Against this context, we hold the view that existing regulations governing telecom, broadcasting and digital media are adequate. Such existing regulations include Indian Telegraph Act, 1885, the Indian Wireless Telegraphy Act (IWT Act), Information Technology Act (IT Act 2000), the Cable Television Networks (Regulation) Act, 1995 (CTNR Act), the Prasar Bharati (Broadcasting Corporation of India) Act, 1990, and on the regulation side, Telecom Regulatory Authority of India Act, 1997 (as amended)

(TRAI Act) that govern converged ICT services. There are also rules that govern content. In addition, the existing Broadcasting sector is suffering from over-regulation and requires de-regulation especially forbearance on pricing and tariff.

In that connection, we would like to cite the National Digital Communications Policy 2018 as a useful precedent. The NDCP sets out strategic objectives, a Mission statement, and goals for national communications policy; it did not attempt to deal in itself with all of the myriad issues confronting the communications industries. So, too, could a useful National Broadcasting Policy seek to set a high-level framework for the broadcasting industry. It does not need to cover every possible issue or regulatory policy.

- Thus, we do not believe that it is essential or even useful for the National Broadcasting Policy to address issues such as promoting workplace diversity, defending public health and safety standards, improving energy efficiency, promoting green energy R&D etc. Of course, these are all important and very worthwhile public policy goals, but they are not the main focus of a policy statement on broadcasting. They can and should be incorporated later in initiatives by both government and industry. Some of these goals also seemingly impose public broadcaster-like obligations on the private sector. Public broadcasters play a hugely important role in democratic societies, particularly in disseminating news and information. Given India's size and diversity, the growth and development of Prasar Bharati (and its Doordashan and All India Radio services) is critical. India's public broadcaster has been a long-standing presence, operating to serve the objective of public duty. Given Prasar Bharati's strong entrenched position, it is imperative not to impose overlapping mandates on the private sector. Blurring these important and distinct roles will limit the ability of the private sector to cater to the creative needs of the broadcasting industry and viewing community, and the burden on the sector will curtail its ability to grow.
- Even in issues more directly linked to the broadcasting industry, there are a number of specific regulatory initiatives mentioned in the TRAI pre-consultation that do not need to be and should not be covered in the overarching National Policy document. Whether a "centralized web-based complaint redressal" mechanism should be implemented, for example, is a question that should be considered later by the official and private-sector institutions involved in implementing the National Broadcast Policy; such a mechanism would be a means to an end, and not an end in itself. The same is true for establishing spectrum policy for broadcasting; whether a "unified spectrum management regime for broadcast and broadband technologies" should be set up should be considered by regulators and officials as a possible means to achieve the goals that should be set out in the National Broadcasting Policy, once those goals are laid out by the government.
- Similarly, it is not desirable in the context of formulating the Broadcasting Policy to consider specific decisions on the degree and conditions of "mandatory sharing of television programs" for individual sporting events. These should be determined by regulators later, in subsidiary proceedings based on the government's policy goals. In making such detailed decisions, regulators can weigh the desirability of broad public accessibility of individual sporting events against the value destruction for the sports rights owners and private broadcasters that is entailed by mandatory sharing.
- We would caution against assuming that any particular current technological conditions should necessarily become the basis for Indian policy, and codified in the Broadcasting Policy.

The pre-consultation paper posits that “convergence” implies that regulatory policies across various media verticals are warranted. As noted above, the Indian broadcasting industry is large and diverse; the government will no doubt wish to specify a wide range of goals that broadcasting policy should achieve, and different parts of the broadcasting industry will have different roles to play: policies on inclusion of disadvantaged populations or broadening public participation, for example, will best be addressed by Doordarshan and All India Radio. Supporting globalization of Indian content, for example, will involve private content producers, public media, relevant government agencies and OTT service operators. Assuming that “convergence” is a suitable goal for such a diverse industry puts the cart before the horse – it should be for regulators to examine the government’s goals and only then decide if a regulatory policy that is “coherent” across media verticals is necessary and useful. In its pre-consultation, TRAI went so far as to include “print media” as a potential subject of national broadcasting policy; this seems inappropriate to us. Telecom services, broadcasting services and digital media are distinct services technologically and hence the laws to deal with them must be kept separate. For example, OTT cannot be included in ‘Broadcasting’ as OTT is not pushed from one to many but relies on pull from a subscriber of the platform. Moreover, it must be noted that a converged regulator may also lead to jurisdictional conflicts which may be cause for uncertainty for businesses and also result in potential legal challenges.

Finally, there is one area which we believe does warrant consideration as part of the National Broadcasting Policy, and which we would urge TRAI to include in its input to MIB: the continuing problem of unauthorized distribution of copyright content. The health of the broadcasting and content production industries, and achievement of the economic benefits sought through the globalization of Indian content, will depend on whether the carriage and distribution systems for media content can be made sufficiently leakproof to guard against unauthorized distribution. Piracy is a parasitic phenomenon that saps the energy of content creation. Creating systems that impede and reduce piracy should be a top-level goal of policy relating to the broadcasting industry, and merits a prominent place in the National Broadcasting Policy.