Response by the Asia Video Industry Association to the MIB's Request for Comment on Framing of a National Broadcast Policy

INTRODUCTION

The Asia Video Industry Association (AVIA) thanks the Ministry of Information and Broadcasting (MIB) for its request for comments, and welcomes the opportunity to submit the international video industry's views on the framing of an Indian National Broadcast Policy .

AVIA (known until earlier this year as CASBAA) is a non-profit trade association of 90 companies dedicated to the promotion of multi-channel television via cable, satellite, broadband and wireless video networks across the Asia-Pacific region. Our member companies operate and invest in 17 different Asian markets, including India, and many of them are substantial cross-border investors; those that are not international investors themselves are the business partners of foreign investors. The members of AVIA have extensive experience in building and creating television infrastructure and quality programming to meet the needs of this region's more than 600 million multichannel TV households.

India's Broadcasting Industry

Indian broadcasting, comprising television and radio broadcasting, is an integral part of the Indian M&E Industry and a vital underpinning for India's economy, culture and society. Estimated at Rs. 771 billion, the sector provides enormous opportunity for creating value, stimulating entrepreneurship, supporting jobs and providing rich and diverse content to consumers both in India and globally. Going forward, the television and radio industry are both expected to grow at 8% to reach Rs. 995 billion and Rs. 39 billion respectively.

Prime Minister Narendra Modi and Finance Minister Nirmala Sitharaman have recently said the government's goal is to make India's economy grow to USD 5 trillion by 2024. According to industry estimates, as the Indian economy is presently at $2.8 trillion, it will have to double GDP by 2024 --- and India's M&E sector can play an important role towards this goal.

For reference, we provide some of the latest projections provided by AVIA member and market research company Media Partners Asia:

--- India's media and entertainment (M&E) market to be worth US$33 billion by 2023.

--- M&E advertising revenues to grow at 10% CAGR over 2019-2023.

--- Pay-TV industry revenues (subscription and advertising) to reach US $14 billion by 2023.

--- Online video market will exhibit a CAGR of 24% over 2019-2023.

However, despite the exciting potential for India's media industries, there is currently no policy vision that provides a long-term roadmap to realize this potential, adapting to the changes arising from the convergence of content delivery media and networks. Most importantly, the industry does not have a "principle-based framework" that can guide the various policies and regulations governing the sector. As a result, the industry is burdened with onerous regulations from multiple regulators – some "legacy" rules that have existed for decades, and others that are newly-imposed. For this reason, investment, particularly FDI, has remained stagnant despite liberalization of policy barriers affecting the sector in 2016.

For the growth projections to become a reality, India's policy-makers need to re-look the M&E sector through a different prism instead of attempting to replicate legacy regulations and apply them to newer and technologically advanced business forms. The need of the hour is to promote light-touch regulations suitable for the internet age to the sector. While the the country's national and cultural sensitivities, and extraordinary diversity must always be borne in mind, it must also be kept in mind that Indian are demanding an array of world class video and entertainment products.

To this end, we believe the National Broadcasting Policy should seek to lay out a long-term roadmap that will enable orderly growth of the sector backed by a robust content eco-system and deployment of latest technologies to give Indian consumers the freedom to access content of their choice as per their convenience.

Vision and Mission for the National Broadcast Policy

• To lay down a consistent and principle-based framework that will enable growth of the broadcasting sector in the light of the changing technology and competitive landscape
• To promote India as a global hub for creating and marketing content broadcast through all\ mediums

Recommended Strategies to Achieve Policy Goals

1. Creating Ease of Doing Business (EoDB) in the Broadcasting Sector
It will be important for the Policy to outline a clear roadmap to achieve a real Ease of Doing Business in the broadcasting sector to increase investments, including FDI, and reduce the onerous day-to-day compliance requirements by:
(a) Introducing of a transparent and time bound licensing and approval process.
(b) Simplifying and reducing compliance requirements for uplinking and downlinking of TV channels, permission and approvals for broadcasting of non-news live events, making changes to TV channels, launch of a new TV channel etc.
(c) Removing all investment restrictions in extant sectoral guidelines which prevent the flow of FDI into the DTH and HITS sectors
(d) Establishing a "promotion conscious" regulatory culture, ensuring that regulators are staffed and motivated to promote the development and export of India's broadcasting products and services. Such a culture would be grounded in understanding among officials of the implications of the changing technology and competitive landscape and issues that are specific to the broadcasting

sector, keeping in view Article 19 (1) (a) of the Constitution of India. There are some very clear international examples of regulators which have embraced national media industry development goals alongside their other functions; Singapore's Infocomm Media Development Authority (IMDA) is one such.

2. Enabling and incentivizing high-quality content creation

(a) Incentivize investments in India's creative economy to produce high quality content, both for domestic and global markets.

(b) Remove economic regulations on tariffs that inhibit the creative economy's ability to obtain value for investments in today's highly competitive market for content.

(c) Prevent revenue leakage due to piracy by strengthening enforcement of copyright laws, and using other laws where possible (e.g. conspiracy and fraud statutes, license revocation) to ensure that business models of content creators are not demolished by unauthorized dissemination of their content

(d) Expropriation Laws & Regulations that seek to erode IP Rights should be revisited and reformed.

3. Harmonizing the regulatory framework in the broadcasting sector with other National Policies, acts and regulations

(a) Protect the creative economy's ability to obtain value for its copyrighted content by aligning to principles of the Copyright Acts, National IPR Policy and international agreements and obligations under WIPO

(b) Incentivize technology upgrades to enable the penetration of wired broadband through cable TV operators to support the strategic objectives of National Digital Communication Policy's "Broadband for All" by 2022 and the Government's Digital India vision to digitally empower all citizens

(c) Align to the IT Act and the rules under the act on all issues related to data protection, security, user-privacy, information and cyber security.

4. Statutory recognition of the broadcasting industry's self-regulatory mechanisms. Any regulation on content must be flexible and it must promote freedom of speech and expression, facilitate creativity and innovation, encourage diversity and plurality of opinions and self-regulation. The Policy should therefore give statutory recognition to industry-led self-regulatory bodies such as:

(a) The Broadcasting Content Complaints Council (BCCC) in respect of general entertainment content broadcasters

(b) The News Broadcasting Standards Authority (NBSA) in respect of news broadcasters

5. Forbearance on tariff regulations to increase the sector's competitiveness . The policy must increase the competitiveness of the broadcasting industry through forbearance on tariff regulations. Evidence from imposition of tariff regulations in the television broadcasting industry indicate that such regulations (with their frequent amendments) increases uncertainties on Return of Investments (ROI) and hence impedes new investment decisions. The industry's inability to attract new investments greatly impacts its competitiveness, particularly in today's rapidly changing technology landscape.

Therefore, the policy must bring in principles to ensure:

(a) That all economic regulations are based on empirical evidence, maintaining competitive parity with other global media production and distribution centres, and taking into account emerging technological and commercial competitors
(b) That no further changes are made to broadcasting tariff regulation at least for the next 3 years
(c) Transition to a complete forbearance on tariff regulations within the next 5 years, in light of the need to provide stability and certainty to the broadcasting sector.

Digital Transformation – Specific Strategies to Promote Growth of the Broadcasting Sector

1. Completion of cable digitization
    - **a.** Policies should be adopted to mandate completion of the cable digitization process, including implementation of full addressability/auditability for digitized cable networks.
    - **b.** To support the national objective of "Broadband For All," policies should be adopted to remove obstacles and provide incentives for investment by the cable industry in wired broadband delivery networks. Optimal use of cable networks is necessary to complement other means of distribution (46/5G and Wifi).
2. Removal of obstacles to distribution of broadcast content – Currently well over half of India's approved television channels are distributed by foreign satellites. India's national satellites do not have sufficient capacity to handle the dynamic growth of the Indian media industry.
    - **a.** Ease of Doing Business in Uplinks/Downlinks – As mentioned above, reforms to increase the Ease of obtaining clearances for uplinks and downlinks are necessary. Currently uplinking and downlinking television channels, as well as special events, involves a long, multi-state and multi-agency process in which each agency regards its own procedures as fixed and autonomous. The new Policy should stimulate reforms which focus on removing these bureaucratic hurdles, and delivering a responsive framework that will facilitate investment. These should include:
        - **i.** Establishment of a "single window" clearance process, with MIB given enough budgetary resource and enough authority to modernize and streamline clearances and to require other agencies to respond within fixed deadlines (unless there are exceptional questions about a given application).
        - **ii.** Mandating clear timelines and processing benchmarks for actions. An agency might, for example, be given a reasonable 15-day period to approve an application or – where it has well-founded doubts about an applicant – to issue a statement of objection. (Such objections should not be tolerated as routine ways of handling all applications; they should really be exceptional.)
    - **b.** Assuring Competitive Availability of Satellite Services -- The National Broadcast Policy should address the availability of satellite services to support present and future broadcasting/video distribution needs. For our part, we believe that India should seriously consider modifying its policies to enable greater use of foreign satellite capacity. This foreign capacity can be combined *optimally* with INSAT capacity and the investments of the wireline and wireless sectors of the telecommunications industry to expand connectivity to all parts of the nation and to users on the move, including on

aircraft and vessels. India should take this opportunity to tap into the extensive foreign investments that have already been made (or are currently being made) in competitive satellite capacity over India in order to achieve its national objectives sooner. Modifying India's policies to allow greater use of foreign satellites will also create additional incentives for more foreign investment into the Indian broadcasting industry.

c. Recognize India's Role as a Key Hub for an International Industry

   i. The new Policy should recognize that integrated use of national and foreign transmission networks is in India's broad national interest. Channels should have the choice to choose the technical satellite solutions that meet their specific commercial needs as long as they are maintaining compliance with Indian rules on content. Licensing policies should be applied in a non-discriminatory, transmission-platform-neutral manner.

Promotion of FDI in Broadcasting

1. Sectoral guidelines currently restrain flow of FDI into the DTH and HITS sectors; these should be removed.
2. Ease of Doing Business should be promoted, across the entire sector. A "light-touch" approach to regulation should be the guiding policy direction.
3. The media and entertainment sectors should be given infrastructure support status. This will allow the sector to further support extension of the benefits of digital networks to all sectors and regions of India.

Make in India

India's media and entertainment industry is an outstanding success; neither this industry nor the supporting industries (e.g. satellite transmission, content creation, advertising) require international protection. Rather, they can be fully competitive in the international marketplace and can continue to cement India's leading role as an international content engine. What is required to make that happen is a shift to supportive, light-touch regulation. This will promote industry growth and investment domestically, and also as an exporter of Indian media and promoter of India's "soft power" overseas.

It should be noted that the antithesis of the productive economy that MIB wishes to further develop – and of the "Make in India" ethos – is the streaming piracy industry. Government policies must support protection of intellectual property and promotion of a fair return on creative investment. As piracy continues to plague the content eco-system, live sports telecasts are particularly vulnerable to signal leakages through piracy by MSOs and LCOs. Thus, India needs to address such piracy-related challenges through appropriate anti-piracy measures, the failure to do so will impact further investment coming into the sector.

Effective Spectrum Allocation

As noted above, satellite communications provide several key pillars for the broadcasting industry; we urge the MIB to take full account of this in its recommendations for the Policy. Satellite networks directly reach millions of Indian consumers through DTH broadcasting, and they also play a vital "B2B" role in supporting distribution of hundreds of television channels to cable reception points and head-ends. Satellite uplinks make it possible for broadcasters to provide live coverage all over the country when a sports/news/entertainment event is happening. Finally, satellite links will be vital as a part of the future 5G ecosystem, delivering video content to base station nodes around India, which it will be cached and delivered to consumers over local networks at their discretion. (This satellite functionality will be particularly important to ensure that the benefits of 5G are not confined to the urban centres that already have broadband, but are extended to even the most remote communities in the country.)

For satellite communications to play their critical and vital role in the development and evolution of the broadcasting industry, they need continued, sustainable and harmonized access to spectrum.

It is important first to stress the fact that decisions at the 2015 World Radiocommunications Conference (WRC-15) with respect to the identification of spectrum for IMT in the 3400-4200 MHz band were as follows:

- The 3400-3600 MHz band has a nearly global identification for IMT in all ITU Regions.
- The 3600-3700 MHz band has been identified for IMT only in four (4) countries in ITU Region 2 (Americas).
- The 3700-4200 MHz band was preserved for FSS globally in all ITU Regions.

WRC-15 further decided not to include frequency bands in the 3600-4200 MHz range on the agenda of WRC-19 for possible identification for 5G.

C-band Frequencies in the 3600-4200 MHz range are used by the satellite industry to provide critical services for India's broadcasting industry; India is rain-prone, and hence C-Band spectrum is vital for real-time industries such as broadcasting. C-band is the only frequency band that offers a reliable service in rainy areas.

Aside from the rain resistance aspect of C-band frequencies, this spectrum band also permits wide-beam coverage. This is essential for coverage of large geographic areas, even entire continents or across continents, as in the case of India, domestically, and Indian programming around the hemisphere.

Recognizing the vital role played by satellite services, it is vital that the Policy address -- in addition to continued use of the satellite spectrum -- the need for protection of current and future satellite stations operating in C-band from possible undue interference from IMT deployments in the 3300-3400 MHz and 3400-3600 MHz bands. High-power terrestrial IMT/5G transmissions anywhere in the C-band downlink bands could effectively prevent the entire C-band from being used by satellite stations. These terrestrial transmissions can overwhelm the ability of satellite earth stations to receive low-power satellite transmissions anywhere in the C-band, cause intermodulation effects, and create other interference issues.

It is not at all certain that such impacts from terrestrial stations on satellite stations can be effectively addressed through interference mitigation measures, such as filtering, RF screening, and the imposition of power limits around receive earth station sites. Even if such measures could be implemented, there are actual implementation costs (*e.g.*, costs of upgraded equipment, labor and downtime, among others) and ongoing performance impacts (*e.g.*, installation of a filter to shield a satellite station operating above 3600 MHz band would reduce performance across the entire C-band receive spectrum) that must first be addressed before considering how IMT stations will be allowed to operate in the C-band. Protection of satellite stations from undue interference is essential in order for satellite services to continue to provide critical broadcasting services and connectivity.

Content Regulation Including Self-Regulation

AVIA believes that India should continue to rely on self-regulation with respect to content standards on Indian television. Implementation of a state-oriented statutory regulatory system is not appropriate for India's social or economic development needs. Overly rigid content regulation, as seen in some other countries, will induce a massive shift in consumer demand for unregulated content viewed via the internet. Far from cultivating the values that form the core of Indian society, excessive regulation can in fact spur shifts towards consumption of illegal content, which in turn brings exposure to dangers such as gambling, pornography, internet crime and so forth.

To avoid this, we urge that the Indian government concentrate its efforts on improving self-regulation by TV channels and media platforms, on enticing Indian consumers to choose to consume media via media, which are respectful of India's laws, morals and values, and at the same time on creating separate standards for various media according to their particular intended audience, scope and access controls. These criteria, and not technologies, used to deliver the programming, should be the basis for regulatory differentiation, as technologies (and the uses to which they are put) can evolve rapidly over time.

Further, the government should avoid seeing the online content industry as another facet of the mature television content supply industry, ripe for extension of the same regulatory approaches. At this stage of development of the online curated content (OCC) industry, over-regulation will constrain development of newer business models which could be of great benefit to consumers and to India's overall economic development. Submission of online content suppliers to the entire panoply of regulations that have evolved in the cable and satellite sectors would kill innovation. We recommend leaving sufficient scope for this start-up sector to develop new services and offer them to consumers without having to deal with the heavy hand of regulation.

India is a large dynamic, open and democratic country with a growing and productive media industry. These are the key factors to be considered, and they mitigate strongly for reliance on a self-regulatory approach to media content standards. Self-regulation is the key to long term growth of the market and of consumer choice, and we therefore urge the government to continue to embrace the principles of self-regulation and self-censorship of content by channels, with the government standing behind as necessary. A centralised, statutory, overly bureaucratic mechanism should be avoided at all costs; such an approach is not suitable for a nation of India's size and diversity, and it could create long-term damage to the flexibility and growth of the media industry.

That said, there are some legitimate issues pertaining to the current state of self-regulation in India. One is the scope of the system – the government together with the industry should look at ways to ensure that the self-regulatory bodies have sufficient authority to apply their standards to all the producers/distributors of content in the market – and that a "non-member" of a self-regulation body is induced to respect the rules, as well as a member. Where appropriate, it may be useful to consider reinforcement of the self-regulatory systems.

Another issue is the need going forward to develop differentiated regulatory approaches based on the "reach" of the medium of transmission. Content broadcast on free-to-air television should have the most conservative content standards, while other media should be regulated according to standards which grow progressively less constraining, as one moves down from mass-market "reach." "Free-to-air" terrestrial, cable and satellite channels, "pay" cable and satellite channels, and "a la carte" channels on digital systems all should be treated separately. The presence or absence of well-functioning "parental control" systems, and the increasing prevalence of personal consumption devices (such as smartphones) also affects viewership and should affect content guidelines. We believe that where pay TV operators demonstrate the technical and commercial ability to restrict content distribution only to adults who request to view that specific piece of content, the content standards applied should approach those applicable to internet TV – this will assure that the legitimate, tax-paying media industry is not hamstrung into an unfair competition with unregulated, offshore, non-taxable websites.

In essence, trying to implement or replicate legacy regulations meant for legacy media businesses for newer technologies is not advisable as it may not only kill innovation, but also impede the growth of Indian content as a soft power for global expansions and reach.

Market Research and Audience Research

The data/audience research system provides data that is vital for Indian broadcasters to develop business models that respond to consumers' wishes. We regard the relatively recent implementation of a joint industry initiative to create the neutral BARC India system as a major positive development in Indian broadcasting; more so as its formation and functioning till now has the blessings of the MIB. Certainly, additional robustness of data can be achieved by making data collection more expansive, and the Policy could usefully look at whether there are supportive policy moves that could be taken. In particular, broadening the neutral "currency" to include measurement of viewing on digital platforms (like curated and user-generated OTT platforms) and broadband networks would be a goal worth achieving, and would be greatly beneficial to players in the industry. On the other hand, we believe that upsetting or disrupting a now-established "currency" like BARC India with another, or creating multiple sources for audience data, could be detrimental to achieving that robust outcome.

Regulatory Implications of the Policy Framework

As mentioned in many of the sections above, a flexible, light-touch regulatory framework that accommodates expanding and innovating business models and relieves many of the regulatory burdens on existing players will be the best way for India to guarantee that its broadcasting/media industries remain dynamic, growth-generating sectors that also help to expand India's role in world video markets. In that connection, we believe that a forward-looking policy framework implies:

- A recognition that new, online business models require new regulatory visions and that application of legacy broadcast rules to online curated content platforms is not the best way forward.
- A vision of the public broadcaster as meeting vital and unique public service needs, and not as a state-backed competitor to the private broadcasting industry.
- An open-minded approach to satellite service regulation, which recognizes the substantial benefits accruing to the broadcasting industry from utilizing foreign investment and foreign-operated networks, in conjunction with national services.
- A determination that content regulation should continue to repose on a self-regulatory basis, and resistance to calls for a large state role in this area.
- A forthright move to relaxation of existing carriage regulations for legacy pay-TV, in keeping with the need to meet competitive challenges facing traditional TV suppliers.
- A revision of existing rules, including "must provide" and "sports sharing" which detract from the legitimate exploitation of content rights by creators and distributors. Bearing in mind that the Berne Convention binds signatories (including) India not to impose broad restrictions on exclusive distribution practices, India should bring its practices into conformity with international best practice. (These best practices were described in our more detailed submission to the MIB last December on sports sharing.)
- A determination to use every tool available to squash online piracy, which remains the greatest threat to economic success for India's media industries.

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