

BY HAND/ELECTRONIC MAIL

30<sup>th</sup> January 2018

To,  
Advisor (B&CS)  
Telecom Regulatory Authority of India,  
Mahanagar Doorsanchar Bhawan,  
Jawahar Lal Nehru Marg,  
Old Minto Road,  
New Delhi – 110 002

Re: Submissions to Telecom Regulatory Authority of India (“TRAI”) in response to the  
Consultation on Issues relating to Uplinking and Downlinking of Television Channels in  
India

Dear Sir,

At the outset, we would like to thank the Authority for giving us an opportunity to tender our views on the “Issues relating to Uplinking and Downlinking of Television Channels in India”.

On perusal of the Consultation Paper, we hereby submit our comments attached as **Annexure**. The said comments as submitted herein is without prejudice to any of our rights, in particular, we reserve our rights but not limited to challenge/ appeal and/ or any such legal recourse or remedy available under the law in reference to any directions, regulations recommendations or any other order(s) that may be made/passed by the Authority on the subject matter.

The same are for your kind perusal and consideration.

Yours Sincerely,  
  
Discovery Communications India

Encl: As above

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**RE: SUBMISSIONS TO TELECOM REGULATORY AUTHORITY OF INDIA  
("TRAI") IN RESPONSE TO THE CONSULTATION ON THE ISSUES  
RELATING TO UPLINKING AND DOWNLINKING OF TELEVISION  
CHANNELS IN INDIA**

Kind Attention:

**Advisor (B&CS)**

**Telecom Regulatory Authority of India,**

**Mahanagar Doorsanchar Bhawan,**

**Jawahar Lal Nehru Marg,**

**Old Minto Road,**

**New Delhi – 110 002**

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**Introduction**

The Indian Broadcasting industry has evolved tremendously from its inception characterized by growing models, increased competition, changing regulations and above all a significant shift in consumer preferences. Low entry barriers and an ease in regulations around the broadcasting licenses has led to a gradual increase in the number of channels over the past decade. The Broadcasting industry has further immense potential to grow enormously, provided that the legal framework are supportive to be in pace with the constant development and challenges faced within the country and globally, while promoting healthy competition and parity amidst all stakeholders. However, it is important for the regulators to take care of not-over regulating the Industry for the sake of progress which may in turn hamper what has been built gradually through decades.

We hereby respond to the issues raised on the specific queries outlined under the consultation paper in two parts, pursuant to the division in the consultation paper for ease and convenience

**ISSUES RELATING TO SATELLITE TV CHANNELS**

**A. DEFINITION OF 'NEWS AND CURRENT AFFAIRS CHANNELS' AND NON-NEWS AND CURRENT AFFAIRS CHANNELS'**

1. *Is there any need to redefine "News and Current Affairs TV channels", and Non-News and Current Affairs TV channels" more specifically? If yes, kindly suggest suitable definitions of "News and Current Affairs TV channels" and Non-News and Current Affairs.*

The term "News & Current Affairs TV channel" and "Non-News & Current Affairs TV channel" as defined under the present guidelines to categories Satellite Tv Channels is self explanatory, clearly differentiating the two categories from each other. Thus the necessity to redefine the terms more specifically would be a futile exercise, coupled with the fact as pointed out by the Ld. Authority that no issues have arisen before the Authority basis the present definition. Further the permissions for grant of licenses by the Hon'ble Ministry of Information and Broadcasting are based on the existing terms as defined under the existing guidelines, any modifications/ redefining of the terms "News & Current Affairs TV channel" and "Non-News & Current Affairs TV channel" might creep up issues/complications in the pre-existing regime.

Thus, it is suggested that the term "News & Current Affairs TV channel" and "Non-News & Current Affairs TV channel" as presently defined should remain as it is.

**B. NET-WORTH OF ELIGIBLE COMPANIES**

2. *Should net-worth requirement of the applicant company for granting uplinking permission, and/ or downlinking permission be increased? If yes, how much should it be? Please elaborate with appropriate justification.*

The intent of the Hon'ble Ministry of Information and Broadcasting (MIB) and of the Authority from the very inception is to boost and promote a healthy growth in the Broadcasting sector. The Broadcasting sector has seen an exponential growth replete with success and immense potential to move on higher trajectory of growth, provided opportunities are administered in manifolds to permit the existing as well as new players to enter the industry to promote healthy competition.

The Government has been adopting the principle of soft touch licensing framework for grant of permission for private satellite channels so as to allow multiple players in the market to ensure

plurality of view point as well as competition which has led to a growth of 883 Private satellite TV channels which includes 391 news and current affairs channels and 492 non-news and current affair channels as permitted by the MIB as on 31.06.2017. The Authority's intent is further seen in the release of the consultation paper on "Ease of Doing Business in Broadcasting Sector", to address the existing policy framework to enable the stakeholders to create a conducive and business friendly environment to set up and operate broadcasting services. Thus increase of net-worth requirement of the applicant company for granting uplinking permission and/or downlinking permission, will create entry barriers and stagnation.

The capital expense for a broadcasting company is manifold to include but not limited to licenses, teleports cost, production cost, marketing and establishment cost etc. for a player with big pockets may be able to afford and sustain such costs but a medium size or a small size player would eventually wear out. Further increase of net worth requirement for an applicant to be eligible for grant of license will lead to monopolistic trade practices and to increase of ill-effect of trading of licences to those players who are unable to qualify the criteria for grant of license.

Further with regional and cultural diversity in India, which is one of the main essence of our country which continues to exist to quite an extent due to the regional media may perish with the increase of net worth criteria which a small or a medium regional broadcaster may not be able to qualify/sustain.

To discourage non-serious players to enter the broadcasting sector, the already existing strict scrutinization process for grant of licenses suffices the intent of screening out non-serious players from entering the sector. Further with the operationalizing criteria already in place and with the existing policy of bank Guarantee, the non-serious players inadvertently get filtered out from the existing sector.

Thus it is suggested that the persisting net worth requirement should continue as it is, without any increase of net worth to continue to encourage the existing players and new entries, directly encouraging healthy competition and the end consumers with larger viewing options and reduced channel pricing.

3. *Should there be different net-worth requirements for uplinking of News and non-News channels? Give your suggestions with justification?*

No. We do not suggest different net-worth requirements for uplinking of News and non- News channels. As both the categories are essential for the development of the broadcasting industry in their own respective way, neither of them should be treated on a separate platform owing to the fact that the said categories have their own individual manifold cost in acquiring respective content, production cost, transponder charges, network establishment, marketing, distribution cost, technology upgradation, coupled with extensive competition within and outside India.

### **C. PROCESSING FEE FOR APPLICATION**

4. *Is there any need to increase the amount of non-refundable processing fee to be deposited by the applicant company along with each application for seeking permission under Uplinking guidelines, and downlinking guidelines? What should be the amount of non-refundable processing fee? Please elaborate with justification.*

The main reason for a non-refundable processing fee to be deposited by the applicant company along with each application for seeking permission under uplinking and downlinking guidelines was to recover administration cost for processing the application. But with the immense development in technology, most of the government license authorities (including authorities like the Trademark Registry India, Ministry of Corporate Affairs, etc) have adopted to technology and online processing of application which cuts down time and administration cost to a large extent. Therefore, it is utmost important to resort to online processing of application which in turn should rather reduce the non-refundable processing fee.

### **D. GRANT OF LICENSE/ PERMISSION FOR SATELLITE TV CHANNELS**

5. *Whether auction of satellite TV channels as a complete package similar to FM Radio channels is feasible? If yes, then kindly suggest the approach.*

The Auction route has been successfully applied in the FM Radio Space by the Government of India but considering that TV Broadcasting through satellite is a completely different ball game with the satellite beam covering a large footprint, say entire India, and also use of foreign satellites

in transmission in India, the auction route of spectrum for Broadcasting would create a difficult situation / roadblock which would alter and limit the dynamics of the current Broadcasting sector.

What distinguishes the electronic media like the television from the print media or other media is that it has both audio and visual appeal and has a more pervasive presence. It has a greater impact on the minds of the viewers and is also more readily accessible to all including children at home. airwaves are public property and better remain in public hands in the interest of the very freedom of speech and expression of the citizens of this country.

Further with the intent to promote parity amidst all size players, auction would clearly defy the said intent, while giving an upper hand to those who have succeeded, while leaving the other at a back seat especially when the cost incurred by each broadcaster whether small or big is immense to each. With the already huge operational cost for a Broadcaster, the implement of auction would rather increase the existing expense, which a small broadcaster will not be able to afford. Further the already existing broadcasters may also have to cut down to meet the increase of cost of operations if the auction process is implemented. Also coupled with the fact, that auction process would in a way be a gamble of huge stakes for a Broadcaster, which would indivertibly wipe out new Broadcasters.

Further as rightly pointed out by the Authority that broadcast media is a powerful purveyor of ideas and values and plays a pivotal role in building, nurturing and cultivating diverse opinions, however with the process of auctioning and controlling of media by the central government will tear the very essence. Further with auction and government control the healthy competition which is utmost important for any sector to grow would further be defeated.

Broadcasting of TV Satellite channels as compared to the radio broadcasting sector vastly defers from each other, and what may work for one sector may not necessary succeed with the other. Further with the current development and pace at which the Television Broadcasting sector has grown. Any experimental exercise to an industry whose growth is at its peak while still with tremendous scope to grow, any such test and trial may break down what has been built in decades to collapse instantly.

- 6. Is it technically feasible to auction individual legs of satellite TV broadcasting i.e. Uplinking space spectrum, satellite transponder capacity, and downlinking space spectrum? Kindly explain in detail.*

It is neither technically nor economically feasible to suggest auction of individuals legs of satellite TV Broadcasting. As it is presently a broadcaster has huge operational expenses per channel which includes but not limited to licenses fees, teleport cost, production cost, marketing and establishment cost etc. individual auctioning will only further increase a hole in the pocket of a broadcaster, which a small or a medium Broadcaster including regional Broadcasters will not be able to afford or invest.

On one hand, the Authority is looking at making ways to ease the business in the broadcasting sector and on the other with implementation of such unviable and unfeasible devices by the Government to generate revenue will clearly wipe out the broadcasting sector.

It often involves an uplink controlled by one party, with the corresponding downlinks being received by many different parties (cable companies, broadcast stations, DTH operators) dispersed over a wide area. In fact, it is this efficient point-to-multipoint use of spectrum that drives the economics of satellite TV broadcasting and makes it attractive. It is difficult to see how auctions of uplink or downlink spectrum, or of transponder capacity, would improve on this set of arrangements, while it would be easy to see how auctions might negatively disrupt such arrangements.

7. *Is it feasible to auction satellite TV channels without restricting the use of foreign satellites, and Uplinking of signals of TV channels from foreign soil? Kindly suggest detailed methodology.*

No. The use of foreign satellite and uplinking of signals of TV channels from foreign soil has till now played a vital role in the development and growth of the Indian Broadcasting sector. Therefore the Indian Broadcasting sector presently is not at a pediment which can afford to welcome any test and trial.

8. *Is it advisable to restrict use of foreign satellites for satellite TV broadcasting or Uplinking of satellite TV channels, to be downlinked in India, from foreign soil?*

No. With the scarcity of resources, availability of foreign satellite capacity has played and will continue to play an important role in the emergence of a vibrant Indian television broadcasting

sector as has been duly noted by the Authority in the present Consultation Paper. Further any changes to the present scenario might hamper the future of the Broadcasting sector.

9. *Can there be better way to grant license for TV satellite channel then what is presently followed? Give your comments with justification?*

With the release of the consultation paper on ease of doing business in the Broadcasting industry, it is appreciated that the Authority understands the difficulties being faced, with prolonged and delayed license processes by a Broadcaster to acquire channel Licenses from the Ministry. The delayed approvals for uplinking and downlinking licenses for satellite Tv Channels inadvertently causes damages and loss to a broadcaster whose business is dependent on the license and launch of the said channel while waiting at a stand-by mode for the approvals. It is highly recommended that in order to streamline the present system Ministry of Information and Broadcasting should reduce the processing time, reduce the number of separate licenses or approvals that may be required for a given activity, specific timeline to be given for each application.

Further with digitalization, the process for application should be digitalized, wherein the applicant Broadcaster is at a position to view the pending status online, in the event of the approval being held in the pipeline, the Broadcaster should be enabled to view the reasons, in order to help the broadcaster rectify the defects at the earliest. Digitalizing the entire process will certainly expedite the grant of license, which in turn would also be cost effective.

#### ***E. ENTRY FEE AND LICENSE FEE***

10. *If it is decided to continue granting of licenses for satellite TV channels on administrative basis, as is the case presently, what should be the entry fee for grant of license for Uplinking of TV channels from India, downlinking of TV channels uplinked from India, and downlinking of foreign TV channels? Please suggest the fee amount for each case separately with appropriate justification.*

It is recommended that cost based fees should be applied for granting of license i.e. fees which is proportionate to the administrative costs of the regulatory activity. E.g. regulatory activity which involves more work or additional monetary involvement then that fee should be higher than the rest. Thus, the Authority could create an Ad-valorem method of charging fee as a percentage of administrative costs incurred in a particular activity.



11. *What should be the license fees structure, i.e. fixed, variable, or semi-variable, for Uplinking and downlinking of satellite TV channels? Please elaborate if any other license fee structure is proposed, with appropriate justification.*

It should be fixed and uniform across the sector.

12. *If the variable license fee structure is proposed, then what should be rate of license fee for TV channels uplinked from India and TV channels uplinked from abroad, and what should be the definition of AGR?*

License fee should be fixed and not variable based.

13. *If the semi-variable license fee structure is proposed, then what should be the minimum amount of license fee per annum for domestic channels (uplinked and downlinked in India), uplink only channels, and downlinking of foreign channels (uplinked from abroad)?*

We do not suggest semi-variable license fee structure either. The fees should be fixed across the board with parity amidst all stakeholders.

14. *If the fixed license fee structure is proposed, then what should be the license fee per annum for domestic channels, uplink only channels, and downlinking of foreign channels?*

Discovery Communications India recommends cost-based fees, i.e. fees that are reasonably related to the administrative costs of the regulatory activity.

15. *What should be the periodicity for payment of the license fee to the Government? Please support your answer with justification.*

Discovery Communications India reserves its right to respond to this at a later stage.

16. *What should be the periodicity for review of the entry fee and license fee rates?*

Discovery Communications India reserves its right to respond to this at a later stage.

#### **F. ENCRYPTION OF TV CHANNELS**

17. *Should all TV channels, i.e. pay as well as FTA satellite TV channels, be broadcasted through satellite in encrypted mode?*

No. The major cons of the doing the same is that providing signals of channels to end consumers will necessarily require a signing of Interconnection Agreement for even FTA Channels and finally may affect the investment in Uplinking sector adversely. Thus, all TV channels should not be broadcasted through satellite in encrypted mode as the whole purpose of the particular business model gets defeated

### **G. OPERATIONALISATION OF TV CHANNEL**

18. *Is there a need to define the term "Operationalization of TV channel" in the Uplinking guidelines, and downlinking guidelines? If yes, please suggest a suitable definition of "Operationalization of TV channel" for the purpose of the Uplinking guidelines, and the downlinking guidelines separately.*

It is important to define "Operationalization of TV channel" in both guidelines. It means when the airing of content starts and remains constant and continuous. It is also required that MIB streamlines the process of providing the licences. Long, unpredictable delays in processing and grant of such licences have as much potential to disrupt plans for operationalizing a start-up TV channel as any concern about the seriousness of the applicant and/or speculation in licences.

19. *Maximum how many days period may be permitted for interruption in transmission or distribution of a TV channel due to any reason, other than the force-majeure conditions, after which, such interruption may invite penal action? What could be suggested penal actions to ensure continuity of services after obtaining license for satellite TV channel?*

Interruption in transmission in any event causes huge revenue and reputation loss to a broadcaster. Therefore, there is no necessity for a penal action to ensure continuity. Channel going –off air would be for a valid reason, plus with the existing Operationalization time bar.

### **H. TRANSFER OF LICENSE**

20. *Whether the existing provisions for transfer of license/ permission for a TV channel under Uplinking guidelines, and downlinking guidelines are adequate? If no, please suggest additional terms and conditions under which transfer*

*of license/permission for a TV channel under Uplinking guidelines, and downlinking guidelines may also be permitted? Please elaborate your responses with justification.*

The current guidelines on transfer of permission of TV channels include transfer in case of merger, demerger or amalgamation, or from one Group Company to another in accordance with the provisions of Indian Companies Act. The existing provisions are limited in its scope as they do not include other possible ways of transfer that are well recognized under the Companies Act as well as Income Tax Act, 1961 such as slump sale, change of control pursuant to acquisition of shares of a company. Therefore, there is a need to broaden the scope of provisions relating to transfer of permission for TV channel. The companies in this sector are adopting innovative business models in order to sustain in the changing economy. The guidelines relating to transfer of permission should allow legally permissible ways of transferring permissions in order to enable companies to structure their business models in the most cost efficient manner within the legal framework. Further broadening the horizon of permissible transfer will also eradicate the evils as identified by the Authorities, couple with the fact that resources as it is already scarce in nature will be well used. Change of hand in the license should not be a obstacle if the process is simplified with suffice method of scrutinization which is already in place. In any case these transfers are examined by the Authority along with MHA to ensure that these are legitimate business transactions. However, the process of examination of the transfer by the authority as well the ministry should be an expedite process and not time staking.

21. *Should there be a lock in period for transfer of license/ permission for uplinking, or downlinking of a TV channel? If yes, please suggest a suitable time period for lock in period. Please elaborate your responses with justification.*

Discovery Communications India opines that there should be no lock in period. Concerns about hawking or trading in licences may be addressed more effectively by making new licences easier to get. There will be less value in speculating in licences, and less incentive to buy a licence on the secondary market, if anyone seriously wishing to launch a new TV channel can just as easily get a new licence from the proper authorities. In fact, Discovery Communications India suggest that making it easier to get new licences would reduce the number of speculative transactions and make it more likely that applications for approvals to transfer licences will be for the transfer of legitimate businesses

22. *Should the lock in period be applicable for first transfer after the grant of license/ permission or should it be applicable for subsequent transfers of license/ permission also?*

Same as 21

23. *What additional checks should be introduced in the uplinking, and downlinking permission/ license conditions to ensure that licensees are not able to sub-lease or trade the license? Please suggest the list of activities which are required to be performed by Licensee Company of a satellite TV channel and can't be outsourced to any other entity to prevent hawking, trading or subleasing of licenses.*

Discovery Communications India states that “trading” in licences that involves actual transfer of control is already subject to prior MIB approval. For activities that fall short of a transfer of control (e.g. outsourcing or sub-leasing of licences), licensees should be reasonably free to organize their business as they see fit, whether by hiring employees or contracting with other businesses to conduct their operations, so long as the licensee remains legally responsible for all of activities conducted under its licence. The licensing system should not lock broadcasters into a single vision of how a TV channel should be run. Reasonable latitude for innovation is critical, especially when existing business models are already being challenged and disrupted by new media technologies and services.

## **ISSUES RELATED TO TELEPORTS**

### **A. MEANING OF A TELEPORT**

1. *Whether specific definition of a teleport is required to be incorporated in the policy guidelines? If yes, then what should be the appropriate definition? Please elaborate responses with justification. Entry fee, Processing fee, and License fee for teleport license.*

Although we suggest to define 'teleport' and also incorporate the definition in the policy guidelines, we however feel that this really is a question about administrative efficiency. In our view, it is not necessary to limit the "unit" of licensing to a single teleport communicating with a single satellite. It could be just as efficient administratively (if not more so) to enable a single teleport licence to cover multiple satellites, and for such licence to be added to or subtracted from time to time with the Government's approval. This could reduce burdens on both the Government and licensees in keeping track of and complying with licence obligations.

**B. ENTRY FEE, PROCESSING FEE, AND LICENSE FEE FOR TELEPORT LICENSE**

- 2. Is there any need to increase the amount of non-refundable processing fee to be paid by the applicant company along with each application for teleport license? If yes, what should be the amount of non-refundable processing fee? Please elaborate with justification.*

Not required to increase the non refundable fee as neither the Authority has raised any issue nor any other agency has raised any concerns.

- 3. Should entry fee be levied for grant of license to set up teleport? If yes, what should be the entry fee amount? Please give appropriate justification for your response.*

It is suggested that the non refundable fee should be divided into two parts and one part should be made as an entry fee.

- 4. What should be the license fee structure for teleport licensees? Should it be fixed, variable or semi-variable? Please elaborate if any other license fee methodology is proposed, with appropriate justification.*

The license fee structure for teleport licensees should be variable.

- 5. What should be the rate of such license fee? Please give appropriate justification for your response.*

Fee that is reasonably related to the administrative costs of the regulatory activity.

- 6. What should be the periodicity for payment of the license fee to the Government? Please support your answer with justification.*

The periodicity should be one year for payment of the license fee to the Government

7. *What should be the periodicity for revision of the entry fee, and license fees rate for teleport licensees?*

Revision of the entry fee and license fee rates should be once in 10 years.

### **C. RESTRICTION ON THE NUMBER OF TELEPORTS**

8. *Whether there is a need to restrict the number of teleports in India? If yes, then how can the optimum number of teleports can be decided? Please elaborate your responses with justification.*

There should be no restriction on the number of teleports in India as this sector has evolved without any restrictions on the number of teleports.

9. *Whether any restriction on the number of teleports will adversely affect the availability or rates of Uplinking facilities for TV channels in India?*

Setting a limit on the number of teleport licences could introduce an inflexibility into the current system, especially if the definition of “teleport licence” was also to be limited to communications with a single satellite. Once the quota of licences has been issued, it will become very difficult for teleports to add services on new satellites since no new licences will be available.

### **D. LOCATION OF TELEPORTS**

10. *What should be the criteria, if any, for selecting location of teleports? Should some specific areas be identified for Teleport Parks? Please elaborate your responses with justification.*

There are already a number of constraints on teleport locations, ranging from availability of land, land use controls, and the frequency licensing and coordination process. Adding more criteria's will lead to lesser teleport parks.

### **E. OPTIMUM USE OF EXISTING TELEPORT INFRASTRUCTURE**

11. *Please suggest the ways for the optimal use of existing infrastructure relating to teleports.*

Discovery Communications India reserves its right to respond to this at a later stage.

**F. UNAUTHORISED UPLINK BY TELEPORT OPERATOR**

12. *What specific technological and regulatory measures should be adopted to detect, and stop uplink of signals of non-permitted TV channels by any teleport licensee? Please elaborate your responses with details of solution suggested.*

Discovery Communications India reserves its right to respond to this at a later stage.

**G. ANY OTHER ISSUE**

13. *Stakeholders may also provide their comments on any other issue relevant to the present consultation.*

The existing system could be improved by setting timelines to each activity, reducing processing times, reducing the number of separate licences or approvals that may be required for a given activity.

**CONCLUSION**

The fact that the extant Regulations have been in place for over half a decade and in that span of time, there have been major changes in Technology and market scenario is the reason why there needs to be a revamp of the present Regulations. The fact that there has been major learning in this span of time and the shortcomings of the extant Guidelines have been in forefront but on the other hand certain aspects of the Regulations are working for the Broadcasting Sector in a positive manner and hence should not be tampered with. Thus, in its ultimate wisdom, the Authority and MIB must carry out amendments in such a way that creates a balance between two very important aspects of the sector i.e. Regulation and ease of Business and must often, always incline on the side of ease of business when in doubt. Thus Discovery Communications India through its response seeks for a revision on the crucial aspects as mentioned above but not a complete re-haul of the present framework.