



Star

*STAR India's Response to TRAI
Consultation Paper on Issues relating to
Up-linking and Downlinking of
Television Channels in India*

31st January 2018

Preliminary Concerns

We would like to take this opportunity to thank Telecom Regulatory Authority of India (“TRAI”) for bringing out this timely consultation. We would also like to thank Ministry of Information and Broadcasting (“MIB”) for initiating a much needed review process for the “Up-linking and Downlinking Guidelines 2011”, which with the passage of time, change in business models and advancement in technologies need to be relooked with a fresh perspective. We believe that with the involvement of industry in this process, the Authority shall be able to make recommendations to MIB that are in consonance with the broader economic objectives of the Government of India such as increasing FDI attractiveness, promoting ease of doing business and realizing the vision of Digital India.

However, fundamental assumptions made by TRAI that would be required to be dealt with. TRAI has wrongly assumed that the broadcasters in India are a licensee under Section 4 of the Telegraph Act 1885 or are a licensee under Wireless Telegraphy Act 1933. The correct position in this regard is that the broadcasters are neither a licensee under Section 4 of the Telegraph Act nor are a licensee under Wireless Telegraphy Act 1933. Before we present our views on the questions asked as part of the consultation paper, we would like to highlight some preliminary concerns:

(1) Broadcasters are not licensees within Section 4 of the Telegraph Act, 1885

The Authority while discussing the “Relevant Statutory Provisions” governing the broadcasting sector has interpreted the permissions issued by MIB to broadcasters under the Uplink Downlink Guidelines to be a license issued under Section 4 of the Telegraph Act, 1885. The relevant paras (2.10 and 2.11 respectively) have been reproduced below:

“2.10...The facilities set up for broadcasting of satellite TV channels requires wireless operating license under the India Telegraph Act 1885, before its setup and made operational. Further, as per up-linking permission granted by MIB for a TV channel, up-linking of signals of satellite TV channels having valid permission from MIB, requires separate permission/ endorsement from WPC. The section 4 of Indian Telegraph Act states that the Central Government has the exclusive privilege of establishing, maintaining, and working telegraphs within India.

2.11. It is evident that the Indian Telegraph Act 1885 and its subsequent amendments define “telegraph” very broadly to include most modern communication systems irrespective of their underlying technology. Accordingly, the statutory basis of up-linking and downlinking policy can be traced to the India Telegraph Act 1885. Further the permissions issued under policy guidelines for up-linking and downlinking of TV channels comes under the ambit of Section 4 of the Indian Telegraph Act, 1885.”

The Authority has sought to classify broadcasters as Section 4 licensees under the Telegraph Act adopting the following reasoning:

- i. As broadcasters use facilities that are licensed under Section 4 of the Telegraph Act, therefore, by the virtue of the use of such facilities and the fact that the Wireless Planning and Coordination Wing (WPC) of the Department of Telecommunications (DoT) endorses the use of satellite spectrum allocated to the teleport operator in the name of the TV channel that shall be transmitted over such set of frequencies.
- ii. As the Uplink and Downlink Guidelines trace their origin to the Telegraph Act, 1885, therefore, any and all permissions issued thereunder ought to be construed as licenses under the said Act.

At this stage, we would like to say that the above position adopted by TRAI is without the requisite basis in law or in statute. We make this assertion on the following grounds:

(2) The “User” of a facility is not the same as licensee/operator

The term licensee has a very specific meaning both in language and the law. The use of the term “licensee” pre-supposes two important components:

- (i) The existence of an activity that requires a license before it is performed; &
- (ii) The existence of authority with Government or individual or an organization to grant a license for such activity, process or property.

The Oxford Legal Dictionary defines, the term licensee as “*a person who has been granted a license*”.

It is clear from the above description that licensee is a person or entity that has received a license for performing an activity which required a license to be effected in the first place.

Section 4 of the Telegraph Act requires a license for establishing, maintaining and operating any “telegraph” in India which otherwise is an exclusive privilege reserved for the Government. The relevant part of Section 4 of the Telegraph Act reads as follows:

“Within [India], the Central Government shall have exclusive privilege of establishing, maintaining and working telegraphs: Provided that the Central Government may grant a license, on such conditions and in consideration of such payments as it thinks fit, to any person to establish, maintain or work a telegraph within any part of [India]:

[Provided further that the Central Government may, by rules made under this Act and published in the Official Gazette, permit, subject to such restrictions and conditions as it thinks fit, the establishment, maintenance and working – (a) of wireless telegraphs on ships within Indian territorial waters [and on aircraft within or above [India], or Indian territorial waters], and (b) of telegraphs other than wireless telegraphs within any part of [India].”

Section 4 of the Telegraph Act is also the governing licensing provision for “wireless telegraph” under the Wireless Telegraphy Act, 1933 (hereinafter, “Wireless Telegraphy Act”), Section 5 of which refers back to Section 4 of the Telegraph Act for the purposes of licensing:

“—The telegraph authority constituted under the Indian Telegraph Act, 1885 (13 of 1885), shall be the authority competent to issue licenses to possess wireless telegraphy apparatus under this Act, and may issue licenses in such manner, on such conditions and subject to such payments, as may be prescribed”

Both the abovementioned provisions are meant for licensing of “Telegraph” which has been defined under Section 3 (1AA) of the Telegraph Act as follows:

“telegraph’ means any appliance, instrument, material or apparatus used or capable of use for transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature by wire, visual or other electro-magnetic emissions, radio waves or Hertzian waves, galvanic, electric or magnetic means.

Explanation.—‘Radio waves’ or ‘Hertzian waves’ means electromagnetic waves of frequencies lower than 3,000 gigacycles per second propagated in space without artificial guide”

Also, Section 2(1) of the Wireless Telegraphy Act defines “wireless communication” as:

“wireless communication’ means any transmission, omission or reception of signs, signals, writing, images and sounds, or intelligence of any nature by means of electricity, magnetism, or Radio waves or Hertzian waves, without the use of wires or other continuous electrical conductors between the transmitting and the receiving apparatus;

Explanation.—‘Radio waves’ or ‘Hertzian waves’ means electromagnetic waves of frequencies lower than 3,000 gigacycles per second propagated in space without artificial guide”

From the above definitions it is amply clear that a telegraph is either an “appliance, instrument, material, apparatus” that is established for the sole purpose of transmission of communications (signs, signals, images and sounds or intelligence) either through wired or wireless means. Any entity engaged in the establishing and operating of such telegraph has to obtain a license under the Telegraph Act for the same.

Under the Up-linking – downlinking guidelines, a broadcaster merely receives the permission to either up-link a satellite linear TV channel from a teleport located in India and downlink the same in India or downlink a satellite TV channel into India which has been uplinked from a teleport located abroad. At the same time, the said guidelines also lay down the criteria for granting the permission to entities who have established teleports in India to use the same for up-linking of satellite TV channels subject to the criteria laid thereunder, for which such entities also have to obtain a “Wireless Operating License” (“WOL”) under Section 4 of the Telegraph Act from Wireless Planning and Coordination wing (“WPC”) of Department of Telecommunications (“DoT”).

The requirement of the Broadcaster getting an endorsement of WPC, is only to ascertain as to whether the “Teleport Operator” which will carry the channel of the broadcaster has sufficient “Bandwidth” or not and for

monitoring purposes. This is more to do with the proper operation of the Teleport Operator than the Broadcasters. Merely hiring of a licensee under Section 4 for performing licensed services would not make the Broadcaster a Licensee under Section 4 of the Telegraph Act. The Hon'ble Supreme Court in the case of *BSNL v. Union of India*¹ while deciding a similar issue in telecom services regarding Sales Tax had held that merely by permitting a consumer to use the services of a telecom service provider does not put the consumer in the control and possession of the equipment of telecom service provider. This discussion crystallizes the manner in which use of teleport/up-link facility differs from the satellite channel that is being up-linked using such facility. Any broadcaster that simply enters into agreements/arrangements with the owner/operator of an up-link facility ("Operator") for which the Operator has received a WOL from DoT), and gets permission under Up-linking guidelines from MIB) does not become either the owner/operator/licensee under Section 4 of the Telegraph Act. Simply, the user of a particular telegraph facility (including earth station up-link facilities, i.e. teleports) is not required to obtain a license under the Telegraph Act at all. Therefore, the use, pursuant to any arrangement, by broadcaster of a facility/mechanism for up-link would not draw any interpretation of it being a licensee under Telegraph Act for such facility.

There may be operational circumstances, where a permitted broadcaster may also be a teleport operator. However, in such instances, a differentiation has to be drawn between the teleport operations of such broadcaster (for which it needs Section 4 license) and broadcasting operations (which require only up-link permission from MIB). The broadcaster can never be said to be a Section 4 licensee for the linear TV channel that it provides.

Furthermore, the teleport operator makes payment of a licensee fee on revenue share basis to the Government. Thus, from the revenue generated by a teleport operator for the activities performed on behalf of the broadcaster, the teleport operator pays the licensee fee. In such a scenario, to once again demand licensee fee from the Broadcasters for the same activity would neither be reasonable nor justifiable.

Furthermore, in the matter of *Star India Pvt. Ltd. v. BSNL*², where on the question of whether Star India is a "service provider" for the purposes of the TRAI Act, to determine whether it falls within the jurisdiction of TDSAT to decide the issue before it, the tribunal categorically held that petitioner (i.e. Star India) was a "service provider", however, it was **definitely not a licensee of the Department of Telecommunications** (the only agency empowered to grant licenses under the Telegraph Act). The TDSAT also clarified that the petitioner was not a licensee in the same manner as the respondent (i.e. BSNL –a licensee under the Telegraph Act). The relevant extract of the judgment below clearly states:

"We would proceed on the basis that:

¹ (2003) 6 SCC 1.

² M.A. No 108 of 2009 in Petition No.172 of 2009.

(a) no license is required; and in the alternative

(b) the petitioner is a licensee.

It is interesting to note that while defining the term 'service provider', the statute does not refer to the Indian Telegraph Act. It refers only to 'licensor' and 'licensee'. It is true that if licensor and licensee are to be assigned their meanings as provided for in the Act, this Tribunal would not have any jurisdiction to deal with the cases pertaining to 'broadcasting and cable services', as a broadcaster is not and cannot be granted any license by the Department of Telecommunication...

...The definition of telecom services as contained in Section 2(k) of the Act is 'exhaustive' in character, but a proviso was appended thereto. In terms of the proviso, a notification has been issued on or about 9th January, 2004 declaring Broadcasting Services to be a Telecommunication Services. By reason of the said notification, thus, a legal fiction has been created. It is now well known that a legal fiction created by a statute must be given its full effect. Petitioner, thus, by reason of the said notification must be held to be rendering telecommunication services. But the same would not mean that it would be required to obtain license stricto sensu under the Telegraph Act. A permission obtained for broadcasting from the competent authority of the Union of India would serve the purpose."

Therefore, for the reasons presented above, a broadcaster cannot be said to be a Section 4 licensee as per the relevant provisions of law.

(3) Up-linking and Downlinking Guidelines have no Statutory Basis

The Authority as per para 2.11 of the consultation paper (quoted above) has tried to draw a link between the permissions granted by MIB to broadcasters under the up-linking and downlinking guidelines 2011, and the Telegraph Act. However, the same does not hold firm under the light of facts surrounding the notification of the said guidelines. Rather, these guidelines are actually devoid of any statutory basis and are purportedly issued by MIB as it has been assigned the business of administering law and policy related to broadcasting under the Government of India (Allocation of Business) Rules, 1961³ (Hereinafter "Allocation of Business Rules").

The said Allocation of Business Rules are framed by the Cabinet Secretariat under Article 77 of the Constitution of India which merely deals with the "Conduct of the business of Government of India" and the relevant part reads as follows:

"The President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business."

Hence, MIB has been dispensing its function of granting permissions under the rules framed to actually determine the manner in which Government of India shall conduct its business. However, within the Allocation

³ As amended up to 15th February 2017.

of Business Rules it appears to be deriving its powers from Clause (2) of Sub-heading I of the section on “*Ministry of Information and Broadcast*” which describes the following as one of the functions of MIB:

“The enunciation and implementation of the law relating to radio and television broadcasting in India by private Indian companies or Indian nationals.”

Neither does the abovementioned Clause nor the said section in Allocation of Business Rules make any reference to the Telegraph Act. Rather the Telegraph Act, as per the said Allocation of Business Rules is placed within the jurisdiction of DoT, Ministry of Communications (“MoC”). The section on “*Ministry of Communication*” clearly states that:

“Policy, Licensing and Coordination matters relating to telegraphs, telephones, wireless, data, facsimile and telematics services and other like forms of communications.”

It should also be noted that the said guidelines are required to be notified under Article 73 of the Constitution of India which provides power of the executive to issue orders and policies:

“Article 73 - Extent of executive power of the Union

(1) Subject to the provisions of this Constitution, the executive power of the Union shall extend

(a) to the matters with respect to which Parliament has power to make laws; and

(b) to the exercise of such rights, authority and jurisdiction as are exercisable by the government of India by virtue of any treaty or agreement: Provided that the executive power referred to in sub clause (a) shall not, save as expressly provided in this constitution or in any law made by Parliament, extend in any State to matters with respect to which the Legislature of the State has also power to make laws

(2) Until otherwise provided by Parliament, a State and any officer or authority of a State may, notwithstanding anything in this article, continue to exercise in matters with respect to which Parliament has power to make laws for that State such executive power or functions as the State or officer or authority thereof could exercise immediately before the commencement of this Constitution Council of Ministers.

The matters with respect to which Parliament has power to make laws are enumerated in Article 246 of the Constitution which gives power to the Central Government to either issue executive orders/policies or frame legislations on the matters mentioned in List I of Seventh Schedule of the Constitution. Entry 31 of the Union List includes “*Posts and telegraphs; telephones, wireless, broadcasting and other like forms of communication.*”

In the landmark judgment delivered by the Supreme Court in the case of *Ram Jawaya Kapur v. State of Punjab*⁴, laid down that Central Government (i.e. the executive) has the power to notify orders and policies without existence of any law supporting the same. The relevant parts of the judgment are quoted below:

“The executive Government, however, can never go against the provisions of the Constitution or of any law. This is clear from the provisions of article 154 of the Constitution but, as we have already stated, it does not follow from this that in order to enable the executive to function there must be a law already in existence and that the powers of executive are limited merely to the carrying out of these laws.”

15. The limits within which the executive Government can function under the Indian Constitution can be ascertained without much difficulty by reference to the form of the executive which our Constitution has set up. Our Constitution, though federal in its structure, is modelled on the British Parliamentary system where the executive is deemed to have the primary responsibility for the formulation of governmental policy and its transmission into law though the condition precedent to the exercise of this responsibility is its retaining the confidence of the legislative branch of the State. The executive function comprises both the determination of the policy as well as carrying it into execution. This evidently includes the initiation of legislation, the maintenance of order, the promotion of social and economic welfare, the direction of foreign policy, in fact the carrying on or supervision of the general administration of the State.”

Therefore, it is clear from the said judgment that notification of policies may not necessarily trace their source to an already existing legislation. Thus, it can only be stated that the up-linking – downlinking guidelines do not trace their source to the Telegraph Act and any attempt to do the same is bound to be infructuous. However, at this stage, one cannot say whether the said Guidelines in question were ever actually notified in the proper manner as per applicable provisions.

Without prejudice to the stand of that broadcasters are not licensees under Section 4 of the Telegraph Act, further submissions are being made on the Consultation Paper. The submissions below are not in any manner indicative or a waiver of the fundamental objection in being outside the definition and purview of Section 4 Licensees.

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 channel’ more specifically? If yes, kindly suggest suitable definitions of ‘News and Current Affairs TV channels’ and ‘Non-News and Current Affairs TV channels’ with justification.

⁴ [1955] 2 S.C.R. 225.

Response:

Any drawing or re-drawing of definitions has to be based upon a purposeful exercise guided towards definite goals. Therefore, it becomes imperative that the goal of such an exercise be defined beforehand. One reason of the same could be to draw strict separation between news and non-news content being broadcast over cable and satellite television. Though such goal is valid, however, issues arise with the use of the term “current affairs”. It should be noted that even “non-news” or general entertainment content can be based upon the present current happenings of the society. In a rapidly evolving creative ecosystem, it becomes necessary that the general entertainment content get closer to the lives of the people in order to remain relevant and hence it becomes necessary to base contents on societal happenings and events.

Thus, we don't feel the need to redefine “News and Current Affair Channel”, however, a more inclusive definition of “Non-news and Current Affairs Channel” needs to be drawn in order to allow greater levels of knowledge based programming.

Irrespective of the stand that we have adopted above, we would like to draw the attention of the Authority towards the issue of certain news & current affairs channels broadcasting mostly “general entertainment content” by merely presenting “news” or “current affairs” for few minutes per clock hour, as there is no clarity on what percentage of “news” content should be broadcast on a “news & current affairs” channel. These channels have for long exploited this loophole by having their license under issued “news & current affairs” category only to avoid applying for temporary live up-linking permissions because there is no need for “news & current affairs” channel to apply for prior approval to live telecast special events. Therefore, we request the Authority to make suitable recommendations to the MIB in order to ensure that news content is strictly defined as against non-news content based on current affairs.

Net-worth of eligible companies

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

Response:

We firmly support Hon'ble Prime Minister's “Start-up India” program and have always encouraged entrepreneurs in the media and entertainment sector. Hence, we believe that the present net worth requirement is adequate considering the investment requirement for launching new channels and additional channels under both categories. We are of the view that there is no requirement to increase the net-worth requirement of the applicant company for granting up-linking permission, and/ or downlinking permission as it would create entry barriers. Based on the consolidated data shared by Ministry of Information and Broadcasting (hereinafter “MIB”) on the number of permitted private satellite TV channels in India, the TV

channels have increased from 821 channels in Dec 2011 to 877 channels in Nov 2017. This reflects a positive growth in the number of TV channels in India based on the net-worth requirement of the applicant company provided in the Policy Guidelines for Up-linking of Television channels from India issued by MIB on Dec 5, 2011.

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

Response:

The net-worth requirements for up-linking of News and Non-News channels should be *status quo* as enumerated in the Policy Guidelines for up-linking of Television channels from India issued by MIB on Dec 5, 2011. An unnecessary change would create entry barriers in the broadcasting sector, likely redirect broadcasters to TV channel broadcast from outside India, and also reduce competition. From a practical point of view, it would be challenging for an entrepreneur investing lower than the prescribed net-worth to sustain the television business. Further, it is suggested that that Net-worth Certificates and Audited Account Statements as certified by the statutory auditors of the concerned broadcaster companies should be the basis for processing of applications for up-linking of News and Non-News channels. This will support the Ease of Doing Business and expedite the process of verification by MIB's finance wing.

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 up-linking guidelines, and downlinking guidelines? What should be the amount of non-refundable processing fee? Please elaborate with justification.*

Response:

Government of India has embarked on the ambitious program of improving ease of doing business across sectors including M&E. One crucial aspect of improving business conditions is to reduce the number of approvals and permissions required and avoiding the use of administrative fees as a source of revenue maximization. In this spirit, we request that the Authority recommends to the Ministry that not only the present fees not be increased rather it should be brought down progressively, as the increased digitization and automation of processes would reduce the administrative costs. Also, the automation and speeding up of basic processes, will encourage faster business decision-making in the sector making it more competitive.

The greatest need of the hour in terms of administrative processes is to introduce a truly effective and meaningful “single window” process wherein all relevant documents and fees can be uploaded and the permission be issued online in a time bound manner. Though the Ministry has taken steps such as introducing “The Broadcast Seva” portal, the implementation and effective use is awaited eagerly by the sector.

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.

Response:

At the outset, we would like to state that the use of a particular satellite spectrum and the corresponding satellite transponder capacity are tightly coupled with each other, whereby the satellite transponder capacity allocated (by the satellite owner) to a company cannot be used without corresponding up-linking satellite spectrum, and similarly, a particular up-linking satellite spectrum, beamed toward a particular satellite, is of no use if the corresponding right to use of that satellite transponder capacity is not available with the same entity. For the success of Satellite TV Broadcasting, it is important to ensure that the right to use for a satellite transponder capacity and corresponding up-linking and downlinking spectrum are allocated to the same entity. Successful broadcasting of TV Channels requires coordinated use of the up-linking Space Spectrum, Satellite Transponder Capacity and Downlinking Space Spectrum, which cannot be auctioned together as they are not controlled by the same entity or even the Central Government. The introduction of an auction route for channels would necessarily require the auction of the spectrum bundled with the satellite transponder allocation, complexity of process would not justify the negligible revenue that may be anticipated from such auction.

Most importantly, there is the relevant issue of international regulatory complications that arise from any effort to auction satellite spectrum. Further there are other complications that might arise if the auction of satellite spectrum is resorted as the same is an International transaction, subject to International Community rules, unlike terrestrial spectrum.

(A) Firstly, satellite TV broadcast and FM radio broadcast are miles apart from each other when it comes to their infrastructural requirements and the manner of use of spectrum. This difference has been effectively brought out by TRAI itself in the consultation paper in para 2.29 which states:

“The FM radio broadcasting is a terrestrial form of broadcasting wherein for each Radio channel, 800 KHz bandwidth spectrum in the frequency band starting from 88 MHz to 108 MHz is allocated by WPC. So theoretically there can be

maximum 25 radio channels in a given area. However, the risk of interference from the adjoining area transmitters further limits the maximum number of FM Radio channels in a given area. Further, the reach of FM radio transmission is limited, and it depends upon the transmitted power and height of the transmitter antenna. Thus in a given geographical area, the maximum number of FM Radio channels are limited by design, and auction for FM Radio channels is carried out geographical area wise.”

As stated by the Authority itself, FM radio stations utilize that part of the overall spectrum which is earmarked for terrestrial communications as opposed to satellite communications where a teleport is used to reach satellite antenna rather than open diametrical radiation as is the case with FM radio transmitters. This simple differentiation means that per FM radio station requirement of spectrum is high and therefore per circle, given the present allocation in National Frequency Allocation Plan – 2011 (NFAP), only maximum of 25 stations per circle can operate (as has been affirmed by the Authority as well). Moreover, FM radio stations have to deploy their own terrestrial transmitter capacity which has to necessarily be licensed as an “apparatus” under the Telegraph Act.

Such is not the case with satellite broadcasters as they can simply hire teleport and satellite transponder capacity from commercial operators of the same. This to say that satellite broadcasters do not require to own the transmission infrastructure as is the case with FM radio stations.

(B) Certain specific aspects of satellite spectrum (and associated orbit) to understand the issue:

- (i) All radio transmissions including those from satellites are inherently not confined to national political boundaries and therefore frequency usage has to be in accordance with the provisions of Radio Regulations (RR) of the International Telecommunication Union (ITU), Geneva. The ITU is the specialized UN agency for ICT issues and the RR have the force of an international treaty.
- (ii) The international framework for coordination, notification, international recognition is an involved process, established /reviewed at World Radio-communication Conferences (WRCs) of ITU. Member States of the ITU (totalling 193 at present) have established legal framework in the ITU Constitution, Convention and the Radio Regulations (RR) that address the rights and obligations of Member administrations, including those for obtaining access to spectrum /orbit resources and international recognition of these rights by recording frequency assignments and orbital positions used/intended to be used in the Master International Frequency Register (MIFR).
- (iii) The satellite systems have to be internationally coordinated as per relevant RR provisions, for the satellite networks to operate without harmful interference whereof use of satellite spectrum has international dimensions. Operations of satellite networks generally requires bilateral/ multilateral coordination and cooperation. It is incumbent on the potential satellite operator (or

operating agency) to obtain access to frequency assignments and associated, suitable orbital position.

(iv) ITU's Radio Regulations complement the ITU Constitution (No. 31 of ITU Constitution), and are based on main principles of 'efficient and rational use of the RF spectrum' and 'equitable access' to spectrum /orbit resources for countries, laid down in No. 196 (Article 44) of the ITU Constitution. The Resolution 2 of the Radio Regulations provide that "all countries have equal rights in the use of both the radio frequencies allocated to various space radio-communication services and the geostationary-satellite orbit and other satellite orbits for these services." 'Resolves 1' of Resolution 2 states, "that the registration with the Radio-communication Bureau of frequency assignments for space radio-communication services and their use does not provide any permanent priority for any individual country or groups of countries and do not create an obstacle to the establishment of space systems by other countries." Resolution 4 of RR on 'Period of validity of frequency assignments to space stations using the geostationary-satellite and other satellite orbits' states that "frequency assignments to space radio-communication stations located on the geostationary-satellite and other satellite orbits...shall not be considered perpetual." This resolution was derived from the 1966 UN Treaty on Outer Space which recognized the 'common heritage' of outer space – i.e. satellite orbital positions are not within an individual country's territorial jurisdiction. Thus, to use a commercial analogy, countries should not see the ITU as a wholesaler of spectrum rights granted in perpetuity which countries can then market at retail to satellite operators.

(v) Most of the radio regulations for use of satellite orbits, along with associated spectrum, follow the principle of 'First Come First Served'. However, to ensure that all countries, especially the developing countries, to have assured access to part of the spectrum (along with associated orbit locations), 'Plans' were evolved for 'Broadcast Satellite Service' in part of Ku band, as well as for 'Fixed Satellite Service' for some other parts of Ku band. These 'Plans' allow a greater control of respective countries on their Plan Allotments.

(vi) Therefore, the ITU process for accessing the spectrum and orbit resource is crucial to any national licensing regime, no matter what form this regime takes, and so an understanding of the role of the ITU is important while considering various options for the licensing of satellite systems and networks.

(C) Therefore, it is clear and present that Satellite Spectrum has to be treated by countries differently from the spectrum used for terrestrial services. It's evident that auction of satellite spectrum, by any country, has international ramifications. Since India, as an ITU Member, has ratified ITU's

Radio Regulations, a 'binding international treaty', like any other ITU Member, it needs to take all measures not to contravene this 'treaty'.

(D) Auction methodology is normally adopted when there is scarcity of a particular resource and the item being auctioned is free from any encumbrances. Satellite spectrum (and associated orbit locations) has multiple encumbrances. Also, theoretically, it is possible for a country to file for required number of orbit locations for its own coverage and coordinate the same with reasonable conditions

(E) We also put it on the record that auctioning of up-link permissions in a standalone manner is not a feasible route as well because to do the same, MIB shall have to artificially limit the same as the resource attached to it (i.e. satellite spectrum is not scarce and unamenable to auctioning). Any such move would be nothing but a brazen attempt at maximizing revenue which would ultimately harm the industry. It should be kept in mind that due to irrational and excessive bidding for spectrum, telecom sector is already in decline. Even in telecom sector, there's no auctioning of licenses. Therefore, it is hard to see the reasoning for bringing the auction route in broadcast sector when the same has failed in telecom.

(F) We also point out that DoT is already in the process of formulating New Telecom Policy – 2018 (NTP – 2018) and as part of the same exercise it is attempting to remove/reduce spectrum auction and AGR based license fee burden on the telecom sector, as the same has been found to be an impediment on telcos that prevents them from increasing CAPEX on infrastructure rollout in far flung districts of our country. Even TRAI which is conducting a separate consultation the said policy has sought comments in the direction adopted by DoT by suggesting one of the strategies as:

“Review of license fee, USOF levy, and SUC keeping in view importance of communication infrastructure in socio-economic development”

Basis the above, auctioning of satellite spectrum either in a standalone manner or combined with up-link permissions is not a feasible option at all.

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.

Response:

For the reasons stated in response to Q5, it is not feasible to auction any part of the satellite spectrum.

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.

Response:

It is not feasible to auction TV Channels without restricting the use of foreign satellites, and up-linking of signals of TV Channels from foreign soil.

The central government can auction only those resources which are fully in its control. The resources used in a Satellite TV Channel, i.e. uplinking and downlinking spectrum coupled with the Satellite transponder capacity are ONLY PARTIALLY in the control of the Central Government.

Further, India has not fully utilized the orbital location to launch more satellites for optimum use. As for the use of Indian satellites, no technical parameters have been given so as to compare them with foreign satellites and make an informed decision while choosing the satellites for broadcast of TV channels. Broadcasters bear considerable cost to lease transponder capacity, and the foreign satellites used by broadcasters are usually bound by long term contractual obligations, which are difficult to break away from. If broadcasters would be forced prematurely to migrate to Indian satellites and the artificial scarcity of spectrum allocation is highlighted, then the implementation of "open sky" policy would be hampered. Furthermore, Indian satellites are not well equipped to provide replacements or backups in cases of technical glitches. For instance, in the case of Sun Direct DTH, there was a major power outage on the Indian satellite INSAT-2E and ISRO was unable to provide a replacement satellite to continue their transmission of DTH services.

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

Response:

It is not advisable to restrict use of foreign satellites for satellite TV broadcasting or up-linking of satellite TV channels, to be downlinked in India, from foreign soil, as there are many broadcasters, DTH operators and occasionally Government agencies that use foreign satellites and have long term contracts with such foreign satellite agencies. If the broadcasters are forced to move over to Indian satellites, then breach of the contractual obligations would lead to serious implications including payment of exit fees, long drawn litigation or arbitration. As of now, there is no scarcity of orbital spectrum, if the foreign satellites are used, while mandatory up-linking from India to Indian Satellite may cause scarcity of transponders and restrict growth of the broadcast sector. Also broadcasters like Sony have been up-linking all their TV channels from foreign satellite from a foreign country, where the laws and policies for that country might be different and could be contradictory to the policies formulated by the Indian Government.

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

Response:

The satellite TV industry has come a long way from its early days and has become a USD 25 billion dollar sector which employs almost 1 million people. Today, it is recognized as one of the sunrise sectors of the Indian economy and in the near future it is expected to play a great role in sustaining India's flagging services sector. However, for this vision to come true, the policy framework governing this sector needs to be overhauled and the "Single Window" Clearance system should be implemented in consonance with the "Digital India" initiative of the Government. Any sector that involves taking multiple permissions, such as satellite TV broadcasting, can be aided greatly by creating an effective online "single window" clearance system that functions like a one stop shop for all filings and also provides real time progress of all applications. Although a "Single Window" system called "Broadcast Sewa" has been implemented by the MIB where an applicant can submit the application through a single window, it still involves approvals of multiple ministries and departments other than MIB, such as Ministry of Home Affairs ("MHA"), Department of Space ("DoS"), empaneled auditors of MIB, Ministry of Corporate Affairs ("MCA"), Ministry of Finance ("MoF"), the WPC and NOCC. Therefore, we suggest that an inter-ministerial panel consisting of representatives from all the above ministries/departments should review the system implemented by MIB and support the same in providing an inter-departmental time-bound system to process applications and facilitate the ease of doing business. Thus, the "Single Window" clearance shall be meaningfully implemented only if the applications are filed online at MIB and then the concerned Ministries/Departments are asked to give their comments online through intranet amongst ministries or follow the method adopted by the erstwhile FIPB clearance process wherein MIB could convene meetings of the concerned Ministries on a monthly or bi-monthly basis. Also, it is felt that the involvement of multiple ministries causes delay in getting approvals in time as they do not stick to any stipulated timeframe but it also derails business planning and payment of valuable forex to foreign satellite operators. Hence, as part of the above suggested process the ministries/departments should also prepare a clear cut timeline that satellite TV businesses can rely on to take time sensitive decisions.

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 up-linking 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.

Response:

One of the main pillars of ensuring “ease of doing business” is to ensure that either no fees is levied or even if necessary to impose fees it should be the minimum possible. For grant of permissions for satellite TV channels, the same principle should be applied and the fee should be restricted to the expense incurred by MIB in actually processing the application. At this juncture, we would again like to caution the Government against using the process of granting permissions as a means for maximizing revenue. The healthy route to extracting value from a growing sector that greatly develops employment, widens the knowledge and creative economy and even substantially accelerates economic growth and state revenue by direct and indirect taxation and contributions, is to nurture its progress and expansion. Revenue maximization at the cost of growth of this sector can only be described as a myopic view.

As the Authority must be aware that broadcast industry is the backbone of the media & entertainment sector and any untoward shocks to broadcast is enough to shake the whole sector. To give the broadcast industry a boost, it needs to be given an industry status while making and amending industrial policies. Providing monetary and non-monetary incentives to the Broadcast industry will result in several other industries enjoying the spillover and sustainable growth of the Indian economy. Introduction of unreasoned increased entry fees will hamper the growth, impact prices and ultimately affect the end consumer. Therefore, there is no requirement to introduce entry fee for grant of license for up-linking of TV channels from India, downlinking of TV channels uplinked from India, and downlinking of foreign TV channels.

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.

Response:

We submit to the Authority that there's no need to change the already existing provisions for license fee as contained in the applicable uplink – downlink guidelines. For reasons, please refer to our response to Q11.

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?

Response:

We are of the view that no variable license fee structure should be introduced which will make the entire broadcasting sector unviable. We have already given the reasons in our response to Q11 and in response to Q5 as well.

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)?

Response:

We are of the view that no semi-variable license fee structure should be introduced. We have already enumerated the reasons in our response to Q11 above.

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?

Response:

Kindly refer to our response to Q11.

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

Response:

Broadcasters are already paying annual license fee to the Government. Either the license fee should be collected for the entire license period of a channel in one go or there should be an online payment system for annual payment of license fee. To elaborate, the permission/license process involve a number of stages and applicants have to approach different ministries and departments multiple times before they can begin operation. This becomes a serious hurdle in the ease of doing business in the sector. Therefore, as in the case of satellite TV channels, an online "single window" clearance system should be introduced with standardized timelines which need to be adhered to by all concerned departments and ministries. This online single window clearance system should be created as per the recommendations of an inter-ministerial panel/group which involves all the relevant ministries/departments dealing with this sector.

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

Response:

As the validity of the license granted is for a period of 10 years, then the review of the entry fee and license fee rates should be done after that 10 years period is over.

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? Please elaborate your responses with justification.

Response:

Encryption of all TV channels including FTA channels must be made mandatory. It will not only reduce piracy but will also discourage distribution platforms to distribute unencrypted FTA channels uplinked from abroad which may carry content that can be perceived as threat to India's national security interests. Encryption will enable broadcasters and the Industry to assess their subscriber base, which shall remove all doubts that are placed upon the existing BARC audience measurement system.

Further, Sports content of national importance is mandatorily shared with Doordarshan (DD) which, as per the judgment of the Supreme Court dated 22.08.2017 should be telecast **only** on Doordarshan's terrestrial and DD Free Dish DTH platforms. Since these platforms broadcast unencrypted telecast which result in large scale piracy eroding the value of broadcast rights holders to exploit their IP. Another example of the dichotomy is that while private commercial FTA channels available on DD Free Dish DTH are encrypted but when the channels are carried by DD Free Dish, then these channels are ultimately carried in an unencrypted form. This makes the entire exercise of encryption, as undertaken by the broadcasters, futile in the first place.

Operationalization of TV channel

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

Response:

Though we do not express any strong views on this matter, however, we request that the Authority and MIB should first work towards, creating a well-defined timeline for issue of licenses and then proceed with any discussion on defining the phrase “operationalization of TV channel”.

The core factors affecting the issue of “operationalization of TV channel” as caused by Wireless Planning & Coordination Wing (hereinafter “WPC”) remain the same, i.e. (a) better inter-departmental coordination; (b) identification of clear cut timelines; & (c) creating enabling framework for new technologies. The manner in which these factors affect WPC and Network Operation & Control Centre (hereinafter “NOCC”) clearances have been detailed as follows: Even though WPC and NOCC belong to Department of Telecommunication (hereinafter “DoT”), they are located in different buildings and the endorsement/approval happen one after the other leading to delay in getting required approvals within a stipulated timeline. Operators are asked to pay Bandwidth/Frequency allocation and monitoring charges separately. This entire process need restructuring and rationalization. Another reason for delay is because WPC has adopted a six monthly window system for assignment of broadcast frequencies after the 2G verdict of the Hon’ble Supreme Court in 2012. It is incumbent upon DoT to seek clarification from the Hon’ble Supreme Court regarding the assignment of broadcast frequencies.

Introduction of new technologies and digitalization of uplink process has allowed multiple channels to be carried on a single frequency. Consequently, if WPC and NOCC permissions have been given for a transponder on a certain frequency for a new channel, any additional channel applications by the same applicant on the same transponder and frequency should not necessitate a fresh WPC and NOCC permissions. A mere intimation should be given to the WPC and the NOCC in respect of such additional channels. In any event the WPC is actively engaged in monitoring of such channels. Further, these last moment permissions from WPC and NOCC leads to lapse of validity period of “operationalization” as well as forfeiture of the performance bank guarantees (hereinafter “PBG”). This incurs a heavy loss to the business in terms of rollout obligation. Thus, the term “operationalization” of TV channel has to be preceded by a major streamlining of part of WPC, NOCC and MIB.

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?

Response:

In our opinion, 21 days may be permitted for interruption in transmission or distribution of a TV channel due to any reason, other than the force-majeure conditions. MIB may give notice for Show Cause on the failure to rectify. The MIB may suspend the License use, upon failure to show cause for interruption and failure to rectify for a continued period of 90 days.

Transfer of License

20. Whether the existing provisions for transfer of license/permission for a TV channel under up-linking 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 up-linking guidelines, and downlinking guidelines may also be permitted? Please elaborate your responses with justification.

Response:

We are of the view that licenses should be transferable. Companies usually restructure through merger, demerger or amalgamation so as to enhance the operational efficiency of that organization. There is a need to align the up-linking and downlinking guidelines with provisions of Companies Act.

Sections 230 & 232 of the Companies Act, for the compromises, arrangements and amalgamations, provide that a notice of the meeting of shareholders and/or Directors along with scheme of compromise, arrangements and amalgamation (including merger or demerger) and other documents as may be prescribed, are mandated to be sent to all the Regional Directors, the income tax-authorities, the Reserve Bank of India, the Securities and Exchange Board, the Registrar, the respective stock exchanges, the Official Liquidator, the Competition Commission of India, and **such other sectoral regulators or authorities** (which would include the TRAI and MIB) which are likely to be affected by the compromise or arrangement. It is further required that representations, if any, by such authorities shall be made by them within a period of 30 (thirty) days from the date of receipt of such notice, failing which, it shall be presumed that they have no representations to make on the proposals.

Hence with a view to improving the ease of doing business in the sector, our proposal is to consider:

- a) If both the transferor company and transferee company are holders of license/permission for up-linking of a TV channel under up-link – downlink guidelines, and downlinking guidelines, then, the Ministry should grant permission for transfer of the license/permission held by the transferor company to the transferee company within the thirty day period set forth under section 230 of the Companies Act, 2013, subject to the net worth criteria being met by the transferee company post

approval of the amalgamation, merger or demerger being approved pursuant to the provisions of the Companies Act.

b) Similarly, in case of transfer of business or undertaking in whole or part by way of a slump sale or an asset transfer, if both the transferor company and the transferee company are holders of license/permission for up-linking of a TV channel under up-linking guidelines, and downlinking guidelines, the Ministry should grant approval within a stipulated period of 15/30 days' subject to the transferee company meeting the net worth criteria.

c) In so far as the transferee company is not a holder of license/permission for up-linking of a TV channel under up-linking guidelines, and downlinking guidelines, The Ministry should make its representation to the proposal for merger, demerger, etc. within the time stipulated under the provisions of Section 230 of Companies Act, 2013. Else it should be presumed that other the proposal is approved subject to security clearance and net worth criteria being met.

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.

Response:

We agree with the apprehensions of the Authority on “trading” and “hawking” of up-link – downlink permissions for satellite TV channels, however, we do not agree that instituting “lock – in” periods is an effective way to achieve the said objective.

It should be noted that the ease of starting or closing down a business, including broadcasting business, is an important benchmark in determining the ease of doing business. Therefore, lock-in periods would actually militate against this objective if resorted. Moreover, no lock – in periods should be made applicable to first/subsequent transfers after the grant of license, as in a fast moving business environment, structuring and restructuring of companies is order of the day.

Contrary to the lock-in approach we propose a market based strategy to ensure that only “serious” players survive. Presently, the tariff and interconnection framework as applicable, provides sufficient tactical provisions which ensure that even the most non-competitive players are able to survive in the market. This includes caps on pricing of channels among others. Therefore, freeing the sector from shackles of regulations would actually lead to course correction and force non-serious players to either innovate/change or leave the sector.

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?

Response:

Please refer to our response to Q21.

23. What additional checks should be introduced in the up-linking, 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.

Response:

In our considered view, the present up-linking and downlinking guidelines already place the responsibility and obligation on compliance with the terms of the license/permission on the holder thereof and in case of violation of any of the provisions thereof, the Ministry may suspend or cancel the registration of the license holder as set forth under these guidelines. Given this, we do not believe there is any requirement for placing any restrictions on activities that cannot be outsourced to any other entity.

Meaning of a teleport

24. 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.

Response:

We are agreeable to including a wide “functional” definition of teleport(s) in the up-link – downlink guidelines. By this, we mean that any definition should only be directed at creating defining teleports as an infrastructural entity.

However, the discussion contained in paragraphs preceding the above questions in paragraphs 3.3 to 3.5 is based upon tying the definition of teleport to one single satellite, i.e. defining teleports in a manner that they become restricted to only one single satellite.

We must say that the above approach carries inherent harm to the industry as directing the question “teleport using one satellite” shall place artificial limits on the “unit” of licensing to a single teleport communicating with a single satellite. Whereas, if the Ministry is looking for efficiency gains then the

wisest move would walk in step with technological progress which has enabled teleports to cater to a number of satellites at a time. Therefore, a single teleport license should allow the operator to cover all possible coordinated and approved satellites.

Entry fee, Processing fee, and License fee for teleport license

25. 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.

Response:

There is no need to increase the amount of non-refundable processing fee to be paid by the applicant company with each application for teleport license. The Ministry should ideally focus on achieving the vision of “ease of doing business” and refrain from enhancing any administrative fees.

In our view, the Government should rather focus on bringing efficiency in the approval process by enabling “e-Governance” through online processing of applications. This will reduce the costs (including administration expenses in processing fees) as well as reduce timelines in granting of license. The permission/license process for teleports involve a number of stages and applicants have to approach different ministries and departments multiple times before the teleport can begin operation. This becomes a serious hurdle in improving ease of doing business in the sector. Therefore, as in the case of satellite TV channels, an online “single window” clearance system should be introduced for teleports with standardized timelines which need to be adhered to by all concerned departments and ministries. This online single window clearance system should be created as per the recommendations of an inter-ministerial panel/group which involves all the relevant ministries/departments dealing with this sector. Presently WPC permission is given to teleports only for a year with an annual renewal process. Often due to delay in the WPC permission there is a delay in obtaining permission for foreign exchange remittance. This may impact compliance with contractual obligations with the satellite service provider. As in the case of the license/permission to set up a teleport, the WPC permission should also be given for 10 years. A report can be submitted to the WPC/MIB on an annual basis confirming compliance with the license terms and payments made to foreign satellite providers.

26. 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.

Response:

There should be no entry fee on the grant of license to set up teleport. Introduction of entry fees will hamper the growth of the broadcast industry and this may impact prices and affect the end consumer. Based on the consolidated data shared by Ministry of Information and Broadcasting (hereinafter "MIB") on the number of permitted private satellite TV channels in India, the TV channels have increased from 821 channels in Dec 2011 to 877 channels in Nov 2017. Furthermore, MIB has an intention to make India as a teleport hub whereby inviting foreign companies to uplink TV channels from India. If there is an introduction of entry fee to set up teleport, it shall act an entry barrier and will go against the spirit of making India a teleport hub.

27. 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.

Response:

India is at a nascent stage of growth in terms of media and entertainment sector. The license fees structure should remain the same as stated in the presently applicable Policy Guidelines for Up-linking and Downlinking of Television channels from India. No other license fee should be introduced as it would hamper the growth of the broadcast industry.

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

Response:

Kindly, refer to our response to Q25.

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

Response:

The periodicity of payment of fees should remain the same as has been prescribed in the present up-link – downlink guidelines in force. Moreover, when it comes to reviewing the license fee periodically, the

same should be done at a gap of at least 10 years as this would give adequate time to the industry to recover the CAPEX incurred by them.

30. What should be the periodicity for revision of the entry fee, and license fees rate for teleports licensees?

Response:

Kindly, refer to our response to Q29.

Restriction on the number of teleports

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

Response:

In our view any attempt at setting artificial limits to number of teleports in India shall be a retrograde move which militates directly against the policies of the present Government such as “Invest India” and “Digital India”.

If the concern of the Authority is to find the ways of “optimal” use of teleports infrastructure as evidenced in Q34, then placing restrictions on number of permitted teleports is sure shot way of creating artificial scarcity and creating market dominance based inefficiencies.

India has all the necessary resources to become the teleports hub of Asia, however, if policy construct becomes prohibitive instead of enabling then no such vision can ever be realized. India has been able to create a thriving and competitive broadcasting sector without placing any restrictions on the number of teleports, and there is no evidence to indicate that a limit is required to address any anomaly in the market. In an ever changing market like India, it would be particularly difficult for a regulator to derive an “optimum” number of teleports. If the limit is set too high, the industry is likely to behave as if there was no limit. If set too low, however, then prices for teleports services from already licensed providers will likely rise, and the expected growth of the Indian television broadcasting sector would likely be inhibited. Moreover, to the extent that the MIB’s concern is about speculative “hawking” and “trading” in licenses, changing the rules to limit the number of licenses is likely to increase incentives for such speculation. Therefore, unnatural restrictions shall only give rise to a “black-market” instead of resolving any issues.

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

Response:

As already explained in our response to Q31, we see absolutely no need for instituting a “license-permit-quota raj” all over again in the teleports business. If the aim and objective of the Government is to increase investments and turn India into the hub for teleport activities in Asia, then no resort should be made to limiting teleport activities through artificial restrictions, rather the existing regulations should be streamlined.

Given the pace at which the broadcasting sector is growing in India, there really exists no way of accurately envisaging the number of channels that might exist in the future or even the satellite capacity requirements. Therefore, setting the “wrong” limit (too low) on the number of teleport licenses could well lead to increased prices. It could also lead to reduced availability of teleport services. Setting a limit on the number of teleport licenses could introduce an inflexibility into the current system, especially if the definition of “teleport license” was also to be limited to communications with a single satellite. Once the quota of licenses has been issued, it will become very difficult for teleports to add services on new satellites since no new licenses will be available.

Location of teleports

33. 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.

Response:

We must say that TRAI has brought the various restrictions placed upon location of teleports quite succinctly in paragraphs 3.20 to 3.21. The most important restriction amongst these is the process of “SACFA site clearance” which basically attempts at dealing with the issue of location of teleports comprehensively by availability of land, land use controls, and the frequency licensing and coordination process. In our experience as users of infrastructure such as teleports, we don't find the need to place any more restrictions upon the location of teleports, as the SACFA process is able to earmark the best locations.

As far as the idea of creating “teleport parks” is concerned, we are supportive of the idea, however, if we may suggest such parks should come along with benefits available to special economic zones (SEZ) such as low taxation, availability of land at cheaper prices and incentives to promote services exports.

With respect to location of teleports, we would also like to bring to notice of the Authority the issue of disaster response planning (DR) by broadcasters. As we are all living in times of great uncertainty in terms of natural disasters such as earthquakes, cyclones etc. it becomes necessary that adequate measures are taken by us to reduce operational risks emerging from such disasters. Therefore, if we may suggest, policy provisions should be made in the up-link – downlink guidelines which allow broadcasters to enter into arrangements with multiple teleports located in different geographies and jurisdictions albeit within the safeguards established by MIB in consultation with TRAI and DoT (WPC).

Optimum use of existing teleport infrastructure

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

Response:

We would like to submit before the Authority that in most cases, rather than additional regulations, just allowing free market forces to operate in an effective manner is more than enough to ensure that infrastructural resources such as teleports in the most efficient manner.

During our long time existence in India running multiple channels we have observed that sufficient incentives exist in the market and the regulatory framework for optimal use of existing teleport infrastructure. Also, if we may remind Authority that in the run up to formulating the existing up-linking and downlinking guidelines, one of the objectives was to turn India into a regional up-link hub. As we see it, this objective has in fact been achieved with respect to India based channels as most are now uplinked from teleports located within India.

In terms of market incentives, the construction of an uplink antenna involves a significant fixed cost, and licensees have strong incentives to maximize the yield from that investment through use of efficient compression and modulation techniques. There are also regulatory incentives to make efficient use of teleport infrastructure. The fixed fee associated with the spectrum licenses needed for teleport operations give licensees strong incentives to maximize the yield from per unit of spectrum.

The use of these techniques, however, do come with trade-offs. The use of more aggressive modulations may come at the expense of availability and the use of compression could come at the expense of quality. The licensees are in the best position to decide whether certain decisions about these trade-offs must be made or not, as only they are located in a competitive and differentiated marketplace, not the Government agencies/regulators.

Unauthorized Uplink by Teleport operator

35. 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.

Response:

The Authority has mentioned multiple ways of monitoring unauthorized up-link from teleports in paragraphs 3.27 to 3.31 where the elaborate machinery involving multiple monitoring and reporting agencies such as WPC, NOCC and EMMC have been mentioned. We find that the resources and technology required to detect and take actions against unauthorized up-linking is already present in the country. However, the need is to bring all information related to licensed teleports and television channels in one single location. Therefore, we again call for the creation of an effective all-purpose single window for licensing of TV channels in India.

This single window should be accessible to all agencies involved in licensing of TV channels and related infrastructure such as MIB (including EMMC), WPC, NOCC, DOS and MHA on the same page. As we have already suggested in our response to the “consultation paper on ease of doing business in the broadcasting sector”⁵ these agencies can then develop a system of joint/inter-ministerial meetings where the officials of all concerned ministries/departments can raise issues brought to their notice to the concerned department and request action. Therefore, if DOS detects that satellite TV signals are being up-linked for which it could find no information from the said single window, then it may ask MIB and WPC to conduct a joint inquiry on the issue.

Any other issue

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

Response:

1. Temporary Up-linking of Live Events:

Though the Authority has raised most pertinent questions throughout the instant consultation paper, however, we find that the lack of questions over “temporary live uplink” is rather circumspect.

It is pertinent to mention that the Authority has indeed mentioned temporary up-linking of live events in para 2.4 of the aforesaid Consultation paper, wherein it has been stated:

“(i) Uplinking of TV channels:

⁵ TRAI Consultation Paper No. 08/2017.

2.4 This permission is required when a company wants to uplink signals of a TV channel to the satellite from the territory of India. This permission is further categorised based upon the nature of programmes to be broadcasted by a TV Channel. Presently, the TV channels have been categorised in two categories namely, "News & Current Affairs" and "Non-News & Current Affairs". The separate eligibility conditions have been prescribed for uplinking of signals of each of the category of TV channels. For uplinking of a TV channel, the applicant Company is required to enclose with the application, among other things, a copy of the agreement with a teleport operator (in case of a third party teleport) and a satellite company for transmission of TV channel to be permitted."

Despite raising concerns regarding temporary live up-link in the beginning of chapter 2, no subsequent question has been raised the consultation paper. Thus, we are broaching the subject of "Temporary uplinking of live events". We are of the view that in order to support varying business needs and consumer experience, MIB should consider permitting issuance of short term / temporary channel licenses, specifically to cater the need of broadcasting multiple feeds of the same live event (such as a sporting event and entertainment events in various languages) as well as assuring audiences the availability of overlapping live events (including events of national importance). Additionally, MIB vide order dated Dec 13, 2017 has introduced a processing fee per channel per day for temporary uplink of a live event of Rs 50,000 for Regional channels and Rs 1,00,000 for National Channels. As Sports channels usually consist of live sporting events and cater to various regions, broadcasters will end up paying for all channels which will incur a huge cost to the broadcaster. The broadcaster is already paying charges of frequency allocation in WPC and monitoring changes by NOCC, through the teleport operators who in turn charge the broadcasters. Therefore, the processing fee per channel per day for temporary uplink of a live event should be done away with.

We would also like to draw attention of the Authority towards the comments made by us in response to the consultation paper on "ease of doing business in the broadcasting sector" where we have also pointed out to the alternative of creating a separate permission regime for sports channel, where such channels with majority of content as live sports can up-link from any location in India at any point of time without the need to seek permission for every single match and venue. This would bring them at par with the "news and current affairs channels" as both are engaged primarily in live broadcasts. We believe that TRAI should frame its recommendations for the present consultation paper in the light of responses already received for the "ease of doing business" consultation paper as most of the issues touched upon here have been broadly covered there as well.

2. Video and Audio quality of the satellite TV channels reaching the end consumer:

Presently, there are no standards specified for the video and audio quality of the satellite channels which are delivered to the end consumer. The content created for Television viewing is piece of art designed from

a creative and technical standpoint to provide the consumer or viewer the best experience creatively as well as for its technical quality. Hence all the participants in the value chain needs to ensure that the viewer gets to experience the same quality on their screens as has been created. Further with digitization and technical improvements of the television display technology itself both in terms of video and audio, it becomes possible to represent the content very close to its original quality. However, to ensure this, all the participants in the value chain needs to maintain specific standards for TV signal reception, processing and re-transmission or delivery through various digital medium till the viewer's television sets.

Broadcasters' follow international standards for maintaining the quality of the content at all stages of content acquisition or reception, content processing and compression. The quality of the video and audio is maintained by ensuring monitoring at all stages and correcting where required up to the satellite delivery to the DPO. Technical parameters such as picture brightness, contrast, colour, audio loudness and audio dynamic range is optimized to provide the best quality experience to the viewers. Since the DPOs receive the signals and deliver them to the viewers it is expected from them to follow the same standards and ensure that the quality till the delivery to the consumer does not deteriorate.

The key areas which need to follow specified standards are the Signal Reception System, Signal Processing System, Signal Compression System, delivery medium and the Customer Premises Equipment ("CPE") and also ensure that the signal delivered to the consumer is not misused and protected through appropriate encryption and content protection mechanisms.

a. SIGNAL RECEPTION:

The channels are broadcast over satellite on C-band in DVB-S or DVB-S2 standard. The satellite provider specifies the "LINK BUDGET" for downlink of the broadcast signals from the satellite. Based on the link budget, the DPOs should install their receive dish (TVRO) which should comply with the broadcasters link budget for that satellite and the specified downlink parameters. As a thumb rule, a minimum of 3.4 meter TVRO should be used for C-band signal downlink so that a margin of 5dB is maintained.

The downlinked signals of the satellite C-band transponder should be distributed within the DPOs headend in such a manner so that the signal losses are minimized to the extent possible. This L-band distribution should follow a structured cabling and distribution process to ensure minimum losses in the signal which is further provided as inputs to the IRD devices of the channels. The signal strength of the L-band signal to the IRD device should be as per standards specified by BIS. As a thumb rule it is recommended that the signal strength of the signal provided to the tuner of the IRD device should be -30dBW to -50dBW at each tuner input of the IRD device.

Depending on the location of the DPOs headend, they may need to use bandpass filters or TI (Terrestrial Interference) filters to reduce any external interference to the satellite downlink signal. It must be ensured

that the L-band signal strength is maintained as per the standards specified by BIS for IRD device at each of its inputs.

b. SIGNAL PROCESSING – BASEBAND:

i. Video:

SD TV: All the devices used in the DPO's headend should comply with SMPTE 259M for standard definition signal processing from the point the signal is decoded from the IRD device to the encoder of the DPO's headend.

HD TV: All the devices used in the DPO's headend should comply with ITU-R BT 709 and SMPTE 292M for high definition signal processing from the point the signal is decoded from the IRD device to the encoder of the DPO's headend.

ii. Audio:

Audio received with the channels signal may be processed at the DPOs headend due to various reasons. During such processing audio format should be maintained to provide the best experience to the viewers. The loudness standard EBU R128 must be followed across all formats of audio from mono, stereo to surround audio. This standard should be followed for all the processing devices from the IRD device output to the encoder of the DPO. This will ensure that the audio loudness is uniformly maintained across all channels and all components of the program on the channels and at the same time provide a very good dynamic range for the audio.

iii. Ancillary data:

These are data which are carried along with the broadcasters video and audio signals of the channels such as subtitling, WSS, etc., should be carried forward to the viewer through the DPOs headend systems.

c. SIGNAL COMPRESSION SYSTEM

The compression system forms an important part in the broadcast chain up till the viewer's CPE in the Digital channel broadcast and distribution. The compression technology has evolved from MPEG1 to HEVC and each of these technologies provide better perceived signal quality over the previous generation at lower bit rates. Hence the most appropriate approach to ensure that the video and audio quality is represented to the viewer as close to the original broadcast video audio quality the recommendation by ITU-R BT500 should be followed. The Signal Compression System should so configured in terms of its video and audio parameters and appropriate bandwidth allocated per channel based on the channel type, SD, HD or UHD so that measurements of DMOS (Differential Mean Opinion Score), PSNR (Peak Signal to Noise Ratio), PQR (Picture Quality Rating) which are all double

ended measurements can be applied to comply with the ITU recommendation (ITU-R BT500). These parameters measure the output video quality with reference to the input video quality and represent the results as a differential of the two. The recommendation for these measured parameters are as below

d. PARAMETER ACCEPTABLE SCALE

DMOS (Differential Mean Opinion Score) – 0 to 20

PSNR (Peak Signal to Noise Ratio) – 80dB

PQR (Picture Quality Rating) – 10 to 20

High compression introduces BLOCKINESS in the image which reduces the perceived video signal quality. “DC Blockiness” (Discrete Cosine Transform) is a measure of the compression artifacts introduced due to the compression systems motion compensation or when very high compression of the signal is applied and appears in the image as blurriness and edge “blockiness”. The DC “blockiness” should be less than 2 % of the area of the image or less than 15% of the total area of the frame.

e. CUSTOMER PREMISES EQUIPMENT (CPE):

The CPE Video and Audio output quality should comply with the standards specified in the above sections. The reproduction quality of video and audio by the CPE can be evaluated and measured using the recommendations by ITU in ITU-R BT500. The measurements of DMOS, PSNR, PQA and DC blockiness can be carried out with reference readings as the incoming signal from the broadcaster and the test point readings being the video output of the CPE at viewer location. The advantage of conducting the measurements at the viewer location reproduces the problems in the entire delivery chain. This would enable the DPOs to identify the problem and correct them so that the viewer is able to receive the best quality signal on his television display system.

The CPE should also be able to reproduce the audio in the same format as the broadcaster delivers the channels up till the viewer's home. So if a channel has 5.1 surround audio then the CPE should be able to carry the surround audio till the CPE's decoded output. It should be left to the viewer to experience the audio in the format they prefer. The CPE's should be able to pass-through 5.1 surround audio as well as decode it to stereo if the viewer so desires. The CPE should comply with the EBU-R 128 recommendation for audio and loudness at pass-through as well as decode.

f. CONTENT COPY PROTECTION:

Encryption of a TV channel ensures that only authorized consumer gets access to the channels he has subscribed to. The content is decoded and reproduced on the television set for viewing only. Any form

of unauthorized copying of the content and / or forwarding of the content should be protected. To ensure this content copy protection standards must be defined and implemented at the output ports of the Set Top Boxes provided to the consumer by the DPOs. This becomes critical as more and more channels are converting to HD. Various content copy protections standards are followed internationally such as CGMS-A & Macrovision for analog outputs, HDCP and DTCP for HDMI outputs, DTCP for IP outputs. Also the watermark logo inserted by the DPOs must be at the uplink stage and should not be rendered at the STB level. To trace piracy it should be mandated that all DPOs should collaborate and cooperate with the broadcasters and allow to insert special “forensic markers” on the STB and CAS so that the source of the piracy can be identified.