Consultation Paper No.16/2017

Response to TRAI Consultation Paper

on

Issues relating to Up-linking and Down-linking of Television Channels in India

by

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Response to Consultation Paper on Issues relating to Up-linking and Down-linking of Television Channels in India

Preliminary Submissions/Response

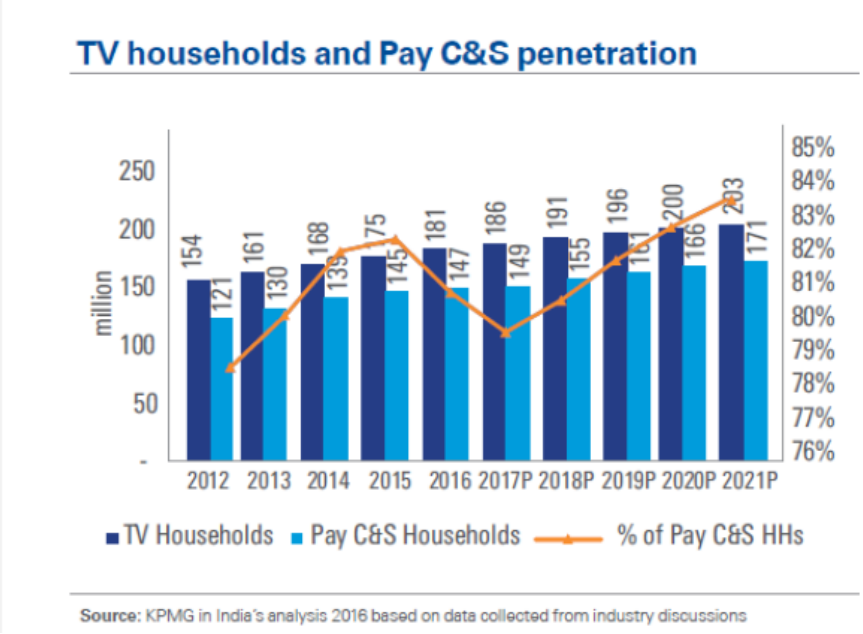
1. **Consultation Paper (CP) is based on flawed premise/assumption - Broadcasters are licensed under Section 4 of the Indian Telegraph Act, 1885.**

1.1 ZEEL notes that the TRAI has issued a consultation paper on what it considers as the issues pertaining to the Up-linking and Downlinking Guidelines relating to channels in India. We have gone through the consultation paper, but regret that the consultation paper not only proceeds on the flawed premise but also has swayed far away from the issues of Up-linking and downlinking.

India is the world's second largest Television market with 247 million television households as per 2011 census. The Television industry accounts for 46% of the revenues of the Media and Entertainment (M&E) industry and will be Rs. 1165.6 Billion by 2021 with a CAGR of 14.7% as per FICCI KPMG Indian Media Entertainment Report 2017.

As per FICCI-KPMG Report 2017 **:**

"Television is expected to grow at a CAGR of 14.7 per cent over the next five years as both advertisement and subscription revenues are projected to exhibit strong growth at 14.4 per cent and 14.8 per cent, respectively. The long term forecast for the television segment remains robust due to strong economic fundamentals and rising domestic consumption coupled with the delayed, but inevitable, completion of digitization".



Accordingly, the need of the hour is that the growth and development of the broadcasting sector which is on the verge of becoming a global industry should be catalysed by streamlining the process of issuing permissions by doing away with multiple approvals whilst issuing Uplinking and Downlinking permissions by MIB in the spirit of the Government of India's much lauded "Ease of Doing Business", "Digital India", "Make in India" and "Start-up India". However, it is regretting to point out that the issues raised in the consultation paper based on reference received from MIB are totally contrary to the above mentioned objectives and instead of development being the focus, the attempt has been to somehow concentrate on increasing the revenue of the Govt. even at the cost of sacrificing and curbing the growth potential of this developing sector.

1.2 The industry has been responding to a wide range of consultation papers such as "Ease of Doing Business" etc in the broadcast sector, issues relating to spectrum, QoS, Interconnect regulations etc. wherein a single thread of conclusion has emerged from the entire broadcasting **universe that the current procedures place an unfair burden on what are termed as "Broadcasters" in the Indian parlance as against all other forms of dissemination of TV channels such as over Internet/OTT platforms etc.** The Authority has failed to take a coherent view of all the technologies which deliver the same result, albeit by different medium, of delivering the same content i.e. that of TV channels to the end customer.

The present CP erroneously treats the "Broadcasters" like Zee, Star, Sony, Viacom etc as those subject to the Indian Telegraph Act. The Indian Broadcasters which are granted permissions for their "Channels" by MIB are in fact "content aggregators" which provide content in the form of TV channel(s), which is then uplinked by a Telecom Licensed Teleport (which in fact is a licensee under Section 4 of the Indian Telegraph Act) and thereafter downlinked and distributed via various networks such as IPTV, DTH, Cable, Wireless and satellite to end customers.

1.3 The premise on which the CP is based upon is contained in para 2.10 & 2.11 of CP which read as under:

> *2.10 The broadcasting of a TV channel through satellite involves transmission and reception of electromagnetic signals conveying images, sounds and data. 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 uplinking permission granted by MIB for a TV channel, uplinking 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. It also provides 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. The word "Telegraph", in the Indian Telegraph Act 1885 has been defined as:*

"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."

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 uplinking and downlinking policy can be traced to the India Telegraph Act 1885. Further the permissions issued under policy guidelines for uplinking and downlinking of TV channels comes under the ambit of Section 4 of the Indian Telegraph Act, 1885.

1.4 It is on aforesaid basis that TRAI has formulated various issues for consultation such as levy of revenue based (AGR) license fee, auction of television spectrum etc. As pointed out hereinabove, when the basic premise on which the CP proceeds is flawed, the issues raised for consultation are accordingly totally flawed and without any merit. The attention in this regard is invited to the following provisions/sections of the Indian Telegraph Act, 1885:

*"**4. Exclusive privilege in respect of telegraphs and power to grant licenses. – (1)** 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.

Explanation – The payments made for the grant of a license under this sub-section shall include such sum attributable to the Universal Service Organization as may be determined by the Central Government after considering the recommendations made in this behalf by the Telegraph Regulatory Authority of India established under sub-section (1) of Section 3 of the Telegraph Regulatory Authority of India Act, 1997 (24 of 1997)

> ***(2)*** *The Central Government may by notification in the Official Gazette, delegate to the telegraph authority all or any of its powers under the first proviso to sub-section (1).*
> *The exercise by the telegraph authority of any power so delegated shall be subject to such restrictions and conditions as the Central Government may, by the notification, think fit to impose."*

The definition of telegraph given under Section 3(1AA) of the Telegraph Act is as follows:

> *"**3. Definitions.***
> *(1). ……*
> *(1AA) '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.*
> *……."*

Thus, for any person to be a licensee under Section 4 of the Telegraph Act, it would require that person to either establish, maintain or work a telegraph. As is clear from the definition of "telegraph" reproduced hereinabove, it must be some equipment, appliance, instrument, material or apparatus used or capable of use for transmission/reception of signals. In the extant scenario in India, a Broadcaster is merely a producer of content which the Broadcaster aggregates from various sources and places them one after another in a desired pattern. After this content is created/aggregated, the same is given to a "Teleport Operator" for up-linking the same to a satellite. In the entire process of use of the teleport for up-linking the channel/content, the Broadcaster has virtually no role to play and the Broadcaster neither owns/establishes/maintains nor does it work the equipment of a Teleport Operator. It would be relevant to point out that this Teleport Operator is a Section 4 licensee under the Telegraph Act as evidenced from the license which is granted. Thus, all the activities covered under Section 4 of the Telegraph Act i.e. the establishing, maintaining and working of equipment / apparatus capable of receiving / transmitting signs, signals, radio or hertzian waves are performed only by a Teleport Operator. Further these are then downlinked by distribution platforms (including DTH operators, Cable Operators, IPTV Operators and HITS operators) who again use telegraphs for re-distributing the signals to subscribers/viewers. Therefore, as Broadcasters do not establish, maintain or operate a telegraph, they can by no stretch of imagination be termed as licensees under Section 4 of the Indian Telegraph Act. The reference of obtaining WPC endorsement and linking the same to arrive at a conclusion that Broadcasters are Section 4 licensees is equally faulty for the simple reason that such a requirement is merely for endorsement of Teleport Operator and Satellite particulars on the permission obtained from MIB.

1.5 In this context it is also pertinent to mention that under the Up-linking and Downlinking Guidelines notified by MIB, an up-linking/downlinking "**permission"** is granted to a channel by MIB and not any "**license"** as sought to be suggested by TRAI in the present CP. Further the said permission is granted under the executive instructions/guidelines notified by MIB and not under any statute. These executive instructions/guidelines do not have any statutory basis/source. Thus any attempt to levy revenue based license fee on the

Broadcasters on the premise that they are licensee under the Indian Telegraph Act would not only be fallacious but also without any legal sanction.

1.6 In this context the attention is also invited to an authoritative pronouncement of Hon'ble TDSAT in Petition No. 172 of 2009 dated 22nd January, 2010 - Star India Pvt. Ltd vs. Bharat Sanchar Nigam Ltd wherein it had been categorically held that a Broadcaster is not a licensee under Section 4 of the Indian Telegraph Act. The attention is particularly invited to para 40 of the said judgement which reads as under:

> 40. *Parliament of India of course has amended the Telegraph Act on* a *few occasions but amendments have not been carried out for meeting these types of contingencies. We may, however, must notice that amendment of the definition of term 'telegraph' in the year 2002 by Act 8 of 2004 with retrospective effect from 1.4.2002 is of great significance to which we would refer to a little later. Telecommunication Services and Broadcasting services are governed by two different statutes. Controls over the two types of services are with two different ministries of the Central Government viz. Telecommunication and Information & Broadcasting. Bill No.89 of 2001 titled "The Communication Convergence Bill 2001" was laid before the Parliament. For some unknown reasons, the said Bill has not been made an Act.* ***Telegraph Act ipso facto does not envisage grant of licence to a broadcaster although the definition of 'telegraph' is very wide in nature. A licence granted by the Department of Telecommunication would not be applicable in relation to Broadcasting Services,*** *if the purpose and object of the Act is given liberal meaning, but as noticed hereto before, permission granted by the Government of India may also be construed to be a license.* ***Such a service even otherwise may not require license under 'the Telegraph Act'****.*

1.7 In this context it is also pertinent to mention the reasons for notifying a comprehensive and detailed Up-linking and Downlinking Guidelines in the year 2005. These were notified pursuant to a judgement of Hon'ble Bombay High Court in a PIL filed by Ms. Pratibha Nathani. The reasons for notification of downlinking guidelines were two-fold :

(i) The channels uplinked from abroad but downlinked in India were not following the Programming and Advertisement Codes stipulated in the Cable Television Network Regulations Act, 1995 and were getting away with violation of Content Code without any penal consequence. The downlinking guidelines mandated the overseas Broadcasting companies/channel owners to incorporate as company in India which would apply for downlinking permission from MIB and would be responsible for compliance of Programming and Content Code.

(ii) The foreign channels were also not paying any taxes on subscription and advertisement revenue earned from Indian market on the pretext that they did not have any permanent establishment in India. The downlinking guidelines mandated that the domestic company applying for downlinking permission for a foreign channel also needs to have an authority to conclude contracts (both subscription and advertisement) in relation to that channel. This brought these channels within the ambit of Indian taxation laws.

The permissions granted under up-linking and downlinking guidelines to the channels have never been considered as "source of revenue" to the Govt. The intention of levying the processing and permission fee has been merely to cover the administrative cost incurred in processing the channel permission applications. It is really surprising to note that now the MIB is contemplating these permissions to be a component/source of revenue generation for them through levy of proposed revenue based license fee which is not only regressive but also going to be severely detrimental to the growth and development of Broadcasting sector itself.

2. **Levy of Entry Fee/Auctioning of Broadcasting Spectrum – violative of Fundamental Right pertaining to Freedom of Speech and Expression under Article 19(1)(a) of the Constitution**

2.1 The Constitution of India includes a catalogue of basic freedoms in Art 19. This catalogue includes the right to freedom of speech and expression in Art 19(1)(a). That article is of tremendous significance to the Broadcasting sector. Article 19(1)(a) is an important constitutional guarantee. It implies the right to speak freely and to express oneself through writing, painting, drawing, acting, gestures, and other modes of expression. Free speech and expression lies at the core of India's democracy. Without it, the concepts of the rule of law, democracy and governance would be impossible to establish and maintain. For this reason, the Constitution assigns an important place to this basic freedom. Yet, the freedom of speech guaranteed under art 19(1)(a) is not absolute. Article 19(2) provides a list of various grounds on which reasonable restrictions can be imposed on the freedom. These grounds are India's sovereignty and integrity, state security, foreign relations, public order, decency, morality, contempt of court, defamation, and incitement of offences. Moreover, the enforcement of Article 19(1)(a) can be suspended during a state of emergency due to war, external aggression or armed rebellion.

2.2 The Constitution's guarantee of the freedom of speech and expression in Art 19 (1)(a) is especially important to the Broadcasting Sector. This is because broadcasting carry expressive content. The Broadcasters enjoy a Fundamental Right of Freedom of Speech and Expression under Article 19(1)(a) of the Constitution. The present CP duly recognizes the fact that Broadcasting is an important medium to disseminate information, education, news, views and infotainment to the masses & general public. India with its diversity of languages, culture and literacy levels can most effectively reach its people through visual media. The swap and reach of print media is highly constricted by its access only to the educated elite. Electronic media i.e. television broadcasting on the other hand has much larger catchment area and carries information, news and entertainment etc. to all socio-economic groups equally & effectively thus empowering the citizens. In para 2.35 of the CP while recognizing the importance of satellite broadcasting, it has been stated by TRAI that:

> *Further, it is also pertinent to mention here that in a globalized economic world, dissemination of information across the borders, and plurality of views play an important role in socio-economic development.*

2.3 It is pertinent to mention that any attempt on the part of Govt. to impose revenue based license fee on satellite TV channels and/or to earn revenue through auctioning of television/satellite spectrum would amount to curtailing/abridging the important right of Freedom of Speech and Expression as available to the TV channel Broadcasters under Article 19(1)(a) and would directly affect the economic viability of the TV channels. In this context it may be pointed out that Hon'ble Supreme Court in plethora of decisions has held that it will not be permissible for the Govt. to impose unnecessary restrictions, burden and if it is done either directly or indirectly by imposing the fee, levies, duties etc on the Press resulting in the curtailment of their circulations (turnover), thereby affecting their viability and the same would amount to violation of Article 19(1)(a). It has been held by Hon'ble Supreme Court that "commercial speech" is also a part of Article 19(1)(a) and is protected under the Constitution. The attention in this regard is invited to the following judgements of Hon'ble Supreme Court:

In ***Indian Express Newspapers (Bombay) Private Ltd. And Others etc. v. Union of India and others,*** the Apex Court dealt with the validity of customs duty on the newsprint in context of Article 19(l)(a). The Court observed (in para 32) thus:

> "*The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic country cannot make responsible judgments." The Court further referred (in para 35) to the following observations made by this Court in Ramesh Thappar v. State of Madras' :*
>
> *"(The freedom) lay at the foundation of all democratic organizations, for without free political discussion no public education so essential for the proper functioning of the processes of popular Government is possible. A freedom of such amplitude might involve risks of abuse. (But) "it is better to leave a few of its noxious branches to their luxuriant growth, that, by pruning them away, to injure the vigour of those yielding the proper fruits"."*

Again in paragraph 68, the Court observed:-

> "*The public interest in freedom of discussion (of which the freedom of the Press is one aspect) stems from the requirement that members of a democratic society should be sufficiently informed that they may influence intelligently the decisions which may affect themselves (Per Lord Simon of Glaisdale in Attorney-General v. Times Newspapers Ltd., Freedom of expression, as learned writers have observed, has our broad social purposes to serve;* ***(i) it helps an individual to attain self-fulfillment, (ii) it assists in the discovery of truth, (iii) it strengthens the capacity of an individual in participating in decision-marking and (iv) it provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change.***

In Tata Press Ltd. vs. Mahanagar Telephone Nigam Limited and Ors. (1995) 5SCC139, the Hon'ble Supreme Court has held that any kind of restriction on media advertisements would be violative to the fundamental rights of Speech and

Expression as enshrined in our Constitution. The attention in this regard is invited to the following paragraphs of the said judgement:

> *22. Advertising as a "commercial speech" has two facets. Advertising which is no more than a commercial transaction, is nonetheless dissemination of information regarding the product - advertised. Public at large is benefited by the information made available through the advertisement. In a democratic economy free flow of commercial information is indispensable. There cannot he honest and economical marketing by the public at large without being educated by the information disseminated through advertisements. The economic system in a democracy would be handicapped without there being freedom of "commercial speech", in rotation to the publication and circulation of newspapers, this Court in Indian Express Newspaper's case MANU/SC/0340/1984 : [1986]159ITR856(SC), Sakal Paper's case MANU/SC/0090/1961 : [1962]3SCR842 and Bennett Coleman's case MANU/SC/0038/1972 : [1973]2SCR757. has authoritatively held that any restraint of curtailment of advertisement would affect the fundamental right under Article 19(1)(a) on the aspects of propagation, publication and circulation.*
>
> *23 Examined from another angle, the public at large has a right to receive the "commercial speech". Article 19(1)(a) not only guarantees freedom of speech and expression, it also protects the rights of an individual to listen, read and receive the said speech. So far as the economic needs of a citizen are concerned, their fulfilment has to be guided by the 'information disseminated through the advertisements. The protection of Article 19(1)(a) is available to the speaker as well as to the recipient of the speech. The recipient of "commercial speech" may be having much deeper interest in the advertisement than the businessman who is behind the publication. An advertisement giving information regarding a life saving drug may be of much more importance to general public than to the advertiser who may be having purely a trade consideration.*
>
> *24. We, therefore, hold that "commercial speech" is a part of the freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution.*

In ***Hindustan Times and Ors vs. State of U.P. 2003 1SCC 591,*** the Hon'ble Supreme Court has held ***:***

> *33. In Sakal Papers (P) Ltd. and Ors. v. Union of India MANU/SC/0090/1961 : [1962]3SCR842, this Court held as follows:-*
>
> > *The advertisement revenue of a newspaper is proportionate to its circulation. Thus the higher the circulation of a newspaper the larger would be its advertisement revenue. So if a newspaper with a high circulation were*

to raise its price its circulation would go down and this in turn would bring down also the advertisement revenue. That would force the newspaper either to close down or to raise its price. Raising the price further would affect the circulation still more and thus a (SIC) cycle would set in which would ultimately (SIC) the closure of the newspaper. If, on the other hand, the space for advertisement is reduced the earnings of a newspaper would go down and it would either have to run at a loss or close down or raise its price. The object of the Act in regulating the space for advertisements is stated to be to prevent 'unfair' competition. It is thus directed against circulation of a newspaper. When a law is intended to bring about this result there would be a direct interference with the right of freedom of speech and expression guaranteed under Article 19(1)(a)."

34. Advertisements in a newspaper have a direct nexus with its circulation.

In ***Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd. and ors. MANU/SC/0745/1995 : AIR1995SC2438*** *, it was held as under:-*

Adverting is considered to be the cornerstone of our economic system. Low prices for consumers are dependent upon mass production, mass production is dependent upon volume sales, and volume sales are dependent upon advertising. Apart from the lifeline of the free economy in a democratic country, advertising can be viewed as the lifeblood of free media, paying most of the costs and thus making the media widely available. The newspaper industry obtain 60%/80% of its revenue from advertising. Advertising pays a large portion of the costs of supplying the public with newspaper. For a democratic press the advertising 'subsidy' in crucial. Without advertising the resources available for expenditure on the 'news' would decline, which may lead to an erosion of quality and quantity. The cost of the 'news' to the public would increase, thereby restricting its 'democratic' availability."

36. It is not in dispute that advertisements play important roll in the matter of revenue of the newspapers.

This Court in ***Bennett Coleman & Co. and Ors. etc. v. Union of India and Ors. etc. MANU/SC/0038/1972 : [1973]2SCR757*** *observed as under:-*

The law which lays excessive and prohibitive burden which would restrict the circulation of a newspaper will be saved by Article 19(2). ***If the area of advertisement is restricted, price of paper goes up. If the price goes up circulation will go down. This was held in Sakal Papers case (supra) to be the direct consequence of curtailment of advertisement. The freedom of a newspaper to publish any number of pages or to circulate it to any number of persons has been held by this Court to be an integral part of the freedom of speech and expression. This freedom is violated by placing restraints***

upon something which is an essential part of that freedom. *A restraint on the number of pages, a restraint on circulation* ***and a restraint on advertisements would affect the fundamental rights under Article 19(1)(a) on the aspects of propagation, publication and circulation***.

Thus, any attempt to levy license fee and/or to earn revenue from auctioning of spectrum in relation to television broadcasting is not only impermissible and illegal as Broadcasters are not a "licensee" under Section 4 of the Indian Telegraph Act but also the same would fall foul of Article 19(1)(a) of the Constitution as detailed hereinabove.

3. **Need to Revisit the Definition of Broadcasting**

3.1 In this connection, we would like to invite the authority to revisit the definition of broadcasting itself which has been redefined by the FCC in USA. Traditionally only those companies were called broadcasters which had a radio station and a studio and produced as well as transmitted such content via spectrum obtained from FCC.

In a recent proclamation, FCC's announced its decision to eliminate the "Local Studio" rule on Oct 24th 2017. The FCC Chairman also proclaimed that **"Communities can interact with stations and access their files online"** which was a reference to obtaining such content online via files, download or streaming.

It showed how broadcasting has moved over the last 80 years, when the original rules were enacted. It was also an ominous pointer towards the very existence of "Television Stations" which have traditionally meant TV being transmitted **terrestrially** using **ATSC or DVB-T**, standards, themselves achieved after a painful process of "Digitalization". **It is also a recognition of the fact that "Content Aggregators" can operate in a much more free environment, and are not essentially broadcasters as understood in traditional sense**. Any content generator in the USA is not called a broadcasters if it confines its distribution to land based networks, and not use spectrum.

3.2 In this context it is also relevant to state that the only distinction which remained between the "Broadcasters" and the Internet Streaming sites was the production of original content. However this barrier was broken with Netflix producing the "House of Cards" which has been followed by similar original productions by dozens of such sites. Within a year the Netflix "original productions" soared to over 40 with the likes of "Daredevil", "Orange is the new Black", "Stranger things" etc. have been very successful matching or exceeding the ratings of the best television shows.

With "TV anywhere", there are no "Traditional Televisions" to deliver content. Nor are there any traditional "TV Broadcasters" whose content alone can be watched. Broadcasting is now just a cliché reverting to its old dictionary meaning of "blasting" content to everyone, which is what the streaming sites do. Regulatory authorities worldwide are aware of it.

The fact that these can be produced and streamed in 4K has meant that the traditional TV Networks whether on terrestrial or satellite delivery cannot match the experience online. The "OTT" services, as these are commonly called are equally accessible on large screen "Connected" TVs.

3.3 "Cord Cutting" a phenomenon which resulted, initially, merely as a compulsion to save Cable or DTH subscriptions quickly turned to "by choice". As data packages offered climb to 200 GB+ a month there was really no compulsive need to watch linear channels from "Broadcasters". It was estimated that in India alone, where there are over 600 million smartphones, over 50 million are being used for viewing online content. As the population moves to Gen Z, the legacy is set to become irrelevant in a time frame shorter than anyone has envisaged.

Traditional "TV stations" have been unable to pay their license fees and many are shutting down as content moves via social networking, individualized streaming and original content production and streaming sites. Regulators (Like FCC) are keen to auction the spectrum for 5G and LTE. Radio stations, not to be left behind are more easily available on the Web without being plagued by signal reception problems.

3.4 **TRAI/MIB is now engineering the same problems in India by creating a deliberate distinction between those who deliver content via a satellite network, as against that via Internet even though the content may be the same. It is unfathomable as to how the authority can ignore the fact that the level playing ground between the two segments is being vitiated by rigorous regulations on one segment while turning a blind eye to the other sector.**

The things may be viewed from another angle. These days the content/TV channel (which is nothing but an aggregation of content) is being distributed/delivered through optical fiber/cables also. The issue of Up-linking/Downlinking Guidelines notified by MIB and the need to obtain permission under these guidelines would come into picture if the content (TV channel) is delivered through a "satellite". A content aggregator instead of up-linking content (TV channel) to a satellite may deliver it to a distribution platform through optical fiber and distribution platform may in turn re-transmit and/or make available the same through fiber/wire/cable itself without involving satellite. In such a scenario the entire transaction would be outside the regulatory ambit as no uplinking/downlinking through a satellite is involved. Accordingly, in such circumstances there would be neither any occasion nor any question of imposing any revenue based (AGR) license fee. The same would be the position in respect of various local cable channels run by multi system operators and cable operators.

In our view the present consultation paper deserves to be withdrawn and be –reissued with the full spectrum of delivery mechanisms to the customers including the use of airwaves, satellite or terrestrial, Internet and the so called "closed networks" which have commenced full-fledged IPTV operations without following the accompanying regulations.

However, without prejudice to above, we are providing our comments, but as the questions are tailored and weighted against the current broadcasting service providers who have the misfortune of being on satellite, we do not believe that any set of answers will set the record straight on the structure of regulations which a progressive regime such as India should follow.

ISSUES FOR CONSULTATION

Definition of 'News and Current Affairs channels' and Non-'News and Current Affairs Channels'

4.1 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 TV channels" with justification.

There is no need to redefine News and Current Affairs TV channels and Non-News and Current Affairs TV channels. In fact as sometimes the General Entertainment Channels also contain some element of Current Affairs, it would be prudent to re-designate these two categories as "News TV channels" and "Non-News TV channels". The distinction is required to be maintained because of separate regulatory and up-linking/downlinking norms applicable to these two categories.

Net-worth of eligible companies

4.2 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.

There is no justification for increasing the networth of the companies. Since "News and Current Affairs" is a sensitive segment already a higher net worth criteria has been laid down for this segment (Rs. 20 crores) which in our view is adequate. In any case as pointed out by us hereinabove, content companies can produce any content and show it via internet based channels and associated unregulated media without having to fulfill any net worth criteria as is applicable to satellite based broadcasting entities. We are of the view that keeping unnecessary regulations only helps certain companies with high networth and discourages startups and companies with new talent.

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

As elaborated in brief in our reply to 4.2, there is already a higher net worth stipulation for News channels (Rs. 20 crores for first channel and Rs. 5 crores for additional TV channel) which in our opinion is adequate.

Processing fee for application

4.4 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.

4.4.1 Before we proceed to give our response to the above mentioned question, we would like to bring the following to the notice of the Authority:

(i) The present CP is ostensibly based on reference dated 21st August 2017 received from MIB. In the said reference the MIB has sought the recommendations of the

Authority on various issues which inter alia include the issue pertaining to "processing fee'.

(ii) It is pertinent to mention that without waiting for the desired recommendations from TRAI, MIB has gone ahead and revised the processing fee for various activities inter alia including change of satellite, channel name/logo, language of channel, category of channel, mode of transmission of channel, teleport and teleport location etc vide its order dated 13th December 2017. The processing fee now stands revised from Rs. 25,000/- to Rs. 1 lakh for national channels & Rs. 50,000/- for regional channels for each of the above mentioned activities.

(iii) In view of the above, the very purpose of seeking the TRAI recommendations on this issue stands defeated as acting unilaterally the MIB has already revised the processing fee and that too without any justification/basis, thereby creating an impression that present exercise is merely a "sham exercise" and MIB has already made up its mind on various issues highlighted in the CP irrespective of the response of stakeholders on the issues raised.

4.4.2 Be that as it may, we proceed to answer the question and state that most countries have now moved to charging processing fees based on only actual administrative charges incurred. In the present digital era we are of the view that MIB should introduce the online submission of various applications and also gradually move towards online approval itself.

All processes should be online and all approvals within the ministry should be via looking at the application particulars online at whichever levels necessary. To the extent possible the queries should also be sent online/through emails and so would be the replies thereto. Further, there should be a time limit of 48 hours to issue or deny any permission. **In Singapore, MDA issues permissions within 24 hours**.

4.4.3 We suggest that an appropriate administrative fees of say Rs. 10,000/- be charged for such processing for each channel payable online to cover the administrative costs. In any event, the present hike in processing fee is highly exorbitant and completely disproportionate to the administrative effort/cost involved therein. If there is a delay of more than 48 hours in issue or denial of any permission, such processing fees should be refunded.

Grant of license/ permission for Satellite TV Channels

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

4.5.1 The concept of auction arises when there is a limited resource and greater demand. Auctioning a resource is deemed to be a process where such resource is thereafter exhausted. However the same is not the case for satellite channels. There is unlimited capacity available on foreign and Indian satellites.

These channels operate on dozens of other country's satellites such as Thaicom, Asiasat, Intelsat Express, Yamal, and others which also operate in the C band or lower extended C-bands. These foreign satellites which have been licensed to be used by the ministry of I&B as well as the WPC with teleports in India.

In addition there are Indian satellites such as GSAT-10, GSAT-17 and many others which have a majority of the capacity vacant.

4.5.2 The TRAI itself has observed the following in para 2.29, 2.30, 2.31, 2.33, 2.34 as under:

2.29 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.

2.30 As stated earlier, satellite TV broadcasting also requires the radio spectrum (for uplink and downlink of signals) along with satellite transponder capacity for transmitting signals of TV channels from broadcaster to distributors of TV channels. Broadcasters use C band of spectrum for transmission of Satellite TV channels in India. The satellite beam covers the large footprint, say entire India, so it is normally not planned for repeat use in very small geographical areas. However, in case of satellite communication the same set of frequencies are reused to communicate with different satellites placed at different positions in the geosynchronous orbit and therefore, allocation of one set of frequencies for one satellite does not restrict the repeat allocation of same set of frequencies to another satellite positioned after certain minimum angular distance in the orbit. Further, as per existing policy guidelines, the spectrum used for uplinking of TV channel signals to a satellite, having footprint over India, can be of India or foreign country. Similarly, the satellite having footprint over India can be an Indian satellite or foreign satellite. However, for downlinking of signals of TV channels from a satellite in India, space spectrum will always be required. As per extant policy guidelines, presently for downlinking of signals of TV channels no specific frequency allocation is required from WPC. Further, it is also important to note here that use of a particular uplinking satellite spectrum and the corresponding satellite transponder capacity are tightly coupled with each other i.e. the satellite transponder capacity allocated to a company cannot be used without corresponding uplinking satellite spectrum, and similarly, a particular uplinking satellite spectrum, beamed towards 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. Therefore, for success of satellite TV broadcasting, it is important to ensure that right to use for a satellite transponder capacity and corresponding uplinking, downlinking satellite spectrum are allocated to the same entity.

2.31 Satellite used for beaming of signals of TV channels is placed at preidentified position in space called orbital position. The orbital positions are allocated to

various nations, seeking to place satellite in space. The allocation process is regulated by International Telecommunication Union (ITU) in coordination with member countries. The slot allocated to member countries may be used by private or public entities within jurisdiction of the member country. Once the required coordination has been completed and a satellite network is in operation, the satellite will be entered in the ITU Master Register. Such registration means that the satellite is internationally recognized and has a right to use the orbital slot and frequency assigned to it for the whole operational life of the satellite. Broadcasters of satellite TV channel hire transponder on a satellite for contractual period from the owner of that satellite. Leasing of a transponder capacity on a satellite simultaneously may fix the uplinking and downlinking frequencies also, and no one else may be able to use those frequencies. The allocation and use of satellite transponder capacity for delivering broadcasting services in India is regulated as per SATCOM policy notified in the year 1997 in conjunction with policy guidelines issued by MIB for uplinking/downlinking of satellite TV channels. Applicable policy guidelines permit use of Indian as well as foreign satellites, as per norms, guidelines and procedures for use of satellites notified by the Department of Space, for delivering broadcasting services in India. As stated earlier, policy guidelines for downlinking issued by MIB permits foreign channels also for downlinking in India.

2.33 Another argument could be, the grant of license for satellite TV channels through auction process may affect plurality of channels, and create entry barriers for new broadcasters. It may also lead to increase in market concentration and have adverse consequences in terms of price of final product, market behaviour etc.

2.34 In case of FM Radio broadcasting, the Central Government have the exclusive control over terrestrial spectrum, and accordingly it auctions the FM Radio channel permission bundled with 800 KHz of spectrum bandwidth to eligible bidders. FM Radio uses different technology and no satellite is required for such transmission and reception. However, in case of satellite TV broadcasting, broadcasters have to bear cost of leasing transponder capacity. Further, as discussed in Para 2.30, on case to case basis, the resources used i.e. uplinking and downlinking spectrum, and satellite transponder are fully or partially in the control of the Central Government. The Central Government can auction only those resources which are fully in its control.

4.5.3 As such auctioning of satellite channels would be quite absurd. Moreover so far as this dispensation is not applied to other equivalent modes of transmission such as IPTV and OTT TV, which are also identically placed as they have more than required resource, auctioning would be absurd. India needs to align globally going ahead and doing such acts as auctioning of channels, which is unheard of would make India a laughing stock apart from the scheme being impractical and non-feasible.

4.6 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.

4.6.1 It is not possible to auction the spectrum for the following reasons:

(i) All satellites, Indian and Foreign are coordinated with the ITU including the frequency spectrum to be used over India. When India gives coordination consent for a satellite and it is approved by the ITU, the satellite has an indefeasible right for using the same.

(ii) The Satellite usage from an earth station is a point to point uplink to a specific orbital location (say 78.5E for Intelsat -20) and constitutes a "vertical use" of the spectrum. There is no limitation for any other satellite earth station to use the same frequency for uplink to any other orbital location, including nearby locations in the orbit e.g. 81E, 83E and so on.

(iii) The ITU gives a satellite a coordinated status only after it satisfies all user administrations that the downlinks will not cause undue interference to any other coordinated satellite.

(iv) The Satellite Transponders belonging to various foreign satellites which are being permitted by the DoS can never be auctioned. There is not a single case anywhere in the world, where the transponders of a coordinated ITU satellite were auctioned. Hence there is no other way these transponders will ever be used, now or in future.

4.6.2 In the CP the TRAI itself has expressed the view that it may not be possible and technically feasible to auction individual legs of satellite TV broadcasting i.e. uplinking space spectrum, satellite transponder capacity, and downlinking space spectrum. The attention in this regard is invited to para 2.35 & 2.36 of the CP which reads as under:

2.35 *Auction of the individual leg of satellite TV broadcasting i.e. uplinking space spectrum, satellite transponder capacity, and downlinking space spectrum may not be technically feasible as these require coordinated use for successful broadcasting of TV channels. Further, the options of uplinking from outside India, and use of satellite transponder capacity on foreign satellites may restrict the plausible gains from auction of these resources. Therefore, alternate could be to auction a complete package for a satellite TV channels i.e. uplink from Indian soil to Indian satellite, and downlink in India. However, this will require restrictions on use of foreign satellites for satellite TV Broadcasting. Further, requirement of mandatory uplinking from India's soil to Indian satellite may cause scarcity of satellite transponders and restrict the growth of the broadcasting sector. Further, it is also pertinent to mention here that in a globalized economic world, dissemination of information across the borders, and plurality of views play an important role in socio-economic development.*

2.36 Further, the dictionary meaning of auction usually implies public sale of goods or property, where people make higher and higher bids (=offers of money) for each thing, until the thing is sold to the person who will pay most. Therefore, for auctioning a public resource like space spectrum used for uplinking and downlinking of signals of TV channels, it is essential that more than one bidder is there for the same spectrum. This may not be the case for satellite TV broadcasting as space spectrum used for uplinking and downlinking of signals of TV channels

may be tightly coupled with the corresponding satellite transponder, already leased by the applicant company or its teleport service provider independently.

4.7 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.

It is not feasible for reasons cited above.

4.8 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?

4.8.1 It is not possible to prohibit the use of foreign satellites for a number of reasons. First of all, the Indian satellites have a limited footprint which covers only India and few other countries. However requirements of Broadcasters are such that they would like to deliver channels in Southeast Asia Africa Middle East and Africa amongst other places covered by satellites. So long as the department of space satellites is unable to provide satellites with similar coverage there is no justification to keep any restriction on the use of foreign satellites. It needs to be recognized that Indian broadcasters need to be able to disseminate their signals around the globe for propagation of Indian views and culture and there are global audiences of over 200 million viewers across the globe. As such the use of foreign satellites is imperative. In addition, on the one hand the new telecom/Satcom policy is advocating open sky policy for telecom and broadcasting sector whereas on the other the MIB/DoS is envisaging the restriction on use of foreign satellites. Both are quite contradictory.

4.8.2 Foreign broadcasters also similarly broadcast their channels for a number of countries in South East Asia and Africa. They do not necessarily transmit each channel only for India. When they uplink to satellites they do so from a convenient location such as Hong Kong, Singapore or Dubai as the regulations in India are cumbersome, expansive and non-transparent.

Such transmissions are received in India as downlinks and need to be permitted.

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

4.9.1 We would like to suggest that in the present digital era the MIB should gradually move towards an online process with following steps:

(i) Registration of a company with CIN and Board of Directors and their DIN Nos.

(ii) Link with RoC should fill in the remaining details automatically.

(iii) There should be an option to select preapproved satellites which may be IS-20, AS-7,Insat 4A, GSAT-0, GSAT-15 and others similarly preapproved satellites.

(iv) There should be option to enter channel name, logo and trademark registration details.

(v) There should be an option to enter the language (including Multiple languages), format (HD or SD)

(v) Online payment of prescribed processing fee

(vi) The approval should be issued in 48 hours.

4.9.2 We have responded in detail to the CP issued by TRAI on Ease of Doing Business and in our response we have suggested various changes that are required in Up-linking and Downlinking Guidelines so as to streamline the procedure for granting permissions to ensure speedy growth and development of the sector. We are reproducing below the extracts of our response for ready reference:

QUOTE

"CHANGES REQUIRED IN THE UPLINKING AND DOWNLINKING GUIDELINES

APPOINTMENT OF DIRECTORS :

A. Existing provisions under the Guidelines:

Uplinking Guidelines

5.10. It will be obligatory on the part of the company to take prior permission from the Ministry of Information & Broadcasting before effecting any change in the CEO/ Board of Directors.

Downlinking Guidelines

1.6. The applicant company must provide names and details of all the Directors of the Company and key executives such as Chairperson, MD, COO, CEO, CTO, CFO and Head of Marketing, etc. to get their national security clearance.

....

5.11 The applicant company shall give intimation to Ministry of Information and Broadcasting regarding change in the directorship, key executives or foreign direct investment in the company, within 15 days of such a change taking place. It shall also obtain security clearance for such changes in its directors and key executives.

B. Challenges faced by the Industry:

(i) The abovementioned stipulation of prior permission as set out in Clause 5.10 of the Uplinking Guidelines is creating practical problems and difficulties. It may be appreciated that it is not possible to wait till the permission is granted by the Ministry of Information & Broadcasting ("**Ministry**") as the security clearance of the proposed Director takes considerable time, sometimes stretching up to even 9-12 months.

(ii) It is pertinent to note that as per The Companies Act, 2013 and the requirements of the listing arrangements with Stock Exchanges, a public listed company is required to appoint certain number of Directors including Independent Directors, nominees of Financial Institutions, Women Director(s) on the Board which are required to be

intimated/communicated to the Stock exchange as well by the listed companies. Further, there are mandatory changes in directorship prescribed under SEBI Regulations/Companies Act which are to be complied in a timely manner by the listed companies. Moreover, in case of listed entities lot of sensitivities are involved around Board appointments and/or any change therein as these appointments/changes impact the market price of the shares of the company.

(iii)The requirement of appointment of Independent Directors is there even in the case of an unlisted public company. In the event an Independent Director resigns, such a company would have to wait till approval of the Ministry is received prior to appointment of another Independent Director and unable to comply with the provisions of The Companies Act, 2013. In the case of a private company with two directors (minimum requirement under the Companies Act, 2013), if one of them resigns such company's ability to appoint another director to replace the resigning director is restrained until receipt of the approval from the Ministry for the new director.

(iv) The purpose of furnishing the details of Board of Directors and/or any change therein is to obtain security clearance. In fact, the intent of the Guidelines is to have only "intimation of change" so that the process of security clearance for such changes in Directors and Key Executives could be initiated by the Ministry. It is for this reason that the Downlinking Guidelines vide Clause 5.11 provide only for "intimation" rather than "prior approval/permission".

C. Suggestions:

To address the challenges as set out herein above, it is recommended that the following process be considered by the MIB with respect to security clearance of the Directors:

(i) An intimation to be sent by the Company to the Ministry along with details of the new Director appointed on the Board of the Company within seven (7) days from the date of appointment;

(ii) Unless anything to the contrary is received by the Company from the Ministry, the Director's appointment shall be deemed as approved by the Ministry;

(iii)Upon receipt of the security clearance from the Ministry of Home Affairs (MHA), the Ministry shall communicate the same to the Company;

(iv)The validity of security clearance of the newly appointed Director(s) should be co-terminus with the validity of the security clearance of the permission holder/Company;

(v) Such Director(s) may also be appointed as Director(s) on the Board of any other Group Company during the validity period without having to seek any fresh security clearance;

(vi) There shall not be any requirement for security clearance of the Independent Directors and/or the Key Executives of the Company, provided however an intimation may be filed by the company with the Ministry in this regard within seven (7) days from the date of the appointment of such Independent Director / Key Executive(s).

The aforesaid mechanism is akin to the practice already adopted by the Ministry on issuance of provisional licenses to the Multi System Operators (MSOs) to enable them to commence their operations in the Digital Addressable System (DAS).

The recommended process shall ensure that the existing Broadcasting Entities as also the Companies seeking new licenses/permission from the Ministry for Up-linking/Downlinking Television Channels are not put to any hardships relating to appointment of Directors and will further enable the objective of achieving Ease of Doing Business in India.

D. Proposed Amendments to the Uplinking & Downlinking Guidelines:

Considering the aforesaid submissions, the provisions of the Uplinking and Downlinking Guidelines relating to the appointment of Directors and Key Executives will need to be revised as below:

"The permission holder shall file an intimation with the Ministry of Information and Broadcasting informing the appointment of any new Director(s) (excluding Independent Directors) on the Board of the company within seven (7) days from the date of such appointment. The intimation should be submitted along with the detailed resume of the Director, duly notarized copy of his/her proof of residence and proof of identity (for e.g. passport copy, driving license, Aadhar Card, etc.) to obtain security clearance of such Director(s).

Unless anything to the contrary is notified by the Ministry, such Director(s) shall be deemed to be approved by the Ministry for appointment of such Director(s) on the Board of the permission holder.

The validity of the security clearance issued by the Ministry in favour of such Director(s) shall be co-terminus with the validity of the security clearance of the permission holder. Further, such Director(s) may also be appointed as Director(s) on the Board of any other Group Company of the permission holder during the validity of his/her security clearance without having to seek any separate security clearance from the Ministry/MHA.

Upon receipt/rejection of the security clearance of such Director(s) from the Ministry of Home Affairs (MHA), the Ministry shall communicate the same to the permission holder. In the event the security clearance of such Director(s) is rejected by the MHA, the permission holder and its Group Company(ies) shall remove such Director(s) from their respective Board within fifteen (15) days from the date of receipt of the rejection letter from the Ministry.

The permission holder shall give an intimation to Ministry regarding change in the Independent Directors, Key Executives (namely, Chairperson, Managing Director,

Chief Operating Officer, Chief Executive Officer, Chief Technical Officer and Chief Financial Officer) and/or foreign direct investment in the Company, within 15 days of such a change taking place."

3. SECURITY CLEARANCE OF THE COMPANIES

A. Existing provisions under the Guidelines:

Uplinking Guidelines

9.2 On the basis of information furnished in the application form, if the applicant is found eligible, its application will be sent for security clearance to the Ministry of Home Affairs and for clearance of satellite use to the Department of Space (wherever required).

*9.3 As soon as these clearances are received, the applicant would be asked to furnish a demand draft for an amount equal to the permission fee and Performance Bank Guarantee as applicable, payable at New Delhi, in favour of Pay & Accounts Officer, Ministry of Information & Broadcasting, Shastri Bhawan, New Delhi. Further, the applicant company in respect of Para 1, 2 or 3 above would be required to sign an agreement titled as "Grant of Permission Agreement", in the format "**Form 2**", which is being prescribed separately.*

Downlinking Guidelines

8.2 The applicant company shall also submit full details of each channel being/proposed to be downlinked along with all other documents as prescribed in the guidelines.

8.3 After scrutiny of the application if the applicant company is found eligible, the same will be sent for security clearance to the Ministry of Home Affairs. In the meanwhile, the Ministry of Information and Broadcasting will evaluate the suitability of the proposed channel for downlinking into India for public viewing.

8.4 In the event of the applicant company and the proposed channel being found suitable, the Ministry of Information and Broadcasting will register the channel and the applicant company to enter into a grant of permission agreement with the Ministry of Information and Broadcasting, Government of India.

B. Challenges faced by the Industry:

(i) At the outset, taking the 'Ease of Doing Business' initiative forward, the Government has liberalized the foreign investment in broadcasting business pursuant to the recent amendments in the FDI Policy whereby 100% foreign direct investment has been permitted under automatic route for Non-News channels.

(ii) The intent and objective for investment by the new companies in Broadcasting however collapses as the companies would be unable to commence their operations for

several months till uplink/downlink permission is granted, which is further dependent on Security Clearance being issued by the Ministry of Home Affairs (MHA).

(iii) Considering the aforesaid, the stipulation of Security Clearance of the applicant companies in the Guidelines is a needless impediment for a new company to commence operations/broadcast of Non-News channels.

C. Suggestions:

As per the Office Memorandum dated 25.06.2014, MIB has clarified that no fresh security clearance would be sought in case security cleared company (with security cleared directors) seeks permission for additional television channel(s) within the validity period of security clearance. We recommend that a similar and simpler process may be considered with respect to security clearance of new company(ies) seeking permission for uplinking/downlinking of television channel which would enable introduction of new entrants in the Broadcasting industry.

(i) Upon receipt of an Application from a Company, the same may be sent for security clearance to the Ministry of Home Affairs (MHA), except when such an application is filed by a Company which holds a valid uplink/downlink license issued by the Ministry.

(ii) Unless anything to the contrary is received by the Company from the Ministry, the Company should be issued the uplink/downlink permission;

(iii) Upon receipt of the security clearance from the MHA, the Ministry shall communicate the same to the Company.

(iv) The validity of security clearance of the Company should be co-terminus with the validity of the uplink/downlink permission granted by the Ministry during which the Company should be allowed to launch and/or acquire any number of additional TV channels without the requirement of any further security clearance.

(v) A time limit of 6-8 weeks be stipulated for MHA to submit a report on the security clearance sought by MIB.

D. Proposed Amendments to the Uplinking & Downlinking Guidelines:

While we appreciate that the aforesaid Office Memorandum dated 25.06.2014 has been published on the website of the Ministry, we would recommend that the provisions of the Uplinking and Downlinking Guidelines relating to the security clearance of the Companies be revised and substituted as below:

"On the basis of information furnished in the application form, if the applicant is found eligible, its application will be sent for security clearance to the Ministry of Home Affairs (MHA) and for clearance of satellite use to the Department of Space

(wherever required). It is hereby clarified that no fresh security clearance would be sought from MHA in case security cleared company *(with security cleared directors)* seeks permission for additional television channel(s) within the validity period of security clearance.

Unless anything to the contrary is notified by the Ministry, such Applicant shall be deemed to be security cleared and the Ministry will evaluate the suitability of the proposed channel for uplinking such television channel and/or downlinking of such channel into India for public viewing.

Upon receipt of the security clearance from the Ministry of Home Affairs (MHA), the Ministry shall communicate the same to the Applicant. The validity of the security clearance issued by the Ministry in favour of such Applicant shall be co-terminus with the validity of the uplink/downlink license issued by the Hon'ble Ministry.

In the event the security clearance of such Applicant is rejected by the MHA, such Applicant shall cease broadcast of the channel within fifteen (15) days from the date of receipt of the letter from the Ministry."

4. **CHANGE IN NAME OF THE CHANNEL AND/OR LOGO OF THE CHANNEL**

A. Existing Provisions

There are no provisions existing in the Uplinking and/or Downlinking Guidelines regarding change in name and/or logo of the permitted television channels. An approval is however sought before giving effect to any change to the approved name/logo of the channel as per the practice followed by the Industry.

Unlike the New Channel approval wherein the other Ministries are also involved viz. MHA for security clearance and Department of Revenue for agreement vetting etc., the approval on modification/change in the name and/or logo of the channel is to be granted by the Ministry of Information & Broadcasting only.

B. Challenges faced by the Industry:

(i) While the Ministry grants the approval for such modifications/changes to the name/logo, the approval erroneously mandates that the company would be liable to stop telecast of new logo forthwith if the same is disallowed by Trade Marks Authority of India.

(ii) It is our submission that the Office of the Registrar of Trademarks is not the final adjudicatory authority and such a mandate on non-use of a mark can only be effectuated by a final order of a Court of Law.

(iii) Moreover, if the name and/or logo conflicts with that of another channel, that is an operational issue for the two channels to sort out, just as in the case of two companies using similar names or selling products with similar names.

C. Suggestions:

Once a channel is given an uplink and/or downlink permission, we are of the view that there should not be a need for further approvals or permissions in case there is any modification/change to the name and/or logo change of such channel for operational/other reasons. Having said this, we do appreciate that other departments like DOS, DOT/WPC and NOCC may need to be informed on such change of name. In light of this background, we suggest the following:

(i) A prior intimation may be filed with the Ministry for any major change in name and/or logo of the permitted channel along with appropriate details/documents for records (with a copy to WPC / NOCC) at least 15 days before such change is to be implemented;

(ii) The entities should further be allowed to do minor variations to the font/logo of the permitted channel with an intimation to the Ministry for their records;

D. Proposed Amendments to the Uplinking & Downlinking Guidelines:

Considering the aforesaid submissions, new provisions need to be introduced in the Uplinking and Downlinking Guidelines relating to the change in name and/or logo of the channel as set out herein below:

"The permission holder shall carry the approved logo of the channel at all times on the top right corner of the screen. Upon receipt of the permission, the permission holder may carry out minor variations including without limitation to the font/color of the approved logo.

The permission holder shall give an intimation to Ministry of Information and Broadcasting regarding any major change in the name and/or logo of the Channel (with a copy to WPC / NOCC), at least 15 days prior to implementation of the same. The letter should be duly accompanied with the following documents:

- *Colored copy of the proposed name/logo to be used,*
- *The Trademark Application/Registration Certificate and/or the letter of authority for usage of the mark from the owner of such mark proposed to be used,*

- *Affidavit confirming that the new proposed channel name/logo to be used, is not similar or deceptively similar to any Trade Mark applied by any third party, or Trade Mark already registered in the name of any third party or of any channel name/logo already in use by any third party and in case of any court order is passed against the applicant broadcaster for restraining*

usage of such mark/ logo, the applicant broadcaster shall be liable to change/ modify the said logo.

5. TEMPORARY UPLINKING PERMISSION

A. Existing Provisions

Uplinking Guidelines

"6.4 All Foreign channels, permitted entertainment channels uplinked from India and companies/individuals not covered in 6.1, 6.2 and 6.3 as above will be required to seek temporary uplinking permission for using SNG/DSNG for any live coverage/footage collection and transmission on case to case basis."

For any live telecast of an event on a non-news and current affairs channel, a temporary uplinking permission is required to be obtained from the MIB. Along with the application for seeking such permission, the applicant broadcasting entity which downlinks the uplinked feed, is required to submit bandwidth arrangement as well as teleport permission. After the receipt of MIB permission, the applicant broadcasting entity is also required to obtain the permission from NOCC & WPC.

B. Challenges faced by the Industry:

(i) There are various live events which require live telecast (for e.g. music concerts, sports {for e.g. cricket/hockey/kabaddi}, award functions) so as to enable the Indian viewers to get the benefit of live telecast of events. Some of these events are also required to be mandatorily made available to Prasar Bharti under the provisions of the Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharti) Act, 2007. The rights to these events at times are procured only a few days before the scheduled live telecast of the event.

(ii) Invariably, the existing procedure creates significant procedural delays in being able to procure the temporary uplink permission in an efficient and time bound manner. Moreover, at times due to uncertainty on receipt of permissions in a timely manner constrains the monetization of the event as it creates uncertainty with advertisers (including for events of national importance to be aired on Prasar Bharti's terrestrial and DTH networks). At times the broadcasters are constrained to cancel the live telecast of the proposed event which results in monetary and reputational loss.

C. Suggestions:

(i) In lieu of the fact that the broadcasting entities are bound to comply with the provisions of the Programme Code and Advertising Code, hence any event/content proposed to be aired live on the channel would also need to follow the same principles, thus ensuring any content being aired is not in violation of the applicable laws.

(ii) Further, the teleport/DSNG Vans used for uplinking of the live events from India are anyways cleared by the Ministry for carrying out live uplink for news channels.

In the case of live uplinking of foreign events, the feed of such events is uplinked from foreign satellites which is downlinked to the permitted teleport at India before the same is telecast live on the channel, which also has to be in compliance of the Programme Code.

In light of the aforesaid, there should not be any requirement for prior approval for uplinking of the live events.

An intimation may however be filed with the Ministry along with appropriate details/documents for uplinking of the live event at least 7 days prior to the proposed airing of such live event, provided that in the case of events to which rights have been obtained within this 7 day period, as soon as is reasonably practicable.

Further clear-cut guidelines should be issued by the Ministry including the list of documents/enclosures required to be submitted by the entities.

D. Proposed Amendments to the Uplinking & Downlinking Guidelines:

Considering the aforesaid submissions, the provisions of the Uplinking and Downlinking Guidelines relating to the temporary/live uplinking by Non-News channels need to be revised and substituted as below:

"All Non-News & Current Affairs Channels uplinked from India and/or downlinked in India will be required to give an intimation to Ministry of Information and Broadcasting regarding the proposed event/footage to be aired LIVE on the channel at least 7 days prior to the scheduled live broadcast of the said event.

The letter should be duly accompanied with the following documents:

- *Intimation letter along with the Application Form duly filled in the format as set out in Exhibit ___;*
- *Letter from the entity which owns the Rights to the proposed event;*
- *Letter from the DSNG Van service provider along with details of the DSNG Van duly holding valid permission proposed to be used for the proposed event;*
- *Details of the Teleport from where the proposed event is to be uplinked along with WPC permission of the Teleport Service Provider.*

In case (a) the broadcast rights to an event/footage have been obtained by the permission holder 48 hours prior to the scheduled date of telecast of such event/footage; or (b) there are any change(s) to the modalities of an event//footage which has already been intimated to the Ministry of Information & Broadcasting, the permission holder shall file an intimation regarding such an event and/or change(s) (as the case may be) to the Ministry of Information & Broadcasting at

least 24 hours prior to the scheduled live broadcast of the said event/footage. In case the live broadcast of such event/footage is scheduled over the weekend (Saturday/Sunday), the permission holder shall file a letter regarding such an event and/or change(s) (as the case may be) to the Ministry of Information & Broadcasting within 24 hours after the live broadcast of the said event/footage."

UNQUOTE

Entry Fee and License fee

4.10 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.

4.10.1 As pointed out hereinabove in the preliminary submissions the very premise on which the AGR based license fee is sought to be suggested is flawed inasmuch as it is completely fallacious and legally incorrect to proceed with the assumption that the Broadcasters are licensee under Section 4 of the Indian Telegraph Act, 1885. The reference from MIB also proceeds on the similar presumption when it states in para 2 of its letter dated 21st August 2017 that "*whether it would be feasible to adopt the revenue sharing model as applicable in the DTH sector, for up-linking/downlinking channels/teleports"*. In this regard it may be pointed that while DTH operators are licensee under Section 4 of the Indian Telegraph Act and accordingly a revenue based license fee is applicable on them, the Broadcasters are not and accordingly there cannot be any question of levying revenue sharing license fee on Broadcasters under the shelter of Section 4 of Indian Telegraph Act as they are permission holder under Up-linking/Downlinking Guidelines which are merely executive instructions and are not under any statute.

4.10.2 The preliminary submissions hereinabove in para 1, 2 & 3 are reiterated and reaffirmed. The attention is also invited to para 2.32 of the CP wherein it has been observed by Authority that:

> 2.32 *Broadcast media is a powerful purveyor of ideas and values, and plays a pivotal* role *in not only providing entertainment but also disseminating information, nurturing and cultivating diverse opinions, and educating and empowering the people, which are must in a democratic society. Therefore, one argument could be that the government should adopt a framework that would, besides maximizing the revenue from the license activity, foster an environment which would induce plurality of views, promote local content and culture, bridge the rural urban information gap, and optimize the number of licenses granted in a given market.*

Accordingly any attempt to levy license fee based on revenue sharing would also fall foul of Article 19(1)(a) of the Constitution and would be violative of Fundamental Rights pertaining to Freedom of Speech and Expression.

4.10.3 Without prejudice we may also state that there cannot be any license fee on Broadcasters as no such fees is applicable to OTT channels which provide a means to deliver content on an identical basis to customers. We recommend levy of only an appropriate administrative

fees based on online entry of all particulars and online grant of permission and that too which is sufficient and adequate to cover the administrative cost based on the efforts involved in processing the application.

4.10.4 Without prejudice to above, it is stated that AGR based license fee is applicable in telecom sector. It is pertinent to point out that the same is mired in lot of controversies and disputes and the matters are pending in High Courts/Supreme Court. Despite the expiration of about 15 years since this AGR based license fee was introduced in telecom sector, the issue is yet to attain finality. The same is the case with DTH sector wherein lot of litigations have taken place on this and the issue what constitutes AGR is the subject matter of various writ petitions pending in different High Courts. The telecom operators are demanding the rationalization and review of existing AGR based license fee regime as well as that of the reserve fee for spectrum auctioning which has caused considerable losses and debt burden on them and thereby various operators in this sector have been forced to merge/consolidate. It is a well-known fact that telecom sector at present is facing a very big challenge of survival because of what the telecom operators perceive as irrational and onerous levies in the form of AGR based license fee and exorbitant spectrum fee/charges. We are afraid that if no lesson is learnt from telecom experience and attempts are made to introduce revenue based license fee regime and auctioning of satellite spectrum etc in the Broadcasting sector, it would meet the same fate and in the process the growth & development of the sector would be a casualty.

4.11 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.

No other license fees or uplink/downlink fees is proposed.

4.12 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?

Not applicable. We do not propose any revenue share or any other mechanism which relates to content which a channel garners by virtue of its IPR and content values or efforts in advertising. These are already covered under the GST.

The very purpose of levy of GST is to eliminate multiple taxes and levies. The government can impose only a single tax/levy on the revenue earned which is the GST and there can be no other tax. Accordingly, the proposal to impose any AGR based levy is against the very spirit of ease of doing business.

4.13 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)?

Not applicable.

4.14 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?

We do not propose any up-linking or downlinking fees. As the OTT services are not subject to any such levies or other charges and delivers the channels in an identical manner, we propose that the uplink channels should be treated identically and there should be no uplink or downlink fees.

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

We do not propose any up-linking or downlinking fees. As the OTT services are not subject to any such levies or other charges and delivers the channels in an identical manner we propose that the uplink channels should be treated identically and there should be no uplink or downlink fees.

As such the question of periodicity is not relevant to our response.

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

We do not propose any up-linking or downlinking fees and/or any entry fee as it would amount to creating unnecessary entry barriers. As the OTT services are not subject to any such levies or other charges and delivers the channels in an identical manner we propose that the uplink channels should be treated identically and there should be no uplink or downlink fees.

As such the question of periodicity is not relevant to our response.

Encryption of TV channels

4.17 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 in brief.

The encryption of TV channels in satellite up-linking is an attribute used by broadcasters to protect their content IPRs and limit it to only those users who have subscribed to the same. Encryption enables the same. Encryption involves additional expenditure and expenses for distribution of decoders, STBs, Call centers and smart cards which broadcasters incur in order to protect their content.

It is tool at the service of broadcasters to be used at their discretion. It is not a tool for bureaucracy to impose restrictions because it is used for a few channels and not for others.

There are no instances of any country in the world which would force broadcasters to label their channel as FTA or Encrypted and force them to incur capital expenditure on encryption system and decoders as a measure of regulation.

The ministry has no means to prohibit FTA channels being broadcast from foreign soils either. Foreign broadcasters may transmit their channels as FTA or encrypted as they deem fit from time to time. There are over 500 such FTA channels transmitted into India.

As such shackling Indian broadcasters only will serve no purpose.

The Authority and the MIB should also at all times equate the services to that delivered over the OTT or IPTV or Internet as the case may be and see that identical provisions apply to both.

Operationalization of TV channel

4.18 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.

As we understand today, the term is used to describe the time when a broadcaster starts to uplink its channel after obtaining the MIB permission for uplink and the WPC license.

We do not see any reason to further define or refine the same.

Insofar as "downlinking" is concerned, the operationalization would mean the day when it (channel) is downlinked and distribution is commenced by a platform operator such as DTH, MSO, HITS etc.

4.19 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?

The Authority and the MIB are perhaps aware that most of the delays which happen are because of delays by bureaucracy including the MIB and the WPC. In Feb 2017, the WPC had closed its window for endorsing any channels on any satellite whether foreign or Indian without assigning any reason. The Window remained closed till October 2017 and was only opened after a huge hue and cry by the Industry and complains at various levels. Even at that time it was opened for only PSUs and Govt. entities which was patently discriminatory and illegal.

The non-endorsement of contracted transponders not only caused huge delays but was also a violation of freedom of Press. Media and Radio, which is guaranteed under the constitution. In the absence of endorsement of satellite capacity, the broadcasters who planned to launch channels, radio stations, and satellite based news delivery were denied opportunity to launch such a channel and convey their points of view via broadcast medium. This violates Articles 14 and 19 of the constitution where only the older established broadcasters can transmit the channels (already endorsed) but no new channels can be launched where a satellite endorsement is essential. It is now more than 7 months that the freedom of Media has been muzzled.

While in the spirit of Make in India and Ease of Doing Business, the Hon. Prime Minister has encouraged the Deptt of Space to launch new satellites at huge cost, the transponders on these satellites where allocated to private users remained unutilized. The Deptt of Telecom and the WPC by their actions have nullified the growth of media and its multiplier

effect on the Indian economy with millions of jobs at stake merely by misinterpreting the Satellite spectrum.

It was pointed out by the IBF and individual broadcasters that they were further aggrieved by the fact that the WPC had chosen to open up spectrum endorsements for Govt. and PSUs but has kept the "Window" closed for other users which includes the entire TV broadcasting sector amongst others. As a result, many of the uplinks were forced to operate from foreign countries due to non-endorsement of satellite capacities which have already received approval of the Ministry of Information & Broadcasting and the Dept. of Space. This definitely goes against the spirit of the ease of doing business in the country.

As such the question of delay in operationalization of channel needs to be addressed to the Govt departments and appropriate remedies instituted so that they desist from such activities in future.

As such we do not suggest any time period as a limit for operationalization of any channel. In any event the present limit is very short because of various formalities involved and WPC issues and the same needs to be revised to at least three years.

Transfer of License

4.20 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 in brief your responses with justification.

4.20.1 The existing provisions for transfer of license/ permission for a TV channel under uplinking guidelines are very onerous. Many broadcasters who had acquired other network channels have been unable to bring them into their fold for many years due to the processes being held up for various reasons including security clearances of Directors.

The Authority should examine these seriously and provide timelines where if a channel which was already operational and uplinking is acquired by another network, the transfer once approved by the NCLT or the CCI as appropriate should fine MIB approval in a fixed time frame of 1-2 weeks.

4.20.2 In this context we would also like to point out that in our response to the CP relating to Ease of Doing Business we have given comprehensive comments regarding the changes required in Up-linking and Downlinking Guidelines in respect of the transfer of permissions. An extract of our response is once again reproduced below for ready reference:

QUOTE

"6. TRANSFER OF PERMISSION OF TELEVISION CHANNELS

A. Existing Provisions

Uplinking Guidelines:

11.1. The permission holder shall not transfer the permission without prior approval of the Ministry of Information and Broadcasting. On a written request from the permission holder, the Ministry shall allow transfer of permission in case of merger/demerger/ amalgamation, or from one Group Company to another provided that such transfer is in accordance with the provisions of the Companies Act, and further subject to the fulfillment of following conditions:

(i) The new entities should be eligible as per the eligibility criteria including the net worth and should be security cleared.

(ii) The new entities should undertake to comply with all the terms and conditions of permission granted.

<u>Downlinking Guidelines</u>

10.1. The permission holder shall not transfer the permission without prior approval of the Ministry of Information and Broadcasting.

10.2. In case of transfer of permission of a Satellite Television Channel uplinked from India from one company to another as per the provisions of Uplinking Guidelines, the registration of the channel under the downlinking Guidelines shall also stand transferred to the new company.

10.3. In case of companies permitted to downlink channels from other countries, on a written request from the permission holder, the Ministry shall allow transfer of permission in case of merger/demerger/ amalgamation, or from one Group Company to another provided that such transfer is in accordance with the provisions of the Companies Act, and further subject to the fulfillment of following conditions:

(i) The new entities should be eligible as per the eligibility criteria including the net worth and should be security cleared.

(ii) The new entities should undertake to comply with all the terms and conditions of permission granted.

B. Challenges faced by the Industry:

(i) The present era is that of consolidation and conversion. Transfer of business or undertaking through slump sale, business transfer agreements, etc. are recognized methods of transfer in accordance with applicable law.

(ii) The existing provisions do not recognize such methods of transfer. This Policy is strongly linked to 'Ease of Doing Business'. Therefore, all the relevant modes of business transfer as provided under the Companies Law need to be recognized under the Policy.

(iii) Further, it should be clarified that no prior approval is required in case of merger/demerger/amalgamation/other accepted methods of transfer of business or undertaking.

(iv) In case of merger/demerger/amalgamation, the permission should be transferred in favour of the Transferee Company so long as it is approved by the National Company Law Tribunal. A copy of the order of NCLT should be filed with the Ministry along with relevant documents.

(v) In case of transfer of business/undertaking through slump sale, business transfer agreements etc, the permission should be transferred in favour of the Transferee Company upon the parties filing the said agreement/arrangement with the Ministry.

(vii) In case the transfer within the Group Companies. Since, the expression "Group Company" has not been defined in the Guidelines, we have a proposed a definition for the same.

C. Proposed Amendments to the Uplinking & Downlinking Guidelines:

(i) Considering the aforesaid submissions, the provisions of the Uplinking and Downlinking Guidelines relating to the transfer of permission need to be revised and substituted as below:

"Transfer of Permission of Television Channels
On a written request from the permission holder, the Ministry shall allow transfer of permission:

- *in case of merger/demerger/ amalgamation which has been duly approved by the Court/Tribunal in accordance with the provisions of the Companies Act, 2013 provided that the permission holder files a copy of the order of the Court/Tribunal sanctioning the said scheme;*
- *in case of transfer of business or undertaking such as through slump sale, business transfer agreements or by such other means in accordance with the provisions of the applicable law, provided that the permission holder file a copy of the agreement/arrangement executed between the permission holder and the transferee company;*
- *in case of transfer within Group Company provided that the permission holder files an affidavit undertaking stating that the transfer is within the Group Companies.*

"Group Company" in relation to another company means a company, <u>which is under the same management and/or promoters or</u> in which that other company has significant influence directly or indirectly and <u>shall also</u> include an associate company, subsidiary company, holding company or a joint venture company.
Explanation: For the purpose of this clause significant influence means control of at least <u>20%</u> of total share capital or of business decision by way of agreement or otherwise

It is clarified that the transfer of permissions is subject to the fulfillment of following conditions:

- *The new entities should be eligible as per the eligibility criteria including the net worth and should be security cleared.*
- *The new entities should undertake to comply with all the terms and conditions of permission granted.*

Unless anything to the contrary is notified by the Ministry, such new entity/acquiring company shall be deemed to be security cleared by the Ministry. The validity of the security clearance issued by the Ministry in favour of such Company shall be co-terminus with the validity of the uplink/downlink license issued by the Hon'ble Ministry.

For avoidance of any doubt, it is hereby clarified that in the event the new entity/acquiring company is an existing broadcasting entity holding a valid uplink and/or downlink permission issued by the Ministry, such an entity shall be deemed to be security cleared so far the transfer application has been filed by such company within its validity of the security clearance."

UNQUOTE

4.20.3 We would also like to point out that despite there being an existing provision in the up-linking/downlinking guidelines regarding the transfer of permission in case of amalgamation, merger, de-merger etc. the entities operating in the Broadcasting & Content Distribution Sector are facing lot of problems. The amalgamation, merger, de-merger etc. take place through Courts/NCLT. The Scheme of Arrangement is filed with the NCLT as per the provisions of the Companies Act. After satisfying itself about the completion of all formalities as prescribed under Companies Act and also after giving notice to MIB and considering its observations, if any, the approval for amalgamation, merger, de-merger etc is granted by NCLT. After receipt of NCLT order, the concerned entity(s) apply for formal approval of MIB which is merely a procedural formality.

However, it is quite surprising as well as painful to point out that even after receipt of NCLT approval/order, the MIB has been sending the Scheme of Arrangement and other documents/papers to their empaneled Chartered Accountant firms for their opinion in the matter. The CA firms are raising queries and questions on the issues which have already been considered & examined by NCLT. This not only causes further delay in granting the formal approval but raising of such queries by CA firms are directly in teeth with the order/approval granted by NCLT and in fact amounts to overreaching the orders of competent Court/NCLT especially when these orders/approvals have been given by NCLT/competent Courts after giving due notice to MIB and after considering their observations/objections, if any. This procedure needs to be discontinued forthwith.

4.21 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.

We do not suggest any lock-in period.

4.22 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?

We do not suggest any lock-in period.

4.23 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.

As elaborated by us in detail, we have not recommended for any limit on the number of licenses or any limit on the number of channels which could be granted uplink and downlink approvals.

The issue of trading of permission crops up as the grant of permissions by MIB to new channels at present is an extremely onerous process and generally takes about 18-20 months from the date of filing the application. Thereafter, the issue of WPC crops up as the window for teleport and satellite endorsement is opened only for a limited period of time. Once the entire procedure is streamlined as detailed hereinabove and the permissions are issued in a time bound manner, the requirement of trading, purchase or transfer of permissions would automatically disappear.

In such an environment the trading or hawking of licenses would not happen, as there would be no advantage to be gained out of it. The trading or hawking happens today as the entire process of obtaining permission is quite cumbersome and time consuming with WPC closing its window as an additional obstacle.

This leads to buying licenses and launch of channels as platform services/ channels.

Meaning of a teleport

4.24 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.

The present working definition of a Teleport is a Facility including an earth station from where the channels of a broadcaster are uplinked to a satellite. The process of uplinking may involve certain processes such as signal processing, compression, satellite transmission, monitoring etc. Moreover such list of processes may change from time to time.

We believe that the above definition suffices for the present.

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

4.25 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.

The Government should encourage setting up of Teleports as well as make India as the Uplinking Hub of Asia replacing Thailand, Singapore or Hong Kong. The Authority may be aware that obtaining licenses and permissions in these countries involves no hassles, paperwork or exorbitant license fees or delayed spectrum approvals. These countries also do not levy infructuous charges for NOCC, monitoring etc. which are sovereign functions which the Govt. may do at its discretion and its own cost.

We suggest a processing fees of only Rs 10,000/- be charged for teleport approvals and process should be online. The time of grant of such licenses should not exceed 15 working days.

4.26 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.

We do not recommend any entry fee and/or any License fees so that India emerges as a competitive destination in teleports.

The Authority may note that the Teleports are a part of the transmission chain and do not need any special dissemination or charges. As an example, most of the channels uplinked from Bangladesh have their own teleports in the form of small earth stations even for single channels.

The Hong Kong Telecom Authority while consulting on the issue of Spectrum charges for Hong Kong had noted as follows:

> "*The frequency bands covered in the current exercise are limited to those allocated for fixed links, Electronic News Gathering / Outside Broadcasting ("ENG/OB") links and satellite links. These bands were not auctioned or traded, thus there is no reference point about their value in the market; the value of them may share only a very small portion of a companies' value, and such portions among different companies are expected to differ".*
>
> *The Administration (HKTA) concludes that spectrum usage fees (SUF) for spectrum assigned administratively should be applicable to frequency bands meeting the following criteria –*
>
> > *(a) the frequency band is currently congested, the threshold of which being at least 75% occupied; and*
> >
> > *(b) the demand for using the frequency band associated with its current use is expected to grow in the next three to five years, or a high potential demand for the frequency band for alternative use(s) is expected.*
>
> The following bands were identified by the HKTA as congested bands:
>
> *Note: The bands identified as congested include –*
>
> *6440 – 7100 MHz*
>
> *7421 – 7900 MHz*
>
> *7900 – 8000 MHz*

8275 – 8500 MHz

10700 – 11700 MHz

These bands do not include the C-band uplinks used for TV uplinking, and no fees is as such leviable for spectrum use.

4.27 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.

Please see our response above.

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

We suggest that license fees should only be charged for spectrum which is auctioned. Satellite spectrum is not limited to use by any specific user on a basis which excludes the other user from using the same on any other satellite. Moreover such spectrum may have been coordinated with ITU by the satellite owner and as such charing any fee for spectrum use if not appropriate as the mere grant of a spectrum does not enable a user to uplink if the satellite user denies the use of its satellite.

On the other hand, broadcasters have the choice, especially for broadcasts meant for multiple countries to go to a foreign soil and carry out broadcasting/ uplinking from foreign soil without paying such spectrum charges in India.

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

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

Please see our responses above.

Restriction on the number of teleports

4.31 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.

Most countries are encouraging channels to set up their own teleports (Bangladesh). It is to the benefit of the nation that a large number of teleports are available for ease of doing business and competitiveness.

If Teleports are limited, they will drive up the up-linking charges due to monopoly/ oligopoly. This will be counter-productive.

4.32 Whether any restriction on the number of teleports will adversely affect the availability or rates of up-linking facilities for TV channels in India?

Yes, the up-linking rates will rise. The MIB and DCIT should have no difficulties in allowing teleports freely so that channel operators can make their own choice to uplink from any teleport or operate their own teleport.

Location of teleports

4.33 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.

Kindly see our responses above, we advocate no restrictions.

Optimum use of existing teleport infrastructure

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

We suggest complete freedom to channels and teleports to operate from any part of India and for any set of channels it deems appropriate and dictated by commercial considerations. By reasons of security, if any region or place is excluded, it would be fair but all other places should be open without any restrictions.

But we are no longer in a permit and license raj, and let commercial reasons dictate as to who should set up the infrastructure of a teleport and how it should be optimally utilized.

Unauthorised Uplink by Teleport operator

4.35 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.

The operation of a Teleport is governed by the Indian Telegraph Act. They can only uplink channels in assigned frequency bands and to specific satellites as approved. Any violation is a violation of the ITA and should be dealt with as per its provisions.

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