

URGENT

No. 1403/36/2017-TV (I) / 50
Government of India
MINISTRY OF INFORMATION & BROADCASTING
'A' wing, Shastri Bhawan,
New Delhi-110 001

Dated: 16.01.2019
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OFFICE MEMORANDUM

Sub : TRAI (Telecom Regulatory Authority of India) Recommendations on 'Issues Relating to Uplinking and Downlinking of TV Channels in India' dated 25.06.2018-Reg.

The undersigned is directed to refer to TRAI recommendations on "Issues Relating to Uplinking and Downlinking of TV Channels in India" dated 25.06.2018 and to state that the recommendations have been examined in this Ministry.

2. In this regard it is also stated that Ministry is in agreement with some of the recommendations whereas some require to be taken up with concerned stakeholders. However, in respect of some recommendations Ministry is not in agreement with. A comprehensive chart with comments of this Ministry and action on each of the recommendations has been prepared and annexed herewith.

3. Therefore as per clause 11 of the TRAI Act 1997, TRAI is requested to reconsider their recommendations vis-à-vis views of this Ministry especially in respect of those with which Ministry is not in full agreement:


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To

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TRAI RECOMMENDATIONS ON "ISSUES RELATING TO UP-LINKING AND DOWNLINKING OF TV CHANNELS IN INDIA"

A. Issues relating to satellite TV channels

Definition of "News and Current Affairs Channels" and "Non-News and Current Affairs Channels"

4.1 The Authority recommends that the existing provisions of meaning of "News and Current Affairs TV channels", and "Non-News and Current Affairs TV channels" mentioned in the up-linking and downlinking guidelines dated 05.12.2011 should be converted into definitions. Accordingly, the Authority recommends following definitions:

(a) "News and Current Affairs TV channels": A channel which has any element of "News & Current Affairs" in its programme content,

(b) "Non News and Current Affairs TV channels": A channel which does not have any element of „News & Current Affairs" in its programme content. [Refer Para 2.11]

To merely state that "News and Current Affairs TV channel" is one which has any element of "News and Current Affairs", is stating the obvious. In December 2017 when MIB imposed processing fee of Rs. 50,000/ 1,00,000 for temporary uplinking by non-news channels, representations were received stating that there is no definition of "News" in the guidelines. There are instances of channels in NCA category that are showing religious content

Hence, a simple definition of news can be provided. Merriam-Webster Dictionary defines news as "a report of recent events". Hence, any channel that primarily broadcasts news i.e. reports on recent events in the course of its daily broadcast can be classified as a "News and Current Affairs Channel". All other channels will be categorised as "Non-News and Current Affairs".

Net-worth of eligible companies

4.2 The Authority recommends that following existing amounts of minimum net-worth of an applicant company seeking permissions for uplinking and downlinking of TV channels, as prescribed in the existing uplinking and downlinking guidelines dated 05.12.2011, should be continued: **[Refer Para 2.23]**

SL.NO.	PERMISSION	NET-WORTH
1.	For uplinking of non-news & current affairs TV channel	For 1st channel: Rs. 5 cr ; For each additional channel : Rs. 2.5 cr
2.	For uplinking of news & current affairs channel	For 1st channel: Rs. 20 cr. For each additional channel : Rs. 5 cr.
3.	For downlinking only	For 1st

TRAI has recommended to continue with the network requirements which was fixed in 2011. Even after 7 years, TRAI has not recommended any change.

In para 2.19 (Page 10 of the recommendation), TRAI says that television broadcasting services is a capital intensive business requiring investment in-

- Programme production
- Uplinking and downlinking of TV channel
- Transponder charges
- Spectrum usage charges
- Network establishment
- Marketing and distribution cost
- Establishment charges
- continuous technology upgradation

News channels have a higher cost as news gathering is expensive. It also agrees (Para 2.20) that non-serious players should be discouraged from entering media business.

The objective of keeping a minimum net worth as an entry barrier for an entity is that being a licensed activity, only those who can afford to make adequate investment should be allowed to enter. TV channels should not be surreptitiously run by other persons from behind the scene. As a free and independent news media is an integral part of a vibrant democracy, it is imperative that the news channels have adequate financial strength to run their operations

of channel in India	channel: Rs. 5 cr. For each additional channel : Rs. 2.5 cr.	independently. Hence, there should be rational basis for arriving at an entry level networth for television business. No such exercise has been done by TRAI. They have only issued a consultation paper followed by open house discussion and have subsequently issued the recommendation. Therefore, this recommendation is referred back to TRAI to re-assess the requirement of networth separately for news and non-news channels.
4.3 The Authority recommends that: a) A self-declaration, in a prescribed format, stating that the applicant company meets net-worth requirements, as specified under the policy guidelines, should be taken from the applicant company at the time of submitting the application. This declaration should be supported with duly audited financial statements of the company. b) The requirement of examining net worth, ownership details, shareholding pattern and its effect on net worth etc., by the empaneled CA should be done away with. (Refer Para 2.25)		The purpose of prescribing a minimum net-worth for companies to run news or non-news channels is to ensure that the entity is financially strong enough to be able to express its views/news/creative content free from the external pressure. Therefore, a correct assessment of the net-worth of the entity is necessary. MIB now relies on the latest declaration made by the entity in the Ministry of Corporate Affairs' MCA 21 Portal as per the provisions of the Companies Act. Further, for news channels, as per extant guidelines, MIB needs to ensure that 51 % single Indian ownership is maintained. It is also necessary to ensure that FDI ownership limits are followed. Further companies have given incorrect/inflated information about their net-

	<p>worth.</p> <p>Therefore, expert examination by Chartered Accountant cannot be done away with, especially for news channels. Hence, this recommendation is not acceptable.</p>
<u>Processing fee for application</u>	
<p>4.4 The Authority recommends that existing amount of onetime non-refundable processing fee of Rs. 10,000/-, levied from the applicant company along with each application for seeking permission under existing uplinking guidelines and downlinking guidelines dated 05.12.2011, should be continued. [Refer Para 2.29]</p>	<p>MIB agrees with TRAI.</p>
<u>Grant of license/ permission for Satellite TV Channels [Refer Para 2.38]</u>	
<p>4.5 The Authority recommends that:</p> <p>i) The existing administrative system for grant of permissions for uplinking and downlinking of TV channels should be continued as auction process for grant of permissions for uplinking and downlinking of TV channels is not feasible.</p>	<p>(i) MIB agrees that there should be no auction for permission for uplinking/downlinking of TV channels.</p>

<p>(ii) The process of granting permission for uplinking of satellite TV channels from India should be streamlined by removing redundant processes, re-engineer necessary processes, and making them efficient using ICT.</p>	<p>(ii) Agreed in principle.</p>
<p>iii) The process of granting permission and registration for downlinking of satellite TV channels should be streamlined in such a way that:</p> <p>(a) the channels having permission for uplinking from India require registration only; and the channels being uplinked from outside India require permission as well as registration.</p> <p>(b) the channels being uplinked from outside India require permission as well as registration.</p>	<p>(iii): As per Uplinking and Downlinking Guidelines of December, 2011, permission is granted for both Uplinking and Downlinking simultaneously, hence making the downlinking permission coterminous with the Uplinking permission at the time of permissions.</p> <p>The granting of annual permission has been done away with and submission of annual fee is deemed as annual renewal of permission.</p> <p>For the channels which are being uplinked from outside India, permission as well as registration are already being granted by this Ministry.</p> <p>All these measures, as already adopted by this Ministry, obviate the need for separate registration as proposed by the Authority.</p>
<p>iv) Initially, MHA should take the decision on security clearance to an applicant company and its key personnel within a period of 60 days. Also, in case of any change in key personnel, MHA should take the decision within a period of 60 days.</p>	<p>(iv) to (vii) MIB agrees with this recommendation in principle. However, security clearances are issued by MHA as per their own guidelines issued vide OM No. 20034/290/2013-CIS.I(Vol-III) dated 25.06.2018. (As regards providing security clearance in 60 days, CoS in its meeting held on 14.7.2014 has granted 12 weeks time to Ministry of Home Affairs for granting/denying security clearance to</p>

(v) Validity period of security clearance granted to a company should be equal to the permission/ license period granted to that company for broadcasting services. The Government in any case reserve the right to withdraw security clearance at any point of time.	proposal. However, Ministry of Home Affairs is taking various steps to ensure that, in practice, the process gets completed within 60 days on an average.)
(vi) The security clearance granted to the key personnel of a company should remain valid for 10 years.	
(vii) In cases where an existing broadcasting company, having valid security clearance, is seeking permissions for additional satellite TV channels, the process of seeking fresh security clearance from MHA should be done away with.	
(viii) DoS should take the decision on clearance for satellite use for broadcasting services within a period of 60 days.	(viii) DoS gives clearance as per their own policy.
(ix) In cases where a broadcasting company is seeking permissions for uplinking of new satellite TV channels to the already cleared satellites having vacant capacity, the process of seeking fresh clearance from DoS should be done away with.	(ix) This matter has already been referred to DoS.
(x) WPC should allocate the spectrum for	(x) At present, spectrum is being allotted by Department of

commercial satellite usage as and when there is a demand for the same from service providers in a time bound manner.	Space administratively to satellite based services along with other terrestrial services on interim basis through administrative orders issued periodically for a period of three months at a time. A proposal for policy decision on allotment of spectrum for all types of services including satellite based services is under consideration within Department of Space.
(xi) The issue of Open-sky Policy for Ku Band Frequencies may be taken up by MIB in INSAT Coordination Committee (ICC) meeting and the Open-sky Policy should be adopted. Simplification of processing of application [Refer Para 2.42]	(xi) The matter is being taken up with DoS. However, TRAI has intimated that they are not required to intimate any proceedings of Department of Space to MIB.
<u>Simplification of processing of applications</u>	
<p>4.6 The Authority recommends that:</p> <p>i) MIB should setup an integrated online portal for broadcasters, teleport operators, and distributors of TV channels (DTH operators/HITS operators/MSOs) which should facilitate the filing of applications, processing in MIB, DoS and DoT, tracking of status of applications, payments, frequency allocations, endorsements, permissions, licenses, registrations, and renewals with common database. Preferably, this portal</p>	<p>(i) & (ii) This Ministry has already launched 'Broadcast Seva' portal (www.broadcastseva.gov.in) for broadcasting services purpose. The portal is being further refined on continuous basis keeping in view the various requirements of the Broadcasters and other users as well as that of this Ministry. User-ID and Password has been provided to TRAI for viewing BroadcastSeva Portal. The Broadcastseva portal is coordinated with Bharatkosh and e-Office.</p>

should be integrated with other e- Governance systems like Bharatkosh portal, e-Office application etc. Access to the portal should be provided to the Authority also for information and analysis.

(ii) The integrated online portal should be developed as early as possible, preferably within a period of 1 year from the date of acceptance of these recommendations. Bharatkosh is an online payment gateway for payment of fee etc. to Government of India .

(iii) In cases of permissions/ licenses where security clearance of the company from MHA or satellite clearance from DoS or both are required, normally the decision to grant permission should be taken by MIB in consultation with MHA and DoS within 3 Months from the date of application.	(iii), (iv), (v) & (vi) MIB agrees with these recommendations in principle and these recommendations will be forwarded to the concerned Ministries for consideration. WPC has suggested to accept recommendations in respect of WOL including allocation of frequency within 60 days.
(iv) In case of permissions, where security and satellite clearances are not required, normally the decision to grant permission should be taken by MIB within 45 Days from the date of application.	
(v) WPC should take the decision on grant of WOL including allocation of frequency within a period of 60 days.	
(vi) The decision to grant permission for operationalising the services, including time taken by MIB, WPC, DoS, MHA, and NOCC for issuing permissions, should be completed within 6 months period in case of uplinking of channel by a new company/teleport/ DTH licenses.	
Entry Fee and License fee	
4.7 The Authority recommends that the following existing amount of Entry fee for uplinking and downlinking of TV channels, as prescribed in the existing uplinking and	MIB agrees as unreasonable entry barriers should not be imposed.

<p>downlinking guidelines dated 05.12.2011, should be continued:</p> <ol style="list-style-type: none"> 1. Uplinking of channels from India - Nil 2. Downlinking of channels uplinked from India - Nil 3. Downlinking of channels uplinked from foreign country - Rs. 10 Lakhs. <p>[Refer Para 2.47]</p>	
<p>4.8 The Authority recommends that:</p> <p>(i) For uplinking of a satellite TV Channel from Indian soil a fixed permission fee of Rs. 3 lakh per annum should be charged.</p> <p>(ii) For downlinking of a satellite TV channel, uplinked from India, a fixed license fee of Rs. 7.5 lakh per annum.</p> <p>(iii) For downlinking of a satellite TV channel, uplinked from foreign soil, a fixed license fee of Rs. 22.5 lakh per annum.[Refer Para 2.57]</p>	<p>MIB agrees with these recommendations principally. However, TRAI may share the basis for the recommended enhancements.</p>

Encryption of TV channels	
<p>4.9 The Authority recommends that encryption of broadcast of FTA channels should not be mandated and it should be left to the broadcasters providing FTA channels. [Refer Para 2.61]</p>	<p>TRAI is of view that encryption of FTA channel would require supply of Integrated Receiver and Decoder (IRD) by a broadcaster to each DPO, who wants to distribute that channel. It will necessitate signing of interconnection agreement between broadcasters and DPOs for FTA channels also, which will result in higher cost of distribution of FTA channels for broadcasters. Further, in case of channels uplinked from abroad, it is not possible to ensure encryption to channels as this may not be mandated for Uplinking in other countries.</p>
Operationalization of TV channel	
<p>4.10 The Authority recommends that:</p> <p>(i) A TV channel should be considered operational when the broadcaster starts continuous broadcasting of programmes on the channel; signals of that TV channel are available to Electronic Media Monitoring Centre (EMMC) and EMMC provides reports to the MIB regarding availability and monitoring of the programmes on that channel.</p>	<p>(i) MIB agrees with this recommendation. It implies that showing colour bar will not be considered as operationalization.</p>
<p>(ii) In case the signals of a permitted TV channel, already operationalised, remain discontinued for a continuous period of one year, permission granted for such channel should be withdrawn by MIB after following due procedure. [Refer Para 2.75]</p>	<p>(ii) Uplinking and downlinking of TV channels being a licensed activity implies that broadcast should be continuous with appropriate content generated regularly throughout the permission period. MIB is of the opinion that discontinuation of broadcast for more than 30 days continuously should be considered as a channel being non-operational. Period of one year as recommended by TRAI is too long.</p>

Transfer of license

<p>The Authority recommends that:</p> <p>(i) The transfer of permissions for uplinking and downlinking of TV channels should not be permitted between two different companies. However, in case of merger and acquisition as recognised under the Companies Act, 2013 or any other applicable law(s), transfer of permissions for uplinking and downlinking of TV channels should be permitted after following the due process. Transfer of permission of TV channels to its subsidiary company or holding company or subsidiary company of the holding company should be allowed freely, provided such company has a valid uplinking and downlinking permission. Explanation: For the purpose of these recommendations, the definition of “subsidiary company” and the “holding company” shall be the same as assigned to them in the Companies Act, 2013 (18 of 2013)</p>	<p>(i) MIB agrees with the recommendation. It implies that slump sale type of situations wherein a channel(s) of one entity is being transferred to another unrelated entity (even if both the entities are security cleared and having permission to run channels from MIB) are not permitted.</p>
<p>(ii) A lock-in period of one year from the date of operationalisation of a channel should be prescribed for the transfer of permission of such channel.[Refer Para 2.83]</p>	<p>MIB agrees with this recommendation. However, in cases as mentioned in (i) above, this lock-in period condition shall not apply.</p>

Possibilities of using the power of media by the Companies

4.11 The Authority reiterates its recommendation titled "Issues Relating to Media Ownership" dated 12th August 2014. [Refer Para 2.88]	The said recommendation is already under consideration in MIB.
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B. Issues relating to Teleports

4.12 The Authority recommends following definition of teleport: Teleport: An earth station facility from where multiple TV channels carrying audio, video and content can be uplinked to geostationary satellite on permitted frequency band. [Refer Para 3.7]	MIB agrees with this definition.
4.13 The Authority recommends that: (i) A teleport should be considered as a hub where multiple antennae can be placed for up-linking to different satellites; however, a separate wireless operating license should be issued for every single antenna.	(i) This will be referred to WPC/DoT. r

<p>(ii) There should be no requirement to obtain separate clearances from Department of Space (DoS) for seeking permission to set up teleport on already cleared satellite subject to clearance by NOCC for such teleport. However, an intimation should be given to DoS for putting any additional antenna on already cleared satellite. [Refer Para 3.10]</p>	<p>(ii) A similar reference pertaining to channels have already been made to DoS. A separate reference will also be made for teleports as well.</p>
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Processing fee, Entry fee and License fee for teleport license

<p>4.14 The Authority recommends that the existing amount of onetime non-refundable processing fee of Rs. 10,000/-, levied from the applicant company along with each application for seeking permission for establishing a teleport under the existing uplinking guidelines dated 05.12.2011, should be continued. [Refer Para 3.15]</p>	<p>MIB agrees with this recommendation.</p>
<p>4.15 The Authority recommends that existing position of no Entry fee, as prescribed in the existing uplinking guidelines dated 05.12.2011, should be continued for granting permission for establishing teleport in India. [Refer Para 3.19]</p>	<p>MIB agrees with this recommendation.</p>

4.16 The Authority recommends that for each, antenna a fixed annual license fee of Rs. 3 lakh should be charged. [Refer Para 3.26]	MIB agrees with this recommendation.
<u>Restriction on the number of teleports</u>	
4.17 The Authority recommends that there should not be any restriction on the number of teleports. [Refer Para 3.34]	MIB agrees with this recommendation
<u>Location of teleports</u>	
4.18 The Authority recommends that the location of teleports should be left to the teleport operators subject to site clearance from WPC wing of DoT. [Refer Para 3.39]	MIB agrees with this recommendation.
<u>Optimum use of existing teleport infrastructure</u>	
4.19 The Authority recommends that it should be left to the market forces to decide the measures to ensure optimal use of their existing teleport infrastructure depending upon the business considerations. [Refer Para 3.43]	MIB agrees with this recommendation.
<u>Unauthorised Uplink by Teleport operator</u>	

<p>4.20 The Authority recommends that:</p> <p>(i) MIB may form a committee consisting of representatives from MIB, BECIL, NOCC and WPC to explore the feasibility of various options including the insertion of Network Provider ID of the broadcasters in the Transport Stream (TS) and the use of DVB-CID to detect and stop uplink of signals of non-permitted TV channels by any teleport licensee.</p>	<p>(i) MIB agrees with this recommendation.</p>
<p>(ii) MIB should enable specific penal provisions to teleport operators under the policy guidelines to deal with unauthorized uplinking. [Refer Para: 3.49]</p>	<p>(ii) MIB Will discuss it with the committee recommended at 4.20 (i) above.</p>
<p><u>Guidelines for the purchase or disposal of equipment used in Uplinking</u></p>	
<p>4.21 The Authority recommends that in view of clause 5.7 of existing uplinking guidelines dated 05.12.2011, there is no requirement of any additional clause to be inserted in the terms and conditions for purchase or disposal of equipment used by teleport / DSNG operators in the policy guidelines for Uplinking of Television channels from India. [Refer Para 3.55]</p>	<p>MIB will study the conditions of Wireless Operating License and discuss it with WPC to arrive at a conclusion.</p>
