



IBF response to TRAI Consultation Paper on Issues relating to Uplinking and Downlinking of Television Channels in India

We take this opportunity to thank the Telecom Regulatory Authority of India (“TRAI”) and the Ministry of Information and Broadcasting (“MIB”) for taking up the overhaul of the entire uplinking / downlinking regime.

That being said, prior to providing our comments to the Consultation Paper on issues relating to up-linking and down-linking of television channels in India issued by TRAI on 19.12.2017 (“TRAI CP”), there are certain fundamental assumptions made by TRAI that would be required to be dealt with. We would also like to take this opportunity to highlight that the MIB ought not to have initiated or made any changes to the existing uplink / downlink regime pending this exercise commenced by the TRAI at its behest. The changes (e.g. imposition of a significantly enhanced temporary uplink license fee, requirement for ISRO clearance for new channel licenses and even name/logo changes which has resulted in all licenses being stalled) also appear to disclose a pre-determined bent of mind which we reserve our rights to highlight should the need arise.

TRAI has wrongly asserted that “...the permissions issued under policy guidelines for the uplinking and downlinking of TV channels comes under the ambit of Section 4 of the Indian Telegraph Act.” The potential implication(s) of this statement are broad, sweeping and baseless. A possible implication is that broadcasters in India whose TV channels are uplinked from India or downlinked into India are treated as licensees under Section 4 of the Telegraph Act 1885 (“**Telegraph Act**”) or as licensees under the Wireless Telegraphy Act 1933 (“**Wireless Telegraphy Act**”). This is a baseless assertion and appears to have been made without due regard to the factual and legal position on the issue. The correct position in this regard is that broadcasters are neither licensees under Section 4 of the Telegraph Act nor licensees under the Wireless Telegraphy Act



nor is there any requirement under any law for a broadcaster to obtain a license for exercising its fundamental right of speech and expression in terms of Article 19(1)(a) of the Constitution of India (this point is further detailed in Section II below).

As on date there is a mere requirement of seeking a permission to uplink or downlink the channel (“Permissions”) under certain Guidelines without reference to any specific statute, which is to ensure that exercise of the said fundamental right is not misused. It may be noted that if any terms and conditions of the Permissions impinge / affect any fundamental rights set out in the Constitution of India the same are likely to be struck down *inter alia* as being unconstitutional and arbitrary. The relevant submissions in this regard, each of which are taken in the alternative and without prejudice to the other, are as under:

I. Broadcaster – not a licensee under Section 4 of the Telegraph Act.

- (i) Section 4 of the Telegraph Act provides that it would be an exclusive privilege of the central government to establish, maintain and work a telegraph. The central government by a notification can also permit any other person on terms and conditions to establish, maintain or work a telegraph. Section 4 is reproduced as under:

“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

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- (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.”



- (ii) 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 Indian 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, 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 Indian Telegraph Act as



evidenced from the license which is granted. Thus, all the activities covered under Section 4 of the Indian 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 network operators (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.

- (iii) The TRAI CP also incorrectly states that *“After receiving the permission for uplinking of satellite TV channels from MIB, the applicant company applies to the WPC wing of DoT for grant of wireless operating license to operationalize the channel.”* By this statement, the TRAI essentially appears to have used an endorsement of satellite channels made by the WPC wing of the Department of Telecommunications on the teleport operator’s license as a part of the teleport operator’s operations to infer that broadcasters are Section 4 Licensees under the Telegraph Act. This is an untenable and incorrect summation. This is only to do with the operation of the Teleport Operator on account of the fact that the teleport operator’s license allows it to only uplink permitted TV channels. Simply put, the “wireless operating license” referred to is obtained by the teleport operator. Additionally, the mere hiring of a licensee under Section 4 for performing the licensed services cannot make the Broadcaster itself a Licensee under Section 4 of the Telegraph Act. The Hon’ble Supreme Court in the case of BSNL Vs. Union of India – (2003) 6 SCC 1 while deciding a similar issue in Telecom Services regarding Sales Tax had



held that merely by permitting a consumer to use the services of a Telecom Service Provider does not put the consumer in the control and possession of the equipment of Telecom Service Provider.

- (iv) The TRAI CP ignores the entire regime which has been operational so far i.e. a teleport operator receives a license which is issued in the name of the President of India and specifically calls out the applicability of the Telegraph Act by virtue of being a licensee under Section 4 thereof. The TV channel licenses issued by the MIB do not carry any such stipulation for the simple reason that it is unsustainable. Therefore, the TRAI CP purports to make an assertion which ignores the legal position as it exists and as borne out by the relevant records available with broadcasters. For this reason also, it is incorrect to assert that all permissions under the uplinking and downlinking guidelines derive their source from S. 4 of the Telegraph Act.
- (v) It would not be out of context here to point out that this Teleport Operator makes payment of a Licensee Fee on revenue share basis to the Government. Thus, from the revenue generated by a Teleport Operator for operating a “telegraph”, the Teleport Operator pays the Licensee Fee. In such a scenario, to once again demand Licensee Fee from the Broadcasters for the same activity would neither be reasonable nor justifiable.
- (vi) The TRAI CP puts forth a position which has been settled to the contrary in the case of Star (India) Private Limited v. Bharat Sanchar Nigam Ltd., wherein the Hon’ble TDSAT held that a broadcaster is not a licensee under Section 4 of the Indian Telegraph Act.



(vii) Further, it has been rightly observed by TRAI in its Consultation Paper itself that the Satellite TV Channel Broadcasters are different from the FM Radio Broadcasters inasmuch as there is a limitation in the bandwidth spectrum available for FM Radio Broadcasters and in a given geographical location, there cannot be more than 10 - 12 FM Radio channels. It is also relevant to point out that for transmission of FM Radio broadcasting, the radio broadcasters are obliged to have their Radio Broadcasting station including establishing their own antenna and other broadcasting equipment which is not applicable to Satellite TV Channel Broadcaster. TRAI has rightly observed that there is a specific spectrum/frequency granted to an FM Radio Broadcasters whereas in case of Satellite TV channels, no specific frequency allocation is done by WPC. Further satellite bandwidth is in abundance in comparison to the radio spectrum and will continue to increase as the number of satellites are increased from time to time. In any event satellite location and frequency is determined by the International Telecommunications Union (ITU) and no satellite can be launched without the ITU's consent- all this makes satellite frequency quite different from terrestrial frequency which is under the control of the Government

(viii) In para 2.31 of the Consultation Paper, TRAI rightly and correctly observed that satellite and transponder space including the frequencies allocated to a particular satellite are matters of International Commitments made by the Union of India and the entire process of satellite along with frequency assigned to it are regulated by International Telecommunication Union (ITU). A satellite before becoming operational has to be entered into in the ITU Master Register



and once the satellite is entered into ITU Master Register, it would mean that the satellite is internationally recognized and has right to use the orbital slot and the frequency assigned to it for the whole operational life of the satellite. Thus, the frequency on which the Satellite TV Channels are uplinked and down-linked are essentially part of the satellite transponders hired by the Satellite TV channel broadcasters. If any License Fee is to be charged on this use of frequency, which is not allocated by the WPC, the Government would be in breach of its international obligations/commitments as correctly highlighted by TRAI itself. Hence satellite spectrum cannot be construed as a “national” resource as in the case of terrestrial spectrum

- (ix) Additionally, the addition of the proposed license fee / royalty / fee on this fallacious basis would go against the stated position of this Government to add to the “ease of doing business in India” and to “invest in India”. Should any of these suggestions see the light of day, it would invite a fundamental overhaul of a broadcaster’s business model which has been in place for more than two decades. Besides inviting fundamental challenges to the position as stated, it could result in a reduced desire to invest in India.

Without prejudice to the stand of the IBF that broadcasters are not licensees under Section 4 of the Telegraph Act for reasons enumerated hereinabove, further submissions are being made on the TRAI CP. It is reiterated that the TRAI ideally ought to abandon this exercise on account of its fundamental fallacy. The further submissions at no point of time are indicative of the fact that IBF has given up its objection to the Consultation Paper that the Broadcasters are not Section 4 Licensees. It is further submitted that the IBF is providing its responses to the questions raised in this Consultation Paper without prejudice to its rights and contentions in the pending



matter before the Madras High Court relating to the tariff order and interconnect regulations sought to be issued by the TRAI in 2017¹.

II. No Entry Fee and License Fee should be charged as the same would be violative of the freedom of speech and expression (Article 19(1)(a))

- (i) TRAI in para 2.32 and 2.33 has correctly observed that Satellite TV channel broadcasters not only provide entertainment but are also disseminating information, nurturing and cultivating diverse opinions, and educating and empowering people which is a must in a democratic society. In this context, any entry fee/license fee imposed on Satellite TV channel broadcasters would be in violation of fundamental rights of the freedom of speech and expression enshrined in Article 19(1)(a) of the Constitution of India.
- (ii) The Hon'ble Supreme Court in a number of cases in the context of press has observed that it would not be legitimate to subject the press to laws which take away or abridge the freedom of speech and expression or adopt measures calculated to curtail circulation.
- (iii) In *Sakal Papers (P) Ltd. & Ors. v. The Union of India* [1962] 3 SCR 842, the Hon'ble Supreme Court, while considering the constitutional validity of the Newspaper (Price and Page) Act, 1956 and Daily Newspaper (Price and Page) Order, 1960, held that the "direct and immediate" effect of the impugned Order would be to compel the publishers to increase the price or to reduce the number of pages of practically every newspaper in the country as also of preventing them from publishing supplements without extraneous restrictions, which it

¹ W.P No. 14226/2016



has a fundamental right under Article 19(1)(a) and, therefore, the Order was violative of the right of the newspapers guaranteed by Article 19(1)(a), and as such, invalid.

- (iv) In *Indian Express Newspapers (Bombay) Private Limited v. Union of India & Ors.*, (1985) 1 SCC 641, writ petitions were filed challenging the levy of import duty on newsprint. The petitioners contended that the duty led to an increase in cost of newspapers and a drop-in circulation, thereby adversely affecting freedom of speech and expression. The Supreme Court of India allowed the petitions and directed the government to re-examine its taxation policy in light of the effect on freedom of the press.
- (v) In *Tata Press Ltd v. Mahanagar Telephone Nigam Ltd.*, AIR 1995 SC 2438, it was held that the public at large has the right to receive the “commercial speech”. Article 19(1)(a) not only guarantees freedom of speech and expression, it also protects the right of an individual to listen, read and receive the said speech.

As mentioned above, the Broadcasters may only be required to seek a Permission (for downlinking and/or uplinking) only so far as these do not affect / impinge any fundamental rights. Any statutory enactment can only impose reasonable restrictions in the interest of sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence (refer Article 19(2) of the Constitution of India). Therefore the terms and conditions of such Permissions cannot include any fee (especially a revenue based fee) as it would be violative of the fundamental rights.



One may also notice that there is no need for any license for launch of any magazines or newspapers and mere requirement of registration for title and other operational reasons. We draw analogy from this as well and recommend that no license or license fee requirement may be put on the Broadcasters for Permissions either directly or indirectly by placing the same on any service providers providing support to content dissemination.

III. Auctioning of Satellite Spectrum is an idea that is Impossible to Implemented

In the present Consultation Paper TRAI seems to be trying to put the TV broadcast on the same pedestal as that of radio broadcast. The Consultation Paper merely ends up juxtaposing TV broadcast and radio broadcast, which the TRAI itself recognizes: (a) the frequency in the spectrum used by a broadcaster is closely coupled with the frequency of a satellite transponder; and (b) the satellite transponder frequency of one satellite transponder covering footprint over a particular region can be identical to other distinct satellites having footprint over the same very region. Unlike radio broadcast, the frequency used by the broadcasters in the radio spectrum is not exclusively controlled by the Government. It is rather synchronised with the frequency of the satellite transponders, the orbital placement of which is controlled by International Telecommunication Union (ITU) and which are owned by public and private players including international organizations.

As rightly pointed by TRAI in the Consultation Paper, the use of satellite orbital locations and frequency assignment are tightly controlled by the ITU, which is a specialized UN agency. ITU allocates orbital slot to a satellite which can have its footprint over larger geographical area including India. This aspect is not and cannot be controlled by any Government of a nation and cannot become the national resource of any one country. Further, as stated above, the satellite transponder by design may



support certain frequency bands, which means that the uplink to and downlink from such satellite of television signal must be undertaken in the matching frequency of that satellite transponder. The broadcasters use satellites, which provide wider footprint beyond one country, for not only broadcasting the television channels to a certain country but also to the countries served by the footprint of such satellite. If Governments of these countries (covered by such satellite footprint) were to auction the frequency bands in the radio spectrum and allocate them to certain broadcasters to be exclusively used by them, it would completely overturn the business of launching satellites and broadcasting TV channels.

Therefore, the cost associated with launching geostationary satellites requires customers to enter into long term commercial arrangements to secure bandwidth on these satellites. These can be for end-of-life of the satellite which may run into 12 years+. The frequency assigned to such commercial arrangement is fixed. For example, a particular broadcaster may use 3900MHz as a centre frequency to downlink multiple channels into India. This frequency could have been possibly assigned due to the transponder that was available at the time of the commercial arrangement, with say Intelsat on Intelsat-20 [IS-20]. These frequencies are assigned to Intelsat by the ITU and they have exclusive use of those in that region. If a public auction is allowed for downlink frequencies by the Government of India, and say an eligible and qualified participant bids more for the frequency 3900MHz, in such scenarios, the winning bidder would need to enter an agreement with Intelsat to use that transponder. Conversely, the incumbent broadcaster would be compelled to enter into a “bidding war” to retain his slot mainly because the IRDs of all his subscriber platform operators is attuned to the slot he already holds. This would result in existing broadcasters shifting their frequencies which is a disruptive proposition. The concerned broadcaster would have thousands of Integrated Receiver Decoders (IRDs) installed across the country, and these are tuned to the broadcaster’s existing frequencies. Widespread migration of frequencies between satellite broadcasters



would lead to chaos in the market and in all likelihood lead to extended periods of outage.

Presently, ISRO does not have the capacity to launch more than 8-10 satellites per annum. In fact, it is intending to enter into arrangements with private enterprises to be able to increase the number of satellites in light of increased demand for the same. Further ISRO being a government agency has national priorities like defence, weather forecasting, data collation, education and would certainly put these ahead of general entertainment. Mandating only ISRO satellites would lead to enormous delays in new channel launches and create a situation of acute scarcity of transponder capacity

Per recent newspaper reportings, Indian Space Research Organization (ISRO) chairman AS Kiran Kumar has released a statement that "ISRO which presently does about eight to ten launches a year is aiming at doing 18 per annum, which cannot be achieved without private participation. ISRO presently has 40 operational satellites in different orbits, but Kumar said that the requirement of the country is "much much higher".

Hence, it is evident that ISRO lacks the capacity to meet the current demand of the country. Mandating uplink/downlink from India in the absence of sufficient resources would only lead to further scarcity of satellite transponders. Even if ISRO enters into joint-venture arrangements with private parties to expedite the launch of satellites, lack of geo stationary satellites to meet the growing demand, would result in creating chaos at ground level. ISRO, in the recent past has infact faced chronic capacity constraints and was looking at leasing satellites / space on other foreign satellites to meet demand for Indian broadcasters and DTH operators. There are supposedly more than 600 geostationary satellites around the world. ISRO has currently 12 GSAT satellites in service. These are used for various essential services as mentioned in the preceding paragraph. These satellites have more than 280



transponders in the C, Extended C and Ku-bands of which close to 100 transponders are leased out to provide services to broadcasters. Close to 1/3rd of the 280+ transponders in use are non-Indian. Besides, with all broadcasters using the same frequency band in the space/radio spectrum to uplink and downlink, auctioning the space/radio spectrum for TV is not feasible from a technical standpoint. Also, broadcasters would have to rationalize the number of channels they run as the cost of operating all the channels will overshoot beyond viability limits. This would also act as entry barrier for fresh business ventures and restrict the growth of the broadcasting sector. Smaller operators would have no option but to exit business. It would thereby have an adverse impact on the overall economy along with employment opportunities in the country. In a globalized economy, dissemination of information across the borders and plurality of views, play an important role in the socio-economic development of the country.

Under its current policy, the Government allows Indian broadcasters to uplink from outside India using foreign satellites. This is a practical necessity considering the demand for geo-stationary satellites which cannot be met by ISRO. In fact ISRO's first priority is to launch satellites for services critical to the nation like defence, weather forecasting, education, etc. Launching commercial satellites for television would always take a backseat. In light of the above, the Government should not compel broadcasters to uplink only from India. This is neither feasible nor practical.

There's also the possibility that if both, the imposition of additional fees for satellite spectrum usage and the mandating of the use of Indian satellites is implemented, then there may be unforeseen outcomes because of the economic pressures it would exert:

- Broadcasters move from satellite delivery to fibre delivery to get their channels to the major MSOs and DTH. This could cut out many rural areas and smaller operators in secondary markets.



- Certain channels that operate on a lower profit margin may be forced to be switched off. This would have a greater impact on educational and regional language channels which tend to be less profitable than the general entertainment channels.

IV. Economic Impact.

- (i) TRAI in its Consultation Paper has observed that the total revenue of TV Industry is Rs. 58,800/- crores as per industry estimates. The TV Industry is further growing at the Compound Average Growth Rate of more than 15%. If License Fee as proposed is levied on Satellite TV Channel Broadcasters, the same would have an adverse impact on the above growth rate especially when digitalization has just begin to step in. Any adverse impact on the TV industry, would lead to an adverse impact on Multi System Operators and Cable Operators which are today providing the last leg penetration to internet services after a huge decline in the Fixed Line Phones. In fact, there would be households in the country where there is no Fixed Line Phones but internet is being provided by the Cable Operators through their network. Thus, for socio-economic growth and to achieve the stated policy of the Government of India of 'Digital India', we would request not to impose any License Fee on Satellite TV Channel Broadcasters.
- (ii) It has also been observed from the Telecom Sector that once License Fee is imposed and the spectrum was auctioned, the growth path of telecom sector has taken a complete U-Turn and almost all the Companies in the telecom sector are in huge debts and are unable to fulfil their commitments towards the license fee as also towards payment of spectrum charges. In fact, large number



of companies have either shut their shop (Tata Telecommunications) or have merged with other bigger telecom companies. In fact closer home we have noticed this even for the DTH companies after the revenue (AGR) based fee was introduced a lot of these DTH companies have mounted debt of license fee and have also suffered losses. To avoid the aforesaid fate of broadcasting sector, it is requested that no license fee be charged from the Satellite TV Channel Broadcasters.

- (iii) Also, the auctioning of satellite television channels will have an adverse effect on the overall broadcasting sector. It would not only create an entry barrier but also negatively impact the quality of content, the diverse variety and number of channels currently being offered. Further, the negative impact on overall competition could result in market concentration and lead to increase in prices currently being offered at economical rates, market behaviour, employment, consumers etc. In the event the TRAI decides to proceed with the implementation of auctioning of TV channels, the costs are likely to increase manifold because of a lack of supply of ISRO launched geo-stationary satellites. This would squeeze out smaller operators resulting in artificial entry barriers which could stifle media freedom. In fact, the auction of TV licences will also have a cascading effect on larger corporations which may also have to rationalize the number of channels that they run as the cost of operating all the channels will spiral, making the business unviable.
- (iv) Without prejudice to the above, IBF is proceeding to give its comments on various issues raised in the Consultation Paper.



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.*

We are of the view that there is no need to redefine ‘News and Current Affairs TV channels’, and ‘Non-News and Current Affairs TV channels’. The definitions of ‘News and Current Affairs TV channels’, and ‘Non-News and Current Affairs TV channels’ are self-explanatory and require no change, except that the term “current affairs” may be deleted because even general entertainment events and live sporting events can fall within that description which is not intended.

However, we would like to state that there is a need for different treatment of News and Non-News Channels.

In addition to the above arguments, we would also like to point out the difference between two different types of Permission holders i.e. news and current affairs channels (“News Channels”) and non-news and current affairs channels (“Non-News Channels”).

While News Channels have the right to carry various different types of content including news on socio-political affairs, wars, economics and policy of government (“Socio-Political Content”), Non-News Channels do not offer such content, and therefore a much simpler process can be adopted for issuing permissions for Non-News channels.



In fact the government already does recognise this difference with very different FDI regime governing the two types of channels where 100% foreign direct investment is permitted under the automatic route for uplinking of Non-News Channels, while only 49% is permitted by way of Government route for uplinking of News Channels.

We bring out this distinction between these two types of channels and Permission Holders to suggest that separate departments under MIB which may take up the specialist role of grant and management of permissions for the same.

It is also worthy of note that the MIB's recent introduction of the significantly heavy temporary uplink license fee is in conflict with the existing FDI policy of the country. The uplink fee is sought on the basis that a "live uplink" constitutes "current affairs" and therefore an enhanced fee has been imposed. It is to be noted that the current FDI policy does not allow broadcasters with more than 49% FDI to engage in "current affairs". Additionally, the MIB also appears to not take into account the fact that there are several live events which are uplinked from abroad and telecast live in India on licensed channels without the need for a temporary uplink license. As a corollary, either the FDI policy has been amended by the MIB by this measure or the basis for imposition of the temporary uplink license fee is in conflict with the FDI policy.

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.*



With regard to whether for granting uplinking and/ or downlinking permission, the net-worth requirement of the applicant company should be increased, we are of the opinion that the net worth as prescribed by the extant uplinking and downlinking policy absolutely fine. Any increase in the net-worth eligibility criteria would have an effect of throttling competition.

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

Net-worth requirement for a News channel has to be much higher than a non-News channel. The reasoning behind such difference is that while non-news channels are only providing entertainment, the news channels provide news reportings to public at large. The public relies upon the news channels for information regarding what is happening in and around the country. Thus, the responsibility of a news channel is far greater and only responsible and serious players should be permitted to be broadcasting news and there cannot be any permissibility to have a fly by night broadcaster spreading fake news. It is reiterated that no unreasonable restrictions ought to be imposed as they would be violative of fundamental rights.

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.*



There can be increase in the processing fee (non-refundable) to be deposited by the applicant company under the existing uplinking and/or downlinking guidelines however, such increase should have direct link with the work done for processing the application. Introduction of a mechanism to enable online processing of applications would not only reduce the cost involved in the process but would also reduce the time for grant of license.

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.*

The question is based on the assumption that a Satellite TV Channel Broad aster is a Section 4 Licensee. IBF has already clarified hereinabove that Satellite TV Channel Broadcasters in India are not establishing, maintaining or working any telegraph and therefore, do not qualify as a Section 4 Licensee. Without prejudice to the aforesaid, TRAI itself has appreciated the difference between the FM Radio Broadcasters and Satellite TV Channel Broadcasters and therefore, to have a similar approach of auction is completely undesirable. As stated hereinabove, such auctions would be in violation of the fundamental rights enshrined under Article 19(1)(a) of the Constitution and would also in complete breach of international commitments made by the Union of India to Organizations such as ITU. Reliance is also placed on : (I), (II) and (III) sections of the present comments.



- 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.*

Auction of the individual leg of Satellite TV Broadcasting would not be feasible keeping in view that there would have to be coordinated use of each individual leg of Satellite TV Broadcasting, i.e. uplinking space spectrum, transponder capacity and downlinking space spectrum. In any case, any such auction of down-linking space spectrum would be in violation of international commitments made by Union of India to organizations such as ITU etc. Reliance is also placed on : (I), (II) and (III) sections of the present comments.

- 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.*

In our opinion, it is not feasible to auction satellite TV Channels. Reliance is also placed on : (I), (II) and (III) sections of the present comments.

- 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?*

In our opinion, it is advisable not to restrict use of foreign satellites for satellite TV broadcasting or for uplinking of satellite TV channels, to be downlinked in India to promote the competition among various satellites. . Also, international / varied satellites offer Broadcasters options of various territorial footprint and Broadcasters are able to select the most appropriate satellites for relevant channels.



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

No change is required to the procedure for grant of license for satellite TV Channel as it existed prior to the Ministry's circular in December 2017 reintroducing a requirement to secure an NOC from ISRO prior to the grant of a new channel license. The current system is working without any glitches and one should not experiment with something which is working fine.

That being said, we would like to highlight a few issues that ideally would have found place in the "ease of doing business" paper but given the urgency with which this consultation has been pursued and the nature of this query, we feel relevant to point out here as well:

- As mentioned above, we urge that there should be separate/standalone uplinking and downlinking guidelines and separate/specialist sub-departments for both, News Channels and Non-News Channels considering that such different type of content should be given a different treatment.
- Further, as on date, the Broadcasters are required to take prior approvals from MIB for multiple operational aspects which causes unnecessary delays. We suggest changes to the uplinking and downlinking guidelines to ease these processes and wherever possible we would suggest change to prior/post notification instead of prior approval requirements.
- Further we would also recommend changes to processes of security clearance and other aspects.



A. Security clearances

As per the existing guidelines, the applications filed by Broadcasters proposing to uplink / downlink television channel(s) are filed with the MIB which are thereafter internally sent to the Ministry of Home Affairs (“MHA”) for security clearance of such applicant companies and the Directors on the Board of such applicant company. Set out below are our views/comments on the said two aspects viz. Security Clearance of the Companies and Security Clearance of the Directors:

i. Security Clearance of Companies:

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.

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 Permissions are not granted, which is further dependent on security clearance being issued by the MHA.

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.



In our view, there are three types of scenarios where an application filed by the companies for uplink/downlink of the Non-News Channels may have to seek a security clearance from the MHA, which are as below:

- a. **Scenario 1:** An existing security cleared Permission Holder company holding a valid Permission issued by the MIB proposing to launch new channels;
- b. **Scenario 2:** A new company which does not hold any valid Permission issued by the MIB but in which the shares are held by **(i)** the Permission Holder; or **(ii)** the shareholders of the Permission Holder (hereinafter referred to as the “**Group Company of Permission Holder**”)
- c. **Scenario 3:** A new company which does not hold any valid uplinking / downlinking Permission issued by the MIB and the shares of such new company are not held by the Permission Holder company or the shareholders of the Permission Holder company (hereinafter referred to as the “**New Entrant in Broadcasting**”).

The Hon’ble MIB has vide its Office Memorandum dated 25.06.2014 clarified that no fresh security clearance would be sought in case the Permission Holder under Scenario 1 seeks Permission for additional television channel(s) within the validity period of security clearance.

Keeping in mind that the Permission Holder and the shareholders of the Permission Holder have already been security cleared by the



MHA, we recommend that the aforesaid approach for no fresh security clearance should also be adopted for Scenario 2 where the group company of the Permission Holder has filed an application seeking permission for uplink/downlink of Non-News Channels. A copy of the Permission issued by the MIB should however be conveyed to MHA for their record and information.

However, in the case of Scenario 3 (where a new entrant in Broadcasting files an application seeking permission for uplink/downlink of Non-News Channels), the MIB may continue to send such applications to the MHA for vetting the company for security clearance. The MIB may grant permission to such new entrant in Broadcasting for uplink/downlink of television channels only after the security clearance has been granted by the MHA.

Further, we are of the opinion that the validity of security clearance issued by the MHA should be co-terminus with the validity of the uplink/downlink permission granted by the MIB during which such companies should be allowed to launch any new/additional TV channels without the requirement of any further security clearance.

ii. Security clearance of Directors:

The stipulation by MIB to seek prior permission for appointment of Director on the Board of the Permission Holder as set out in Clause 5.10 of the uplinking guidelines is creating practical problems and difficulties. It may be appreciated that the security clearance of the proposed Directors takes considerable time, sometimes stretching up



to even 9-12 months, thereby creating a lot of uncertainty about the business plans/propositions in absence of the Directors being on Board.

It is pertinent to note that there are various statutory requirements under SEBI Regulations/Companies Act and other applicable laws which are to be complied with, in a timely manner by the Permission Holders viz. the requirement of appointment of Independent Directors, set up of certain Committees and filing of the relevant forms under the Companies Act within a period as prescribed therein, etc.. To cite certain examples, in the event an Independent Director resigns, such a company/Permission Holder would have to wait till approval of the MIB is received prior to appointment of another Independent Director and is thus 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/Permission Holder's ability to appoint another director to replace the resigning director is restrained until receipt of the approval from the MIB for the new director.

To address the challenges as set out herein above, we recommend the following:

- a) An intimation to be sent by the applicant company to the MIB along with details of the new Director and the self-declaration undertaking (in the format as may be prescribed by the MIB/MHA) within seven (7) days from the date of appointment on the Board of the company. Unless anything to the contrary is



received by the company from the MIB, the Director's appointment shall be deemed as approved by the MIB. However, in case the security clearance of such Director is rejected by the MHA, the Permission Holder shall remove such Director from the Board within seven (7) days from the date of such communication is received from the MIB.

- b) 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;
- c) Security cleared Director(s) may also be appointed as Director(s) on the Board of any other Group Company of the Permission Holder during the validity period without having to seek any fresh security clearance;
- d) 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 MIB in this regard within seven (7) days from the date of the appointment of such Independent Director / Key Executive(s).

In our view, the recommended process would ensure that the existing Permission Holders as also the companies seeking Permission from the MIB are not put to any hardships or delays relating to appointment of Directors which will further enable the objective of achieving Ease of Doing Business in India.



- B. As per our understanding, applications for Permissions are sent to an empanelled chartered accountant for net-worth examination and after ministry of corporate affairs (MCA) gives their comments, the comments received are again sent to empanelled CA for confirmation.

We are of view that sending file to empanelled CA twice is duplicity of work. MCA gives their comments and empanelled CA only verify what MCA has said and that to from information which is publicly available on MCA website. We are in view that comment received from MCA should not be sent to empanelled CA for further examinations.

- C. In case of downlinking of channels (which are uplinked from foreign soil) application is being sent to Department of Revenue for examining the distribution agreement which is submitted by applicant. This examination is based on clause 1.3 of downlinking guidelines dated 5th December 2011 as reproduced below:-

"The applicant company must either own the channel it wants downlinked for public viewing, or must enjoy, for the territory of India, exclusive marketing/ distribution rights for the same, inclusive of the rights to the advertising and subscription revenues for the channel and must submit adequate proof at the time of application. "

We are of view that this examinations can be done at MIB itself and there is no requirement for further sending file to department of revenue just for confirmation of above clause.



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.*

TRAI in para 2.32 and 2.33 has correctly observed that Satellite TV channel broadcasters not only provide entertainment but also disseminating information, nurturing and cultivating diverse opinions, and educating and empowering people which is a must in a democratic society. In this context, any entry fee/license fee imposed on Satellite TV channel broadcasters would be in violation of fundamental rights of the freedom of speech and expression enshrined in Article 19(1)(a) of the Constitution of India. Reliance is also placed on : (I), (II) and (III) sections of the present comments.

- 4.11 *What should be the license fees structure, i.e. fixed, variable, or semi-variable, for uplinking and downlinking of satellite TV 49 channels? Please elaborate if any other license fee structure is proposed, with appropriate justification.*

Since Broadcasters are not licensees under Section 4 of the Indian Telegraph Act, 1885, no license fee whether fixed, variable or semi-variable is required to be paid by the Broadcasters. However, in our opinion, no change is required in the present rate of license fee prescribed for uplinking and/or downlinking of Satellite TV Channels. Reliance is also placed on : (I), (II) and (III) sections of the present comments.



- 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?*

Since Broadcasters are not licensees under Section 4 of the Indian Telegraph Act, 1885, no license fee whether fixed, variable or semi-variable is required to be paid by the Broadcasters. However, in our opinion, no change is required in the present rate of license fee prescribed for uplinking and/or downlinking of Satellite TV Channels. Reliance is also placed on : (I), (II) and (III) sections of the present comments.

- 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)?*

Since Broadcasters are not licensees under Section 4 of the Indian Telegraph Act, 1885, no license fee whether fixed, variable or semi-variable is required to be paid by the Broadcasters. However, in our opinion, no change is required in the present rate of license fee prescribed for uplinking and/or downlinking of Satellite TV Channels. Reliance is also placed on : (I), (II) and (III) sections of the present comments.

- 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?*

Since Broadcasters are not licensees under Section 4 of the Indian Telegraph Act, 1885, no license fee whether fixed, variable or semi-variable is required to



be paid by the Broadcasters. However, in our opinion, no change is required in the present rate of license fee prescribed for uplinking and/or downlinking of Satellite TV Channels. Reliance is also placed on : (I), (II) and (III) sections of the present comments.

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

Since Broadcasters are not licensees under Section 4 of the Indian Telegraph Act, 1885, no license fee whether fixed, variable or semi-variable is required to be paid by the Broadcasters. However, in our opinion, no change is required in the present rate of license fee prescribed for uplinking and/or downlinking of Satellite TV Channels. Reliance is also placed on : (I), (II) and (III) sections of the present comments.

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

Since Broadcasters are not licensees under Section 4 of the Indian Telegraph Act, 1885, no license fee whether fixed, variable or semi-variable is required to be paid by the Broadcasters. However, in our opinion, no change is required in the present rate of license fee prescribed for uplinking and/or downlinking of Satellite TV Channels. Reliance is also placed on : (I), (II) and (III) sections of the present comments.

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.*



We are of the opinion that all Satellite TV Channels whether FTA or Pay should be broadcasted through satellite in encrypted. Encryption of FTA channels in addition to pay channel will ensure that the signals of the broadcaster are not available to unauthorised operators.

Operationalisation of TV channel

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

‘Operationalisation of TV Channel’ may be defined to mean date from which signals of that channel start transmitting continuously and the new channel’s viewership gets collated and reported by BARC.

Currently, applicants are expected to operationalise a new channel within a ‘roll-out’ period of 1 (one) year from the grant of a licence. Considering that broadcasters need to enter into several arrangements such as with satellite operators, content providers, distribution platform operators (DPOs), etc. which could be given effect only after MIB approval, the ‘roll-out’ period should be extended to 2 (two) years, failing which the licence in any case stands cancelled. The licence from the MIB is only one of the many permissions and administrative actions that need to be taken for the launch of a channel. And pay channels are likely to take more time than FTAs as they need to tie up arrangements with a number of MSOs and DTH operators. Further, the genre of the channel in which the broadcaster would have wished to launch might have undergone change from the time the broadcaster applied for the MIB



permission till the time the permission was granted. This at times could require a change in business plan and strategy which is a time consuming process. Further, carriage and placement deals take time to close considering the competitive nature of the industry.

Nonetheless, to propitiate any concerns regarding non-operationalization of channels, our proposal is for insertion of constraints by way of imposition of investment obligations on the broadcasters within the proposed 'roll-out' period of 2 (two) years from the date of grant of permission by the MIB which may alternatively be considered by the TRAI. To elucidate, TRAI may consider imposing an obligation on broadcasters to make investments on its channel by way of entering into arrangements with satellite operators and/or content providers and/or DPOs for a minimum threshold of say Rs. 50 Lakhs within the roll-out period of 2 (two) years. This would act as deterrent and prevent non-serious players from entering into the business for the sake of trading/leasing permissions.

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?*

Interruption in transmission or distribution of a TV Channel for any reason other than the force majeure conditions, should not continue beyond a period of 21 days.



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 your responses with justification.*

Transfer of business or undertaking through slump sale, business transfer agreements, etc. are recognized methods of transfer in accordance with the applicable laws at India. However, as per the existing provisions of the uplinking/downlinking guidelines, the permission issued by MIB can be transferred only in case of merger/demerger/amalgamation of the Permission Holder, that too subject to prior approval of the MIB.

The present era is that of consolidation and conversion hence it is vital for the guidelines to recognise and facilitate the transfer of permissions from the Permission Holder to third party company(ies) without having the need to seek prior approval from the MIB if the merger/ demerger/ amalgamation/ acquisition/ transfer of Permission Holder(s) is done in accordance with the applicable laws.

In our view, in the case of merger/demerger/amalgamation of the Permission Holder, the permission issued by MIB should be de-facto transferred in favour of the transferee so long as the merger/ demerger/ amalgamation of the Permission Holder company is approved by the court/tribunal (a copy of which is filed with the MIB along with relevant documents). Having said this, the transferee needs to ensure continued compliance of the provisions of the uplinking/downlinking guidelines and an undertaking on such compliance



should form part of the merger/ demerger/ amalgamation application which is filed with the courts/tribunals. A copy of the documents should also be filed with the MIB as an intimation for their records and information

In addition to the above, there could be three (3) more scenarios where the Permission Holder may seek for transfer of the permission issued by MIB. These scenarios have been enumerated below:

- a) Scenario 1: Application for transfer of Permission as an effect of the transfer/acquisition of business/undertaking from one Permission Holder to the other Permission Holder;
- b) Scenario 2: Application for transfer of Permission as an effect of the transfer/acquisition of business/undertaking from one Permission Holder to another entity which does not hold any valid uplinking/downlinking permission issued by the MIB, but in which the shares are held by (i) the Permission Holder; or (ii) the shareholders of the Permission Holder (hereinafter referred to as the "Group Company of Permission Holder");
- c) Scenario 3: Application for transfer of Permission as an effect of the transfer/acquisition of business/undertaking from one Permission Holder to a new entity which does not hold any valid uplinking/downlinking permission issued by the MIB and the shares of such new company are not held by the Existing Broadcaster or the shareholders of the Existing Broadcaster (hereinafter referred to as the "New Entrant in Broadcasting").

Keeping in mind that the transfer of business or undertaking through slump sale, business transfer agreements, etc. are recognized methods of transfer in accordance with the applicable laws at India, we recommend that the Permission issued by MIB should be de-facto transferred in favour of the transferee so long as the transfer/acquisition of the Permission Holder is done



in accordance with the provisions of the applicable laws (including Companies Act, 2013). Similar to the provisions suggested herein above, the transferee needs to ensure continued compliance of the provisions of the uplinking/downlinking guidelines and an undertaking on such compliance should form part of the documents that should be filed with the MIB as an intimation for their records and information.

A prior approval should be sought from MIB only in the case of Scenario 3 where a new entrant in broadcasting files an application seeking transfer of permission.

- 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.*

No lock in period is required for transfer of license for uplinking and/or downlinking of a TV channel. The provisions under the extant policy are adequate.

- 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?*

No lock in period is required for the first transfer of license or any subsequent transfer of license for uplinking and/or downlinking of a TV channel. The provisions under the extant policy are adequate.



- 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.*

No additional checks are required to be introduced in uplinking, downlinking permission.

The issues raised from 4.24-4.30 are concerned with the entry fee, processing fee and license fee of teleport licensees, IBF is only representing the Broadcasters and as such does not have comments on these issues.

- 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 response with justification.*

It would not be appropriate to restrict the number of teleport in India as the same would create a monopoly in favour of the few and would act as an entry barrier which would be adverse to competition.

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

Yes. Putting restrictions on the number of teleport operators will adversely affect the availability of up-linking facilities for TV channels and would also lead to increase in the rates of up-linking TV channels. Thus, it would not be appropriate to restrict the number of teleport in India as the same would create



a monopoly in favour of the few and would act as an entry barrier which would be adverse to competition.

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 response with justification.*

No comments.

Optimum use of existing teleport infrastructure

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

No comments.

Unauthorized 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.*

Currently, every teleport operator has to inform and take permission of WPC before up-linking signals of any TV channel. In such a scenario, if WPC finds that any particular TV channels is not permitted then, it can inform the Teleport Operator to remove the channel forthwith.



4.36 *Any other issues*

In our view, there is an urgent level playing field which ought to be secured in the Broadcasting Sector:

Private broadcasters are mandated to follow the long procedure to acquire Permissions from the MIB before airing any Satellite TV Channels including till operationalisation of the channels. Even after operationalization of a channel, private broadcasters are required to comply with the extant Tariff Orders, Interconnect Regulation, Quality of Service Regulations and Consumer Protection Regulations.

However, some entities/platforms enjoy a special privilege in the form of an exemption from all of the above. These include Prasar Bharati's DTH platform 'DD FreeDish' and the platform services that are offered by the DPOs to their subscribers at no/negligible cost. Not only do they enjoy the aforementioned exemption but they also aren't mandated to comply with the provisions of the programme code and advertisement code. This creates an uneven playing field for private broadcasters and it is suggested that uniformity is brought about.
