

January 31, 2018

Telecom Regulatory Authority of India ('TRAI')  
Mahanagar Doorsanchar Bhawan,  
Jawaharlal Lal Nehru Marg, New Delhi – 110002

**Ref:** Consultation Paper dated 19 December 2017 on the Issues related to Uplinking and Downlinking of Television Channels in India.

Dear Sir,

We wish to thank the Hon'ble Authority for giving us the opportunity to express our views and extend our suggestions on Issues related to Uplinking and Downlinking of Television Channels in India.

In context of the same, please find below our response on the said Consultation Paper for your kind perusal.

For any further clarification, you may write to us or contact us.

Yours Sincerely,

**For B4U BROADBAND (INDIA) PVT. LTD.**

Sd/-

Authorized Signatory

**COMMENTS**  
**OF**  
**B4U BROADBAND (INDIA) PVT. LTD.**  
**TO THE CONSULTATION PAPER**  
**ON**  
  
**ISSUES RELATED TO**  
**UPLINKING AND DOWNLINKING OF**  
**TELEVISION CHANNELS**  
**IN INDIA**

**DATED**  
**19 DECEMBER 2017**

## **COMMENTS OF B4U ON THE CONSULTATION PAPER DATED 19 DECEMBER 2017 ON THE ISSUES RELATED TO UPLINKING AND DOWNLINKING OF TELEVISION CHANNELS IN INDIA**

### **INTRODUCTION**

We write herewith in response to the consultation paper promulgated by TRAI on the Issues related to Uplinking and Downlinking of Television Channels in India.

B4U as a group is an international conglomerate, operating channels like B4U Music, B4U Movies, B4U Aflam, B4U Plus and is available in various countries like USA, UK, Asia Pacific, Canada, South Africa, Europe, Middle East, Australia etc.

In India, B4U is a small broadcaster and has been operating since 1999, and currently, has two channels namely B4U Music and B4U Movies, both FTA channels.

In our view while considering change in the existing uplinking and downlinking policy, TRAI should study and take into consideration the policies in different countries of the world.

As the B4U group has international presence, we would humbly like to draw some light on such policies in a few countries.

Like, in UK, the competent authority [i.e., Office of Communication (“OFCOM”)] assesses the details furnished at the time of application by the Licensee and then issues a Television Licensable Content Service License (“TLCS”). Once a TLCS license is granted, it continues lifetime of the channel and no periodic registrations are required. A registration fee is paid one time and the renewal fee is paid annually. As long as the Channel continues meeting the criteria set by the authority, the license continues to be operative. A notice of change application is to be made only in certain cases such as change in controls, shareholder and/or directors. Every licensee is also responsible to submit annual revenue and transmission report, detailing the annual transmission/broadcasting details and annual turnover.

TLCS application fee: £2500 and Annual Fee is £1000.

In UK, there is no minimum threshold (i.e. net worth) for a broadcaster/licensee to obtain a TLCS License.

In UAE, the Telecommunication Regulatory Authority issues a Broadcasting Satellite Transmission Services (BSTS) license for any channels uplinked and downlinked within the territory. This License is typically given for a period of 10 years and renewed upon filling a renewal application. However, a foreign channel (a channel that is uplinked from a jurisdiction outside UAE) and downlinked and transmitted into the territory need not take any license from the Telecommunication Regulatory Authority, as long as it has a license from a competent authority

from the jurisdiction from where the channel is Uplinked ( For example, if the channel is uplinked from UK for transmission into UAE, the channel must either have a TLCS license from Office of Communication, UK or a BSTS license issued by the Telecommunication Regulatory Authority).

BSTS application fee: AED10,000. If the applicant is a body corporate, then its share capital should be of AED 5 million.

To Broadcast within Europe (i.e. Germany, Italy, France, etc. – the TLCS is enough since any country which is part of EU can broadcast into any member state without obtaining license from the local authority, as long as they hold an appropriate license from the member state where the signals are originating.

In the US, Federal Communications Commission (FCC), is responsible for overseeing the telecommunications industry. The FCC has exclusive jurisdiction to grant, deny, review, and terminate television broadcast licenses. The FCC is also responsible for establishing guidelines, promulgating regulations, and resolving disputes involving various broadcast media. However, if a channel is only a broadcasting channel in US originating from another country, it is not required to take any specific permission from FCC to broadcast into USA. The broadcaster is to only provide the channel signal to the Platform Operator, who then broadcasts the channel within the country and these Platform Operators operate in the said country by way of a license. The same applies to Canada, Africa, etc.

**B4U'S VIEWS ON THE SAID CONSULTATION PAPER ARE AS UNDER:**

**NEW PROVISIONS THAT MAY BE INCORPORATED WITHIN THE POLICY GUIDELINES FOR PURPOSE OF CLARITY:**

**1. DEFINITION OF OPERATIONALISATION OF TV CHANNELS:**

The meaning of operationalization of TV channels should be clearly formulated within the policy. A TV channel may be considered operational in the event it has commenced the necessary business/operational activities such as entering into agreements with DPO's, appointing relevant officers/staff etc., that are necessary for commencing the transmission of the channel for which license is sought.

**2. EXTENSION FOR OPERATIONALISATION OF A CHANNEL TO BE MADE SPECIFIC:**

In the current policy guidelines though the provision of a hearing is made in case the channel is not made operational within the period of one year of the license, there is no clear provision regarding the grounds on which such extension may be granted or refused. The new policy should bring in clear grounds on which an extension may be granted or denied, taking the commercial and practical difficulties into consideration.

**3. TIMEFRAME FOR GRANTING LICENSE TO BE DEFINED:**

There should be a timeline fixed for the grant of license from the date an application is submitted subject to the fulfilment of all queries and conditions. The timelines for raising and reverting to queries should also be fixed, in order to make the process fast and keep the same commercially viable.

This is a very essential requirement for promoting the broadcasting business and would also curb trading and sub-leasing of licenses as any company would prefer to have its own license than lease the same.

With regard to the above comments on timeframe and extension criteria, B4U would like to humbly submit that since currently there is no timeline defined for provision of the license, the entire dynamics of business fail if there are too many changes in the business environment and economy of the country and could lead to difficulties in making a channel operational within the given timeframe.

An example of the same is the application made by B4U for the B4U Hitz and B4U Plus channels. The Application was made in the year 2013, while B4U received the permission in the year 2016. The entire process of granting the license took considerable time since its application. This delay in receipt of the said permission impacted the initial strategy

and planning for the launch and operationalization of the said channels and seriously impacted the strategizing and planning of content as well as budgeting of the same.

Further, due to impact of demonetization during that period, the revenues dropped and cash flows of the Company were seriously impacted. The delay in the coming into force of 'The Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations 2017, due to the stay of the said regulations, also dampened the possibility of the carriage fees getting reduced. Additionally, the cost of carriage of channel on the DD Free Dish Platform considerably increased. All these factors put together hampered getting the said channels operational within the given timeframe and there being no clear provision for extension provided within the downlinking guidelines, the same was not granted. B4U thus not only lost the opportunity to make the channels operational though the same was due to commercial reasons and financial constraints, but also lost heavily on all the fees, amounts and resources it spent for the grant of license. Moreover, it once again has to go through the cumbersome process of getting a new license.

**4. *INTRODUCE CHECKS AND BALANCES IN PLACE TO CURB TRADING AND LEASING OF LICENSING:***

Rather than increasing the net worth, other checks and balances could be put in licensing conditions, such as:

- License may be granted only to such companies that have included broadcasting in its memorandum and article of association.
- Requirement of relevant knowledge and expertise of the broadcasting sector, especially in case of completely new entrants.
- Licenses that are already issued may be asked to submit the details of the operational aspect of the channel, by which it can be assessed as to who actually has control of such channel, such as distribution details, advertising sales details, control of the distribution and advertising with the applicant company even if the activity is outsourced.

Importantly, to curb trading and subleasing of the licenses, as an industry, B4U feels that the timelines within which a license is granted should be stringent and there should be easy and faster processing of the same without further increasing the Net Worth and once a license is granted the same should be operational during the lifetime of the channel subject to meeting the prescribed guidelines.

**EASE OF DOING BUSINESS, NO RESTRICTION/MANDATE TO BE INCORPORATED ON THE RIGHT TO DO BUSINESS OR REDUCE SOCIO-ECONOMIC GROWTH:**

1. The Ministry being a government body always focuses and tries to enhance socio-economic growth rather than generation of revenues. The government is endeavoring

- to bring in an ease of doing business and to promote the broadcasting sector and bring in changes within the policy that make functionality, processing, etc., in relation to the grant and renewal of licenses very convenient.
2. However, an overview of the consultation paper gives the perspective that stringent policies on mandating the use of Indian satellites as well as increase in net worth, charging of bank guarantee, charging of a variable or semi-variable license fee or increasing the fixed license fee, auction of the satellite channels, etc., are being suggested. In the event such policy is implemented, the same would lead to a restriction on the right to do business guaranteed under article 19 (1) (g) of the constitution and also reduce the socio-economic growth of the country as well as create and increase monopoly in the sector, which would be against the very objective of the government
  3. Our views to the various suggested changes are as under:
    - a. **Net Worth:** The net worth criteria at present, in our view, is sufficient to access the seriousness of the channel broadcaster. In the year 2011, the net worth criteria had already been increased considerably. In the event, the net worth keeps increasing the newer small players who wish to enter into the broadcasting business on a smaller scale would not be able to do so and the broadcasting business shall be dominated and the feasibility to do business would be only with the big players in the market. This will not only decrease business opportunity for small players but also lead to concentration of economic powers in the hands of big players and the same would not be in the interest of the general public.

Further, any assessment of Net Worth should be only at the beginning of granting a new license and not during the renewal of the registration permission of a channel license. Once a channel is granted the license and has been broadcast for the license period, the broadcaster should not be required to prove its eligibility and seriousness towards running the channel. The Government must consider that the profit and loss of a company keeps varying every financial year, and the net worth may accordingly vary at the end of the registration period. Maintaining the same net worth during renewal shall lead to forceful infusion of capital within the business rather than rolling with the same capital and create further hardships for sustenance.

- b. **Entry Fee and License fee:** The government's motive of bringing in ease of doing business may be achieved by following international trends existing for the licensing process such as in the UK. The registration for channel license should be made a one-time permanent process and the license should be operative permanently till the lifetime of the channel subject to payment of a reasonable annual renewal fee and subject to meeting the criteria set by the Ministry. Thus even the net worth criteria would be evaluated only at the time of registration and

would help the company to function easily without having to infuse capital to maintain the net worth on every registration.

The license fee should not be on variable or semi – variable basis. The government needs to take into account the multiple expenses incurred by a broadcaster such as infrastructure, content, marketing, distribution, operation etc. and any fee cannot be merely based on the gross revenue after deduction of taxes. Any variable fee based on revenues would reduce the profit margin which may result in cost cutting and may also result into shut down of the small companies. The license fee should rather be a fixed fee. Charging a variable or semi-variable fee would enhance government revenues, but would not be beneficial to the companies rather it would be a disincentive for a broadcaster especially new entrants and small broadcasters. However, in the event government still considers on the levy of the variable or semi variable fee, there should be a capping on such fee. While deciding the cap on the fee, the government should take the current fee into account so that the same is not increased invariably. The said cap may be reviewed periodically and may be increased by a minimal maximum percentage of say 5% after every 5/10 years.

- c. ***Grant of license through Auction:*** Considering/proposing to bring satellite broadcasting licenses on the same footing as FM broadcasting license would not be commercially fair. In case of satellite broadcasting, it is necessary to keep in mind that only the license is issued by the MIB, while the transponder capacity etc. has to be licensed from outside, which is not the case of FM licensing. In case of FM, the license along with the spectrum capacity is provided by the Government. Further, in the case of FM there is a limitation of the spectrum capacity and hence it is auctioned, which is again not the case in respect of satellite transponder capacity for television broadcasting. Furthermore, the costs, process and several other factors vary in both means of broadcasting and bringing them on the same footing would be treating unequal's as equals.

Further, conducting an auction may cause a delay in the process of licensing, since the auction would be held on a timely and periodic basis and as such would restrict any company from applying as and when required by them. If a company is not ready for the application by the auction date, it would have to wait for the next auction. By having an auction leading to the highest bidder getting the license, it would create a restriction on trade due to financial constraints and also only the economically stronger companies would be able to procure the licenses easily.

- d. ***Mandating use of Indian Satellites:*** Any policy to restrict of the use of foreign satellite and mandating use of Indian satellites, would impact the business and

restrict its freedom, as this decision is guided by several commercial and operational factors, for e.g. the global or territorial reach of the satellite. Further, there are only a couple of companies which have satellite transponder capacity in India as well as abroad. Any such restriction shall reduce the bargaining power and choice available to the applicant companies, and also lead to creating a monopoly situation in the hands of the Indian satellite service provider. This would also create stringent situation affecting the foreign channels being transmitted into India. The same would also create a monopoly situation with the India Satellite Service provider giving him more scope to arm twist, thus reducing the bargaining power of the applicant company and also affect the global socio-economic growth.

- e. ***Requirement of a bank guarantee and penalty for interruption or non-operationalization of TV channels:*** The Net Worth criteria should be sufficient criteria for gauging the financial standing and seriousness of the applicant company. A Bank Guarantee should not be required. Further, in the event of interruption or non-operationalization, a hearing should be provided and the reasons for such condition should be taken into account. If the same is due to practical, commercial or financial constraints, there should be no penalty charged, since such company would already be affected and any further penalization would only worsen its situation rather than give it a growth prospect. In case a channel is interrupted for more than 3 months, its license may be suspended and a re-activation of license be allowed on reasonable prescribed grounds. Any such conditions though intending to curb trading and sub-leasing, in consequence would actually impact the genuine companies seeking to do business.
  
- f. ***Transfer Of License:*** Slump sale is an activity that is undertaken to get rid of business verticals that are not making profit or is not part of the core business activity. This is a legally recognized activity and promotes orderly growth of the sector and plays a significant role in the free market economy, as rightly pointed out in this consultation paper. Hence the Ministry should recognize slump sales for the transfer of licenses, as not recognizing the same would act as a deterrent for companies to enter into such activities.

As regards the lock-in period for transfer of license, in our view there should be no lock in period for any transfers obligated by reason of merger/demerger/amalgamation/slump sales or from one group company to another company.