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Prof. M. Kasim
Advisor (B&CS)-III
Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan
Jawaharlal Nehru Marg
New Delhi – 110002
E-mail: mkasim@trai.gov.in; ks.rejimon@nic.in

**Re: Pre-Consultation Paper on Ease of Doing Business in Broadcasting Sector released by the Telecom Regulatory Authority of India ("TRAI") on April 17, 2017**

Dear Sir,

At the outset, we applaud the Hon'ble Authority's efforts to initiate and identify the various challenges faced by the Broadcasting sector and your keenness to remove the impediments that have been plaguing the Industry for decades. Our suggestions and comments to the captioned Pre-Consultation Paper are set out in Exhibit A attached to this letter.

We will endeavor to assist the Authority in progressing with this initiative and to achieve the objectives identified in the Pre-consultation paper.

Please feel free to revert to us for any further clarification.

Yours sincerely

For **Viacom 18 Media Pvt. Ltd.**
Authorized Signatory

Viacom 18 Media Pvt. Ltd. MUMBAI

# COMMENTS/RESPONSE
# OF
# VIACOM 18 MEDIA PVT. LTD.
# TO
# THE PRE-CONSULTATION PAPER ON EASE OF DOING BUSINESS IN BROADCASTING SECTOR
# DATED
# APRIL 17, 2017

## EXHIBIT A

**About Viacom18**:
Viacom18 is one of the leading media and entertainment companies in India and operates several Non-News Television channels such as Colors, Rishtey, Rishtey Cineplex, MTV, MTV Beats, Nick, Vh1, Sonic, Comedy Central, Nick Jr., Colors Infinity and regional channels such as Colors Marathi, Colors Bangla, Colors Odia, Colors Gujarati, Colors Kannada and Colors Super. Viacom18 also owns and operates a film business through Viacom18 Motion Pictures and an events business under the Integrated Network Solutions division.

**Ease of Doing Business**:
In 2015, India was ranked 134 amongst 189 chosen countries for the World Bank's Ease of Doing Business index. Pursuant to various policy initiatives taken by the Government of India ("**Government**"), India's Ease of Doing Business ranking has jumped four places to 130 in 2017. However, we still rank lower in doing business amongst the BRICS nations such as Russia (40), South Africa (74), China (78), and Brazil (123), and also lag behind when compared to many of our neighboring nations - Bhutan (73), China (78), Nepal (107), Sri Lanka (110), Pakistan (144) and Bangladesh (176).

India wants to reach 90th rank in 2017-18 and 30th rank by 2020 in the Ease of Doing Business index. To achieve this goal, we feel that the Government must streamline many of its existing policies and/or introduce new policies (including in the Broadcasting Sector).

The TRAI's initiative, in this backdrop, is a welcome move.

**Issues for Pre-Consultation**:
As Broadcaster of several Non-News Television Channels in India, our comments are limited to the practical issues being faced by Broadcasters like us and the initiatives that the Government may take to ease the doing of business in the broadcasting sector in India.

### 1) LICENSING ISSUES

In accordance with the existing Uplinking and Downlinking Guidelines, the Broadcasters are required to take prior permission from the Ministry of Information & Broadcasting (MIB) for television channel(s) being uplinked from and/or downlinked at India. While compliance on existing eligibility criteria by the Broadcasters does not seem to be a concern, there are certain operational challenges which if addressed as suggested below would result in Ease of Doing Business for the Broadcasting sector and could put the sector on high growth trajectory. This approach seems to be quite contrary to the Government's 'Minimum Government and Maximum Governance' policy. Such delays are not merely being faced by the new entrants but even by the Broadcasters, like us, who have been operating in India for the last two (2) decades. In this regard, taking the 'Ease of Doing Business' initiative forward, the Government has already 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. Considering the aforesaid, the stipulation of seeking prior security clearance is a needless impediment to commence operations/broadcast of Non-News television channel.

It is hence our suggestion that without compromising with the safety and security of the nation, the Government must consider a policy shift from the existing 'Licensing Regime' to 'Registration Regime'. Under the 'Registration Regime', subjected to fulfillment of eligibility criteria, the Broadcasters must be permitted to register their respective channels with the MIB and immediately start operations.

## 2) TARIFF FORBEARANCE:

It is a known fact that the cost of production of a channel at the initial stages is much more than what is recovered by broadcasters by way of subscription and hence, any prescription of cap on the MRP of a channel adversely and directly affects the revenue of broadcasters. Leaving the prices open to market forces never results in an increase of prices. Broadcasters are aware of the actual rates at which their channels would sell and hence, will never price channels at an adverse rate which would, in turn, reduce eyeballs for their channels, thereby, affecting the advertisement rates for the broadcaster adversely. Due to sufficient choices available to the consumers, the pricing at retail level automatically gets controlled.

The biggest fact in favour of forbearance at wholesale level is that forbearance at retail level has existed for the longest time, and there has never been any complaint that the prices are obnoxiously high and/or leading to any kind of adverse situation for the subscriber. It should be considered that the manner in which the industry has marketed its channels, conducted deals, and provided services, it is clear that if forbearance is offered, the rates of the channels will be market- and competition-driven, and actual demand and supply will control the pricing. It could lead to effective price reduction in the rates with innovative offers. Any prescription or any sort of cap on the right of the broadcasters to price their channels will ultimately restrict them to utilize the resources in order to cut costs and further the industry will be deprived of the technological advancements.

It needs to be considered that a customer is able to determine the true value of the channel when given an option and not be guided by any prescriptions. Any prescription of a cap on the MRP undermines the value that could best be determined by the customer itself. Any assumption that a prescription of a cap on the MRP will self-regulate the pricing of the pay channel is based on incorrect premise and needs to be done away with.

This is so because, firstly, the broadcasters will never charge more in the absence of any such cap and secondly, that the customers will stop watching the channels and thus, the advertisement revenue will be affected. The broadcasters' primary motive is to reach out to the highest number of eyeballs so that the revenue generation through advertisements is maximum. In order to reach out to the maximum number of eyeballs, broadcasters tend to provide the content at the lowest possible cost. With

introduction of new content in the market each day, the competition in the market amongst broadcasters has also increased.

The same principle is applied across a number of other sectors such as FMCG – the fourth largest sector in the Indian economy. In FMCG, only certain fundamental aspects such as packaging and labelling, signage & customer notices and safety, sanitary & hygienic requirements are regulated, but not the price of the products. A similar approach is required for the broadcasting sector wherein only the quality of content in terms of technology is administered, and not the price of the content.

Therefore, we recommend that the Authority must relook at the current pricing regime and notify a clear "sunset date" for the transitory framework leading to total forbearance, not later than two years from the date of notification of the final tariff order.

## 3) INFRASTRUCTURE STATUS TO BROADCASTING SECTOR

The Government has embarked on a journey to achieve complete digitization by this year, but to realize this mission especially in this extremely capital-intensive growth phase, it is critical that broadcasters and distribution platforms are aided with better and affordable financing options. This can only be achieved when the broadcasting and content distribution sector is granted the 'Infrastructure status'.

The broadcasting and content distribution infrastructure like telecom, is important infrastructure for the country. Besides delivering digital television signals, it can be effectively used to deliver broadband services and thereby effectively contributing to the e-Governance initiative of the Government. Once the addressability is introduced by way of digitization, broadcast services are likely to contribute substantial revenue in the form of GST and other taxes to the State exchequer because of the transparency associated with the digital content distribution services.

The Hon'ble Minister of I&B, Shri Venkaiah Naidu had earlier recognized and acknowledged the efforts of the industry body, Indian Broadcasting Foundation (IBF) on the matter in the Rajya Sabha in August 2016. He, replying to a starred question, said that "*the IBF had provided a pre-Budget Memorandum for the Union Budget 2016-17 requesting for the grant of infrastructure status to broadcasting industry. The Ministry after examination of the request of IBF had recommended the demand of the industry to declare it as "Infrastructure" to the Ministry of Finance, Department of Economic Affairs which is the administrative Ministry concerned in the matter for an appropriate decision.*"

This, however, did not see the light of the day in the Union Budget 2017-18 in which the infrastructure status was only granted to affordable housing.

As television has become an integral part of everyone's life and has attained a status akin to "essential services", it is important that Broadcasting and Distribution services be subjected to a lower rate under

GST regime as is applicable to essential services, to make them affordable to masses. It is, therefore, vital to grant 'infrastructure status' to the sector.

## 4) SELF-REGULATORY MECHANISM

For any industry to optimize its potential, it is vital that it is accorded the flexibility to decide the price points and quality of goods/services being offered. In the broadcasting sector, it is the content that qualifies as the 'goods/services'. Monetizing this content requires constant innovation and a free hand to decide on the variety of content being provided. Therefore, any form of regulatory intervention on content could drastically impede growth of the sector.

The existing mechanism of self-regulation has been sufficient and could be corroborated from the fact that the 13-member body, Broadcasting Content Complaints Council (BCCC) has efficiently been adjudicating all the complaints filed against members of the Indian Broadcasting Foundation (IBF) for any alleged violation of the Programme Code / Self-Regulatory Guidelines, including the complaints forwarded by the MIB.

Further, approx. 7000 complaints relating to the program content aired on the channels have been duly adjudicated upon by BCCC after following the due process of complaint redressal and the principles of natural justice pursuant to which penalties have been imposed and warnings/directions have been issued to the erring channels which have violated the Self-Regulatory Guidelines. It is pertinent to note that till date, none of the decisions passed by the BCCC have ever been challenged in any Court of law, which evinces the efficiency in the functioning and the sanctity of the orders passed by BCCC.

In addition to the Self-Regulatory Code, several advisories have been issued by BCCC from time to time on various sensitive issues including Advisory on Portrayal of Persons with Disabilities in TV Programmes, Advisory on Depiction & Use of National Flag, National Emblem, National Anthem and Map of India in TV Programmes and Advisory on Telecast of Content Sensitive to Minorities amongst others so as to guide the member broadcasters on themes and subject matters that may require further clarity on depiction of content.

Needless to mention, the Apex Court has on several occasions reiterated that any regulation and/or such constraint of content by the Government and/or the instrumentality of the State would amount to abrogation/restriction on the freedom of speech and expression.

It is in this background, we wish to recommend that no form of regulatory intervention on content should be introduced and the existing self-regulation mechanism should be continued to be adopted by all content creators/broadcasters.

## 5) OPERATIONAL ISSUES:

Under the Uplinking and Downlinking Guidelines, the Broadcasters are required to take prior permissions of the MIB for changes in relation to operational issues at every stage. Such approval process results in substantial delays and often derailment of the purpose for which such permission was sought. Hence, it is our suggestion that the Government must consider a policy shift from the existing 'Prior Approval' to 'Prior Intimation' in relation to the following:

### A. Security clearances

As per the existing regime, the applications filed by the applicant companies 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 uplink/downlink permission is 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 television channels may warrant a security clearance from the MHA, which are as below:

a) Scenario 1: An existing security cleared permission holder company holding a valid uplinking/downlinking permission issued by the MIB (hereinafter referred to as the "**Permission Holder**") proposing to launch new channels;
b) Scenario 2: A new company 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: 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 television channels. A copy of the permission issued by the MIB should however be conveyed to MHA for their record and information.

Only in the case of Scenario 3 (where a new entrant in Broadcasting files an application seeking permission for uplink/downlink of Non-News television channels), the MIB should 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.

We are further 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 in India which are to be complied 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 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 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 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/Company;
c) A 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 shall ensure that the existing Permission Holders as also the companies seeking permission from the MIB for Up-linking/Downlinking are not put to any hardships relating to appointment of Directors which will further enable the objective of achieving Ease of Doing Business in India.

## B. Transfer of Permissions

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 company, the permission issued by MIB should be *de-facto* transferred in favour of the Transferee Company so long as the merger/demerger/amalgamation of the Permission Holder company is approved by the Court (a copy of which is filed with the MIB along with relevant documents). Having said this, the Transferee Company 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. 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 schemes, 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 company 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 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 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 in India, we recommend that the permission issued by MIB should be *de-facto* transferred in favour of the Transferee Company so long as the transfer/acquisition of the Permission Holder company is done in accordance with the provisions of the Companies Act, 2013. Similar to the provisions suggested herein above, the Transferee Company 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.

## C. Name and Logo Change

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

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

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

- A prior intimation may be filed with the MIB for any major change in name and/or logo of the permitted channel along with appropriate details/documents for records (with a copy to WPC / NOCC) at least 15 days before such change is to be implemented;
- The entities should further be allowed to do minor variations to the font/logo of the permitted channel with an intimation to the MIB for their records;

## D. Approval from Department of Space (DOS) for change of teleport

We applaud the recent notification dated February 22, 2017 issued by the MIB in respect of Clause 9.2 of the Uplinking Guidelines waiving the condition to seek DOS approval. However, the said sub-clause 9.2 is under Clause 9 which relates to "Process for Obtaining Permission for new channels". It is thus not clear if the notification issued by the MIB would also cover the applications filed for change in teleport/satellite by the existing channels/permission holders.

We would sincerely appreciate if the MIB could clarify that the said exemption on DOS approval shall also be applicable to the existing permission holders who seek to move the permitted channel(s) to an approved teleport.

Similarly, foreign satellites are currently permitted to provide services only after the same have been coordinated with ISRO. MIB could thus obtain list of such Foreign Satellites from DOS which are coordinated with ISRO, and the list of such Foreign Satellites could be made available on MIB's website. Broadcasters could then be made aware of the list of permitted Foreign Satellites, and avail services only from such permitted Foreign Satellites for uplinking of signals. The specific frequency on which the channel is to be uplinked is in any event filed and approved by the WPC.

This could facilitate MIB's process for approving new channels or change of satellite (in case of permitted channels), wherein they could refer to such list of Foreign Satellites rather than sending the file to DOS on each occasion.

**E. Temporary Uplinking**

Under the Uplinking Guidelines, the Broadcasters are required to take prior temporary Uplinking permission from the MIB before live telecast of events. Along with the application for seeking such permission, the Broadcaster is also required to submit bandwidth arrangement as well as teleport permission. After the receipt of permission from the MIB, the Broadcaster is also required to obtain the permission from NOCC & WPC. This entire process takes substantial time. However, often live telecast rights of events are granted to the Broadcasters only few days before the date of the scheduled event. In many such situations, the Broadcaster is unable to get the necessary uplink permission in time leading to monetary and reputation loss.

It is submitted that the teleport/DSNG Vans are anyways cleared from the MIB. Hence, to ease the process, it is suggested that the Government permit the Broadcasters to uplink live events using the MIB cleared teleport/DSNG Vans only subject to compliance of the Programme and Advertising Code without seeking any additional/prior approval from the MIB on temporary uplinking. An intimation may however be filed with the MIB in this regard along with the relevant details of the event proposed to be aired live on the channel.

With this, we would like to sincerely thank TRAI on its efforts to analyze various nuances of the Broadcasting Industry and seeking the views/opinion from all the stakeholders involved so as to address the issue harmoniously.