

INFOCOM THINK TANK COMMENTS ON TRAI CONSULTATION PAPER ON ISSUES RELATING TO UPLINKING AND DOWNLINKING OF TV CHANNELS IN INDIA

1.0 General Observations on `Content and carriage' of Satellite TV channels

Review of the policy guidelines relating to the uplinking and downlinking of TV channels in India is a welcome step and is fully endorsed by the Infocom Think Tank.

Broadcasting service as defined in No.1.38 of ITU's Radio Regulations *is a radiocommunication service* in which the transmissions are intended for direct reception by the general public. This service may include sound transmissions, *television* transmissions or other types of transmission.

Broadcasting has two main components – (i) program or content and (ii) the carriage or transmission / broadcast (of the program or content).

Ministry of Information and Broadcasting (MIB) in India, regulates the program or content component and the carriage / transmission / broadcast is regulated by the WPC Wing of the Ministry of Communications, under the Indian Telegraph Act, 1885.

The definition of 'Telegraph' in this Act is quite wide and encompasses all line and wireless signals, including broadcasting. At the international level also, broadcasting signals are covered under Radio Regulations (an international treaty) of the International Telecommunication Union (ITU), Geneva, which provide overall regulations for all wireless transmissions.

A broadcaster of TV Channels through satellite is merely a producer of `content' and the entire infrastructure used at the teleport for up-linking the channel/content and the space segment/satellite transponder capacity used, forms the `carriage'.

The Teleport Operator is thus, a Section 4 Licensee under the Indian Telegraph Act and the "wireless operating license" referred to above is obtained by the teleport operator.

It may be added that down-linking of satellite TV channels does not require any specific wireless license since reception of satellite TV signals has been exempted from wireless licensing requirements in India

Hence, in the Uplinking and Downlinking Guidelines, only the 'Carriage' part (Teleport) should be regulated under Section 4 of the Indian Telegraph Act 1885.

On the subject of Auctioning satellite TV channel it is noted that it is being considered at the behest of the MIB, as a way to increase the revenue to the Government.

This 'Think Tank' believes that use of radio spectrum for satellite TV requires a treatment different from the spectrum used for terrestrial services.

Satellite footprints & radio signals do not respect international borders and therefore the procedures developed and agreed upon and contained in ITU's Radio Regulations - a binding international treaty document of which India is a signatory – result in the use of internationally accepted operational parameters leading to a harmonious coexistence with other satellite networks without causing harmful interference.

Therefore, auctioning of satellite spectrum, by any country, has international ramifications.

ITU's Radio Regulations complement the ITU Constitution (No. 31 of ITU Constitution), and are based on the main principles of 'efficient and rational use of the RF spectrum' and 'equitable access' to the spectrum / orbit resources for countries, laid down in No. 196 (Article 44) of the ITU Constitution.

Further, the Resolution 2 of the Radio Regulations provide that "all countries have equal rights in the use of both the radio frequencies allocated to various space radiocommunication services and the geostationary-satellite orbit and other satellite orbits for these services."

'Resolves 1' of Resolution 2 states, "that the registration with the Radiocommunication Bureau of frequency assignments for space radiocommunication services and their use does not provide any permanent priority for any individual country or groups of countries and do not create an obstacle to the establishment of space systems by other countries."

Resolution 4 of RR on 'Period of validity of frequency assignments to space stations using the geostationary-satellite and other satellite orbits' states that "frequency assignments to space radiocommunication stations located on the geostationary-satellite and other satellite orbits...shall not be considered perpetual."

This resolution was derived from the 1966 UN Treaty on Outer Space which recognized the 'common heritage' of outer space – i.e. satellite orbital positions are not within an individual country's territorial jurisdiction.

In conclusion, countries should not see the ITU as a wholesaler of spectrum rights granted in perpetuity which countries can then market at retail to satellite operators.

Therefore the concept of auctioning satellite TV channels is not supported.

2.0 Responses to 'Issues' in Chapter 4 of TRAI 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.

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.

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

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.

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.

Response: FM Radio Channels use terrestrial spectrum, while satellite TV channels use satellite transponder capacity and related RF spectrum. Their characteristics and regulations have many subtle differences. Hence, it is not possible to treat (or auction) the satellite TV channels as a complete package similar to FM Radio channels.

4.6 Is it technically feasible to auction individual legs of satellite TV broadcasting i.e. uplinking space spectrum, satellite transponder capacity, and downlinking space spectrum? Kindly explain in detail.

4.7 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.

Response for 4.6 & 4.7: The satellite RF spectrum is different in character from , the RF spectrum for terrestrial services, which includes broadcast of TV and FM channels, etc. The satellite RF spectrum has many international constraints. In fact, the satellite RF spectrum is a shared international resource. Hence, It is not feasible to auction the satellite spectrum or the satellite spectrum for uplinking or downlinking, whether on Indian satellites or foreign satellites.

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?

Response: The Radio, Television and Video Cassette Recorder Sets (Exemption From Licensing Requirements) Amendment Rules, which were last amended through GSR 18(E) dated 9 January 2001, do not impose any restriction on reception of satellite TV signals from any satellite in any frequency band. It is only their re-transmission – through Cable or any other media – which can be and is being regulated through the existing Downlinking Guidelines and Cable TV Act. Hence, putting any further restrictions might be counter-productive and might lead to avoidable violations.

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

Response: Reducing processing times and a single window clearance for grant of permission and the required license would be welcome.

Entry Fee and License fee

4.10 If it is decided to continue granting of licenses for satellite TV channels on administrative basis, as is the case presently, what should be the entry fee for grant of license for uplinking of TV channels from India, downlinking of TV channels uplinked from India, and downlinking of foreign TV channels? Please suggest the fee amount for each case separately with appropriate justification.

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

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?

Response: One of the cardinal principles / objectives of the Uplinking & Downlinking Guidelines was to encourage the Indian broadcasters to start uplinking their satellite TV channels from India. Government is trying to improve the 'Ease of doing Business' in India. Hence, cost of uplinking from India (including licence fee and other levies) should remain competitive, with respect to uplinking from abroad. These aspects may kindly be kept in view while reviewing any fee and levies.

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)?

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?

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

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

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.

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 "operationalization of TV channel" for the purpose of the uplinking guidelines, and the downlinking guidelines separately.

Response: The operationalisation / commencement of a satellite TV channel Uplinking can be treated from the time when the channel starts uplinking from the teleport, after various technical tests, etc. The corresponding downlink is also operational / available from the same time. The testing process does take a reasonable time, and the WPC operational Licence is granted after these tests have been successfully completed.

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?

Response: Normally a broadcaster would not like any interruption in its services. However, in case of interruption in the satellite capacity or the teleport technical facilities, due to any problem with the satellite or otherwise, getting alternate capacity / teleport facility does take fair amount of time. (Broadcasters may like to indicate a reasonable time frame for this purpose).

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.

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.

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?

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.

Response: The uplinking and downlinking permissions / licences are not limited / restricted in number. A broadcaster can apply for the same at any point of time and obtain the necessary permission / licence. Hence, there should be no need / incentive for any new broadcaster to sub-lease / obtain such permission from an existing broadcaster, having such permission / licence. At best it may save some time for a new broadcaster under the present process. To that extent, the process for grant of such a permission / licence by MIB should be simplified and expedited. The WPC Wing grants the wireless licence for necessary teleport facility, based on the permission from the MIB. Even that process can be and should be expedited.

Meaning of a teleport

4.24 Whether specific definition of a teleport is required to be incorporated in the policy guidelines? If yes, then what should be the appropriate definition? Please elaborate responses with justification.

Response: A *telecommunications port* – or, more commonly, *teleport* – is understood as a satellite ground station that functions as a hub connecting satellite(s) or geocentric orbital network(s) with a terrestrial telecommunications network, such as the telecommunication channels, satellite audio & video channels, Internet, etc.. It can also be understood as a telecommunications network that provides access to communications satellites and other long-distance media. Different antennae at a teleport may be communicating with multiple satellites.

Teleport is basically a telecommunication facility and is licensed / regulated under the Indian Telegraph Act 1885 for grant of wireless licence. Even at present teleports are not regulated by MIB, which is quite logical, and the same dispensation should continue.

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

4.25 Is there any need to increase the amount of non-refundable processing fee to be paid by the applicant company along with each application for teleport license? If yes, what should be the amount of non-refundable processing fee? Please elaborate with justification.

4.26 Should entry fee be levied for grant of license to set up teleport? If yes, what should be the entry fee amount? Please give appropriate justification for your response.

4.27 What should be the license fee structure for teleport licensees? Should it be fixed, variable or semi-variable? Please elaborate if any other license fee methodology is proposed, with appropriate justification.

Response 2.25-2.27: As stated in response to para 4.15, the regulation / control for the ‘teleport’ which is a telecommunication facility, should continue as at present..

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

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

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

Restriction on the number of teleports

4.31 Whether there is a need to restrict the number of teleports in India? If yes, then how the optimum number of teleports can be decided? Please elaborate your responses with justification.

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?

Response: As stated in response to para 4.15 , the regulation / control for the ‘teleport’ which is a telecommunication facility, should continue as at present.

Further, there does not appear to be any need / rational for restricting the number of teleports. Let the market forces decide the business aspect of teleports and the economically viable / sustainable number. Also, any restriction on number of teleports may increase the cost of teleport services.

Location of teleports

4.33 What should be the criteria, if any, for selecting location of teleports? Should some specific areas be identified for Teleport Parks? Please elaborate your responses with justification.

Response: As stated in response to para 4.15 , the regulation / control for the ‘teleport’ which is a telecommunication facility, should continue as at present . Let the market forces decide the number and location of teleports.

Optimum use of existing teleport infrastructure

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

Response: As stated in response to para 4.15, the regulation / control for the ‘teleport’ which is a telecommunication facility, should continue as at present. The market forces would decide the optimal use of teleports and their infrastructure.

Unauthorised Uplink by Teleport operator

4.35 What specific technological and regulatory measures should be adopted to detect, and stop uplink of signals of non-permitted TV channels by any teleport licensee? Please elaborate your responses with details of solution suggested.

Response: The teleport licensees, under the wireless licence, are allowed to transmit only those channels of a broadcaster, which have been permitted by the MIB in the Uplinking and Downlinking permission for the concerned broadcaster. Transmission of any non-permitted channel / program is a violation / offence for the wireless licence for such a teleport and the owner of the teleport can be prosecuted for such an offence.

It may be added that violation of conditions of the wireless licence can lead to imprisonment of the licensee, besides financial penalty / fine and cancellation of the wireless licence.

Any other issue

4.36 Stakeholders may also provide their comments on any other issue relevant to the present consultation.