Comments by Sony Pictures Networks India Private Limited on pre-consultation paper on 'Ease of Doing Business in Broadcasting Sector' ("Pre-consultation Paper")

The Pre-ConsultationPaper covers broad issues require deliberation in the broadcasting sector so that exhaustive consultation with the stakeholders can be undertaken. The Pre-Consultation Paper has identified certain issues. Upon perusal of the Pre-Consultation Paper and due consideration of the identified issues, we have following observations on each issue:

(i) Issues related to processes and procedures for obtaining permission/license/registration for the following broadcasting services and subsequent compliances connected with these permissions.
(a) Uplinking of TV channels
(b) Downlinking of TV channels
(c) Teleport services
(d) Direct-to-home services
(e) Private FM services
(f) Headend-in-the sky services
(g) Local Cable Operators
(h) Multi System Operators
(i) Community Radio Stations
(j) Any other related issue

Response:

As a broadcaster, the main area of concern for us is the smoothening of process & procedure for obtaining Permission/License/Registration for Uplinking /Downlinking of television channels. Thus, we have identified certain areas of concern in this regard:

I. Change in name of the channel and/or logo of the channel

At present whenever a channel wishes to modify/change its permitted name and/or logo, for operational and other relevant reasons, prior approval has to be obtained from the Ministry of Information and Broadcasting ("**MIB**").

In order to ease the process, we feel that once a channel is given an uplink and/or downlink licence, there should not be a need for further approvals or permissions in case there is any modification/change to the name and/or logo change of such channel for operational/other reasons. The Broadcaster can notify to MIB upon changing the name of the channel and/or logo of the channel.

We suggest that 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 at least 15 days before such change is to be implemented.

II. Temporary Uplinking Permission

For any live telecast of an event on a non-news and current affairs channel, a temporary uplinking permission is required to be obtained from the MIB. Along with the application for seeking such permission, the applicant broadcasting entity which downlinks the uplinked feed, is required to submit bandwidth arrangement as well as

teleport permission. After the receipt of MIB permission, the applicant broadcasting entity is also required to obtain the permission from NOCC & WPC.

Additionally, there are various live events which require live telecast *(for e.g. music concerts, sports {for e.g. cricket/hockey/kabaddi}, award functions)* so as to enable the Indian viewers to get the benefit of live telecast of events. Some of these events also have to be made available to PrasarBharati under the provisions of the Sports Broadcasting Signals (Mandatory Sharing with PrasarBharati) Act, 2007. The rights to these events at times are procured only a few days before the scheduled live telecast of the event.

We suggest that in lieu of the fact that the broadcasting entities are bound to comply with the provisions of the Programme Code and Advertising Code, hence any event/content proposed to be aired live on the channel would also need to follow the same principles, thus ensuring any content being aired is not in violation of the applicable laws. Further, the teleport/DSNG Vans used for uplinking of the live events from India are anyways cleared by MIB for carrying out live uplink for news channels. In light of the aforesaid, there should not be any requirement for prior approval for uplinking of the live events. This requirement shall be ideally dispensed with.

At best an intimation may however be filed with the Ministry along with appropriate details/documents for uplinking of the live event at least 7 days prior to the proposed airing of such live event, provided that in the case of events to which rights have been obtained within this 7 day period, as soon as is reasonably practicable.

III. Transfer of Permission of Television Channels

As you are aware, Clause 10 of the Uplinking Guidelines reads as under:

10.1. The permission holder shall not transfer the permission without prior approval of the Ministry of Information and Broadcasting.

10.2 In case of transfer of permission of a Satellite Television Channel uplinked from India from one company to another as per the provisions of Uplinking Guidelines, the registration of the channel under the downlinking Guidelines shall also stand transferred to the new company.

10.3 In case of Companies permitted to downlink channels from other countries, On a written request from the permission holder, the Ministry shall allow transfer of permission in case of merger/demerger/ amalgamation, or from one Group Company to another provided that such transfer is in accordance with the provisions of the Companies Act, and further subject to the fulfillment of following conditions:

(i) The new entities should be eligible as per the eligibility criteria including the net worth and should be security cleared.
(ii) The new entities should undertake to comply with all the terms and conditions of permission granted.

Further, as per the Office Memorandum No. 1403/20/2013-TV (I)/20 dated 25.06.2014, MIB has clarified that No fresh Security Clearance (from MHA) would sought incase Security Cleared Company (With Security Cleared Directors) seek permission for additional TV channels within the Validity period of Security Clearance (10 Years).Even for the new entity (Broadcaster) Security Cleared as per the above memorandum, MIB sent the application to the Ministry of Home Affairs for Security Clearance. MHA normally takes 9 – 12 months' time for Security Clearance.

We submit that the present era is that of consolidation and conversion. Transfer of business or undertaking through slump sale, business transfer agreements, etc. are recognized methods of transfer in accordance with applicable law. The existing provisions do not recognize such methods of transfer.

Therefore, it should be clarified that no prior approval is required in case of merger/demerger/amalgamation/other accepted methods of transfer of business or undertaking. In case of merger/demerger/amalgamation, the permission should be transferred in favour of the Transferee Company so long as it is approved by the Court (a copy of which is filed with the Ministry along with relevant documents) and in case of transfer of business/undertaking through slump sale, business transfer agreements etc, the permission should be transferred in favour of the Transferee Company upon the parties filing the said agreement/arrangement with the Ministry and in case the transfer within the Group Companies. Since, the expression "Group Company" has not been defined in the Guidelines, we have a proposed a definition for the same.

In light of the aforesaid submissions, the provisions of the Uplinking and Downlinking Guidelines relating to the transfer of permission need to be revised and substituted as below:

10.1.On a written request from the permission holder, the Ministry shall allow transfer of permission:

i. in case of merger/demerger/ amalgamation which has been duly approved by the Court/Tribunal in accordance with the provisions of the Companies Act, 2013 provided that the permission holder files a copy of the order of the Court/Tribunal sanctioning the said scheme;

ii. in case of transfer of business or undertaking such as through slump sale, business transfer agreements or by such other means in accordance with the provisions of the applicable law, provided that the permission holder file a copy of the agreement/arrangement executed between the permission holder and the transferee company;

IV. Requirement of approval from Department of Revenue (DoR)

We want to draw your attention to the following provisions of downlinking guidelines:

Downlinking guidelines (Clause No. 1.3) – *"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."

Downlinking guidelines (Clause No. 1.4) – *"In case the applicant company has exclusive marketing / distribution rights, it should also have the authority to conclude contracts on behalf of the channel for advertisements, subscription and programme content."*

Broadcasters who owns the TV channels and downlinks them in India, uplinkingof channels happen from international regions, for e.g. Singapore. Paragraph No. 1.3 and 1.4 of the Downlinking Guidelines relates with agency arrangement do not apply to group of such broadcasters. Even then, every time an application for a new channel is submitted, MIB sends intimation to DoR to examine the applicability of these guidelines in each case. Broadcasters have requested many times to MIB to not send its cases to the DoR as the same was not applicable. However, this practice continues, delaying the process.

We suggest that it is submitted that the applications for new channels should be examined at the Ministry and should be sent to the DoR only if Guideline Nos. 1.3 and 1.4 are applicable in any particular case.

V. Approval on remittance to foreign satellite service providers

Under the process of an uplink application, the applicant is required to enclose and uplink satellite capacity agreement with the foreign satellite operator. Once this agreement is signed, the charges for such capacity commence immediately, which are required to be paid to the foreign satellite operator. However, the MIB permissions take a long time, sometime more than 4-5 months due to various reasons.

This results in the following:

(i) Charges are required to be paid to the satellite operator, for the period during which the channel agreement has been signed but the channel is not operational.

(ii) Such charges can only be paid post MIB approval. Hence the process at present is logically and practically incorrect, apart from the wastage of transponder charges.

Most of the Broadcasters have 05 -10 years' service agreement with the Satellite Companies. Forex Remittance authorizations could be made available for the entire period of the contract between the approved Satellite Service Provider and the Broadcasters (unless there is any change in the lease agreement and remittance amount). The contract between the Broadcaster and the Satellite Provider is anyways submitted to the MIB as part of the original application from the Broadcaster. Further, the Broadcasters could continue to file the details of the foreign remittances made for transponder charges on a yearly basis.

VI. Appointment of Director

Clause 5.10 under the Clause General Terms & Conditions of the Uplinking Guidelines currently reads as under:

5. GENERAL TERMS & CONDITIONS

……..
……..

5.10. It will be obligatory on the part of the company to take prior permission from the Ministry of Information & Broadcasting before effecting any change in the CEO/Board of Directors.

(i) The above mentioned stipulation of prior permission is creating practical problems and difficulties especially for public listed companies. It may be appreciated that it is not possible to wait till the permission is granted by the Ministry of Information & Broadcasting (Ministry) as the security clearance of the proposed Director takes considerable time, sometimes stretching up to even 9-12 months. However, as per The Companies Act, 2013 and the requirements of the listing arrangements with Stock Exchanges, a public listed company is required to appoint certain number of Directors including Independent Directors, nominees of Financial Institutions, Women Director(s) on the Board which are required to be intimated/communicated to the Stock exchange as well by the listed companies. Further, there are mandatory changes in directorship prescribed under SEBI Regulations/Companies Act which are to be complied in a timely manner by the listed companies.

(ii) In case of listed entities lot of sensitivities are involved around Board appointments and/or any change therein as these appointments/changes impact the market price of the shares of the company.

(iii) The requirement of appointment of independent directors is there even in the case of an unlisted public company. In the event an independent director resigns, such company would have to wait till approval of the Ministry 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 ability to appoint another director to replace the resigning director is restrained until receipt of the Ministry approval for the new director.

(iv) The purpose of furnishing the details of Board of Directors and/or any change therein is to obtain security clearance. In fact intent of the Guidelines is to have only "intimation of change" so that the process of security clearance for such changes in Directors and Key Executives could be initiated by the Ministry. It is for this reason that the Downlinking Guidelines vide Clause 5.11 provide only for "intimation" rather than

"prior approval/permission". The said Clause of Downlinking Guidelines reads as under:

> *5.11 The applicant company **shall give intimation** to Ministry of Information and Broadcasting regarding change in the directorship, key executives or foreign direct investment in the company, within 15 days of such a change taking place. It shall also obtain security clearance for such changes in its directors and key executives.*

Thus even in Downlinking Guidelines only an "intimation" has been stipulated.

We would like to suggest the MIB the following with respect to the Appointment of the Directors:

(i) An intimation to be sent by the Company to the Ministry along with details of the new Director appointed on the Board of the Company within seven (7) days from the date of appointment.
(ii) Unless anything to the contrary is received by the Company from the Ministry , the Director's appointment shall be deemed as approved by the Ministry;
(iii) Upon receipt of the security clearance from the Ministry of Home Affairs (MHA), the Ministry shall communicate the same to the Company.
(iv) 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.
(v) Such Director(s) may also be appointed as Director(s) on the Board of any other Group Company during the validity period without having to seek any fresh security clearance.
(vi) 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 with the Ministry in this regard.

This mechanism is akin to the practice adopted by this Hon'ble Ministry on issuance of provisional licenses to the Multi System Operators (MSOs) to operate in Digital Addressable System (DAS).

The suggested process shall ensure the existing Broadcasting Entities and/or the companies seeking new licenses/permission from the Ministry for Up-linking/ Downlinking Television Channels are not put to any hardships relating to appointment of Board of Directors of such entities and will further the objective of achieving Ease of Doing Business in India.

VII. Compulsory registration of trademark

As for the requirement of applying for trade mark registration of the logo of the channel, this should be done away with. The rationale being simple that if the incumbent broadcaster adopts a channel logo which infringes the trade mark of

another person, that person will come after the broadcaster. If a court finally adjudicates that the logo adopted by the broadcaster indeed infringes the mark of another person, MIB can require the person to change the logo of the channel or revoke the permission.

For changing the logo, there has to be first a difference between "cosmetic changes" and "substantial changes". For the former, an intimation should be sufficient and serve the purpose. For the latter, there can be a reasonable approval process.

(ii) Allocation of broadcasting spectrum

(a) Clearance from Department of Space
(b) WPC clearance for broadcasting services
(c) SACFA Clearance Process
(d) Clearance from Network Operations Control Center (NOCC)
(e) Any other related issue

We have no particular issue to highlight in under the above heads. However, all the process should be eased out and made easy for the stakeholder. An online initiative should be started to make the processes very easy and fast so that no delay is suffered by the stakeholders. This will help the industry to grow and function better.

(iii) Other Issues

(a) Disaster Recovery Site for DTH Operator
(b) Transmission of radio services over DTH platform
(c) Right of Way for cable operators
(d) Broadband through cable TV
(e) Open sky policy for KU band
(f) Rationalization of FDI policy in broadcasting sector
(g) Developing India as a teleport hub
(h) Skilled manpower in broadcasting sector
(i) Indigenous manufacturing of broadcasting equipments

We submit that the FDI policy in broadcasting sector should be completely implemented under the complete automatic route and no unreasonable embargo should be levied by the government. We urge that the consistency in threshold levels for FDI limits should be allowed for both broadcast and carriage. The technology is evolving at a very fast rate. FDI in the sector will help in consolidation and more investment in the sector which will in turn promote faster growth. We urge that the consistency in threshold levels for FDI limits should be allowed for both broadcast and carriage. We also submit that a new body in place Foreign Investment Promotion Board should be notified at the earliest.

Indigenous manufacturing of all equipments should be encouraged as it will reduce the cost of the equipments. Hence, all steps should be taken in this direction especially if the rural areas have to be tapped and digitized.

Additional issue:

Further, as broadcaster, it is pertinent for us to highlight the issue of new maximum retail price (MRP) model proposed by TRAI through the Telecommunication (Broadcasting and

Cable) Services Interconnection (Addressable Systems) Regulations 2017 and the Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff Order, 2017 issued on 3 March 2017. We again wish to highlight that the industry has already matured and is ready for complete forbearance. To reinvent the wheel and completely move the pricing regime from wholesale to MRP model is a rather regressive step at this stage. The industry is already aligned to function in accordance to wholesale selling of channels. Any kind of step towards price control and manner of offering of channels whether in a-la-carte or bouquet form will only will only hinder the growth, investment and innovation in the broadcasting sector. We, therefore, strongly advocate that there should be flexibility and complete forbearance on pricing and manner of offering of channels for subscription.