

Consultation Paper dated 31st July, 2017

"Ease of Doing Business in Broadcasting Sector"

Our comments to each of the issues raised by the Authority in this consultation paper are captured below:

Issues related to Satellite Television Channels

Q1. Is there a need for simplification of policy framework to boost growth of satellite TV industry? If yes, what changes do you suggest in present policy framework relating to satellite TV channels and why? Give your comments with justification?

TN comments:

At the outset, we commend the initiative taken by the Authority in addressing concerns of stakeholders with respect to ease of doing business in the broadcasting sector and sincerely look forward to favorable and much needed changes being carried out to the existing policy framework applicable to satellite TV channels to enable us to aid in the growth of the broadcasting sector.

Yes, in our view, there is an urgent need to simplify the policy framework with respect to satellite television channels, particularly to ease the process involved in obtaining permissions and reduce the time taken to procure licenses.

As pointed out by the Authority in its preface to this consultation, several stakeholders have raised the issue of unpredictable delays in obtaining clearances from the concerned authorities as a major bottleneck to carrying on business operations in an unhindered manner. These unplanned time delays have an adverse impact on ease of doing business as it puts a question mark on subsequent business activities and impacts contractual obligations with other stakeholders in the value chain, not to mention the costs that would be incurred in keeping alive business interests while awaiting the statutory clearances.

Some of the changes that we propose in this regard for the Authority's consideration are summarized below:

❖ **Online mechanism**

The present policy framework involves multiple clearances at different levels within the same Ministry as well as between several Ministries within the Government. Be it security clearances or technical clearances, applicants today have to approach several authorities

before permission or approval is granted with respect to their TV channels. As pointed out by the Authority, the internal processes that involve interaction within and between ministry departments are at present done manually. This makes the entire process cumbersome and extremely time consuming.

With the changing face of technology and advancement in doing business, it is imperative that critical processes and clearances such as the MHA, WPC and NOCC permissions be automated and aligned through an online mechanism which will not only save considerable time but will also go a long way in improving efficiencies in reviewing applications and granting the necessary approvals/clearances.

We appreciate the Ministry's effort in launching the 'Broadcast Seva' portal to facilitate online payments and tracking of applications. The same should be extended to facilitate online processing and approval of permissions across various departments and Ministries. At present the portal is wrought with teething issues, which need to be urgently addressed and resolved and made to function in a more user friendly manner.

- ✓ Promoting online processes for clearances and approvals will go a long way in easing the burden of the current mechanism and will save a lot of time, money and help in removal of uncertainties in the whole process, thereby benefiting the broadcasters and their business interests.
- ✓ In order to promote growth in this sector it is important to ease the hardships faced by the stakeholders at multiple levels.
- ✓ An online mechanism will not only address this issue but will also facilitate efficient systems of database management for the Ministries. Today, stakeholders submit voluminous information and data pertaining to their business and management while seeking approvals and clearances from the authorities.
- ✓ An online mechanism will help make available such key information at the disposal of the concerned authorities and will ease the burden of repeated and lengthy information submission by stakeholders.
- ✓ Online payment facility can be integrated into the overall system so that there is no delay in making payments and as such approvals are not put on hold for such delays.

❖ **Forfeiture of PBG on non-operationalization of the channel**

In terms of the current policy framework, the MIB has stipulated the roll-out obligation for operationalization of TV channels within a period of one year from the date of permission. Performance Bank Guarantee (PBG) of Rs. 1 crore is to be submitted by applicants in

case of non-news channels and a PBG of Rs. 2 crore in case of news channels at the time of issuance of the final uplink/ downlink permission towards the roll out obligation. In the event of failure of the broadcaster to operationalize the channel within the period of one year, the permission is, immediately on the expiry of one year, cancelled and the PBG is forfeited. This stipulation is a double whammy for the broadcaster. On the one hand, the broadcaster incurs huge financial losses due to the failure to launch the TV channel as projected, and on the other hand, the permission granted, subject to operationalization, is cancelled without any opportunity whatsoever for the broadcaster to seek redressal or extension of time for the same, even after penalty is levied.

Broadcasters face challenges on multiple fronts and almost always these challenges are due to extraneous circumstances and the broadcasters have very little control over the situation or its consequences. Payment of PBG upfront itself is a huge liability and a harsh enough deterrent against non-operationalization of the channel within the stipulated one year period. However, in the event of failure to roll out the channel within one year due to business challenges and extraneous circumstances, the PBG submitted by the broadcaster is forfeited without further recourse.

It is our submission that to encourage ease of doing business in this sector, the scare of financial loss such as forfeiture of PBG, must be relooked at to make it more stakeholder friendly. We suggest that a 6 month extension is granted to broadcasters who fail to operationalize the channel within the stipulated period of one year, subject to the payment of a nominal penalty. The forfeiture of the PBG may be invoked in the event the broadcaster fails to launch the channel even after the extended period of 6 months without affording any further opportunity.

This suggestion, if implemented, will avoid imposition of both consequences at one go, while still maintaining the sanctity of the roll-out condition, and will also give a fair and equitable opportunity to the broadcaster to deal with the situation and the extraneous circumstances.

❖ **Self Certification**

One of the factors that add to the time spent on seeking regulatory approvals under the current policy framework is the requirement for attestation of certain documents i.e. affidavits and undertakings that form part of the application. We are of the view that service providers, in any sector, are better equipped with know-how about their business and therefore self-certification of documents must be

explored as against third party certification. Submissions before government and other regulatory bodies, including the Authority itself are now being self-certified by the applicants and therefore the process requirements in this space must also take this into consideration. A simple self-certification system will enable reduction in transaction costs, speed up information sharing, procedures and formalities and, as a result, will significantly increase the rate of regulatory approvals. The main advantage of self certification is that it will help reduce administrative costs and transaction time and can truly strengthen the call of ease of doing business in India. Thus, for MIB approvals and applications, self-certification on company's letter head should be promoted in various affidavits/undertakings in place of attestation by notary public on stamp papers.

❖ **Offences & Penalties**

The current policies that govern satellite TV channels and their related license conditions prescribe penalties that are far too stringent and not always commensurate with the offences they are levied against. For instance, ban of a TV channel for a fixed period of time, if found to be violative of the prescribed guidelines is a very harsh stipulation and will have an adverse impact on the business operations of the channel.

The five-strike clause as laid down in the policy guidelines that govern the uplink and downlink permissions granted to broadcasters does not clarify the mitigating circumstances or the process that would be followed before the penalty of revocation of license is levied on the channel. It is also not clear how the five instances of violation will be considered or the nature of offence to qualify for a violation instance.

We request that these provisions on offences and penalties are reviewed afresh and greater emphasis is laid on self-regulation. It is well known that the broadcasting sector, whether the news or the non-news genre has adhered to self-regulation guidelines laid down by bodies such as NBA, IBF and ASCI and the framework has found favor with the MIB on many occasions.

As a step, all instances of violation, specifically related to content carried on TV channels must be referred to the independent redressal bodies set up under the aegis of the NBA, IBF and ASCI. On the basis of recommendations made by NBA, IBF and ASCI, as the case maybe, extreme cases of violations can be looked at by the MIB from a penal action perspective. A suitable framework in this regard with clearly laid down responsibilities must be considered as

a measure to boost growth and independence of the broadcasting sector.

❖ **Mergers & Acquisitions**

Today the extant guidelines that govern the broadcasting sector do not encourage corporate actions such as mergers and acquisitions, specifically within the sector. We have already made detailed submissions before the Authority as far as cross media ownership and restrictions are concerned. Vertical Integration within the broadcasting sector should be encouraged with necessary safeguards. However, corporate actions such as M&A are essential for the growth and expansion of businesses and must be permitted even within the broadcasting space.

Specific guidelines and rules govern M&A and any fear of hindrance to competition or abuse of any dominant position by an entity would be adequately addressed under Competition laws. The Indian Competition law framework is already equipped to deal with issues affecting competition across sectors, including the Media and Entertainment sector. Therefore, concerns of consolidation, dominance or monopoly that may arise as a result of such mergers can be adequately addressed under the existing competition law framework.

The intent of the existing policy guidelines aims to permit only those transactions that are approved under the Companies Act through a court approved process and are effected between group or associate companies. This stipulation effectively discourages M&A within the sector i.e. between non-related or non-group entities in the broadcasting sector.

We firmly believe that M&A deals are integral to any business restructuring exercise, whether in media or other sectors. M&A allows businesses to expand their business and augment capabilities to deliver a wider range of products and services. Business integration also gives fair value for players who wish to realize or opt out of competition. We urge the Authority to review the existing policy guidelines from this perspective and bring out changes that encourage and promote M&A within the broadcasting space.

Q2. Is there a need in present policy framework relating to seeking permission for making changes in the name, logo, language, format, etc. related to an operational satellite TV channel? If so, what changes do you suggest and why? Give your comments with justification?

TN comments:

While we are of the view that the current framework as regards permissions for change in name, logo, language, etc of satellite TV channels is robust and adequate, we suggest that the process be clearly laid out with fixed time frames for obtaining approvals. For instance, applications seeking approval of change in logo, with no change in name of the channel can be taken on record by way of an intimation as against specific approvals. This will ease the pressure on broadcasters who for business objectives seek these changes and they will be better equipped in planning their timelines accordingly.

We support the view that the approval process as it stands today needs a review but do feel that complete relaxation of these norms may result in deteriorating the ecosystem of the broadcasting space and hurt the established players going forward. The need of the day therefore is to have clear processes in place with definitive timelines so that valuable time and the overall purpose of seeking such changes is not lost in the entire journey.

Q3. Do you agree with some of the stakeholders comment at pre-consultation stage that Annual Renewal process of TV channels needs simplification? Give your comments with justification?

TN comments:

Yes, we do concur with the view that the process of Annual Renewal of Permission has to be simplified. We also note that vide notification dated November 11, 2016 the MIB has in fact done away with the annual renewal of permission. However, the MIB has also discontinued the issuance of Renewal Certificates. It is important that the renewal certificates are continued to be issued by the MIB along with the receipt of payment giving details of the channel and the period for which the fee is paid. This process can be facilitated through the 'Broadcast Seva' portal as part of the overall online automation process, as suggested in our submissions above.

Q4. Do you agree with stakeholders' comments that coordination with multiple agencies/ Government departments related to starting and operating of a TV channel can be simplified? If so, what should be the mechanism and framework for such single window system? Give your comments with justification?

TN comments:

Yes, we are of the strong view that a single window mechanism will go a long way in easing the coordination process between departments and Ministries, as highlighted in our response to Q1 of this consultation. In

addition to removing the manual submission method adopted by the Ministry, the entire process of seeking information, approvals, payments and coordination between and within different departments and Ministries must be automated as an online mechanism. This will save huge amounts of time and will ease the entire process of seeking permissions for operating a TV channel.

Especially in broadcast services, the present system of WPC permission for TV channels should be done away with and replaced with a simple intimation & reporting requirement. Presently WPC issues a teleport license to the teleport with certain capacity. Once a channel is added/deleted/renamed, there is a requirement for the teleport to obtain WPC permission for addition/deletion/renaming of the channel. This is a very time consuming process and such pre-approval from WPC is unnecessary considering that there is already an approval from the MIB. This can be replaced by a periodic MIS to be sent by teleport giving the information on the TV channels uplinked by the teleport.

Similarly seeking prior uplink permission from NOCC for TV channels uplink should be done away with by replacing it with Intimation & Reporting system.

In addition, the uplink permission from WPC and NOCC may be entirely done away with for applications seeking change of name of TV channels. In case of endorsement of name change, a simple intimation by the teleport operator to WPC and NOCC should suffice and in the case of a new channel endorsement, the present system can be continued since the WPC and NOCC regulate and prescribe the minimum bandwidth requirement for SD/HD channels. However, efficient delegation of powers must be done within the concerned Ministries to fasten the approval process. Also, in view of technological advancements in compression technologies, the WPC should lower the minimum data rate for HD channels from the present data rate of 8mbps under MPEG4.

Q5. Is present framework of seeking permission for temporary uplinking of live coverage of events of national importance including sports events is complicated and restrictive? If yes, what changes do you suggest and why? Give your suggestions with justification.

TN comments:

As suggested earlier in this submission, the Authority must consider an effective online mechanism to also facilitate approvals for temporary uplinking of live coverage of events of national importance, including sports and significant events in the media and entertainment sector. Non-News broadcasters also play a vital role in disseminating important information and awareness by way of such broadcasts and since these are

event based, timeliness is of utmost importance. Huge investments are made in acquiring the broadcast rights of such events and broadcasters face immense hardships when permissions are unduly delayed. Further, the Ministry must seriously consider delegating such approvals to identified departments within its framework to ensure a time bound and dedicated approval method.

Issues related to DTH/Teleports/HITS

Q6. Do you feel the need to simplify policy framework for seeking permission/license for starting and running of following services–

- (i) Teleport services
- (ii) DTH service

If yes, what changes do you suggest so that process of grant of permission/license can be simplified and expedited? Give your comments with justification.

TN comments:

We refer to our submission above with respect to simplification of the existing policy framework for satellite TV channels. As regards, Teleport services, we endorse similar suggestions that will go a long way in easing the procedural difficulties faced by teleport operators, both in terms of timelines as well as ease of operations.

Q7. As per your understanding, why open sky policy for Ku band has not been adopted when it is permitted for 'C' band? What changes do you suggest to simplify hiring of Ku band transponders for provision of DTH/HITS services? Give your comments with justification.

We have no specific comments.

Q8. What are the operational issues and bottlenecks in the current policy framework related to –

- (i) Teleport services
- (ii) DTH service

How these issues can be simplified and expedited? Give your comments with justification.

TN comments:

We refer to our submission above with respect to simplification of the existing policy framework for satellite TV channels. As regards, Teleport services, we endorse similar suggestions that will go a long way in easing the procedural difficulties faced by teleport operators, both in terms of timelines as well as ease of operations.

Issue related to Cable Television

Q9. What are the specific issues affecting ease of doing business in cable TV sector? What modifications are required to be made in the extant framework to address these issues? Give your comments with justification.

We have no specific comments.

Q10. Is there a need to increase validity of LCO registration from one year? In your view, what should be the validity of LCO registration? Give your comments with justification.

We have no specific comments.

Issues related to Private FM Radio/ Community radio

Q11. What are the issues in the extant policy guidelines that are affecting the ease of doing business in FM sector? What changes and modifications are required to address these issues? Give your comments with justification.

We have no specific comments.

Issues related to broadcasting frequency clearances

Q12. Is there a need to streamline the process of assignment of frequency by WPC and clearances from NOCC to enhance ease of doing business? What changes do you suggest and why?

We have no specific comments.

Q13. What are the reasons for delay for allocation of frequencies by WPC? What changes do you suggest to streamline the process? Give your comments with justification.

We have no specific comments.

Issues related to Indigenous Manufacturing

Q14. What are the key issues affecting the indigenous manufacturing of various broadcasting equipments and systems. How these issues can be addressed?

We have no specific comments.

15. Is there any other issue which will be relevant to ease of doing business in Broadcasting sector? Give your suggestions with justification.

Issues related to Trials for New Technologies

Q16. Are there any issues in conducting trial projects to assess suitability of a new technology in broadcasting sector? Give your comments with justification.

We have no specific comments.

Q17. What should the policy framework and process for consideration and approval of such trial projects?

We have no specific comments.

Q18. Stakeholders may also provide their comments with justification on any other issue relevant to the present consultation paper.

TN comments:

We wish submit a few other issues that could be considered by the Authority:

- ❖ Confidentiality and safety of information and data submitted by broadcasters and other stakeholders;
- ❖ Removal of restrictions on satellite bandwidth;
- ❖ Ability and freedom of choice of satellites;
- ❖ Measures to curtail high costs of procurement of satellite bandwidth.

August 28, 2017