RESPONSE OF ZEE ENTERTAINMENT ENTERPRISES LIMITED

TO

TRAI CONSULTATION PAPER

ON

"EASE OF DOING BUSINESS IN BROADCASTING SECTOR"

ISSUED ON 31ST JULY, 2017

From: Avnindra Mohan
avnindra.mohan@zee.esselgroup.com

Q.1 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?

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?

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?

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?

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.

Response:

1. **NEED FOR NATIONAL MEDIA POLICY**

1.1 India is the world's second largest Television market with 247 million television households as per 2011 census. The Television industry accounts for 46% of the revenues of the Media and Entertainment (M&E) industry and will be Rs. 1165.6 Billion by 2021 with a CAGR of 14.7% as per FICCI KPMG Indian Media Entertainment Report 2017.

The Indian M&E industry: Size

Overall industry size (INR billion) (For calendar years)	2011	2012	2013	2014	2015	2016	Growth in 2016 over 2015
TV	329.0	370.1	417.2	474.9	542.2	588.3	8.5%
Print	208.8	224.1	243.2	263.4	283.4	303.3	7.0%
Films	92.9	112.4	125.3	126.4	138.2	142.3	3.0%
Digital advertising	15.4	21.7	30.1	43.5	60.1	76.9	28.0%
Animation and VFX	31.0	35.3	39.7	44.9	51.1	59.5	16.4%
Gaming	13.0	15.3	19.2	23.5	26.5	30.8	16.2%
OOH	17.8	18.2	19.3	22.0	24.4	26.1	7.0%
Radio	11.5	12.7	14.6	17.2	19.8	22.7	14.6%
Music	9.0	10.6	9.6	9.8	10.8	12.2	13.0%
Total	728.4	821.0	918.1	1025.5	1156.5	1262.1	9.1%

Source: KPMG in India's analysis and estimates, 2016–17

The Television Industry in India has been not only growing in size and revenues, but has also been transforming in terms of modes of delivery a rapid pace.

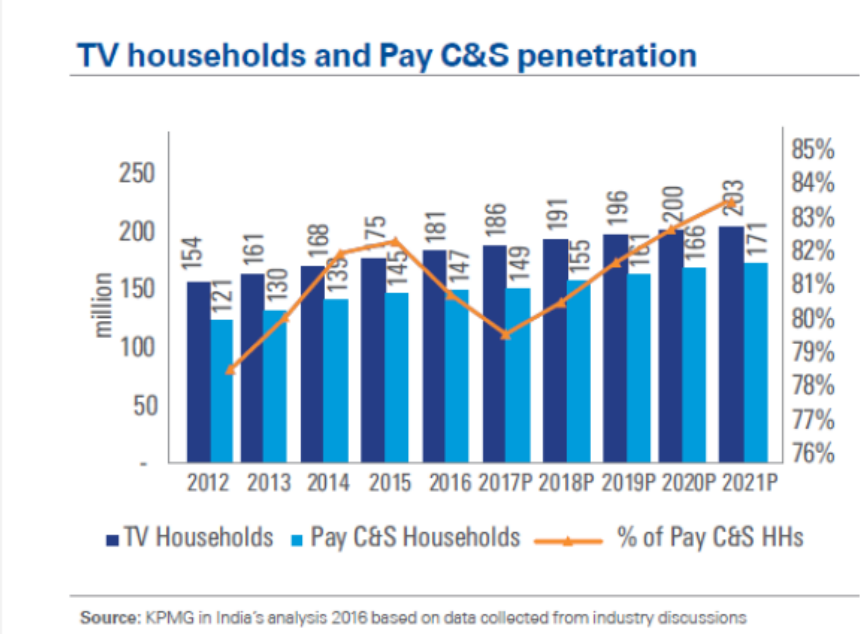
The Indian M&E industry: Projections

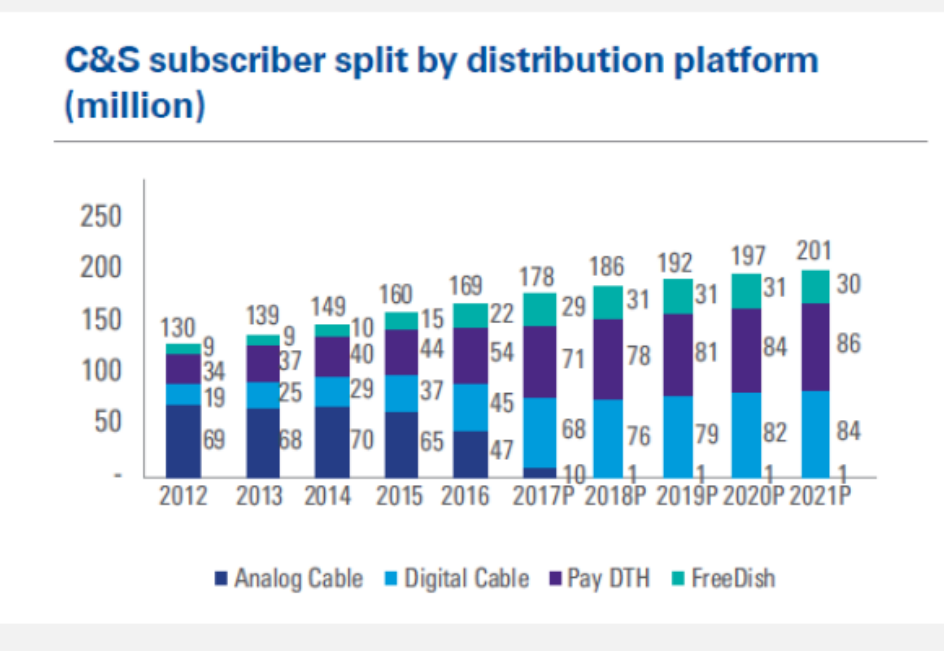
Overall industry size (INR billion) (For calendar years)	2016	2017P	2018P	2019P	2020P	2021P	CAGR (2016-2021P)
TV	588.3	651.0	750.9	876.8	1,014.5	1165.6	14.7%
Print	303.3	325.0	350.4	378.5	405.6	431.1	7.3%
Films	142.3	155.0	166.0	178.2	191.6	208.6	7.7%
Digital advertising	76.9	101.5	134.0	174.3	226.5	294.5	30.8%
Animation and VFX	59.5	69.5	81.2	95.5	111.9	131.7	17.2%
Gaming	30.8	37.2	44.2	52.2	60.7	71.0	18.2%
OOH	26.1	29.0	32.5	36.4	40.8	45.7	11.8%
Radio	22.7	26.4	30.7	35.9	41.5	47.8	16.1%
Music	12.2	14.0	16.3	19.0	22.1	25.4	15.8%
Total	1262.1	1408.7	1606.2	1848.7	2115.2	2419.4	13.9%

1.2 Till 1992, the majority of Indian television comprised of Doordarshan terrestrial television. With the advent of Cable television in 1992, and the availability of private TV channels there was a rapid growth in the television markets. Subsequently with the licensing of DTH services in 2003, the Pay TV industry was rapidly transformed with an estimated 70 Million households opting for free or pay DTH services.

1.3 As per FICCI-KPMG Report 2017 **:**

"Television is expected to grow at a CAGR of 14.7 per cent over the next five years as both advertisement and subscription revenues are projected to exhibit strong growth at 14.4 per cent and 14.8 per cent, respectively. The long term forecast for the television segment remains robust due to strong economic fundamentals and rising domestic consumption coupled with the delayed, but inevitable, completion of digitization".





1.4 Given the growth potential and prospects in media sector, there is a strong need for our country to have a vision document in the form of National Media Policy. Once created, it will become a one stop reference document for all the entities interested in either setting up a new organization or scaling up their existing businesses. As a matter of illustration, telecom sector already has a National Telecom Policy in place since 1999 which has gone through two to three rounds of revision to match the growth and dynamics of the sector. The tremendous growth achieved by Telecom sector in India would not have been possible without a well-defined Telecom Policy. A policy document not only specifies the growth targets but also outlines the means and measures required to achieve the same. We need similar vision document in broadcasting sector also to ensure the orderly growth and development of this sector.

Thus the top most priority at present is to formulate a policy document containing a detailed Broadcasting and Content Distribution policy framework for at least next five years so that the requisite resources could be mobilized and channelized towards achievement of the laid down targets for the Broadcasting sector.

2. CHANGES REQUIRED IN THE UPLINKING AND DOWNLINKING GUIDELINES

APPOINTMENT OF DIRECTORS :

A. Existing provisions under the Guidelines:

Uplinking Guidelines

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.

Downlinking Guidelines

1.6. The applicant company must provide names and details of all the Directors of the Company and key executives such as Chairperson, MD, COO, CEO, CTO, CFO and Head of Marketing, etc. to get their national security clearance.

....

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.

B. Challenges faced by the Industry:

(i) The abovementioned stipulation of prior permission as set out in Clause 5.10 of the Uplinking Guidelines is creating practical problems and difficulties. 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.

(ii) It is pertinent to note that 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. Moreover, 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 a 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 approval from the Ministry 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, the 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".

C. Suggestions:

To address the challenges as set out herein above, it is recommended that the following process be considered by the MIB with respect to security clearance 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 by the company with the Ministry in this regard within seven (7) days from the date of the appointment of such Independent Director / Key Executive(s).

The aforesaid mechanism is akin to the practice already adopted by the Ministry on issuance of provisional licenses to the Multi System Operators (MSOs) to enable them to commence their operations in the Digital Addressable System (DAS).

The recommended process shall ensure that the existing Broadcasting Entities as also 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 Directors and will further enable the objective of achieving Ease of Doing Business in India.

D. Proposed Amendments to the Uplinking & Downlinking Guidelines:

Considering the aforesaid submissions, the provisions of the Uplinking and Downlinking Guidelines relating to the appointment of Directors and Key Executives will need to be revised as below:

"The permission holder shall file an intimation with the Ministry of Information and Broadcasting informing the appointment of any new Director(s) (excluding Independent Directors) on the Board of the company within seven (7) days from the date of such appointment. The intimation should be submitted along with the detailed resume of the Director, duly notarized copy of his/her proof of residence and proof of identity (for e.g. passport copy, driving license, Aadhar Card, etc.) to obtain security clearance of such Director(s).

Unless anything to the contrary is notified by the Ministry, such Director(s) shall be deemed to be approved by the Ministry for appointment of such Director(s) on the Board of the permission holder.

The validity of the security clearance issued by the Ministry in favour of such Director(s) shall be co-terminus with the validity of the security clearance of the permission holder. Further, such Director(s) may also be appointed as Director(s) on the Board of any other Group Company of the permission holder during the validity of his/her security clearance without having to seek any separate security clearance from the Ministry/MHA.

Upon receipt/rejection of the security clearance of such Director(s) from the Ministry of Home Affairs (MHA), the Ministry shall communicate the same to the permission holder. In the event the security clearance of such Director(s) is rejected by the MHA, the permission holder and its Group Company(ies) shall remove such Director(s) from their respective Board within fifteen (15) days from the date of receipt of the rejection letter from the Ministry.

The permission holder shall give an intimation to Ministry regarding change in the Independent Directors, Key Executives (namely, Chairperson, Managing Director, Chief Operating Officer, Chief Executive Officer, Chief Technical Officer and Chief Financial Officer) and/or foreign direct investment in the Company, within 15 days of such a change taking place."

3. SECURITY CLEARANCE OF THE COMPANIES

A. Existing provisions under the Guidelines:

Uplinking Guidelines

9.2 On the basis of information furnished in the application form, if the applicant is found eligible, its application will be sent for security clearance to the Ministry of Home Affairs and for clearance of satellite use to the Department of Space (wherever required).

*9.3 As soon as these clearances are received, the applicant would be asked to furnish a demand draft for an amount equal to the permission fee and Performance Bank Guarantee as applicable, payable at New Delhi, in favour of Pay & Accounts Officer, Ministry of Information & Broadcasting, Shastri Bhawan, New Delhi. Further, the applicant company in respect of Para 1, 2 or 3 above would be required to sign an agreement titled as "Grant of Permission Agreement", in the format "**Form 2**", which is being prescribed separately.*

Downlinking Guidelines

8.2 The applicant company shall also submit full details of each channel being/proposed to be downlinked along with all other documents as prescribed in the guidelines.

8.3 After scrutiny of the application if the applicant company is found eligible, the same will be sent for security clearance to the Ministry of Home Affairs. In the meanwhile, the Ministry of Information and Broadcasting will evaluate the suitability of the proposed channel for downlinking into India for public viewing.

8.4 In the event of the applicant company and the proposed channel being found suitable, the Ministry of Information and Broadcasting will register the channel and the applicant company to enter into a grant of permission agreement with the Ministry of Information and Broadcasting, Government of India.

B. Challenges faced by the Industry:

(i) 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.

(ii) 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 granted, which is further dependent on Security Clearance being issued by the Ministry of Home Affairs (MHA).

(iii) 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.

C. Suggestions:

As per the Office Memorandum dated 25.06.2014, MIB has clarified that no fresh security clearance would be sought in case security cleared company (with security cleared directors) seeks permission for additional television channel(s) within the validity period of security clearance. We recommend that a similar and simpler process may be considered with respect to security clearance of new company(ies) seeking permission for uplinking/downlinking of television channel which would enable introduction of new entrants in the Broadcasting industry.

(i) Upon receipt of an Application from a Company, the same may be sent for security clearance to the Ministry of Home Affairs (MHA), except when such an application is filed by a Company which holds a valid uplink/downlink license issued by the Ministry.

(ii) Unless anything to the contrary is received by the Company from the Ministry, the Company should be issued the uplink/downlink permission;

(iii) Upon receipt of the security clearance from the MHA, the Ministry shall communicate the same to the Company.

(iv) The validity of security clearance of the Company should be co-terminus with the validity of the uplink/downlink permission granted by the Ministry during which the Company should be allowed to launch and/or acquire any number of additional TV channels without the requirement of any further security clearance.

(v) A time limit of 6-8 weeks be stipulated for MHA to submit a report on the security clearance sought by MIB.

D. Proposed Amendments to the Uplinking & Downlinking Guidelines:

While we appreciate that the aforesaid Office Memorandum dated 25.06.2014 has been published on the website of the Ministry, we would recommend that the provisions of the Uplinking and Downlinking Guidelines relating to the security clearance of the Companies be revised and substituted as below:

"On the basis of information furnished in the application form, if the applicant is found eligible, its application will be sent for security clearance to the Ministry of Home Affairs (MHA) and for clearance of satellite use to the Department of Space (wherever required). It is hereby clarified that no fresh security clearance would be sought from MHA in case security cleared company *(with security cleared directors)* seeks permission for additional television channel(s) within the validity period of security clearance.

Unless anything to the contrary is notified by the Ministry, such Applicant shall be deemed to be security cleared and the Ministry will evaluate the suitability of the proposed channel for uplinking such television channel and/or downlinking of such channel into India for public viewing.

Upon receipt of the security clearance from the Ministry of Home Affairs (MHA), the Ministry shall communicate the same to the Applicant. The validity of the security clearance issued by the Ministry in favour of such Applicant shall be co-terminus with the validity of the uplink/downlink license issued by the Hon'ble Ministry.

In the event the security clearance of such Applicant is rejected by the MHA, such Applicant shall cease broadcast of the channel within

fifteen (15) days from the date of receipt of the letter from the Ministry."

4. **CHANGE IN NAME OF THE CHANNEL AND/OR LOGO OF THE CHANNEL**

A. Existing Provisions

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 Ministry of Information & Broadcasting only.

B. Challenges faced by the Industry:

(i) While the Ministry grants the approval for such modifications/changes to the name/logo, the approval erroneously mandates that the company would be liable to stop telecast of new logo forthwith if the same is disallowed by Trade Marks Authority of India.

(ii) It is our submission that the Office of the Registrar of Trademarks is not the final adjudicatory authority and such a mandate on non-use of a mark can only be effectuated by a final order of a Court of Law.

(iii) Moreover, if the name and/or logo conflicts with that of another channel, that is an operational issue for the two channels to sort out, just as in the case of two companies using similar names or selling products with similar names.

C. Suggestions:

Once a channel is given an uplink and/or downlink permission, 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 change 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 on such change of name. In light of this background, we suggest the following:

(i) A prior intimation may be filed with the Ministry 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;

(ii) The entities should further be allowed to do minor variations to the font/logo of the permitted channel with an intimation to the Ministry for their records;

D. Proposed Amendments to the Uplinking & Downlinking Guidelines:

Considering the aforesaid submissions, new provisions need to be introduced in the Uplinking and Downlinking Guidelines relating to the change in name and/or logo of the channel as set out herein below:

"The permission holder shall carry the approved logo of the channel at all times on the top right corner of the screen. Upon receipt of the permission, the permission holder may carry out minor variations including without limitation to the font/color of the approved logo.

The permission holder shall give an intimation to Ministry of Information and Broadcasting regarding any major change in the name and/or logo of the Channel (with a copy to WPC / NOCC), at least 15 days prior to implementation of the same. The letter should be duly accompanied with the following documents:

- *Colored copy of the proposed name/logo to be used,*
- *The Trademark Application/Registration Certificate and/or the letter of authority for usage of the mark from the owner of such mark proposed to be used,*

- *Affidavit confirming that the new proposed channel name/logo to be used, is not similar or deceptively similar to any Trade Mark applied by any third party, or Trade Mark already registered in the name of any third party or of any channel name/logo already in use by any third party and in case of any court order is passed against the applicant broadcaster for restraining usage of such mark/ logo, the applicant broadcaster shall be liable to change/ modify the said logo.*

5. TEMPORARY UPLINKING PERMISSION

A. Existing Provisions

Uplinking Guidelines

"6.4 All Foreign channels, permitted entertainment channels uplinked from India and companies/individuals not covered in 6.1, 6.2 and 6.3 as above will be required to seek temporary uplinking permission for using SNG/DSNG for any live coverage/footage collection and transmission on case to case basis."

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.

B. Challenges faced by the Industry:

(i) 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 are also required to be mandatorily made available to Prasar Bharti under the provisions of the Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharti) Act, 2007. The rights to these events at times are procured only a few days before the scheduled live telecast of the event.

(ii) Invariably, the existing procedure creates significant procedural delays in being able to procure the temporary uplink permission in an efficient and time bound manner. Moreover, at times due to uncertainty on receipt of permissions in a timely manner constrains the monetization of the event as it creates uncertainty with advertisers (including for events of national importance to be aired on Prasar Bharti's terrestrial and DTH networks). At times the broadcasters are constrained to cancel the live telecast of the proposed event which results in monetary and reputational loss.

C. Suggestions:

(i) 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.

(ii) Further, the teleport/DSNG Vans used for uplinking of the live events from India are anyways cleared by the Ministry for carrying out live uplink for news channels.

In the case of live uplinking of foreign events, the feed of such events is uplinked from foreign satellites which is downlinked to the permitted teleport at India before the same is telecast live on the channel, which also has to be in compliance of the Programme Code.

In light of the aforesaid, there should not be any requirement for prior approval for uplinking of the live events.

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.

Further clear-cut guidelines should be issued by the Ministry including the list of documents/enclosures required to be submitted by the entities.

D. Proposed Amendments to the Uplinking & Downlinking Guidelines:

Considering the aforesaid submissions, the provisions of the Uplinking and Downlinking Guidelines relating to the temporary/live uplinking by Non-News channels need to be revised and substituted as below:

"All Non-News & Current Affairs Channels uplinked from India and/or downlinked in India will be required to give an intimation to Ministry of Information and Broadcasting regarding the proposed event/footage to be aired LIVE on the channel at least 7 days prior to the scheduled live broadcast of the said event.

The letter should be duly accompanied with the following documents:

- *Intimation letter along with the Application Form duly filled in the format as set out in Exhibit ___;*
- *Letter from the entity which owns the Rights to the proposed event;*
- *Letter from the DSNG Van service provider along with details of the DSNG Van duly holding valid permission proposed to be used for the proposed event;*
- *Details of the Teleport from where the proposed event is to be uplinked along with WPC permission of the Teleport Service Provider.*

In case (a) the broadcast rights to an event/footage have been obtained by the permission holder 48 hours prior to the scheduled date of telecast of such event/footage; or (b) there are any change(s) to the modalities of an event//footage which has already been intimated to the Ministry of Information & Broadcasting, the permission holder shall file an intimation regarding such an event and/or change(s) (as the case may be) to the Ministry of Information & Broadcasting at least 24 hours prior to the scheduled live broadcast of the said event/footage. In case the live broadcast of such event/footage is scheduled over the weekend (Saturday/Sunday), the permission holder shall file a letter regarding such an event

and/or change(s) (as the case may be) to the Ministry of Information & Broadcasting within 24 hours after the live broadcast of the said event/footage."

E. Detailed submissions in relation to ease of doing business vis-a-vis the use of DSNG and Teleport for Temporary Uplinking Permission is enclosed herewith as Annexure-A.

6. TRANSFER OF PERMISSION OF TELEVISION CHANNELS

A. Existing Provisions

Uplinking Guidelines:

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

Downlinking Guidelines

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.

B. Challenges faced by the Industry:

(i) 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.

(ii) The existing provisions do not recognize such methods of transfer. This Policy is strongly linked to 'Ease of Doing Business'. Therefore, all the relevant modes of business transfer as provided under the Companies Law need to be recognized under the Policy.

(iii) Further, 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.

(iv) 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 National Company Law Tribunal. A copy of the order of NCLT should be filed with the Ministry along with relevant documents.

(v) 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.

(vii) 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.

C. Proposed Amendments to the Uplinking & Downlinking Guidelines:

(i) Considering 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:

"Transfer of Permission of Television Channels

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

- *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;*
- *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;*
- *in case of transfer within Group Company provided that the permission holder files an affidavit undertaking stating that the transfer is within the Group Companies.*

"Group Company" in relation to another company means a company, which is under the same management and/or promoters or in which that other company has significant influence directly or indirectly and shall also include an associate company, subsidiary company, holding company or a joint venture company.

Explanation: For the purpose of this clause significant influence means control of at least 20% of total share capital or of business decision by way of agreement or otherwise

It is clarified that the transfer of permissions is subject to the fulfillment of following conditions:

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

Unless anything to the contrary is notified by the Ministry, such new entity/acquiring company shall be deemed to be security cleared by the Ministry. The validity of the security clearance issued by the Ministry in favour of such Company shall be co-terminus with the validity of the uplink/downlink license issued by the Hon'ble Ministry.

For avoidance of any doubt, it is hereby clarified that in the event the new entity/acquiring company is an existing broadcasting entity holding a valid uplink and/or downlink permission issued by the Ministry, such an entity shall be deemed to be security cleared so far the transfer application has been filed by such company within its validity of the security clearance."

7. **APPROVAL FROM DEPARTMENT OF SPACE (DOS)**

A. Existing provisions under the Guidelines:

Uplinking Guidelines

9.2 On the basis of information furnished in the application form, if the applicant is found eligible, its application will be sent for security clearance to the Ministry of Home Affairs and for clearance of satellite use to the Department of Space (wherever required).

B. Challenges faced by the Industry:

(i) Under the process stipulated for an uplink application, the applicant is required to enclose an 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 a take long time, sometimes more than 12 months due to various reasons including security, channel and content approval, Directors approval, DoS referrals, WPC approval, teleport approval etc.

This results in the following:

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

(b) Such charges can only be paid via RBI approval, which again needs MIB approval. Hence, the stipulated process at present is logically and practically incorrect, apart from causing huge wasteful expenditure of transponder charges for the applicant.

(ii) We appreciate the recent notification dated February 22, 2017 issued by the Ministry of Information & Broadcasting 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.

C. Suggestions:

(i) We would sincerely appreciate if 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.

(ii) 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 aware on 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.

8. APPROVAL FROM DEPARTMENT OF REVENUE (DOR)

Certain broadcasters own the TV channels and downlinks them in India. Uplinking of channels happen from international regions, for e.g. Singapore. Paragraph No. 1.3 and 1.4 of the Downlinking Guidelines which relates to the agency arrangement, do not apply to group of 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.

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.

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

(iii) Teleport services
(iv) 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.

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.

Q8. What are the operational issues and bottlenecks in the current policy framework related to –
(iii) Teleport services
(iv) DTH service

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

Response

1. Rationalization of License Fee levied on DTH

(i) The DTH operators have been continuously representing for rationalization of license fee which at present is being levied @10% on Gross Revenue of DTH operators. DTH is an addressable digital delivery platform and can play a pivotal role in creating "Digital India" initiative of the present Government. The popularity of DTH will depend on whether it can provide content at par with the cable operations at comparable prices and with an acceptable level of quality of service. At present the cable services enjoy advantage vis-à-vis DTH in terms of initial investment by a consumer in customer premises equipment, the subscription charges, taxation policies etc. There is no license fee on cable operations.

(ii) In case of DTH not only license fee is levied @10% of GR but also since the content is delivered through satellite, there is an associated high cost of transponder lease, spectrum royalty, monitoring charges etc. Besides, in addition to the entry fee of Rs. 10 crores, the DTH operator is also liable to pay 10% of its gross revenues as license fee to the Govt. This renders the DTH services quite costlier vis-à-vis cable services. The subsidies coupled with heavy license fee and taxation burden has resulted in huge losses for DTH operators which are clearly reflected in their financial statements. If the license fee and other taxation levies are not rationalized, the DTH companies may not be able to sustain these losses for long period and the digitalization initiative in the sector would suffer a great setback Accordingly at present there is a need to provide level playing field to DTH operators by correcting the existing anomalies in license fee structure, taxation policies etc.

(iii) The issue of DTH license fee rationalization has been subject matter of various TRAI recommendations. The latest TRAI recommendations have been issued on 23rd July 2014 which in the context of levy of license fee has recommended the following:

> ***"The license fee in the new DTH licensing regime should be charged as 8% of Adjusted Gross Revenue (AGR) where AGR is calculated by excluding, Service Tax, Entertainment Tax and Sales Tax /VAT actually paid to the Government, from the Gross Revenue (GR)".***

In this context it is pertinent to point out that MIB has not at all sought any recommendation from TRAI on the license fee issue as it had already taken a decision to reduce the license fee from 10% to 6% of GR which is pending for implementation. The TRAI has souo moto sent its recommendations dated 23.07.2014 without there being any reference from MIB in this behalf.

(iv) The recommendation of the TRAI that the DTH services be charged Licence Fee at the rate of 8% of the AGR where AGR be calculated by excluding only Service Tax and Sales tax actually paid to the Government, if the Gross Revenue had included components of Sales Tax and Service Tax, comes as a shock and surprise to DTH Sector. DTH services operators have been regularly appraising the TRAI and MIB on the matter of the heavy cost they have been incurring for the provision of the services. It has been a matter of fact that the DTH services not only pay taxes to the tune of 33% of their revenue but also pay around 35% to 40% of their revenue as the content cost. There is a huge investment in subsidizing the Consumer Premises Equipment to the consumers of which the Set Top Boxes being the major component.

(v) It is pertinent to mention that there is great difference in the services being provided under the Unified Licenses and the DTH. The unified license providers are mere carriers. They pick voice or data traffic from a point and deliver it at a point. They do not have to pay for what they are carrying on their networks nor do they have to subsidies the hardware to the end users.

(vi) We are of the view that the License fee should not only be pegged at the level of 8% of AGR where AGR is to be calculated by excluding only the GST actually paid to the Government. In addition to excluding GST and/or any other Tax levy, **the content cost actually paid to the Broadcasters should also be deducted from the Gross Revenue in order to arrive at AGR**.

(vii) At present, the content charges range from 35% to 40% of the total revenues collected by the DTH operator. The principle of AGR being used as a basis of license fees is to exclude the direct payouts which include Taxes and must also include third party content charges as exclusions. Hence the recommended suggested formula should have been:

License fees = (Total Revenues from DTH Licensing activities - Content Charges-Taxes and Levies) X 8%

(viii) It should be noted that an AGR of 8% may be appropriate for Telecom providers where there is no direct payout to the extent of 40% to third parties. The operators use their own networks for generating the revenues. If they pay any amounts as interconnect charges, they also receive similar interconnect charges for incoming calls. Hence these balance out and the 8% License fees gets applied to revenues retained by them. **In any event, even in case of Telecom services, the charges actually paid to other service providers are allowed to be deducted from Gross Revenue in order to arrive at AGR (Refer Annexure A to the Unified License)**. The attention in this regard is invited to clause 3.2 of the Unified License which specifies the exclusions to be made from the Gross Revenue to arrive at AGR.

(ix) This is totally different from DTH where the 8% license fees (at present 10%) also gets applied to the direct payouts to content providers. DTH operators, as a result of payout to broadcasters, retains approximately 60% of the revenue, whereas the License fee gets applied to the full revenue, it amounts to levying fee on the revenues of a DTH operator at 8% out of 60% or at 13.33% effective rate (16.66% at existing level of 10%).

To summarize, owing to the 40% or more content cost, an AGR based tax of 4.8% equates to an effective AGR tax rate of 8% for the revenues retained by the operator.

(x) In this context it is pertinent to mention that admittedly TRAI had earlier in its Recommendations dated 15/4/2008 had recommended the levying the license fee at 6% on Gross Revenue (GR) basis in response the decision of the Ministry of Information & Broadcasting contained in its letter dated 17th March 2008. In this regard it is pertinent to mention that MIB while considering the TRAI recommendations dated 01/10/2004 wherein TRAI had recommended the reduction of license fee to 8% of Adjusted Gross Revenue (AGR), decided not to adopt the concept of AGR as recommended by TRAI as allowing the deductions from GR is likely to enable the companies to conceal their shareable revenue rather than making the system transparent. **The MIB however decided to reduce the license fee from 10% of GR to 6% of GR.**

(xi) The recommendations made by TRAI in 2014 are a total shift from the position taken from the earlier two recommendations and also contrary to the Hon'ble TDSAT's judgment dated 28th May 2010 in the matter of Sun Direct Pvt. Ltd v/s Union of India Petition no 92 (c) and Bharti Telemedia v/s Union of India Petition no 93 (c) where the Tribunal had laid down the underlying principles to be taken into account which calculating the AGR based Licence fee. In the said judgement the TDSAT reiterated the certain deductions have to be made from Gross Revenue for the purpose of calculation of License Fee. These deductions included subscription fee payable to broadcasters, commission paid to the dealers and distributors, payments received on behalf of third party, installation charges passed to the other parties and taxes paid to the Government.

(xii) The attention in this regard is also invited to that TRAI Recommendations on Issues relating to Broadcasting and Distribution of TV channels dated October 01, 2004 wherein it had appreciated the difficulty of the high taxation being levied on the DTH sector and to bring in a level playing had recommended a reduction in the license fee by 2% and also bring in the concept of the AGR. The relevant extracts of the said recommendations are reproduced below :

> *7.1 There is a fundamental difficulty in providing competition within the cable industry in the provision of last mile services. In some parts of the world this has been explicitly recognized and the local operator has been given an exclusive franchise in a given geographical area. This is not feasible in India given the way the industry has grown and evolved. The most feasible way of giving competition to the cable industry in the short run, is through DTH.*
>
> *7.2 If there has to be competition between the two platforms then license fees, taxes etc. should all be made as uniform as is possible. To some extent given the differences in size, technology and reach, complete uniformity is not possible.*
>
> *7.4 Presently DTH operators are being charged annual license fee of 10% of its gross revenue as reflected in the audited accounts. DTH operators' revenue include pay channel charges and sale of hardware and therefore a significant amount of license fee is payable on account*

of these. This license fee increases the cost of pay channels and hardware for DTH subscribers.

7.5 There is need to provide as even a playing field as possible, between DTH and the Cable industry given the differences in scale of operation and technology. The cable operators have to pay an annual fee of Rs.500/-. Taking a cable operator who has only 500 connections this means an average of Re.1 per annum. In contrast if we take the consumer bill for a DTH consumer with full content at Rs.300 per month a 10% revenue share comes to Rs.30 per month or Rs.360 per annum. Therefore from both angles – the need to maintain parity with cable industry and the need to popularize DTH as a mass market instrument there is a need to bring down the levels of license fee for the DTH operators. At the same time there is need to provide checks to ensure that the accounts are being correctly presented – this can be done by using the CAGs audit to ensure that there is no loss of revenue to the Government. Necessary changes should be made to the license conditions to incorporate these changes.

(xiii) Originally, the TRAI has recommended a reduction of 2% in the license fee for DTH i.e. 8% from the existing level of 10% which is to be calculated on Adjusted Gross Revenue (AGR). The AGR was to be calculated by reducing:

(a) Subscription fee charges passed on to the pay channel broadcasters;
(b) Sale of hardware;
(c) Services/Entertainment Tax actually paid to the Central/State Governments, if the gross revenue had included them.

However, in the subsequent recommendations dated 15/4/2008, TRAI has proposed the license fee as 6% of the Gross Revenue, which recommendations the Ministry has accepted. It may be mentioned that 6% of Gross Revenue would result in realization of more revenue by the Govt. vis-à-vis 8% of AGR which is to be calculated after reducing the subscription fee paid to the pay channels by a DTH operator.

(xiv) The TRAI in its recommendations dated 1/10/2004 has also stated that:

7.7 TRAI has expressed its views in various recommendations that the telecom services should not be treated as a source of revenue for the Government. Imposing lower license fee on the service providers would encourage higher growth, further tariff reduction and increase service provider revenues. With increased growth, it would be a win- win situation for the industry and the Government. The Government would also get higher license fee and service tax if revenue for the service provider increase.

In view of the above, there is a strong case for reduction of license fee from the existing level of 10% of Gross Revenue to 6% of Gross Revenue realized from the **licensed DTH activity**. There is an urgent need to implement the reduction in the license fee without further delay.

(xv) Thus in our view there can be two approaches:

(a) License fee be charged as per the decision of MIB on TRAI recommendations as also reflected in MIB letter No. D.O. No. 8/12/2006-BP&L Vol. II dated 17.03.2008 and TRAI letter 17-01/2008-FA dated 15th April 2008, which is 6% of the GR.

(b) Alternative can be the principles laid down in judgment of Hon'ble TDSAT dated 28th May 2010 i.e. 8% of Gross Revenue after deducting the pass through elements such as content costs, GST and other tax levies, transponder costs, hardware sale revenue etc.

Thus there is an urgent need for TRAI to initiate a consultation process on the issue by bringing a consultation paper at the earliest.

2. <u>Satellite Capacity – Open Sky Policy</u>

(i) DTH sector is today in a precarious position. As the cable sector is being digitized, the DTH sector is losing its competitiveness on account of the fact that DTH service providers do not have the sufficient bandwidth to expand their channel offerings.

The DTH guidelines as they stand at present provide for the following:

> ***11.1 Though Licensee can use the bandwidth capacity for DTH service on both Indian as well as foreign satellites, proposals envisaging use of Indian satellites will be extended preferential treatment.***
>
> ***11.2 The Licensee shall ensure that its operation will conform to the provisions of inter-system coordination agreement between INSAT and the satellite being used by the Licensee.***

(ii) When DTH licensing guidelines were announced, satellite capacity for providing such services was readily available with ISRO/ Antrix on the INSAT series of satellites. Accordingly the DTH Agreement License conditions had a proviso that

> "preference will be given to Indian Satellites" even though the DTH Licensees were not prohibited to go to foreign satellite operators for lease of capacity.

However in the implementation of the agreement, the DoS/Antrix made it compulsory for acquiring capacity in the Ku band only via ISRO/Antrix and not directly by contract with a foreign satellite operator, even though such an operator would have been coordinated with respect of ITU coordination with ISRO.

(iii) Moreover the INSAT satellites had limited capacity and even though the first DTH operator - Dish TV was initially given capacity on INSAT 3A (4 transponders out of 6 available on the satellite), the same could support only 48 channels and in the very next year (2004) INSAT had to lease capacity from a foreign operator i.e. New Skies Satellite on the satellite NSS-6, whereby 10 transponders could be provided. With New DTH licensees coming in, only one operator (Tata Sky) could be given capacity on INSAT 4A while all other operators (Reliance big TV, SUN, Videocon d2H and Airtel) had to be given capacity on foreign satellites. These satellites included Measat 3A, ST-2, NSS-8 etc. For expansion of capacities, once again, capacity had to be leased on foreign satellites such as Asiasat-5 in case of Dish TV even as late as 2010.

(iv) It is quite evident that in the absence of ready available INSAT capacity which would go waste if the DTH licensees were to take capacity on foreign satellites, there is no justification for Canalization of satellite capacities via ISRO/Antrix. Lease of Capacities via ISRO /Antrix also have the limitation that the satellite leases are entered into for a period of 3 years with a proviso that if INSAT capacity is available the Licensee is bound to shift to such capacity. This is totally impractical as an operator with 10 million dishes can not incur "dish re-pointing charges" to an INSAT satellite, which as an example of Rs 300 per dish would cost Rs 3 Billion or Rs 300 crores to shift these dishes. **This is clearly impractical and it is imperative that an Open Skies Policy should be put in vogue as a part of the DTH License Agreement which would allow any DTH operator to hire capacity directly on a satellite which is approved by ISRO and so notified.**

(v) Lease of capacity via Antrix/ ISRO over the past few years has also brought in many limitations which are hindering the growth of the industry:

(a) Being Government Organizations DoS and IRO are bound to follow tendering procedures, elaborate technical and financial evaluation and price negotiations, negotiations of legal terms and conditions before a contract is entered into. This delays the processes by over a year. In the Indian DTH industry players have been waiting for as long as 2-4 years for allocation of even minimum capacities.

(b) Based on the internal criteria developed by them, Antrix is charging an overhead on satellite capacities of up to 10% whereas it was just 2% a few years back. This addition of 10% together with charges and levies on it makes the satellite capacity prohibitively expensive.

(vi) Currently the broadcasters who operate in C band are allowed to tie up for their satellite capacity themselves on ISRO coordinated satellites and in case the Ku band capacity is required on the same satellite then it has to be routed through ISRO. In order to facilitate the availability of bandwidth, the DTH operators be permitted to directly tie up with the foreign satellite providers. It is accordingly suggested that:

(a) As in case of the C band teleport requirements, DTH operators and Ku band teleport operators be allowed to enter into Capacity agreements with the satellite providers directly. This will enable DTH operators and Ku band teleport operators to source the capacity and build their own business models and the DTH operators will be able to offer more channels to the consumers.

(b) DTH service providers will be able to build their own back up plans for protection of their investments and consumer interests.

(c) Once the satellite is coordinated by the Department of Space and the satellite is approved for use over the Indian Skies, then it should be allowed to be directly contracted by Ku band teleport operator and DTH operator.

(d) The direct contracts can incorporate conditions from the lease agreements of the Antrix so as to protect National interests. This would also protect Antrix from any financial liability in case of any default by the DTH service provider.

(e) The arrangement will be more cost effective as the Operators will be able to sign for long term thus getting better rates.

(f) If the capacity is coming up at the orbital slot where one DTH operator is already operational then that particular DTH operator should be given preference as it will not be possible for the another DTH operator to be operational at that orbital slot due to location of the receiving antennas.

(vii) It may be added that all satellite capacity contracted, either directly by the operators (presently in the C-Band) or via Antrix (in the Ku-band) it still needs to be approved by the Wireless Planning Wing (WPC). The DTH license agreement has the following clause in regard to WPC:

> *12.3 The Wireless Planning & Coordination (WPC) Wing of the Department of Telecommunication, Ministry of Communication shall issue SACFA clearance to the Licensee as soon as possible after receiving the application the same and shall grant the final Wireless Operational License, after signing of*

this agreement, subject to fulfillment of the necessary terms and conditions including installation of equipment etc. as may be required by WPC.

Thus there is an immediate need to review the present satellite capacity provisions incorporated in the DTH license agreement. **These need to be amended so as to allow DTH operators to directly lease the Satellite Capacity in the Ku band as is the case in the C-band, subject to the satellite being coordinated with ISRO.**

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.

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.

Response:

1. Registration/License

(i) At present there is no mechanism/data available to ascertain the number of cable operators operating in India. There are varying estimates ranging from 50000-60000 numbers however the exact quantum thereof is not known. We are of the view that the present system of "registration" of Cable operators must be replaced by system of "licensing" in order to ensure a proper and effective implementation of various Rules and Regulations notified by MIB and TRAI.

(ii) The provision of cable services is covered under the purview of Indian Telegraph Act. The attention in this regard is invited to the judgment of Hon'ble High Court of Rajasthan in Shiv Cable TV System vs. The State of Rajasthan and Ors. – AIR 1993 RAJ 197 wherein the Hon'ble High Court inter alia held

"The disc antenna as well as the cable network installed by the petitioners, therefore (both) require licence under the Indian Telegraph Act read with Indian Wireless Telegraphy Act, 1933. The

transmission of prerecorded cassette through cable network also requires licence under these Acts."

The competent authority for grant of license can be either the "authorized officers" appointed by MIB or in order to avoid multiplicity of authorities, this function can be entrusted to the specified central nodal authority to be created for monitoring of cable TV services with offices at various places situated all over India. This would go a long way in regulating the Cable services in the sector.

(iii) The period of one year validity as stipulated under the present system of "Registration" is wholly inadequate and in fact the license for cable services should be granted at least for a period of 5 years with a provision to revoke the same in case of breach of any terms and conditions of license.

2. **Piracy Issues**

(i) At present the provisions of Cable Act or the Rules made thereunder do not adequately address the issue of piracy. Although sub-rule 3 of rule 6 provides that :

"No cable operator shall carry or include in his cables service and programme in respect of which copyright subsists under the Copyright Act 1957 unless he has been granted a license by owners of copyright under that Act in respect of such programe."

Still the rampant piracy of various channels is going on by tapping the signals from DTH and other feeds. Accordingly, in order to tackle this issue, we suggest that the following proviso be incorporated in the said sub-rule 3:

"Provided that carrying of programme or channel by a cable operator by pirating the service (s) of the licensee of such copyrights including but not limited to Direct to Home service provider (s), IPTV service provider(s), Headends-in-The-Sky service provider (s), MSOs, shall be construed as a violation of the Act."

3. Cable Channels run by MSOs/LCOs

(i) At present there is no regulatory mechanism available for registration or grant of permission to the local cable channels run by MSOs/LCOs. In order to ensure the compliance of the prescribed content

code and to take action in case of any violation of the applicable laws, it is imperative that these local cable channels must also be registered with the Ministry of Information & Broadcasting. In this context, it is pertinent to point out that at places these channels also carry local news and current affairs programme and therefore considering the sensitivities of the issues involved, it becomes all the more important to have these channels registered with MIB. An Authorised Officer at the City/Regional level can be appointed to grant permission and monitoring of ground based channels offered by MSO's /LCO's. Without such formal permission no MSO/ LCO should be allowed to offer services through such ground channels. Further, data pertaining to all such ground channels should be made available at a centralised point giving in brief the content carried by each such channel.

(ii) It shall be the responsibility of such MSO's/LCO's to ensure compliance of program code, Advertisement code and content provided through their ground based cable channel.

(iii) Any non-compliance of the guidelines, regulations including non-adherence of program code, Advertisement code and content would make the MSO/LCO liable for cancellation of the Registration granted to such ground channel.

4. **License Fee Issue in case of provision of Broadband/Internet through cable**

(i) There are approx. 80 million households having Cable TV access i.e. 44 per cent of the total C&S households in India. The Multi System Operators (MSOs) and the Local Cable Operators (LCOs) have an inherent strength in providing last mile access. The sheer reach of the cable network to large number of households renders this infrastructure both amenable and ideally suited to the delivery of Broadband to a large segment of the population very quickly. Internationally, the growing convergence of broadcasting and Broadband is being recognized, yet the two have distinct markets for their own respective industries. In many developed countries Broadband is, in effect, delivered through the cable system. The MSOs and LCOs can play an important role in the delivery of Broadband as we move towards convergence.

(ii) The roles of MSOs and Local Cable Operators have also been recognized in the recommendations of TRAI dated 17/4/2015 titled delivering broadband quickly, what do we need to do? It may be mentioned that cable modems provide subscribers with access to broadband services over cable television (CATV) networks. Cable TV networks can be a cheaper and convenient source of providing broadband to households. Cable TV networks already have access to large number of households (over 80 million households now). These networks cater to much larger rural population compared with copper connectivity. According to industry estimates, Multi System Operators (MSOs) have laid around 30,000 km of OFC to provide connectivity to cable operators besides large backbone OFC network for inter-city and infra-city connectivity. At many places they are using OFC networks of TSPs. International experience too suggests that provision of broadband services is an attractive business avenue for the cable TV sector.

(iii) Most of the Multi System Operators having pan India operations have obtained the ISP license/Unified License for delivering the internet services. This license envisages the payment of license @8% of AGR.

The revenue stream of MSOs consists of :

(a) The revenue from Cable TV services
(b) The revenue from Internet services

In this context it is pertinent to point out that revenue from Cable TV stream constitutes more than 90% of total revenue. However, the Department of Telecom (DoT) is demanding the license fee in respect of revenue earned from cable TV operations and related value-added-services such as Video on Demand etc. which has no relation whatsoever with the provision of internet services, e.g. :

- revenue from cable TV operations under the license granted by MIB - Rs. 300 crores
- revenue from internet services under ISP/Unified License - Rs. 20 crores
- applicable license fee @8% of AGR - Rs. 1.60 crores
- license fee being demanded by DoT (@8% AGR on Rs. 320 crores) - Rs. 25.6 crores

(iv) The action of DoT in demanding the license fee of 8% even on the revenue realized from cable TV services which services are being provided under the license granted by MIB, is not only irrational and illogical but also unjust and unfair. This is having an adverse impact on the expansion of internet and broadband through cable which is so vital for the growth of the country and still woefully short of the target that the Govt. has set.

(v) In this context it is pertinent to point out that TRAI in its recommendations dated 6th January 2015 on "Definition of Revenue Base (AGR) for the Reckoning of License Fee and Spectrum Usage Charges" has inter alia observed the following :

> *2.23…….*
> (I) *Revenue from Operations: The operating revenue represents the revenue generated by way of provision/delivery of services and sale of goods for which a telecom licence is required and also includes operating revenue from activities other than telecom, such as transportation, power transmission, etc. as well as revenue from services operated under licence/permission from the Ministry of Information & Broadcasting (MIB), such as cable TV or broadcasting services. Revenue from operations also includes 'other operating revenue' arising from telecom activities or ancillary to telecom activities but for which a telecom licence is not required (e.g., sale of handsets/equipment, revenue from sharing of passive infrastructure/providing OTT services etc.) and 'other operating revenue' from activities other than telecom.*
>
> *2.29 In the light of the above discussion, it is better that issues pertaining to inclusion or non-inclusion of revenue from operations other than telecom activities and other income are dealt with, before going on to address the definition of AGR for the purpose of LF and SUC. The Authority is of the considered opinion that the applicable GR (for proceeding to the next step of arriving at AGR) needs to be defined before arriving at AGR for the purpose of levying of LF and SUC.*
>
> ***Therefore, the Authority recommends that Applicable Gross Revenue (ApGR) would be equal to total Gross Revenue of the licencee as reduced by:***

(i) revenue from operations other than telecom activities/ operations as well as revenue from activities under a licence/ permission issued by Ministry of Information and Broadcasting;
(ii) Receipts from the USO Fund; and
***(iii) items of 'other income' as listed in the 'positive list' (Table 2.1*)**.

(vi The DoT is yet to take any decision on these TRAI recommendations and in the meanwhile the demands are being raised by DoT on MSOs demanding the license fee even on the internet from CATV operations

This issue needs to be immediately addressed in the interest of expansion of Broadband services in India through Cable TV. The following two alternatives are suggested in this regard:

(a) The DoT should immediately clarify that provision of internet services by MSOs/LCOs, the revenue stream from cable TV operations/services which are being provided under the license/permission granted by MIB, will not be included and that the license fee 8% of AGR would be payable in only on income from internet services; or

(b) The provisions of Broadband services through Cable TV should be granted exemption from payment of license fee for a period of 5 years in order to ensure the pan India penetration of Broadband services through cable networks under the digital initiative of Govt. of India.

5. Right of Way

(i) The cable services are provided through cable/optical fiber infrastructure which is either underground or overhead. Recognizing the importance of granting cable operators a right to lay down the cables/optical fibers, the amendment was carried out in the Cable Television Network Regulation Act in 2012 by introducing a new Section 4B in the said Act which deals with the Right of Way for cable operators and permission by public authority. Despite the incorporation of Section 4B in the Cable Act, cable operators are still facing lot of problems in getting the "Right of Way" permissions form the local authorities who are

laying down different rules and norms for cable operators vis-à-vis telecom operators, thereby creating discrimination both in terms of charges as well as other terms.

(ii) The attention in this regard is invited to sub-section (5) and (6) of Section 4B of the Cable Act which reads as under:

> *"(5) The Central Government may lay down appropriate guidelines to enable the State Governments to put in place an appropriate mechanism for speedy clearance of requests from cable operators for laying cable or erecting posts on any property vested in, or under the control or management of, any public authority and for settlement of disputes, including refusal of permission by the public authority.*
>
> *(6) Any permission granted by a public authority under this section may be given subject to such reasonable conditions as that public authority thinks fit to impose as to the payment of any expenses, or time or mode of execution of any work, or as to any other matter connected with or related to any wok undertaken by the cable operator in exercise of those rights."*

(iii) It is pertinent to point out that the Guidelines/Rules contemplated in the above mentioned provisions are yet to be laid down by the local authorities, thereby creating ground level issues and difficulties for the cable operators to obtain relevant permissions. On the other hand the Department of Communication has vide Gazette Notification No. G.S.R. 1070(E) dated 15.11.2016 has notified the "Right of Way" rules for grant of permissions to the telecom operators. A Copy of these Rules is enclosed herewith as **Annexure-B.**

The applicability of these Rules is required to be extended to the cable operators/MSOs also. In addition since most of the cable operators/MSOs are also providing internet/broadband services under USAL licenses granted by Department of Telecom and as such are eligible for the benefits of the above mentioned Notification No. G.S.R. 1070(E) dated 15.11.2016.

Thus, in order to streamline and to ensure the uniformity in the process for granting "Right of Way" permissions, it is imperative that applicability of the Gazette Notification No. G.S.R. 1070(E) dated 15.11.2016 be extended to cable operators/MSOs.

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.

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?

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.

Response

(i) The process of assignment of frequency by WPC and clearances from NOCC needs streamlining and simplification. In this regard we would like to point out that the Wireless Planning & Coordination (WPC) Wing, Department of Telecommunications has not carried out any "endorsement" of the spectrum for the broadcasting of the TV channels since February 2017. It is now more than six months and the applications are pending for the authorization of the Spectrum, authorization of Teleports and many other matters.

(ii) We would like to place on record that by virtue of having signed certain contracts, although the Broadcasters and Teleport operators are incurring expenses towards the satellite capacities, they are unable to use teleports and launch new channels. Accordingly, the satellite capacities hired by them are lying vacant resulting in huge financial and commercial loss.

(iii) The Broadcasters also had a meeting Wireless Adviser, DoT to discuss the matter for a favourable resolution. Wireless Adviser was appreciative to our concerns but continued to show his inability to take any favourable action citing the reason of an old Supreme Court judgement on spectrum matter in a 2G license cancellation matter wherein the Hon'ble Supreme Court has taken the view that spectrum allocation has to be done through auction process. We tried to convince and persuade him that the said judgement of Hon'ble Supreme Court is in respect of terrestrial spectrum allocation which is used by telecom operators and that the same is not applicable to broadcasters as no spectrum allocation is involved in uplinking the signal to a transponder. In broadcasting the Satellite usage from an earth station is a point to point uplink to a specific orbital location and constitutes only a 'vertical use' of the spectrum and the satellite to which

uplinking is done is coordinated with the ISRO via ITU including the frequency spectrum to be used over India.

(iv) It is quite strange that the WPC has chosen to interpret the spectrum allocation issue which relates to terrestrial use spectrum wherein one user excludes others and gets certain rights from the Govt of India. However, in the extant case of satellite usage, no such right is granted and all spectrum that is used has been coordinated by ISRO and/or foreign operators via the ITU of which India is a member. The non-endorsement of capacities after DoS approval is placing India in an anomalous position where business cannot be conducted even as per internationally approved agreements. This is causing huge financial loss also as despite signing the agreements with DoS approved satellites, the transponder capacity cannot be utilized by the Broadcasters and Teleport operators because of refusal by WPC to endorse the same.

(v) We would further like to submit that there is no proper justification for stopping spectrum endorsement for satellites due to the following facts:

a) All satellites, Indian and Foreign are coordinated with the ITU including the frequency spectrum to be used over India. When India gives coordination consent for a satellite and it is approved by the ITU, the satellite has an indefeasible right for using the same.

b) The Satellite usage from an earth station is a point to point uplink to a specific orbital location (say 78.5E for Intelsat -20) and constitutes a "vertical use" of the spectrum. There is no limitation for any other satellite earth station to use the same frequency for uplink to any other orbital location, including nearby locations in the orbit e.g. 81E, 83E and so on.

c) The ITU gives a satellite a coordinated status only after it satisfies all user administrations that the downlinks will not cause undue interference to any other coordinated satellite.

d) The Broadcasters/Teleport operators are submitting all applications for WPC endorsement, merely as a procedure because such allocations already have the consent of the Dept. of Space, ISRO and also the Ministry of Information and Broadcasting.

e) The Satellite Transponders belonging to various foreign satellites which are being permitted by the DoS can never be auctioned. There is not a

single case anywhere in the world, where the transponders of a coordinated ITU satellite were auctioned. Hence there is no other way these transponders will ever be used, now or in future. Hence just unilaterally stopping the endorsement of transponders after approval of use by the MIB and the DoS creates a complete obstruction for the conduct of business.

f) The non-endorsement of contracted transponders is a violation of freedom of Press. Media and Radio, which is guaranteed under the Constitution. In the absence of endorsement of satellite capacity, the broadcasters who plan to launch channels, radio stations, and satellite based news delivery are denied opportunity to launch such a channel and convey their points of view via broadcast medium. This violates Articles 14 and 19 of the Constitution where only the older established broadcasters can transmit the channels (already endorsed) but no new channels can be launched where a satellite endorsement is essential. It is now more than 7 months that the freedom of Media has been curtailed in an arbitrary and illegal manner.

g) While in the spirit of Make in India and Ease of Doing Business, the Hon. Prime Minister has encouraged the Dept of Space to launch new satellites at huge cost, the transponders on these satellites where allocated to private users have and will remain unusable. The Dept of Telecom and the WPC by their actions are nullifying the growth of media and its multiplier effect on the Indian economy with millions of jobs at stake merely by misinterpreting the Satellite spectrum.

(vi) The Broadcasters are further aggrieved by the fact that the WPC has chosen to open up spectrum endorsements for Govt. and PSUs but has kept the "Window" closed for other users which includes the entire TV broadcasting sector amongst others. As a result, many of the uplinks are forced to operate from foreign countries due to non-endorsement of satellite capacities which have already received approval of the Ministry of Information & Broadcasting and the Dept. of Space. This definitely goes against the spirit of the ease of doing business in country.

This is required to be addressed immediately.

Q15. Is there any other issue which will be relevant to ease of doing business in broadcasting sector? Give your suggestions with justification.

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

Response

1. BROADCASTING AND CONTENT DISTRIBUTION – AN INFRASTRUCTURE SERVICE SECTOR

(i) The media, whether print or electronic, nowadays has become the most important tool in influencing, political, cultural and social environment & opinions all over the world. India with its diversity of languages, culture and literacy levels can most effectively reach its people through visual media. The swap and reach of print media is highly constricted by its access only to the educated elite. Electronic media i.e. television on the other hand has much larger catchment area and carries information, news and entertainment etc. to all socio-economic groups equally & effectively thus empowering the citizens.

(ii) It is stated that the Indian Broadcasting (TV channels) and Content distribution Sector (DTH, cable, HITS etc.) is one of the largest Sectors in the world. As per research Reports (FICCI – KPMG 2017), backed by growth in advertising and subscription revenues, the television industry is expected to grow to Rs. 1166 billion by 2021 from the present size of Rs. 651 billion (2017). As per the report, TV households will surge to 203 million by 2021 from the present level of 186 million in 2017. The paid Cable and Satellite (C&S) homes are expected to grow from the present level of 149 million to 171 million by 2021.

(iii) As per the study conducted by Deloitte and MPA the Indian Television Industry is estimated to have provided employment to 4.82 lacs people directly and 12.89 lacs people indirectly in Financial Year 2013 & added Rs. 27,777/- crores (USD 4,480 million) of value to the economy. Further the industry has paid approx. Rs.6000 crores as net Indirect Taxes.

(iv) In the present era of convergence of telecommunication, information technology (IT) and broadcasting technology, the distinction between telecom services and broadcasting/ cable services has got blurred. It is pertinent to point

out that by way of Notification No. S.O. 44(E) dated 9.1.2004 issued by the Ministry of Communication & Information Technology (Department of Telecommunications), the Central Govt. has notified `Broadcasting Services and Cable Services' to be "Telecommunication Service" under TRAI Act 1997. Yet it is inexplicable that whereas the telecom is considered as "Infrastructure Sector" and thus entitled to various benefits and incentives whereas the same is denied to Broadcasting and Content Distribution Sector.

(v) Throughout the world, the Broadcasting and Distribution Sector as a whole is moving from analog system to digital regime so as to realize the benefits of digitalization being economy, speed and quality efficiencies. Information & Communication Technologies have taken a big leap forward and the distinction between broadcasting, telecommunications & multi-media services is disappearing very fast. Convergence is coming not only in technology but also in carriage infrastructure and receivers. Major driver of convergence is digital technology. Digital compression technology enables transmission of the same information by usage of less bandwidth in the digital mode as compared to the requirement in the analogue mode. Digital technology is spectrum efficient and has been a factor to promote digital revolution.

(vi) Recognizing the same, the Parliament amended the Cable Television Network Regulation Act, 1995 in 2012 thereby laying down the roadmap of mandatory addressable digitalization of the entire analogue Cable Sector in four phases which has already been completed. An investment outlay of around Rs. 25,000 – Rs. 30,000 crores by way of set top boxes, optical fibers, digital headends etc has already been done. It is therefore imperative to incentivize the digitalization initiative by way of providing supportive policy framework and institutional arrangement for its implementation and sustenance so that it becomes affordable for masses and the 'DIGITAL INDIA' initiative of Hon'ble Prime Minister is fulfilled. Recognizing the need of attracting the foreign investment for making available the required fund for the digitalization initiative, the Government recently has liberalized the FDI Policy for the Broadcasting and Content Distribution Sector by allowing FDI upto 100% in the Sector.

(vii) Broadcasting Services including Cable Services, DTH service and HITS Services and other similar Content Distribution Services require huge investment in infrastructure viz. broadcast centers, digital headeneds, DTH infrastructure, HITS infrastructure, optical fibre network, teleports, Subscriber Management Systems (SMS), encryption systems, set top boxes and other consumer premise equipments (CPE) etc. running in thousands of crores. As

mentioned hereinabove, these services are critical as they act as an important medium for dissemination of information, education and entertainment to the masses.

(viii) Telecom sector, which struggled for over five years (1995-2000) in its initial stages of privatization, could grew at a tremendous pace only because the government provided various incentives to the sector. Today, Telecom is the largest growing sector, adding over 8 million subscribers per month. The sector has given boost to the growth of the economy, provided job opportunities, increased investors' wealth and provided revenue to the Government.

(ix) The Telecom Services are treated as Infrastructure Services and are eligible for various benefits and incentives including the benefits under Section 80-IA and Section 72A of the Income Tax Act. The need for level playing field and the parity demands that all these benefits should be extended to Broadcasting Services as well by Broadcasting Services promises similar growth potential and can repeat the success story of telecom provided if it is given imputes by the government.

(x) The cable TV network, like telecom infrastructure, 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.** The Digitalization of analogue cable C&S homes involves the investment outlay in the range of Rs. 25000 Crores to Rs. 40000 Crores. Once the addressability is introduced in the Cable Sector by way of digitalization, these 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.

(xi) Similarly, the DTH operators have already invested over Rs. 15,000 crore and this Sector would also require an additional investment of Rs. 15,000-20,000 crore in the next 4 – 5 years for further expansion of the services. The DTH sector will provide direct job opportunities to 0.5 million people and indirect job opportunities to about 1.5 million people. Like telecom sector, due to its inherent nature of transparent system of accounting, DTH services will provide revenue of Rs. 7,000 – 10,000 crore in the form of GST and license fee for a period of five years provided the industry is given similar incentives as provided to telecom sector.

(xii) Thus, the Broadcasting, Cable and DTH sectors deserve to be treated as infrastructure industry and all the benefits and incentives as are available for

infrastructure industry should be extended to the Broadcasting, Cable and DTH sector including :

(a) **Classification as Priority Sector by RBI**

Availability of finance at concessional rate of interest to give boost to digitalization process in the country. The Reserve Bank of India should treat the Sector as "Infrastructure" and immediately notify the same as "Priority Sector" for the purpose of granting loans & advances – both for financing Capital Assets/Infrastructure and Working Capital finance, thereby making available the necessary funds to the Sector at concessional rate of interest.

(b) **Tax Holiday under Section 80-IA of Income Tax Act**

Digital Cable Service Providers, DTH service operators, HITS Operators and similar Digital Content Distribution Service Providers undertaking digitalization of their services should be eligible for a deduction of 100% of the profits and gains derived by them in providing the respective digital services for the first five assessment years and thereafter 30% of such profits and gains for further five assessment years in a block of 15 years.

(c) **Carry forward and set off of accumulated losses and unabsorbed depreciation allowance in amalgamation or demerger etc. Section 72A of Income Tax Act**

Section 72A of the Income Tax Act, 1961, defines the term Industrial Undertaking but does not seem to cover Broadcasting Industry. Therefore, **all Broadcasting Services including content distribution services** should be covered under the definition of industrial undertaking, as defined under para 7(a)(aa) under Section 72A of the Income Tax Act. It appears that when this definition was introduced, Broadcasting Industry was in a nascent stage and probably that is the reason it was not included in the definition of the industrial undertaking though Print Media does get covered under this definition.

(d) Grant of Right of Way for laying optical fiber network by State Government and Municipalities to the licensed digital service providers.

(e) Broadcasting Services including Cable Services, DTH service and HITS Services and other similar Content Distribution Services require huge investment and would see consolidation in the ensuing years. However, it is imperative to allow carry forward of accumulated losses in case of amalgamation or de-merger. Like telecom sector, all Broadcasting Services including content distribution services should also be covered under the definition of industrial undertaking, as defined under para 7 (a)(aa) under Section 72A of the Income Tax Act. It is therefore imperative that the definition **of the term Industrial Undertaking be expanded to include the "Broadcasting Industry" and the Broadcasting Industry be defined to include the Broadcasting and Content Distribution Services.**

2. **ARASU and A.P. Fibre Net issue**

1. On 28.12.2012, TRAI issued recommendations to the Government (MIB) inter alia, recommending that:

(i) Central Government Ministries and Departments, Central Government owned Companies, Central Government Undertaking, Joint Ventures of the Central Government and the private sector and Central Government funded entities should not be allowed to enter into the business of broadcasting and/or distribution of TV channels.

(ii) State Government Departments, State Government owned Companies, State Government Undertaking, Joint Venture of the State Government and the Private Sector and State Government funded entities should not be allowed to enter into the business of broadcasting and/or distribution of TV channels.

2. These recommendations were considered by Inter-Ministerial-Committee (IMC) headed by Additional Secretary, MIB and it appears that IMC has recommended MIB to take opinion of Ld. Attorney General in the matter.

3. In the meanwhile, because of the directions of the Madras High Court in a pending petition in Chennai and the implementation of Phase-IV of

digitalization, provisional license has been granted by MIB to ARASU in April 2017.

The following may be noted in this regard:

(i) Only provisional license has been granted to ARASU.

(ii) The Centre/MIB has not yet taken final decision on the recommendations of TRAI and they are still under consideration of the Govt.

(iii) The license granted to ARASU is conditional and a clause is stated to have been inserted in the license which says that in the event Central Govt. accepts TRAI recommendations that State Govt are not allowed to own distribution platforms, the ARASU will have to shut down the operations.

(iv) A 3-month time has been given to ARASU for transition from analogue to digital regime by installing digital headend and deploying the STBs etc. In case the said switch over does not happen within 3 months, the broadcasters are entitled to switch off the channels.

4. However, it appears that the MIB has not yet sent the said case to Ld. Attorney General for obtaining opinion as suggested by IMC in the light of above mentioned TRAI recommendations and the matter is pending in Ministry only. The ARASU is repeatedly seeking extension for deployment of Set Top Boxes and implementation of DAS. Despite the expiry of 5 month since the grant of provisional DAS license, the Digital Addressable System is yet to be implemented in the operational areas of ARASU.

5. Despite repeated reminders and follow-ups, the MIB has not taken any final decision on grant of MSO license to ARASU. This is causing lot of uncertainty. Now another State owned company – A.P .Fiber Net has come up in the distribution segment which is owned by Andhra Pradesh Government. The Punjab Govt. has expressed its intention to set up an ARASU like entity in Punjab for cable TV operations. The Karnataka Govt. has also recently expressed its intentions to launch a TV channel. The news reports in this regard are attached herewith as **Annexure-C (Colly).**

6. TRAI recommendations clearly state that the State Governments cannot own distribution platforms and/or to own a television channel. The matter is required to be taken up with MIB on urgent basis by TRAI reiterating its recommendations and asking the Govt. to take the final decision in the matter in the light of the recommendations of 2012 at the earliest to end the prevailing uncertainty. If no decision is taken on these recommendations, these State Govts would go ahead and set up/launch their own distribution platforms and channels and thereafter it would be very difficult to close their operations.

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