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Re: Response to the Consultation Paper dated 19.12.2017 on Issues relating to Uplinking and Downlinking of Television Channels in India

The Ministry for Information and Broadcasting (MIB) through its letter dated 21.08.2017 requested the Telecom Regulatory Authority of India (TRAI) to suggest guidelines for uplinking television channels from India and for downlinking television channels in India. The MIB stated that the reason that these guidelines needed amendment/review was that the Uplinking and Downlinking Guidelines had been drafted on 5th December, 2011 and in view of the technological advances and change in the markets scenario it had become necessary to review and amend the provisions of these guidelines in order that there is healthy growth of the broadcasting sector. Therefore, the MIB sought inputs from the TRAI on various issues relating to the permissions for uplinking and downlinking of satellite television channels in India and setting up of teleports.

In view of the above, the TRAI has circulated a Consultation Paper relating to the Uplinking and Downlinking of Television Channels in India (the “said Consultation Paper”) dated 19th December, 2017 and has sought the views and inputs of various stakeholders on the several issues involved.

Upon a perusal of the said Consultation Paper the following issues have been culled out by the TRAI:

Definition of 'News and Current Affairs channels' and Non-'News and Current Affairs Channels'

4.1 Is there a need to redefine “News and Current Affairs TV channels and Non News and Current affairs TV channels more specifically? If yes kindly suggest suitable definitions of “News and Current Affairs TV channels and Non News and Current affairs TV channels with justification?

In respect of the above issue, the News Broadcasters Association (NBA) submits that the definition of “News and Current” affairs channel as it exists presently in the Guidelines for Uplinking and Downlinking news and current affairs channels in India is absolutely acceptable and should be retained. The definition is that “a News & Current” Affairs TV channel means a channel which has any element of news & current Affairs in its programme content”.

The reason for retaining the said definition as it is and not modifying /amending it is that given the strict and stringent legislations, guidelines, regulatory procedures, policies (such as Foreign Direct Investment will be only 49%, news channels to have only an Indian editor etc.) and the strict eligibility criteria required to be a “News and Current Affairs channel”, there would rarely be cases where a channel would declare themselves to be news and current affairs channels unless their intention was to actually telecast/broadcast news and current affairs. There may be some stray errant cases of violation however policies and guidelines cannot be amended based on these errant cases, if a majority of the news and current affairs channels are within the definition as stated above.

Net-worth of eligible companies

4.2 Should net-worth requirement of the applicant company for granting uplinking permission, and/ or downlinking permission be increased? If yes, how much should it be? Please elaborate with appropriate justification.

In respect of the issue regarding increasing the net worth requirement of a broadcasting company for granting uplinking permission, and/ or downlinking permissions, NBA submits that the net worth required by a broadcasting company for granting uplinking permission, and/ or downlinking permissions is already high and prohibitive and therefore the net worth requirement for the grant of the above permissions should not be raised. As stated in paragraph 2.20 of the said Consultation Paper raising the net worth would discourage new entrepreneurs from entering the broadcasting industry, it might also affect the growth of local and regional channels thereby affecting the diversity and plurality in the field of broadcasting, leaving the field open to cartelization by few of the media houses. This might in turn lead to reduction in competition amongst channels, eventually leading to an increase in the prices paid by the consumers to watch these channels. Increasing the net worth requirement would certainly not be a guarantee to avoid sub leasing and might in fact lead to an increase the malaise.

It may also be noted that even in a digitized era, for the news and current affairs channels the main source of revenue continues to be through advertising. The subscription revenue continues to be low in the areas where Multi System Operators (MSOs) and Local Cable Operators (LCOs) operate, therefore to raise

the net worth requirement of a broadcasting company for granting uplinking permission, and/ or downlinking permission would be levying a huge burden on the companies.

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

NBA's submission with regard to the above issue is that the present status quo should be maintained.

As stated above, the main source of revenue for the news and current affairs channels is still through advertising. The subscription revenue continues to be low in the areas where MSOs and LCOs operate. Furthermore the investment to start a news channel is very high and the infrastructure and capital cost is very expensive. Due to the differential in the above costs of news channels and non news channels, the present requirement is adequate and justified.

Processing fee for application

4.4 Is there any need to increase the amount of non-refundable processing fee to be deposited by the applicant company along with each application for seeking permission under uplinking guidelines, and downlinking guidelines?, What should be the amount of non-refundable processing fee? Please elaborate with justification.

There should be no increase in the amount of non-refundable processing fee to be deposited by the broadcasting company along with each application for seeking permission under uplinking guidelines, and downlinking guidelines.

The current fee requirements are adequate and do not warrant any changes. Any further increase in these amounts would not be reasonable and be against the spirit of 'Ease of Doing Business' initiative.

Grant of license/ permission for Satellite TV Channels

4.5 Whether auction of satellite TV channels as a complete package similar to FM Radio channels is feasible? if yes, then kindly suggest the approach.

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

4.7 Is it feasible to auction satellite TV channels without restricting the use of foreign satellites, and uplinking of signals of TV channels from foreign soil? Kindly suggest detailed methodology.

4.8 Is it advisable to restrict use of foreign satellites for satellite TV broadcasting or uplinking of satellite TV channels, to be downlinked in India, from foreign soil?

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

In respect to the issues elaborated in paragraphs 4.5 to paragraph 4.6 above, the NBA submits that it is not feasible to auction satellite TV channels as a complete package similar to auctioning of FM Radio channels. It is reiterated that the system of auctioning satellite TV channels has not worked in several countries of the world and is not recommended as the broadcasting industry uses vertical spectrum connected with a satellite transponder. It does not use a horizontal spectrum and therefore is a completely different system from the FM radio channels.

The reasons for stating that auction of satellite TV channels as a complete package is not a workable solution and will also be detrimental to the broadcasting industry have already been elaborated in the said Consultation Paper at paragraphs 2.33, 2.35 and 2.36 and are therefore not being repeated.

On the issue raised in paragraph 4.8 above, NBA states it would not be advisable to restrict use of foreign satellites for satellite TV broadcasting or uplinking of satellite TV channels, to be downlinked in India, from foreign soil for the reasons already stated above and in said Consultation Paper itself.

As far as the issue raised in paragraph 4.9 is concerned NBA suggests that there should be a single window clearance for all permissions, licenses just as exists in relation to issuing of passports. Further the time frame for granting such licenses and/ or permissions should be spelt out clearly and should be followed strictly by the authorities concerned.

Entry Fee and License fee

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

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

4.12 If the variable license fee structure is proposed, then what should be rate of license fee for TV channels uplinked from India and TV channels uplinked from abroad, and what should be the definition of AGR?

4.13 If the semi-variable license fee structure is proposed, then what should be the minimum amount of license fee per annum for domestic channels

(uplinked and downlinked in India), uplink only channels, and downlinking of foreign channels (uplinked from abroad)?

4.14 If the fixed license fee structure is proposed, then what should be the license fee per annum for domestic channels, uplink only channels, and downlinking of foreign channels?

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

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

With regard to issues raised in paragraph Nos. 4.10 to 4.14 NBA states that the present status for grant of license for uplinking of TV channels from India, downlinking of TV channels uplinked from India, and downlinking of foreign TV channels should be maintained and not be amended. It may be noted that apart from the permission to uplink TV channels, the news and current affairs channels also have to provide a Performance Bank Guarantee (PBG) of Rs. 2 crore. As stated in the Consultation Paper “Ease of doing business in the Broadcasting Industry”, this industry already contributes adequate revenue to the government in terms of GST, Income Tax, and Local Tax, Entertainment Tax etc. Perhaps the TRAI can look at the MSOs and LCOs revenue contribution in respect of this issue.

As for issues raised in paragraph Nos. 4.15 and 4.16 the periodicity for payment of the license fee to the Government should remain one year/annually and the periodicity for review of the license fee rates should remain 10 years however it is suggested that 2 years before the date of review of the fee/license, TRAI/government should hold a consultation with the stakeholders.

Encryption of TV channels:

4.17 Should all TV channels, i.e. pay as well as FTA satellite TV channels, be broadcasted through satellite in encrypted mode? Please elaborate your responses with justification.

NBA submits that in a digitization era there is no place for channels without encryption however the issue of whether a channel should be encrypted or not, Free to Air channels (FTA) or a Pay channel, should be left to the discretion of the broadcaster.

However, it has been noticed that on DD Free Dish there are some channels that get overlapped and offering those overlapping channels an undue advantage.

Operationalisation of TV channel

4.18 Is there a need to define the term “operationalisation of TV channel” in the uplinking guidelines, and downlinking guidelines? If yes, please suggest a suitable definition of “operationalisation of TV channel” for the purpose of the uplinking guidelines, and the downlinking guidelines separately.

Operationalization of a TV channel in the Uplinking & Downlinking guidelines is understood as commencement of regular uplink of channel content (distinct from test transmission) from the authorised teleport.

A suitable definition for the term “operationalisation of TV channel” can be the date from which a channel beams/transmits its signal with content.

4.19 Maximum how many days period may be permitted for interruption in transmission or distribution of a TV channel due to any reason, other than the force-majeure conditions, after which, such interruption may invite penal action? What could be suggested penal actions to ensure continuity of services after obtaining license for satellite TV channel?

In respect of the above issue, NBA submits that the interruption in transmission of signals by any news and current affairs channels could be several genuine reasons, apart from force-majeure conditions, due to which a channel’s signal is interrupted or cannot be beamed.

If the broadcaster is not in a position to revive the channel uplinking over a period of 3 years the permission and license to broadcast may be cancelled subject to a show cause notice being issued.

Penal action is uncalled for, as the broadcaster will be sustaining huge losses in terms of advertisements and distribution.

Transfer of License

4.20 Whether the existing provisions for transfer of license/permission for a TV channel under uplinking guidelines, and downlinking guidelines are adequate? If no, please suggest additional terms and conditions under which transfer of license/permission for a TV channel under uplinking guidelines, and downlinking guidelines may also be permitted? Please elaborate your responses with justification.

4.21 Should there be a lock in period for transfer of license/permission for uplinking, or downlinking of a TV channel? If yes, please suggest a suitable time period for lock in period. Please elaborate your responses with justification.

4.22 Should the lock in period be applicable for first transfer after the grant of license/ permission or should it be applicable for subsequent transfers of license/ permission also?

4.23 What additional checks should be introduced in the uplinking, and downlinking permission/ license conditions to ensure that licensees are not able to sub-lease or trade the license? Please suggest the list of activities which are required to be performed by Licensee Company of a satellite TV channel and can't be outsourced to any other entity to prevent hawking, trading or subleasing of licenses.

NBA's preliminary view is that in respect of the existing provisions for transfer of license/permission for a TV channel under Uplinking Guidelines, and Downlinking Guidelines, the present Guidelines are adequate. Neither should a lock-in period be applied nor should additional checks be introduced.

All guidelines /permissions should be in sync with the Companies Act and SEBI Guidelines/Rules.

However, it is suggested by NBA a separate consultation paper needs to be circulated on this issue as it involves very complicated matters.

Meaning of a Teleport:

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

1. As on date the MIB issues a permission to setup a Teleport at a location. This Teleport can have multiple antennae at that location, but a single permission is given for all antennae put together.

2.MIB issues permission for uplink/downlink operationalization of TV channel(s) applied for on specified satellites.

3. WPC issues license for uplink to a particular satellite from one antenna. If a second dish is uplinking on the same or different satellite, from the same location, a second license is issued for the permitted channel(s) being uplinked.

4.Presently both MIB and WPC treat a group of uplink antennae at a specified location as one Teleport.

5.WPC issues permission for setting up additional uplink antennae at that Teleport at the request of the Teleport operator for uplink of additional channel(s).

6. If an uplink antenna is not in use, it is permitted under Non-Dealer Possession Licence (NDPL), till it is commissioned for a new licensed uplink.

The permission by MIB to setup a Teleport is for setting up one or more antennae at a location for the uplink of permitted channels.

Since a teleport is basically an earth station that has the technical facility capable of uplinking a number of TV channels to the satellite/s, it could have number of locations, number of dish antennas and could uplink to various satellites. In fact, the WPC wing of the Department of Telecom always issues operating licenses based on antenna and the uplinking chain.

In view of the above, NBA submits that a teleport should be defined as:

“An earth station facility from where multiple TV channels can be uplinked and not limited to a single uplink setup.”

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

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

NBA is of the view that the current non-refundable processing fee requirements to be paid by the applicant company along with each application for teleport license are adequate and do not warrant any modifications/amendments. Any further increase in these amounts would act as an entry barrier for new players and be against the spirit of ‘Ease of Doing Business’ initiative. The non-refundable processing fee is high enough to restrict entry only to serious players and at the same time not burden new entrants/entrepreneurs in the sector.

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

NBA submits that there should be no entry fee for grant of license to set up teleport and the present status should be maintained.

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

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

With regard to issues nos. 4.27 to 4.28 NBA states that the license fee structure for

teleport licensees is sufficient and adequate should not be increased.

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

The periodicity for payment of license fee to the Government should remain as per the present norms which are adequate and do not warrant any change.

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

The periodicity for revision license fee rates for the teleport should remain 10 years however it is suggested that 2 years before the date of review TRAI/government should hold a consultation with the stakeholders. As far as entry fee is concerned NBA has already stated that there should be no entry fee for grant of license to set up teleport.

Restriction on the number of teleports:

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

No restrictions need be placed on the number of teleports in India. Any attempt to restrict the number of teleports will be a regressive step and will also hurt all business prospects and growth of the broadcasting industry. It will tantamount to limiting the infrastructure to uplink TV channels and such a decision is neither logical nor progressive from the business perspective, for example a broadcaster operating from certain remote part of India may not have its own teleport for uplinking of its channel and the teleport facility may not necessarily be available in that area. If it cannot have its teleport, the broadcaster will be dependent on the teleport available at another location and will have to carry its signals to the other place by requiring other connectivity incurring additional costs. The greater the number of teleports, the greater the competition, which will in turn bring down operating costs.

Furthermore, putting a cap on teleports will result in market distortions and will offer huge advantage especially to the established teleport operators who may charge exorbitantly from broadcasters in view of the changed scenario. This may also result in garnering of a major chunk of available satellite bandwidth by large teleport operators in view of their dominant position thereby disturbing the entire gamut which will result in enhanced cost of operations for the

broadcasting companies and will create market distortions as already stated. It may result in cartelization and monopolies being created.

Broadcasting companies may also have issues related to operating their channels at lower bandwidth than what is contracted if the teleport operator chooses to do so adopting unfair practices. There is very little control the broadcaster will have in such a scenario. In other words, an unscrupulous teleport operator may get unjust enrichment at the cost of broadcaster in the above situation. It is similar to the internet user getting a variable speed inspite of the ISP's commitment of a particular speed.

4.32 Whether any restriction on the number of teleports will adversely affect the availability or rates of uplinking facilities for TV channels in India?

NBA states that for the reasons given in paragraph 4.31, restrictions in the number of teleports will eventually have an adverse impact on the rates for uplinking on account of a limited infrastructure to uplink.

Location of Teleports:

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

NBA submits that there should be no specific determined location. The determination of the location should be left to the discretion of the individual broadcasting companies.

In the current regulatory regime, a teleport operator has to obtain Standing Advisory Committee for Frequency Allocation (India)(SACFA) clearance from the WPC wing of the DOT in respect of its teleport.

SACFA clearance is given based on various technical factors such as the height of the antenna from ground level, distance of antenna from nearest airport, frequency used etc. after receiving comments from twenty of its members.

SACFA clearance is required to be sought once the MIB and WPC wing grant permissions in respect of the teleport.

It is suggested that application at MIB should be accepted only after grant of SACFA clearance to broadcasting companies as this will save time and there would not be any doubt in location of teleport.

Optimum use of existing teleport infrastructure

4.34 Please suggest the ways for the optimal use of existing infrastructure relating to teleports. Unauthorised Uplink by Teleport operator.

Since a teleport is an infrastructure facility, the government should ease and encourage infrastructure sharing amongst teleport operators. A teleport plays a very important role in uplinking of TV channels and hence awareness with regard to the regulatory framework must be created amongst all teleport operators.

Infrastructure sharing can only be encouraged by relaxing the various regulatory processes that a teleport operator needs to adhere to and by introducing self-certification by teleport companies.

TRAI should also consider making a suggestion to MIB to bring teleports within the infrastructure sector, and also accord incentives similar to those offered for Export Oriented Zones, Special Economic Zones, as this would help increase competition and help in the country's larger agenda to make India as a teleport hub, competing with Thailand, Hong Kong and Singapore. The move would also encourage foreign operators to set up local teleports, and lower operating costs for broadcasters.

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

The signal uplinked by a teleport operator is currently being monitored by below two agencies:

1. Wireless monitoring organisation which is a part of the Department of Telecommunication has created an International Satellite Monitoring Earth Station (ISME), JALNA, Maharashtra which monitors the signal being uplinked by various teleport operators and sends their report to the WPC wing of the DOT.
2. Network Operation Control Centre (NOCC) also monitors signals being uplinked by various teleport operators.

Teleport operators sometimes uplink signals without due authorisation on the grounds that they have only aired the content being provided by a TV channel broadcaster. With regard to national security it is very important for a teleport operator to be aware of what content is getting uplinked through its facility.

To stop unauthorised uplink by teleport operators the above two agencies, viz., ISME and NOCC which should work more effectively in their dealing with errant teleport operators so that instant action can be taken if there is an unauthorised uplink apart from the fact that there should be stringent monitoring of such channels.

It is NBA's view if a teleport operator uplinks without authority then there should be a heavy financial penalty imposed on such a teleport operator and suspension of its license in egregious cases.

Any other issue

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

The above comments are being given by NBA of behalf of its member news channels.

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Secretary General

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