

27th November, 2024

**Shri Deepak Sharma,
Advisor (B&CS),
Telecom Regulatory Authority of India (TRAI),
New Delhi.**

Sub: BIF's Comments on the TRAI Consultation Paper on "Framework for Service Authorizations for provision of Broadcasting Services under the Telecommunications Act, 2023", dated 30th October 2024

Dear Sir,

With reference to the subject mentioned, please find enclosed BIF's comments on the above-mentioned Consultation Paper.

We earnestly request your kind consideration in this regard.

Best Regards,



T.V. Ramachandran,
President,
Broadband India Forum.

BIF Response to TRAI Consultation Paper on Framework for Service Authorisations for provision of Broadcasting Services under the Telecommunications Act, 2023

Preamble

At the outset, BIF wishes to thank Authority for giving the opportunity to offer comments to the Consultation Paper on Framework for Service Authorisations for provision of Broadcasting Services under the Telecommunications Act, 2023.

The Consultation Paper notes that Ministry of Information & Broadcasting (MIB) has made a request to TRAI to recommend Terms and Conditions, including fees, for authorizing certain 'broadcasting services' under the Telecommunications Act, 2023, with an objective to harmonise regulations across the various service providers since they currently operate under licenses or registration issued by MIB under Section 4 of Indian Telegraph Act (ITA) 1885.¹

We understand that as per Allocation of Business Rules, 1961 and its subsequent amendments thereof, broadcasting clearly falls under the purview of MIB. All Broadcasting Service Licenses have thus far been issued by MIB. Only one of the key resources used for 'carriage' viz. Allocation of the Spectrum has been under the purview of WPC (DoT) for which a WOL (Wireless Operating License) is issued to the broadcasters for the spectrum that they use for transmission.

In this regard, BIF through its Legal Advisory Team analyzed the current regulatory framework for broadcasting to understand whether the Telecom Act encompasses within it any regulation as regards broadcasting services. We believe that the answer to this question forms the crux of the entire Consultation Paper. We submit our views on the above, and request the Authority to kindly consider them in order to bring regulatory clarity and certainty for the stakeholders:

Legislative intent for distinct regulation of Broadcasting Services and Telecommunication Services

We understand that Broadcasting has been categorised as a form of communication as under Entry 31 of List I of 7th Schedule of the Constitution of India. This is also reflected in the definition of "broadcast" under the Copyright Act, 1957² and the Prasar Bharti (Broadcasting Corporation of India) Act, 1990³.

The Telecommunication Bill, 2022 initially provided a specific definition of broadcasting services" under Section 2(4) of Bill. Moreover, the definition of "telecommunication service" in the Bill explicitly included "broadcasting service". However, this inclusion underwent significant modification and was ultimately **omitted in the final version of the Telecom Act, 2023**.

The deliberate omission of broadcasting services from the Telecom Act indicates a clear legislative intent to exclude broadcasting from the regulatory ambit of the Telecom Act. This omission reflects the recognition that broadcasting operates within a distinct legal and regulatory framework, separate from telecommunication services.

¹ Exclusive privilege in respect of telegraphs, and power to grant licenses

² Section 2(dd) of Copyright Act, 1957

³ Section 2 (c) Prasar Bharti (Broadcasting Corporation of India) Act, 1990

An important point to consider is that there is no definitive provision of law that specifically codifies the understanding that a broadcaster gets permission / license to engage in broadcasting activity under Section 4 of the ITA, however, there has been precedence and clarification to this understanding through a judgement by Hon'ble Supreme Court of India in the case of *Secretary, Ministry of Information and Broadcasting, Govt of India v Cricket Association of Bengal [1995]SCR 1036 (CAB matter)*.

The Hon'ble Supreme Court observed that the Indian Telegraph Act is totally inadequate to govern an important medium like radio and television, i.e., broadcasting media. The Court noted that it is imperative that the Parliament makes a law placing broadcasting media in the hands of an independent and autonomous public authority representative of all sections and interests in the society to control and regulate airwaves.

From this it may be deduced that one of the possible reasons/basis for subjecting broadcasting activity to a license was to enable transmission of broadcast signals via utilisation of spectrum. This was at the time done within the definition of a "telegraph" under the Telegraph Act, 1885.

Further, the TRAI Act, in defining "telecommunication services" under Section 2(1)(k), specifically excludes broadcasting services. However, a proviso to the said section allows the Central Government to notify additional services, including broadcasting services to be included as part of telecommunication services. The Central Government gave effect to this by way of an amendment in the year 2000, but the official notification of the said amendment was promulgated only in 2004.

This amendment was challenged in the Delhi High Court in *Star India Private Limited & Ors. v TRAI, 146 (2008) DLT 455*. Although the challenge was rejected by the Court then, a few important observations from the case related to the legislative intent for distinct regulation of broadcasting services are relevant and have been produced hereunder:

"18. ... The intention of Parliament was already manifestly clear, namely, that although broadcasting is inherently covered under the TRAI Act and the Telegraph Act, its galloping growth has warranted that it should be governed by a separate statutory structure. It was for this reason that although broadcasting services would fall within the umbra of the definition of telecommunication services as available in Section 2(1)(k) of the TRAI Act, it was from the very inception intentionally excluded there from, in the sanguine expectancy that the Broadcasting Bill would very soon receive statutory standing alongside the TRAI Act. In the event, however, the planning proved presumptuous. The Proviso is the penumbra which will persist only till the passing of the Broadcasting Bill or the Convergence Bill, as the case may be. It appears to us that this is the intention of Parliament."

"30. The abiding and enduring intention of the legislature is that Broadcasting should be monitored by a distinct statute and till such time as that does not happen the TRAI Act would regulate this activity, if the Government so desires."

The above legal case also brought out the distinction between regulation of carriage and content. While carriage aspects of the telecommunication service and hence broadcasting service to that extent can be regulated under the TRAI Act, content is covered by and dealt with under the Cable Television Networks Act (CTN Act), since from the perspective of content and programming, it is the CTN Act that encapsulates broadcasting.

Our detailed response to the various questions, may kindly be read in line with the points made above

Q1: Under Section 3(1) of the Telecommunications Act, 2023, the Applicant Entity may be granted an authorisation, in place of the extant practice of the grant of license/ permission from the Central Government. The terms and conditions governing the respective authorisation for broadcasting services may be notified by the Ministry of I&B as Rules to be made under the Telecommunications Act, 2023. In such a case, whether any safeguards are required to protect the reasonable interests of the Authorised Entities of the various broadcasting services? Kindly provide a detailed response with justifications?

BIF RESPONSE

As noted in the Consultation Paper, the licensing for broadcasting services is being governed under the Telegraph Act 1885, and with the Act being replaced by the Telecom Act 2023, the new regulatory framework around broadcasting services needs to be framed and TRAI is looking to recommend terms and conditions for the same.

- The Telecom Act's regulatory role can, at best, encompass the carriage aspect of broadcasting—specifically, the transmission of signals and spectrum allocation. However, content regulation remains outside its purview and should continue under the jurisdiction of the MIB.

In view of the above, in accordance with the judgement of the Apex Court recommending a new statute for broadcasting services, the current permission regime through issue/renewal of licenses maybe continued for business continuity till a new Act is promulgated which can comprehensively take care of all the broadcasting services. These may be allowed to be continued under the extant license regime U/s 4 of the Indian Telegraph Act. We, therefore, request the Authority accordingly to review the scope of this Consultation in order to ensure that broadcasting services are regulated appropriately and the interests of the players in the market are protected as they exist under the extant regime.

Additionally, so far the MIB has been granting licenses, permissions or registrations to broadcasting service providers. It is, therefore, imperative that even under the new regime, the contractual nature of these licenses is maintained even if the license is referred to as an "authorisation"

Licenses instil regulatory certainty and predictability, ensuring transparency and fair play in line with constitutional mandates. The contractual rights under the existing licenses fosters a legitimate expectation that the terms and conditions will not be unilaterally amended.

Several services within the broadcasting sector are highly capital intensive and therefore, regulatory stability is required to ensure continued investment in the sector.

In light of the above, it is recommended that the contractual nature of the licenses should be preserved under the new regime and the rights of all broadcasting service providers under the existing license agreements must be preserved.

Q2: The definitions to be used in the Rules to be made under the Telecommunications Act, 2023, governing the Grant of Service Authorisations and provisioning of the Broadcasting (Television Programming, Television Distribution and Radio) Services are drafted for consultation and are annexed as Schedule-I. Stakeholders are requested to submit their comments in respect of

suitability of these definitions including any additions/ modifications/ deletions, if required. Kindly provide justifications for your response.

BIF RESPONSE

We are in agreement with the definitions and terminologies contained in various policy guidelines, regulations, acts governing and regulating the broadcasting sector which have been collated in Schedule-I. These may be utilized while preparing the draft terms and conditions of Grant of Service Authorisations and Television Programming, Television Distribution and Radio Broadcasting.

As regards definition of 'broadcaster'; a 'broadcaster' means a person or a group of persons, or body corporate, or any organization or body who, after having obtained, in its name, permission/authorization from the Central Government for its channels, is broadcasting to the general public/masses through any technology. The medium of carriage (terrestrial or satellite), should not change the definition of Broadcasting under the Act. Hence, we are of the view that there should be one common definition of Broadcasting, notwithstanding the medium of transmission/carriage.

We agree with the following definition of 'Programme', Ground based broadcasting and Satellite based broadcasting as given in Schedule I as below:

- a) *"Programme" means any television broadcast and includes- exhibition of films, features, dramas, advertisement and serials; News & current affairs, Non-news & current affairs, educational content any audio or visual or audio-visual live performance or presentation, and the expression "programming service" shall be construed accordingly;"*
- b) *"Satellite-based Broadcasting" means providing programming services using satellite-based communication medium for delivering channels to the distributors of television channels."*
- c) *"Ground-Based Broadcasting" means providing programming services using terrestrial communication medium for delivering channels to the distributors of television channels."*

We also agree with the amended definition for Distribution Services and Distribution Service Providers, as mentioned in Schedule -I

2.5. We are not in agreement with the following definition of IPTV Services as adopted from the International Telecommunication Union (ITU)

"An IPTV service (or technology) is the new convergence service (or technology) of the telecommunication and broadcasting through QoS controlled Broadband Convergence IP Network including wire and wireless for the managed controlled and secured delivery of a considerable number of multimedia contents such as Video, Audio, data and applications processed by platform to a customer via Television, PDA, Cellular, and Mobile TV terminal with STB module or similar device"

We believe that this definition lacks flexibility and incorporated terms such as "considerable number of multimedia contents", "Broadband Convergence IP Network" and "Convergence service" which have not been defined anywhere.

Therefore, the existing IPTV Service definition as reproduced hereunder, should be adopted to ensure that the definition remains dynamic, with the ability to adapt to evolving technologies:

"internet protocol television service" or "IPTV service" means delivery of multi-channel television programmes in addressable mode by using Internet Protocol over a closed network of one or more service providers;"

However, if the Authority still wishes to adopt the ITU definition, the following modifications are proposed:

*(23) "IPTV" (Internet Protocol Television) service (or technology) is a convergence service (or technology) of the telecommunications and broadcasting through QoS controlled Broadband Convergence IP Network including wire and wireless for the managed, controlled and secured delivery of **multichannel television programmes in addressable mode** a considerable number of multimedia contents such as Video, Audio, data and applications processed by platform to a user via Television, PDA, Cellular, and Mobile television terminal with STB module or similar device;*

Q3: A preliminary draft of Scope of Service for various Broadcasting services and the corresponding Service Area is provided in Table 2.1 for consultation. Whether the same appropriately covers the Scope of Service and Service Area? If not, stakeholders are requested to submit their comments, if any additions/modifications/ deletions are required in the Scope of Service and Service Area, along with necessary justifications

BIF RESPONSE

We agree to the Scope of Service and the corresponding Service Area as provided in Table 2.1 of the Consultation Paper

Q4: For the purpose of grant of authorisation under Section 3(1) of the Telecommunications Act, 2023, the Central Government may issue an authorisation document to the Applicant Entity containing the essential details viz. Name, Category and Address of entity, Scope of Service, Service Area, Validity etc. A draft format of authorisation document is given at Figure 2.2. Do you agree with the draft format or whether any changes are needed in the draft format of authorisation document? Please provide your response with necessary explanations.

BIF RESPONSE

We believe that in order to preserve the contractual nature of the authorisation, it is integral that the authorisation document includes the terms and conditions that were previously part of the license issued to the service provider.

By removing these terms from the license and incorporating them instead under the Broadcasting (Grant of Service Authorisations) Rules, the service provider's ability to challenge the terms that are part of a statutory instrument would be significantly limited as opposed to a license / contract. This will leave the service provider with no option but to challenge the law itself, thereby curtailing their rights under the Contract Act.

Additionally, the draft format for grant of Service Authorization given in figure 2.2 seems to be relevant for uplinking & downlinking of TV channel under Television Programming Services, but not for the Teleport Service. The Service Authorization format for Teleport should mention Satellite in place of Name of Channel.

In light of the above, it is imperative to ensure that the format of authorisation remains consistent with the current license format, i.e., it includes detailed terms and conditions instead of those being outlined under a separate set of Rules.

Q5: A preliminary draft of terms and conditions to be included in the first set of Rules i.e., for Grant of Service Authorisations is annexed as Annexure-II. Stakeholders are requested to submit their comments in the format provided below, against the terms and conditions and indicate the corresponding changes, if any, with necessary reason and detailed justification thereof.

BIF RESPONSE

Please refer to our response to Q1 and Q4. It is reiterated that the contractual nature of the authorisation is preserved in the interest of regulatory certainty and investment stability.

The terms outlined in the Broadcasting (Grant of Service Authorisations) Rules should remain part of the license to ensure that the contractual nature of the license / agreement between the government and the service provider remains intact.

Including such detailed terms and conditions as part of the Rules, rather than the license agreement, limits the service providers ability to challenge these terms thereby curtailing their rights under the Contract Act.

Nevertheless, our comments against specific terms and conditions are as under:

S. No.	Description	Terms and Conditions	Proposed change	Reason with detailed justifications
1	Definitions			Our response to Q2 may be referred to.
2	Scope of Service and Service Area			Our response to Q3 may be referred to.
3	Eligibility conditions	(3) The applicant company shall make full disclosure, at the time of application, of Shareholders Agreements, Loan Agreements and such other Agreements that are finalized or are proposed to be entered into	3) The applicant company shall make full disclosure, at the time of application, of Shareholders Agreements; Loan Agreements and such other Agreements that are finalized or are proposed to be entered into	In the case of DTH, there has been no requirement to disclose Loan Agreements or similar agreements at the time of applying for a license so far. Introducing such a requirement at this stage would place service providers in a more challenging position than they were initially, which cannot be the intended outcome of the law. This change would unfairly create unnecessary complications, disrupting the established framework.

4	Processing Fee, Entry Fee, Bank Guarantee, Security Deposit and Renewal Fee	-	-	Or response to Q16 may be referred to.
5	Process of Application to obtain the Service Authorisations	(i) The applicant entity shall make disclosure in its application of all its Shareholders, Loan Agreements and such other Agreements that are finalized.	i) The applicant entity shall make disclosure in its application of all its Shareholders, Loan Agreements and such other Agreements that are finalized.	In the case of DTH, there has been no requirement to disclose Loan Agreements or similar agreements at the time of applying for a license so far. Introducing such a requirement at this stage would place service providers in a more challenging position than they were initially, which cannot be the intended outcome of the law. This change would unfairly create unnecessary complications, disrupting the established framework.
6	Migration of Existing service providers of old regime in the new Authorisations framework	11.(3).i. An online application requesting for migration may be provided, along with surrender/ submission of the existing license/ permission. This process shall not incur any additional fees, such as processing or entry fees etc. In such a scenario, the remaining validity period of the existing service provider shall be migrated to the authorization framework. All terms and	For Teleport: → The existing permission should continue till the validity period and post that, renewal should be done in new authorization regime. → The assigned spectrum (administrative basis) should continue to be valid on the current terms	In case of Teleports, the terms and conditions that existed during the assignment of spectrum should remain unchanged for the period of MIB permission.

		<p>conditions for service provisioning shall be governed by the rules made under the Telecommunications Act, 2023.</p> <p>11.3.v. In case an existing Licensee/permission holder, holding administratively assigned radio frequency/spectrum (e.g., teleport, television channel, DTH, HITS, CRS etc.) migrates to the service authorisation granted under the Telecommunications Act, 2023, such spectrum shall continue to be valid on the terms and conditions on which it had been assigned, for a period of five years from the appointed day of section 4(8) of the Telecommunications Act, 2023, or the date of expiry of such spectrum, whichever is earlier.</p>	<p>and conditions on which it had been assigned, for a period of MIB permission.</p>	
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Q6: Draft structure for covering terms & conditions for provision of services after grant of authorisations to be included in the second set of Rules, namely, The Broadcasting (Television Programming, Television Distribution and Radio) Services Rules, is shown in Figure 2.4 above for consultation. Whether changes are required in the said structure? Please support your response with proper justification

BIF RESPONSE

We generally agree with the Draft Structure for covering T & Cs for provision of services after grant of authorisations to be included in the second set of Rules as shown in Figure 2.4 of the CP.

However, the natural consequence of adopting common terms for all services, whether for programming or distribution, is that the most stringent provisions, previously applicable only to certain services, appear to have been extended across the board. As a result, some services are now subject to much stricter terms and conditions than they were before, place them in a worse off position.

Therefore, we recommend that the terms and conditions are reconsidered to ensure that no service provider is left in a disadvantaged situation in the new regime as compared to its existing position.

Q7: The two possible approaches for migration from the existing regime of license/ permission to the authorisation framework under the Telecommunications Act, 2023, has been discussed in the Section D of Chapter II. Which of these two or any other approach should be adopted for migrating the existing licensee/ permission holders to the service authorisation framework? Stakeholders are requested to provide their comments with detailed justifications

BIF RESPONSE

For migration of a licensee to the new proposed authorisation regime, TRAI has proposed two different approaches viz.

- i. Authorisation co-terminus with the existing validity period of the license/ permission and
- ii. Authorisation with prescribed validity period for that service

First Approach: An online application requesting for migration has been suggested along with surrender/ submission of the existing license/ permission. This process may not incur any additional fees, such as processing or entry fees etc. In such a scenario, the remaining validity period of the existing service provider may be migrated to the authorisation framework. All terms and conditions for service provisioning may be governed by the new rules.

Second Approach: Authorisation may be valid for the prescribed validity period for the respective service authorisations from the effective date of Authorisation, irrespective of the validity period of the license/ permission already held. In this methodology, on migration, the Authorised Entity may be liable to pay the differential Entry Fee i.e. Entry Fee applicable for the service authorisation, if any, in which the Authorised Entity is getting migrated minus the Entry Fee (for balance validity period) already paid by the licensee/ permission holder in the old regime for the service authorisation(s) getting migrated. However, no Entry Fee refund shall be made by the Central Government.

Validity period for Spectrum upon migration: As per the Telecommunications Act, 2023, the relevant provisions related to validity of spectrum assigned are reproduced below. '4(8). Any spectrum assigned through the administrative process prior to the appointed day, shall continue to be valid on the terms and conditions on which it had been assigned, for a period of five years from the appointed day, or the date of expiry of such assignment, whichever is earlier. 4(9). Any spectrum assigned through auction prior to the appointed day, shall continue to be valid on the terms and conditions on which it had been assigned.' Therefore, upon migration to the new authorisation regime, the validity period for spectrum assignment may be governed as per above provisions.

In view of ease of doing business through submission of an online application and no additional charges to be paid, we are of the view that the First Approach should be adopted for migrating an existing licensee to the new service authorisation regime

That said, it must also be noted that under Section 3(6) of the Telecommunication Act, such process is envisaged to be optional. We therefore hope that these rules will be consistent with the provisions of the Telecommunication Act, 2023 and will not require any of the existing licensees to mandatorily migrate to the new regime.

Lastly, the terms and conditions applicable to existing licensees who choose not to migrate should be no worse off than those applicable to such licensees who choose to migrate, as well as to the new entrants who obtain an authorisation under the new regime.

Q8: Contravention of the terms and conditions contained in the Rules to be made as well as non-adherence to the Programme Code and Advertising Code is likely to invite penal provisions.

- a) Whether the extant penal provisions for breach of terms and conditions of license/ permission are appropriate or required to be modified to align with the provisions of the Telecommunications Act, 2023? If so, please provide a detailed response with justifications. If not, whether the same should be adopted mutatis mutandis? Please provide a detailed response with necessary justifications.**
- b) Further, in respect of violation of Programme Code and Advertising Code, whether the penal provisions should be adopted mutatis mutandis? If not, what modifications are required? Please provide your comments with necessary justifications.**

BIF RESPONSE

We believe that the extant penal provisions for breach of license / permission terms and conditions should be modified to align with the Telecommunications Act, 2023. This is because service providers would benefit significantly from a more structured, graded penalty regime as opposed to the present regime.

Such graded penalty system should ensure that a penalty should be imposed only when it is clearly established without doubt that there has been wilful misconduct on the part of the licensee/authorised entity, which has led to the breach.

Additionally, we recommend that since the contravention and penalty provisions outlined in Chapter VIII (Adjudication of Certain Contraventions) of the Telecommunication Act are already comprehensive and well-structured, there is no need to introduce an additional set of penalties for violations of the Programme Code and Advertisement Code. The Telecommunication Act provides sufficient flexibility through the Second Schedule to determine penalties based on the severity of violations under both codes.

To summarize, the following is recommended:

- (i) Detailed guidelines should be issued as to how the application of the factors mentioned under Section 32(3) of the Telecom Act would result in the classification of violations into different categories under the Second Schedule, along with examples.**
- (ii) The penalty should be imposed only when it is established beyond doubt**

that it was wilful misconduct on the part of the licensee/authorised entity that led to the breach.

(iii) Even for violations of the Programme Code or Advertisement Code, the Authorised Entity should be governed by the provisions contained in Chapter VIII (Adjudication of Certain Contraventions) of the Telecommunications Act, 2023.

Q9: A preliminary draft of Common terms and conditions for inclusion in the second set of Rules for Broadcasting (Television Programming, Television Distribution and Radio) Services is annexed as Part-I of Annexure-III for consultation. Stakeholders are requested to submit their comments in the format given below, against the terms and conditions and indicate the corresponding changes, if any, with necessary reason and detailed justification thereof.

BIF RESPONSE

S. No.	Description	Terms and Conditions	Proposed change	Reason with detailed justifications
1	Definitions	-	-	Our response to Q2 may be referred to.
2		The Authorized Entity shall follow the measures notified by the Central Government under Section 21 of the Telecommunications Act, 2023 in respect of the procurement of equipment for provisioning of broadcasting services only from trusted sources.	This clause should stand deleted.	The insertion of such clause will have a large scale impact on the entire sector. An Authorized Entity under the Act can be a broadcaster or a distributor. The equipment used by each varies significantly due to the differing services they provide. In fact, even among distributors, for instance, the equipment used by DTH services differ substantially from that used by cable operators. The present clause therefore, lacks clarity on the scope of equipment that will be covered under this clause
3	Technical conditions	The Authorized Entity shall have the right to undertake the sale, hire,	The Authorized Entity shall have the right to undertake the sale, hire, purchase, lease or rent of the	Users should not be given the option to obtain user terminals from any source meeting the standards prescribed because this could have unintended consequences such as benefits of upgrades may not be extended to users that acquire their terminals from third party sources. This could ultimately lead to

S. No.	Description	Terms and Conditions	Proposed change	Reason with detailed justifications
		<p>purchase, lease or rent of the Customer Premises Equipment (CPE). Users shall be given the option to obtain the user terminals from any source meeting the standards prescribed in Clause 4 above.</p>	<p>Customer Premises Equipment (CPE). Users shall be given the option to obtain the user terminals from any source meeting the standards prescribed in Clause 4 above.</p>	<p>compatibility issues, even if the terminal is aligned with BIS Standards. This would result in poor service quality and consequently, an increase in consumer complaints. Similarly, any discounts offered by the Authorised entity will not reach a consumer that has bought the terminal from a third party source thereby resulting in a pricing disparity.</p> <p>Lastly, if the Authorized Entity sells its boxes to users, it would lose control and visibility over how consumers dispose off these devices, particularly STBs, which may fall within the ambit of the E-Waste Rules, 2022. This could ultimately expose the Authorised entity to potential violations under the E-waste rules which outline the disposal methods for e-waste.</p> <p>Therefore, the Authorised entity should retain control over the provision of user terminals.</p>
4	<p>Contravention of Rules / Violation of Programme Code and Advertisement Code</p>	<p>(1) The cases of contravention of these Rules shall be governed by the provisions contained in Chapter VIII (Adjudication of Certain Contravention</p>	<p>(1) The cases of contravention of these Rules and the Programme Code and Advertisement Code shall be governed by the provisions contained in Chapter VIII (Adjudication of Certain Contraventions) of the Telecommunications Act, 2023. (2) For the violation of the Programme</p>	<p>Please refer to the response to Q8.</p>

S. No.	Description	Terms and Conditions	Proposed change	Reason with detailed justifications
		<p>s) of the Telecommunications Act, 2023.</p> <p>(2) For the violation of the Programme Code or Advertisement Code, an Authorised Entity shall be governed by the Cable Television Networks (Regulation) Act, 1995 and the rules made thereunder</p>	<p>Code or Advertisement Code, an Authorised Entity shall be governed by the Cable Television Networks (Regulation) Act, 1995 and the rules made thereunder</p>	
5	Commercial Conditions	12. Commercial Conditions	For Teleport Services, commercials should be governed by the	Commercials are based on multiple factors which may differ across service providers.

S. No.	Description	Terms and Conditions	Proposed change	Reason with detailed justifications
		<p>The Authorised Entity shall charge the tariffs for the Service as per the Tariff orders/ regulations/ directions/ decisions issued by TRAI from time to time. The Authorised Entity shall also fulfil requirements regarding publication of tariffs, notifications and provision of information as directed by TRAI through its orders/ regulations/ directions issued from time to time as per the provisions of TRAI Act, 1997 as amended from time to time.</p>	<p>Teleport Service Provider only and not as per the Tariff orders/ regulations/ directions/ decisions issued by TRAI.</p>	
6	Operating Conditions	15.(1).(b) The Authorised Entity shall not in any manner discriminate between users and provide	For Teleport Services, uniform commercial principle across customers is not viable.	The commercials are dependent on multiple factors uniform commercial principle cannot be viable across 'Teleport' providers.

S. No.	Description	Terms and Conditions	Proposed change	Reason with detailed justifications
		<p>services on the same commercial principle. The Authorised Entity shall clearly define the scope of Service to the user(s) at the time of entering into contract with such user(s). Before commencement of Service in an area, the Authorised Entity shall notify and publicise the address/ URL where any user can register demand/ request for Broadcasting (Programming and Distribution) Service. Any change of this address/ URL shall be duly notified by the Authorised Entity. Provided that nothing contained herein will affect or prejudice the rights of the</p>		

S. No.	Description	Terms and Conditions	Proposed change	Reason with detailed justifications
		Authorised Entity to carry out a check on credit worthiness of applicants for its services.		

Q10: Whether any changes are required in the extant eligibility conditions in respect of minimum net worth for inclusion in the Rules to be made under the Telecommunications Act, 2023 for the following service authorisations?

- i. News & Current Affairs TV Channel
- ii. Non-news & Current Affairs TV Channel
- iii. Teleport/ Teleport Hub

Stakeholders are requested to provide their comments with detailed justification

BIF RESPONSE

Requirement of high net worth is not required for service authorisations when other financial provisions exist. It leads to complex regulatory processes that can delay approvals and operationalization of new teleports.

High net worth requirements can exclude smaller players and startups from entering the market, which limits competition and innovation.

Q11: Whether any changes are required in the extant processing fee (for new authorisation/renewal), annual authorisation fee (erstwhile annual permission fee) and other fees applicable on the following for the formulation of the terms and conditions of the authorisation for these services?

- i. Uplinking of a Television Channel
- ii. Downlinking of a Television Channel
- iii. News Agency for Television Channel(s)
- iv. Teleport/ Teleport Hub
- v. Any other services related to Television Channels

Stakeholders are requested to provide their comments with detailed justification.

Q12. Whether any changes are required in the extant security deposit and performance bank guarantee applicable on the following for the formulation of the terms and conditions of the authorisation for these services?

- i. Uplinking of a Television Channel
- ii. Downlinking of a Television Channel
- iii. Teleport/ Teleport Hub
- iv. Purchase/hiring and use of SCG equipment

Stakeholders are requested to provide their comments with detailed justification.

Q13: A preliminary draft of terms and conditions for inclusion in the second set of Rules for The Broadcasting (Television Programming) Services is annexed as Part-II of Annexure-III for consultation. Stakeholders are requested to furnish their comments in the specified format given below, against the terms and

conditions and indicate the corresponding changes, if any, with necessary reason and detailed justification thereof.

Q14: Whether the extant eligibility requirement in respect of minimum net worth is required to be harmonized under the 119 terms and conditions of authorisation for DTH and HITS services?

- a. If yes, what should be the quantum of minimum net worth for these services?
- b. If no, reasons thereof.

Stakeholders are requested to provide their comments along with detailed justification

Q15: Whether the following parameters applicable for DTH and HITS services should be reviewed while framing the terms and conditions of authorisation for these services? If yes, please suggest changes required, if any, on the following aspects, with detailed justifications: a. Period of authorisation (erstwhile license/ permission) b. Processing Fee c. Entry Fee d. Authorisation Fee (erstwhile License Fee) e. Bank Guarantee f. Renewal Fee

BIF RESPONSE to Q11 to Q15

Response: **There is an urgent need for rationalization of levies and the bank guarantees, to reduce the financial burden on the sector.**

At the outset, we believe that there **should not be any need for payment of annual authorisation fees** (annual permission fee) to enable ease of doing business in India. Further, requirement for a **bank guarantee should be done away with** to generate value for the Teleport operators

Q16: A preliminary draft of terms and conditions for inclusion in the second set of Rules for the Broadcasting (Television Distribution) Services in respect of Distribution Services (DTH/ HITS), is annexed as Part-III of Annexure-III for consultation. Stakeholders are requested to render their comments in the format specified in the table given below, against the terms and conditions and indicate the corresponding changes, if any, with necessary reason and detailed justification thereof

BIF RESPONSE

The Terms and Conditions of Rules for DTH Services may be suitably incorporated based on the detailed issues, concerns and challenges that plague the DTH sector as given below.

a) Increasing Cost and Reducing Revenue impacting the viability and financial health of DTH Operators:

- i. The subscriber acquisition cost is very high due to high subsidy extended on Set Top Box given to customers. Further, increase in numbers of HD channels necessitated the requirement for transponders the cost of which has also increased manifold in past few years. These huge costs of upgradation of the services coupled with high regulatory cost have scuffed the margins for DTH operators.
- ii. Due to the regulated tariff for DTH operators, there has been no revision in Network Capacity Fee (NCF), which is the principal source of revenue of the DTH operators, for last 4 years. Concomitantly, there has been steep increase in cost of operations of DTH services as a result of which the DTH operators are put to great hardship.

b) Uneven regulatory framework creating a non-level playing field vis-a-vis competition:

- i. The DTH industry is reeling under excess regulation, complex as well as dis-balanced regulatory framework. Today, in the broadcasting sector's entire value chain, DTH operators are the only ones subjected to license fees. This creates a non-level playing field and is somewhat discriminatory and against the basic premise of TRAI's endeavor to have a balanced regulatory framework.
- ii. No License Fee is being paid by other competitors of DTH Operators, such as Cable and HITS operators, despite providing the same set of service to the same market. Some recent media reports also suggest that DoT is likely to consider the **waiver of the license fee on wireline broadband services (including IPTV) offered by Telecom Service Providers for the next 10 years.**
- iii. The table below explains the financial obligations borne by the DTH operators in comparison with the OTT players/Broadcasters & other LCOs and MSOs:

DPOs	DTH	Broadcaster OTTs and other OTTs	HITS	LCOs [Local Cable Operators]	MSO [Multi-System Operators]
Entry Fee	INR 10 crores	Nil	INR 10 crores	INR 500/- (One-time)	INR 1 Lakh (one-time registration Fee)
Annual License Fee	8% of Gross Revenue	Nil	Nil	Nil	Nil
BGs	INR 5 crores	Nil	INR 40 crores	Nil	Nil

- iv) This pressure from unregulated market, combined with the increased cost of operations and the very high regulatory levies, has led to most DTH operators suffering from operating losses even after 12-15 years of operations.

Therefore, we humbly submit that to bring in parity with the cable distribution services, the DTH services may be also be exempted from paying of the License fee.

c) Imposition of a license fee on DTH Operators for Broadcasters' Share of Revenue is incorrect and requires immediate review:

- (i) The DTH operators have always been collecting the revenue from subscribers and passing on the broadcasters' share to them. The new regulatory framework (NTO 3.0) has clearly spelt out the mechanism for sharing of revenue stream between DTH operators and the broadcasters. Being a distributor for the broadcasters, a DTH operator only gets a distribution margin and NCF. The same is for the investment made to create the network,

whereas the content or channel subscription cost, is the broadcasters' revenue.

- (ii) TRAI, in its letter dated 8th January, 2020 to MIB, had stated that the new framework, to a large extent, has altered the structure of the value chain, the commercial relationships between the stakeholders and their revenue streams etc. It is now easier to identify the subscription revenue passed on to the broadcasters by DTH operators vis-à-vis other revenue streams. Through this new framework, TRAI has once again clearly stated that the amount collected by DTH operators for the channel/bouquet subscription is broadcasters' revenue and DTH operator's revenue is only other sources (e.g. NCF, VAS charges etc.). **Thus, imposition of license fee on DTH operators for part of the revenue earned by the broadcasters (being in the nature of pass-through) is not correct and needs immediate correction.**

D) Incorrect and partial implementation of license fee structure for DTH Operators:

- (i) While recommending the 8% of AGR on DTH, TRAI has taken the reference of the telecom sector. Since both the services are derived from the Indian Telegraph Act, 1885, the license fee for DTH has been prescribed equivalent to the telecom operators. However, we humbly wish to submit that TRAI may have erred on two counts while comparing the same.
- (ii) In case of telecom, the annual License Fee rate of 8% is inclusive of USO levy of 5%. Thus, the actual License Fee rate for telecom is 3% and not 8%. The funds of USO levy come back to the Telecom Service Providers through subsidy granted for participation in eligible projects. However, since DTH does not form part of USO, this levy is disproportionate even if compared with telecom services.
- (iii) It has also not recognized the pass-through mechanism (for the broadcasters' portion of the revenue) as applicable for telecom operators.
- (iv) Further, the recent reforms approved by the Cabinet to boost sector investments and provide impetus to competition and consumer interests are restricted to only the telecom sector. One of the key decisions relates to the exclusion of non-telecom revenue (including revenue from DTH) from the definition of Adjusted Gross Revenue for the purpose of levying the telecom License Fee. The necessary license amendments have also been made by the concerned Department of Telecom and are effective from 1st October, 2021. However, no equivalent change has been brought about in the DTH license regime.

Therefore, there is an urgent need to review the definition of revenue for DTH services, rationalization of levies and the bank guarantees, in order to reduce the financial burden on the sector and also help in the proliferation of DTH services and help the industry both in the short and the long run.

Q17: The extant IPTV guidelines dated 08.09.2008 may be required to be amended to align with the provisions of the Telecommunications Act, 2023. A preliminary draft of terms and conditions for providing IPTV Services is annexed as Part III of Annexure-III for consultation. Stakeholders are requested to provide their comments including addition/ modification/ deletion required, if any, with detailed justification.

BIF RESPONSE

After reviewing the terms and conditions outlined in Chapter 3.3: Draft Terms and Conditions for Internet Protocol Television (IPTV) Services under the Broadcasting (Television Distribution) Services Rules, we believe that they are sufficient in their current form and do not require any modifications.

Q18: Is there a need to review the minimum net worth requirement of Rs. 100 crore for ISPs to provide IPTV services, while framing the terms and conditions for provision of IPTV services in the new authorisation regime and whether it should be aligned with the terms and conditions of authorisation of Internet Services by Department of Telecommunications? Please provide your comments with detailed justification.

BIF RESPONSE

We believe that the minimum net worth requirement of INR 100 crore for Internet Service Providers (ISPs) seeking authorization to offer IPTV services should remain unchanged. IPTV is a capital-intensive service that requires substantial investment in technology and network infrastructure. The net worth requirement serves as a filter to ensure that only those with the financial capability to meet these demands can provide services at the required standard.

That said, the Authority should ensure that any entity that provides IPTV services, regardless of its manner of provision, is subject to the same obligations—whether financial, commercial, or otherwise. This will help maintain consistency in the regulatory framework and ensure a level playing field, preventing any entity in direct competition within the IPTV sector from being given an undue advantage.

Q19: In order to unbundle the authorisation from the spectrum allocation, the authorisation for providing FM Radio services is required to be obtained first, and thereafter an authorised entity is allowed to participate in the e-auction process for allocation of spectrum in a particular city. In such a scenario, stakeholders are requested to provide their comments with detailed justification on the following: a. Whether the scope of service for the FM radio service be made Pan-India instead of City to allow an authorised entity to participate in e-auction process of any City in India? b. What should be the prescribed entry fee, processing fee requirement for obtaining such FM Radio broadcasting service authorisation?

BIF RESPONSE

No Comments

Q20: A preliminary draft of terms and conditions for inclusion in the second set of Rules for the Broadcasting (Radio) Services is annexed as Part-IV of Annexure-III for consultation. Stakeholders are requested to furnish their comments in the specified format given below, against the terms and conditions and indicate the corresponding changes, if any, with necessary reason and detailed justification thereof

BIF RESPONSE

No Comments

Q21: Stakeholders may provide other comments, if any, relevant to the issues related to terms and conditions, including regulatory fees for the broadcasting services authorisations with justifications thereof.

BIF RESPONSE

1. Infrastructure sharing

On September 28, 2023, the Ministry of Information & Broadcasting introduced crucial amendments to the Cable Television Network Rules, 1994. Among these amendments was a provision facilitating the sharing of infrastructure between cable operators and broadband service providers. This initiative aimed to realise the twin benefits of enhanced internet penetration and efficient utilisation of resources. Additionally, it was anticipated that it would help alleviate the necessity for additional infrastructure for supporting broadband services.

In alignment with this approach, we advocate for a holistic method to infrastructure sharing that extends beyond cable and broadband services. The potential for cross-industry infrastructure sharing, such as between IPTV and DTH platforms, presents an opportunity to maximise resource utilisation and drive efficiencies across sectors.

Drawing parallels with the telecom industry, where infrastructure sharing has been instrumental in realising economies of scale, the importance of liberal and mutual policies for infrastructure sharing cannot be emphasised enough. Such policies not only foster innovation but also contribute significantly to the sustainability efforts of companies and the nation at large.

The benefits of infrastructure sharing extend beyond cost savings, encompassing efficient utilisation of available infrastructure, reduced capital and operational expenditures (CAPEX and OPEX) and decreased reliance on foreign imports of electronic systems and satellite transponders. Additionally, infrastructure sharing enhances distribution network capacities.