

From: Pankaj Singh <pankaj.singh@ficci.com>

To: "advbcs-2@traai.gov.in" <advbcs-2@traai.gov.in>, "jtadvisor-bcs@traai.gov.in" <jtadvisor-bcs@traai.gov.in>

Cc: "Leena Jaisani" <leena.jaisani@ficci.com>, "Pawan Kaul" <pawan.kaul@ficci.com>, "Mansha Vij" <mansha.vij@ficci.com>, "Shivani" <shivani@ficci.com>, "FICCI Media & Entertainment Division" <me@ficci.com>

Date: Fri, 06 Dec 2024 16:08:30 +0530

Subject: Withdrawal of FICCI's Representation on the Consultation Paper on Service Authorizations Framework

===== Forwarded message =====

Shri Deepak Sharma
Advisor (B&CS)
Telecom Regulatory Authority of India

Sub: Withdrawal of FICCI's Representation on the Consultation Paper on Service Authorizations Framework

Dear Sir,

On behalf of the Federation of Indian Chambers of Commerce and Industry (FICCI), we wish to convey our gratitude for the opportunity to participate in the consultative process on the Consultation Paper on the Framework for Service Authorisations for the provision of Broadcasting Services under the Telecommunications Act, 2023.

Following the submission of our representation, we have received additional feedback and comments from our industry stakeholders. Given the diversity and complexity of perspectives shared, we believe it is essential to further deliberate and achieve a broader consensus among the industry participants.

In this context, we respectfully wish to withdraw the representation submitted by FICCI on this matter. This decision stems from our commitment to accurately reflect the consolidated views of the industry, ensuring our submissions align with the best interests of all stakeholders.

We value our collaboration with TRAI and will strive to submit a revised representation after consolidating industry inputs and achieving consensus.

Thank you for your attention to this matter. Please feel free to reach out if any clarification is required.

Warm Regards,



FICCI's feedback on Telecom Regulatory Authority of India's (TRAI's) Consultation Paper Framework for Service Authorisations for provision of Broadcasting Services under the Telecommunications Act, 2023

Shri Deepak Sharma

Advisor (B&CS)

Telecom Regulatory Authority of India (TRAI)

INTRODUCTION

The Federation of Indian Chambers of Commerce and Industry (FICCI) thanks the Telecom Regulatory Authority of India (TRAI) for initiating a consultation to streamline the service authorizations framework for broadcasting services under the Telecommunications Act, 2023.

As a leading voice of India's industry and commerce, FICCI recognizes the transformative potential of the Telecommunications Act, 2023, in shaping the nation's digital ecosystem. This legislation represents a pivotal step towards modernizing India's regulatory framework, fostering innovation, and ensuring inclusive connectivity across urban and rural landscapes.

Upon carefully reviewing the Consultation Paper, we would like to respectfully submit that the premise of aligning broadcasting services under the Telecommunications Act, 2023, is fundamentally wrong.

Broadcasting services should not be included in the Telecommunications Act's authorization regime. Historically, broadcasting was brought under "telecommunication services" in 2004 to extend TRAI's jurisdiction over distribution services as a stopgap, not to equate broadcasting with telecommunications.

Distinct Nature of Broadcasting and Telecommunications:

The distinct nature of broadcasting and telecommunications lies in their fundamental differences. Broadcasting primarily involves content creation and operates in a "one-to-many" communication format, targeting a wider audience, whereas telecommunications focus on transmitting voice or data in a "one-to-one" manner. While technological advancements, such as digital delivery, have led to convergence at a technological level, this does not translate to functional, regulatory or service convergence. Broadcasting is inherently content-driven, requiring significant creative input, whereas telecommunications are predominantly technology-driven. This divergence underscores the unique operational and regulatory requirements of each sector, despite their shared technological platforms.



Convergence between telecommunications and broadcasting is limited to delivery platforms (e.g., broadband-based services). This does not necessitate a unified licensing framework. A similar analogy would be combining e-commerce, e-health, and e-finance sectors with telecommunications, which is clearly inappropriate.

Spectrum Usage:

While telecommunications require spectrum for two-way communication, broadcasting predominantly uses spectrum for one-way dissemination (e.g., DTH). The economic model and operational implications are vastly different.

Content vs. Carriage Regulation:

Content regulation (creative, societal impact) differs from carriage regulation (technical, economic aspects). Merging them under telecommunications could blur critical distinctions and disrupt the media ecosystem.

Sufficient existing regulatory framework

The existing regulatory framework for broadcasters is robust and sufficient, eliminating the need for over-regulation. The Ministry of Information & Broadcasting (MIB) effectively governs the sector through uplinking and downlinking guidelines, which have been instrumental in fostering growth while preserving the unique identity of broadcasting. Additionally, the introduction of the Broadcast Seva Portal has further streamlined processes, enhancing efficiency and ease of compliance for broadcasters. Integrating telecommunications regulations into this framework risks diluting the distinct nature of broadcasting.

Issues with Unified Licensing Framework:

- Unified regulation may lead to monopolies and stifle competition, disadvantaging smaller broadcasters.
- Licensing broadcasting under the telecom framework risks undermining free speech and media independence.
- A "one-size-fits-all" approach ignores the nuanced differences between distribution mechanisms (e.g., DTH, IPTV, cable).
- Shifting broadcasting to telecom licensing could lead to increased costs (e.g., spectrum fees) and harm to smaller players.
- Frequent regulatory changes could alienate consumers and destabilize the industry.

Concerns with Proposed Framework:



1. Operational and Financial Feasibility:

First, the operational and financial feasibility of requiring approximately 329 broadcasting entities to comply with telecom-style licensing raises significant issues. This would likely lead to increased compliance costs, disruption of existing business models without providing tangible benefits, and market consolidation, where smaller broadcasters may struggle to bear the additional regulatory burdens.

2. Impact on Freedom of Speech:

The impact on freedom of speech is a crucial consideration. Broadcasting is an exercise of freedom of speech under Article 19(1)(a) of the Constitution of India. Imposing telecommunications-style licensing could risk government overreach, potentially undermining the independence of the media and creative freedom.

3. Dilution of Broadcasting Identity:

Including broadcasting under the Telecommunications Act risks diluting its unique identity. This could undermine the recognition of broadcasting as a distinct sector, leading to the conflation of diverse industries. Such a move could result in overregulation, inefficiency, and market monopolization.

Sector-Specific Nuances:

Unified frameworks fail to address the sector-specific nuances of DTH, HITS, or IPTV services. Regulatory approaches must respect the distinct operational characteristics and consumer dynamics of each platform.

Mandating broadcasting entities to adhere to telecom licensing norms could result in:

- Increased costs for broadcasters (e.g., spectrum auctions, licensing fees).
- Elimination of smaller players and market monopolization by a few large entities.
- Potential erosion of freedom of speech and creative expression due to government control.

Disruption to Industry Stability:

- Frequent regulatory changes disrupt industry operations and frustrate consumers, leading to potential migration to alternative platforms

FICCI Recommendations:

- Maintain broadcasting as a distinct sector under its existing regulatory framework.
- Avoid overregulation; focus on light-touch policies to foster innovation, affordability, and healthy growth.
- Strengthen self-regulation mechanisms for content instead of imposing stricter regulations.
- Recognize the distinct nuances of broadcasting and avoid a unified framework that fails to address the specificities of different distribution mechanisms.



FICCI's response to specific issues for Consultation:

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.

FICCI's response:

Under Section 3(1) of the Telecommunications Act, 2023, the shift from licenses to authorizations requires clear safeguards to protect the interests of broadcasters. The regulatory role of the Act should focus on aspects such as signal transmission and spectrum allocation. Rules and regulation related to content regulation should not be made under the Telecommunications Act, 2023. Content regulation must remain under dedicated legislation (such as the proposed Broadcasting Services Regulation Bill) and the jurisdiction of the Ministry of Information and Broadcasting (MIB) to ensure consistency and clarity in governance. Furthermore, the draft rules governing authorizations should be shared with relevant stakeholders, including broadcasters, for review and suggestions before being finalized.

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.

FICCI's response:

We recommend replicating the existing definitions under the relevant legislation (for example, the Cable Television Networks Regulation Act) and policy guidelines to avoid ambiguity and ensure consistency in broadcasting regulations. New definitions related to programming and/or content services should not be introduced via terms and conditions of service authorisations.

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.



FICCI's Response:

The scope of service for television broadcasting is appropriate, however uplinking & downlinking, operation of teleports, etc. should not be classified as “television programming” services, as these services relate only to the carriage of the television channel and not the content carried by them. This distinction should be made clearly to avoid the inclusion of regulation that impacts content in rules for broadcasting carriage.

The scope of service appropriately covers radio; however, it is important to clarify that analog and digital transmission are simply different methodologies of FM radio broadcasting. As such, digital transmission should not be delinked from FM radio broadcasting. Both analog and digital formats fall under the same broadcasting service category and should be treated together to maintain regulatory consistency. Any differentiation between the two could lead to confusion and regulatory challenges.

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.

FICCI's response:

Conditions for FM Radio Broadcasting

- We recommend including Limited Liability Partnerships (LLPs) as eligible organizations for FM radio broadcasting. The current draft rules only allow Indian companies, while LLPs are permitted for television broadcasting. To ensure a level playing field and consistency across the media sectors, LLPs should be granted the same eligibility for FM radio broadcasting as they are for TV.
- The One Time Entry Fee should be recognized as an intangible asset when calculating net worth. Given that this fee is paid for long-term licenses and has value as per both international and Indian accounting standards, treating it as zero for net worth calculation is not logical. We suggest that it be considered as an asset, which would provide a more accurate and fair financial assessment for operators.
- As stated in our introduction, digital terrestrial radio broadcasting should not be treated separately from FM radio broadcasting, as it is merely a different technology used for the broadcast of FM radio. Both analog and digital forms of FM radio should be considered as part of the same broadcasting category to maintain consistency and avoid unnecessary regulatory distinctions.



- Migration of Existing Broadcasters / Service Providers to New Regime – Broadcasters who choose not to migrate to the new regime should be allowed to continue operating during the remaining period of their license. Additionally, if they opt out of the migration, the unexpired portion of the One Time Entry Fee should be refunded to such operators, ensuring fair treatment for all service providers under the new regulatory framework.

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 said penal provisions should be adopted *mutatis mutandis*? Please provide a detailed response with necessary justifications.

c. 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.

FICCI Response:

For FM radio stations, especially in small towns with low revenue potential, we believe that the existing penalties under the current Grant of Permission Agreement are appropriate. Penal provisions under Sections 41-44 of the Telecommunications Act should apply, with the understanding that the government may issue warnings for first offenses. For violations of the Programme Code, a warning should be issued for first offenses (except in cases of national security), with penalties applicable for subsequent willful violations. Media organizations should first address complaints through their self-regulation mechanisms for content correction.

For television broadcasting, the extant provisions for breach of terms & conditions of license are sufficient. With respect to violations of the Programme Code and Advertising Code, all penal provisions should form part of dedicated broadcasting legislation, such as the proposed Broadcasting Services (Regulation) Bill, and should be adjudicated through the industry self-regulation process. They should not form part of the terms and conditions for carriage services.

Regarding penalties:

1. Detailed guidelines should be provided for how factors under Section 32(3) of the Telecom Act will classify violations.
2. Penalties should only be imposed when willful misconduct is conclusively established.

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.

FICCI's Response:

S. No.	Description	Terms and Conditions No.	Proposed changes, if any	Reasons with detailed justification
FM Radio Broadcasting				
1.	Restructuring of Entity			
2.	Restrictions on operation of Multiple channels in a city			
3.	Cross Media Ownership			
4.	Annual Authorisation Fee			
5.	News and current affairs programmes		The draft should include TRAI's recommendations to allow FM broadcasters to source and broadcast news and current affairs from authorized providers like TV channels and news agencies, beyond AIR repeats. Live coverage of national sports events should also be permitted	
6.	Programme Content		Broadcast of English and foreign language music should not be capped at 50 percent. There are many channels that are based on broadcast of English music. The restriction of 50 percent should be for non-music content.	



7.	Prohibition of Certain Activities			
8.	Penalty for Non operationalisation of services			
9.	Networking			
10.	Technical Parameters and Standards		Trai had recommended in its recommendations on consultation paper dated 8.1.2008 that the FM channels should cover district level so that rural and semi urban areas get the benefit of this media. The technical parameters need to be changed so that coverage covers district.	
11.	Number of Frequencies		This clause is fine but should override any conflicting clauses mentioned in any other general rules , Clause	
12.	Co-location			
13.	Frequency allocation and SACFA clearance			
14.	Mandatory sharing of certain broadcast signals with Prasar Bharati			
15.	Monitoring and requirement to furnish information			
16.	Inspection			
17.	Surrender of Authorization			
18.	Provisions relating to data broadcasting services in FM/ Digital sub carriers			



19.	Miscellaneous			
-----	---------------	--	--	--

We trust that our submission will assist in your decision-making process. Furthermore, we look forward to contributing to similar consultations in the future and are available to provide any clarifications or additional information as needed.