



Broadband India Forum

...enhance, expand & usher the true value of broadband

FINAL BIF RESPONSE TO TRAI CP ON ISSUES PERTAINING TO UPLINKING & DOWNLINKING OF TV CHANNELS

About Broadband India Forum

BIF's mission is to support and enhance all policy, regulatory & standards initiatives for the proliferation of high quality broadband in the country in a technology-neutral and all-inclusive manner.

Broadband India Forum (BIF) functions as a policy forum and think-tank that works for the development & enhancement of the entire broadband ecosystem in a holistic technology-neutral and service-neutral manner. BIF seeks to be a thought leader and a credible and effective voice to help propel the nation to achieve the country's ambitious vision of creating a Digital India. To achieve this, BIF works to promote the rapid development of policies to promote affordable and high speed ubiquitous broadband throughout the country.

Registered as IPTV Society, its brand - BIF was formed in October 2015 and is a fairly nascent but dedicated Forum with participation from all stake holders, including Technology Providers, Telecom Operators, Internet Service Providers, Value-Added Service Providers, Satellite Operators and service providers, MSO, startups and professional entities as well as seasoned Industry professionals who are familiar with different technologies, operations, regulations and policies.

Need for Reviewing Uplinking – Downlinking Guidelines

It is an appropriate time for India to review its policy guidelines relating to the uplinking and downlinking of TV channels in India, which are now more than 5 years old. TV penetration in India is now about 61% and is expected to reach 72% by 2017, digitisation of cable TV in India is at an advanced stage with three phases

already covered, and direct-to-home (DTH) subscriptions are growing rapidly, driven by content innovation and product offerings.

So it must be acknowledged that the existing policy guidelines were an important first step in the emergence of an Indian Television Broadcasting sector that is “vibrant ... with more than 880 permitted satellite TV channels, around 80 Teleports, 7 DTH operators, 1500 Multi-system operators and large number of Cable TV operators.” Participants in this industry include a plethora of local broadcasters, DTH platforms and video programmers, as well as well-known international programming channels. This diversity has resulted in an incredible variety of news, sports, cultural, educational and entertainment programming choices being available to Indians across the subcontinent, as well as the export of valuable Indian-sourced programming to the rest of the world.

I. Threshold Concerns

That being said, prior to providing our comments to the Consultation Paper on issues relating to up-linking and down-linking of television channels in India issued by TRAI (“CP”), there are certain fundamental assumptions made by TRAI that would be required to be dealt with.

We believe that TRAI’s assertion that “...*the permissions issued under policy guidelines for the uplinking and downlinking of TV channels comes under the ambit of Section 4 of the Indian Telegraph Act*”, can be challenged. The potential implication(s) of this statement are broad and sweeping. A possible implication is that broadcasters in India whose TV channels are uplinked from India or downlinked into India are treated as licensees under Section 4 of the Telegraph Act 1885 (“Telegraph Act”) or as licensees under the Wireless Telegraphy Act 1933 (“Wireless Telegraphy Act”). This assertion appears to have been made without due regard to the factual and legal position on the issue. The correct position in this regard is that broadcasters are neither licensees under Section 4 of the Telegraph Act nor licensees under the Wireless Telegraphy Act.

It is pertinent to note that the activity of a broadcaster is primarily to produce content, which then is uplinked via a Teleport in order to make that content available to consumers. The TV Channel per se is only the medium/brand carrying the aggregate content.

We wish to respectfully submit to the Authority that such guidelines may be authenticated through the formal notification of Rules, thereby making it enforceable.

The relevant submissions in this regard, each of which are taken in the alternative and without prejudice to the other, are as under:

i. Up-linking and Downlinking Permissions are not a license under Section 4 of the Telegraph Act.

- (i) Section 4 of the Telegraph Act provides that it would be an exclusive privilege of the central government to establish, maintain and work a telegraph. The central government by a notification can also permit any other person on terms and conditions to establish, maintain or work a telegraph. Section 4 is reproduced as under:

“4. Exclusive privilege in respect of telegraphs and power to grant licenses. – (1) Within India, the Central Government shall have exclusive privilege of establishing, maintaining and working telegraphs:

Provided that the Central Government may grant a license, on such conditions and in consideration of such payments as it thinks fit, to any person to establish, maintain or work a telegraph within any part of India.

Provided further that the Central Government may, by rules made under this Act and published in the Official Gazette, permit, subject to such restrictions and conditions as it thinks fit, the establishment, maintenance and working –

- (a) of wireless telegraphs on ships within Indian territorial waters (and on aircraft within or above India or Indian territorial waters) and*
- (b) of telegraphs other than wireless telegraphs within any part of India.*

Explanation – The payments made for the grant of a license under this sub-section shall include such sum attributable to the Universal

Service Organization as may be determined by the Central Government after considering the recommendations made in this behalf by the Telegraph Regulatory Authority of India established under sub-section (1) of Section 3 of the Telegraph Regulatory Authority of India Act, 1997 (24 of 1997)

(2) *The Central Government may by notification in the Official Gazette, delegate to the telegraph authority all or any of its powers under the first proviso to sub-section (1).*

The exercise by the telegraph authority of any power so delegated shall be subject to such restrictions and conditions as the Central Government may, by the notification, think fit to impose.”

- (ii) The definition of telegraph given under Section 3(1AA) of the Telegraph Act is as follows:

“3. Definitions.

(1).

(1AA) *‘telegraph’ means any appliance, instrument, material or apparatus used or capable of use for transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature by wire, visual or other electro-magnetic emissions, radio waves or hertzian waves, galvanic, electric or magnetic means.*

.....”

Thus, for any person to be a Licensee under Section 4 of the Indian Telegraph Act, it would require that person to either establish, maintain or work a telegraph. As is clear from the definition of “telegraph” reproduced hereinabove, it must be some equipment, appliance, instrument, material or apparatus used or capable of use for transmission/reception of signals. In the extant scenario in India, a broadcaster is merely a producer of content which the broadcaster aggregates from various sources and places them one after another in a desired pattern. After this content is created, the same is given to a “Teleport Operator” for up-linking the same to a satellite.. It would be relevant to point out that this Teleport Operator is a Section 4 Licensee under the Indian Telegraph Act as evidenced from the license which is granted. Thus,

all the activities covered under Section 4 of the Indian Telegraph Act i.e. the establishing, maintaining and working of equipment / apparatus capable of receiving / transmitting signs, signals, radio or hertzian waves are performed only by a Teleport Operator. Therefore, as broadcasters do not establish, maintain or operate a telegraph, they can by no stretch of imagination be termed as licensees under Section 4 of the Indian Telegraph Act.

The TRAI CP also erroneously states that *“After receiving the permission for uplinking of satellite TV channels from MIB, the applicant company applies to the WPC wing of DoT for grant of wireless operating license to operationalize the channel.”* By way of clarification, the Broadcaster needs an endorsement of satellite channels to be made by the WPC wing of the Department of Telecommunications on the teleport operator’s license as a part of the teleport operator’s operations. This should not be inferred by TRAI that broadcasters are Section 4 Licensees under the Telegraph Act. This is an untenable and incorrect summation. This is only to do with the operation of the Teleport Operator on account of the fact that the teleport operator’s license allows it to only uplink licensed TV channels. Simply put, the “wireless operating license” referred to is obtained by the teleport operator. Additionally, the mere hiring of a licensee under Section 4 for performing the licensed services cannot make the Broadcaster itself a Licensee under Section 4 of the Telegraph Act. The Hon’ble Supreme Court in the case of BSNL Vs. Union of India – (2003) 6 SCC 1 while deciding a similar issue in Telecom Services regarding Sales Tax had held that merely by permitting a consumer to use the services of a Telecom Service Provider does not put the consumer in the control and possession of the equipment of Telecom Service Provider.

The TRAI CP puts forth a position which has been settled to the contrary in the case of *Star (India) Private Limited v. Bharat Sanchar Nigam Ltd.*¹, wherein the Hon’ble TDSAT held that a broadcaster is not a licensee under Section 4 of the Indian Telegraph Act. Relevant text reproduced below:

“We would proceed on the basis that:

(a) no license is required; and in the alternative

(b) the petitioner is a licensee.

¹ M.A. No 108 of 2009 in Petition No.172 of 2009.

It is interesting to note that while defining the term 'service provider', the statute does not refer to the Indian Telegraph Act. It refers only to 'licensor' and 'licensee'. It is true that if licensor and licensee are to be assigned their meanings as provided for in the Act, this Tribunal would not have any jurisdiction to deal with the cases pertaining to 'broadcasting and cable services', as a broadcaster is not and cannot be granted any license by the Department of Telecommunication...

...The definition of telecom services as contained in Section 2(k) of the Act is 'exhaustive' in character, but a proviso was appended thereto. In terms of the proviso, a notification has been issued on or about 9th January, 2004 declaring Broadcasting Services to be a Telecommunication Services. By reason of the said notification, thus, a legal fiction has been created. It is now well known that a legal fiction created by a statute must be given its full effect. Petitioner, thus, by reason of the said notification must be held to be rendering telecommunication services. But the same would not mean that it would be required to obtain license stricto sensu under the Telegraph Act. A permission obtained for broadcasting from the competent authority of the Union of India would serve the purpose."

Further, it has been rightly observed by TRAI in its Consultation Paper itself that the Satellite TV Channel Broadcasters are different from the FM Radio Broadcasters inasmuch as there is a limitation in the bandwidth spectrum available for FM Radio Broadcasters and in a given geographical location, there cannot be more than 10 – 12 FM Radio channels. It is also relevant to point out that for transmission of FM Radio broadcasting, the radio broadcasters are obliged to have their Radio Broadcasting station including establishing their own antenna and other broadcasting equipment which is not applicable to Satellite TV Channel Broadcaster. TRAI has rightly observed that there is a specific spectrum/frequency granted to an FM Radio Broadcasters whereas in case of Satellite TV channels, no specific frequency allocation is done by WPC.

ii. Satellite Spectrum is not Suitable for Auction – Both Uplink and downlink legs.

At the outset, we would like to state that the use of a particular satellite uplink and downlink spectrum and the corresponding satellite transponder capacity are tightly

coupled with each other, whereby the satellite transponder capacity allocated (by the satellite owner) to a company cannot be used without corresponding up-linking and down-linking satellite spectrum. Similarly, a particular up-linking satellite spectrum, beamed toward a particular satellite, is of no use if the corresponding right to use of that satellite transponder capacity is not available alongwith the right to use the downlink spectrum. For the success of Satellite TV Broadcasting, it is important to ensure that the right to use for a satellite transponder capacity and corresponding up-linking and downlinking spectrum are allocated to the same entity. The introduction of an auction route for channels would necessarily require the auction of the spectrum bundled with the satellite transponder allocation, complexity of process would not justify the negligible revenue that may be anticipated from such auction.

Most importantly, there is the relevant issue of international regulatory complications that arise from any effort to auction satellite spectrum. Further there are other complications that might arise if the auction of satellite spectrum is resorted as the same is an International transaction, subject to International Community rules, unlike terrestrial spectrum. Besides, auctions are ill-suited as an administrative mechanism to license services that rely on shared spectrum, such as satellite-based broadcast services.

- a. Firstly, satellite TV broadcast and FM radio broadcast are miles apart from each other when it comes to their infrastructural requirements and the manner of use of spectrum. This difference has been effectively brought out by TRAI itself in the consultation paper and we have highlighted that in the previous sub-heading: As stated by the Authority itself, FM radio stations utilize that part of the overall spectrum which is earmarked for terrestrial communications and which is exclusive and not shared in a given area, as opposed to satellite communications where spectrum is shared and non-exclusive and where a teleport is used to reach satellite antenna rather than open diametrical radiation as is the case with FM radio transmitters. This simple differentiation means that per FM radio station requirement of spectrum is high and therefore per circle, given the present allocation in National Frequency Allocation Plan – 2011 (NFAP), only maximum of 25 stations per circle can operate (as has been affirmed by the Authority as well). Moreover, FM radio stations have to deploy their own terrestrial transmitter capacity which has to necessarily be licensed as an “apparatus” under the Telegraph Act. Such is not the case with satellite broadcasters as they can simply

hire teleport and satellite transponder capacity from commercial operators of the same. This to say that satellite broadcasters do not require to own the transmission infrastructure as is the case with FM radio stations. Hence the analogy of FM Radio broadcast being similar to Satellite TV Channel broadcast is not accurate.

- b. Certain specific aspects of satellite spectrum (and associated orbit) need to be brought out to understand the issue:

All radio transmissions including those from satellites are inherently not confined to national political boundaries and therefore frequency usage has to be in accordance with the provisions of Radio Regulations (RR) of the International Telecommunication Union (ITU), Geneva. The ITU is the specialized UN agency for ICT issues and the RR have the force of an international treaty.

The international framework for coordination, notification, international recognition is an involved process, established /reviewed at World Radio-communication Conferences (WRCs) of ITU. Member States of the ITU have established legal framework in the ITU Constitution, Convention and the Radio Regulations (RR) that address the rights and obligations of Member administrations, including those for obtaining access to spectrum /orbit resources and international recognition of these rights by recording frequency assignments and orbital positions used/intended to be used in the Master International Frequency Register (MIFR).

The satellite systems have to be internationally coordinated as per relevant RR provisions, for the satellite networks to operate without harmful interference whereof use of satellite spectrum has international dimensions. Operations of satellite networks generally requires bilateral/ multilateral coordination and cooperation. It is incumbent on the potential satellite operator (or operating agency) to obtain access to frequency assignments and associated, suitable orbital position.

ITU's Radio Regulations complement the ITU Constitution (No. 31 of ITU Constitution), and are based on main principles of 'efficient and rational use of the RF spectrum' and 'equitable access' to spectrum /orbit resources for countries, laid down in No. 196 (Article 44) of the ITU Constitution. The

Resolution 2 of the Radio Regulations provide that “all countries have equal rights in the use of both the radio frequencies allocated to various space radio-communication services and the geostationary-satellite orbit and other satellite orbits for these services.” ‘Resolves 1’ of Resolution 2 states, “that the registration with the Radio-communication Bureau of frequency assignments for space radio-communication services and their use does not provide any permanent priority for any individual country or groups of countries and do not create an obstacle to the establishment of space systems by other countries.” Resolution 4 of RR on ‘Period of validity of frequency assignments to space stations using the geostationary-satellite and other satellite orbits’ states that “frequency assignments to space radio-communication stations located on the geostationary-satellite and other satellite orbits...shall not be considered perpetual.” This resolution was derived from the 1966 UN Treaty on Outer Space which recognized the ‘common heritage’ of outer space – i.e. satellite orbital positions are not within an individual country’s territorial jurisdiction. Thus, to use a commercial analogy, countries should not see the ITU as a wholesaler of spectrum rights granted in perpetuity which countries can then market at retail to satellite operators.

Moreover, the radio regulations for use of satellite orbits, along with associated spectrum, follow the principle of ‘First Come First Served’ rather than auctions. Therefore, the ITU process for accessing the spectrum and orbit resource is crucial to any national licensing regime, no matter what form this regime takes, and so an understanding of the role of the ITU is important while considering various options for the licensing of satellite systems and networks.

Therefore, it is clear and present that Satellite Spectrum has to be treated by countries differently from the spectrum used for terrestrial services. It’s evident that auction of satellite spectrum, by any country, has international ramifications. Since India, as an ITU Member, has ratified ITU’s Radio Regulations, a ‘binding international treaty’, like any other ITU Member, it needs to take all measures not to contravene this ‘treaty’.

- c. Auction methodology is normally adopted when there is scarcity of a particular resource and the item being auctioned is free from any encumbrances. Satellite spectrum (and associated orbit locations) has multiple encumbrances.

We also put it on the record that auctioning of up-link permissions in a standalone manner is not a feasible route as well because to do the same, MIB shall have to artificially limit the same as the resource attached to it i.e. satellite spectrum is not scarce and unamenable to auctioning.

- d. Auctions are suitable for services that have exclusive spectrum allocations, but are ill-suited as an administrative mechanism to license services that rely on shared spectrum, such as fixed-satellite service stations (FSS) and broadcast-satellite service (BSS) stations. The spectrum used by satellite operators to provide satellite-based services is shared with other satellite operators in the same coverage area, and also with other services, including terrestrial services. Therefore, auctions are not a suitable mechanism to assign licenses for satellite-based services including broadcasting services.
- e. The fact that ITU address the rights and obligations of member countries with regard to access to spectrum/orbit resources and does not resort to “auctioning” of the same, a member country like India should ideally not take the “auction” route as it may lead to violation of India’s international commitments.)

We also point out that DoT is already in the process of formulating New Telecom Policy – 2018 (NTP – 2018) and as part of the same exercise it is attempting to ease barriers to market entry, and not promote measures that are contrary to these goals.

COMMENTS ON SPECIFIC ISSUES AND PROPOSALS IN THE CONSULTATION

On the specific issues and proposals raised in the Consultation Paper, BIF’s responses are set out below.

Definition of 'News and Current Affairs channels' and Non-'News and Current Affairs Channels' (Consultation Paper, para. 2.15)

4.1 Is there any 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.

The consultation paper does not clearly explain what would be the goal of the mooted redefinition, so it is difficult to assess the concepts. We note that “News and Current

Affairs” TV channels are currently not required to carry any particular percentage of news content; some such channels in fact broadcast mostly general entertainment programming, with only a few minutes of news each hour. Therefore the definition is not binding upon such channels, who are free to change their programming mix.

We see no need to change the definition of “News and Current Affairs Channels”. On the other hand, the “Non-News and Current Affairs” category suffers from a lack of precision in the definition of what constitutes “current affairs.” Such channels may feel obliged to avoid programming that might touch upon issues of current interest, and happenings or events in the society. This is in our view an unnecessary restriction on the creative license normally allowed such channels. We would support a clearer and more inclusive definition of “Non-News and Current Affairs Channels,” to clearly delineate news content from entertainment content touching on current events.

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.

BIF urges the TRAI to take care not to create further entry barrier for serious players; financial backing/capability is not the only indicator of seriousness and capability to carry out quality broadcasting activities. A balance needs to be maintained between ensuring adequate financial backing of TV broadcasting ventures and enabling competitive entry by new voices in the marketplace.

To the extent the Government of India is concerned about the “hawking” or “trading” in speculative licences (reference TRAI CP Clauses 2.70, 2.76 and 2.77), setting high net-worth requirements would not necessarily address this concern. Making it easier for new entrants to obtain a new broadcast licence – e.g. by simplifying the process, and not necessarily in reducing fees or eligibility – may actually do more to deter “hawking” or “trading” of speculative licences – those not associated with active business – in the secondary market.

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

Refer to our response to 4.2 above.

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.

BIF would simply like to caution against imposing excessively high barriers to entry for competitive entry by new channels, whether they be from those new to the market or established applicant companies. BIF recommends that fees are reasonably related to the administrative costs of the regulatory activity.

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.

Refer to “ii” under the heading “Threshold Concerns” above

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.

Refer to our response to 4.5 above.

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.

No, auctions are not feasible for the reasons described in above in detail. In addition, the government can only auction resources which are fully within its control. Resources used to broadcast a satellite TV channel (uplinking and downlinking spectrum coupled with a satellite transponder) are only partially within the control of the government, which is constrained by ITU allocations of frequencies, assignment of orbital slots, and requirements to fully coordinate with the orbital resources of other countries.

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?

The Indian broadcasting sector is a sunrise sector for the economy; it is on the cusp of a strong phase of growth, backed by rising consumer demand and improving advertising revenues. Since the inception of satellite television distribution in India more than four decades ago, the availability of foreign satellite capacity has played and will continue to play an important role in the emergence of the vibrant Indian

television broadcasting sector noted in the Consultation Paper. The only reason advanced for considering such restrictions is to enable auctions of satellite TV channels. As explained above, such auctions are not feasible. The situation would only be compounded if accompanied by a requirement to move the many TV channels on foreign satellites today onto Indian satellites. Potentially hundreds of uplink antennas and many thousands of downlink antennas throughout the country would need to be repointed. It would also likely lead to less efficient use of resources as for example previously multiplexed Indian and non-Indian feeds on a single satellite would need to be separated and uplinked onto another satellite using another antenna, likely requiring the use of more spectrum at greater cost. Many channels also use the same satellite feeds to serve the Indian diaspora across West Asia and South East Asia while ensuring compliance with Indian broadcasting rules. Channels should have the choice to choose the technical/satellite solutions that meet their specific commercial needs as long as they are maintaining compliance with Indian broadcasting regulations on content.

By market estimates about 500 TV Channels operate on foreign satellites using more than 70+ foreign satellite transponders. Foreign satellites have steadily grown in India in absence of domestic satellites providing the right quality of service, global distribution and coverage, replacement and backup plans along with a long term roadmap for expansion for broadcasters.

There exists a real possibility that if foreign satellites are only available for TV Channels uplinked from foreign soil to be downlinked into India, then many broadcasters would migrate to Teleports outside India.

Overall, forcing Indian broadcasters to move to domestic satellites without adequate quantity or quality capacity, merely for revenue maximisation, is ill-advised.

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

BIF would recommend simplifying and streamlining the present administrative system of granting licences. It has succeeded in creating a vibrant and competitive TV broadcast sector in India so far, but it can certainly be improved by for example reducing processing times, reducing the number of separate licences or approvals that may be required for a given activity, eliminating duplication, simplifying requirements, and making outcomes more predictable – as far as possible

A streamlined, stable, transparent, prompt and predictable licensing system will lay a solid foundation for future growth of this important sector in India. We express support for the concept of an effectively implemented “single window” licensing mechanism, and we continue to believe that the “single window” could be the foundation for a better way to use digital procedures to license satellite TV channels than the present procedures.

Even some simple changes in the processes can help smoothen the process, like –

- Permissions granted to broadcasters for uplink and downlink of TV channels on a given satellite through a given teleport, should be used as precedents with automatic/expedited approvals for uplink/downlink of additional TV Channels on the same satellite and same teleport for the same broadcaster.
- Identify a list of approved satellites along with their frequencies/beams, that have coverage over India and that are coordinated with Indian Administration under the ITU regime. This way each individual application for uplink need not be vetted again for the satellite and the frequency so long as the broadcaster uses a satellite from the approved list.
- Endorsing and de-endorsing of TV Channels from a Teleport’s Operating License that uplinks and downlinks such TV Channels should be streamlined. This way the Teleport Operator should be able to use the satellite resources to populate their operations with new TV Channels in place of defunct TV Channels.

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.

Fees for granting satellite licenses should be levied on a non-discriminatory basis. BIF recommends that all fees are reasonably related to the administrative costs of the regulatory activity. Most communications regulators around the world set administrative fees in accordance with this principle, and for India to adopt this principle would be very much in keeping with the government’s desire to improve the ease of doing business.

In addition, TRAI should provide parity in downlink entry fees between programming originating from India and abroad. The downlink service entry fee currently applies

only to operators transmitting programming uplinked from outside India. This artificially introduces a bias against international channel providers, and against international satellite and teleport operators.

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.

Refer to our response to 4.10 above.

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?

We believe that no reasonable discrimination can be made between channels uplinked from within India or abroad.

As for AGR based fee mechanisms we would like to state that no change is required in the present rate of license fee prescribed for uplinking and/or downlinking of Satellite TV Channels.

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)?

As stated in response to multiple questions above, any fee should be linked only to the administrative costs to the Government to process a license application. Moreover, any kind of fees including license fee should not be used as a means of maximizing revenue.

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?

BIF recommends cost-based fees – preferably fixed – that are reasonably related to the administrative costs of the regulatory activity.

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

As broadcasters are already paying annual license fee to the Government. Either the license fee should be collected for the entire license period of a channel in one go or there should be an online payment system for annual payment of license fee.

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

Given that the validity of the license granted is for a period of 10 years, then the review of the entry fee and license fee rates should be done after such period is over.

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.

BIF is of opinion that all Satellite TV Channels whether FTA or Pay should be broadcasted through satellite in encrypted form. Encryption of FTA channels in addition to pay channel will ensure that the signals are not pirated in a rampant manner as is the case today.

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 “operationalization of TV channel” for the purpose of the uplinking guidelines, and the downlinking guidelines separately.

BIF believes that to successfully operationalise a TV channel often depend on timely grant of license applications. Long, unpredictable delays in processing and grant of such licences have great potential to significantly disrupt plans for operationalising a start-up TV channel, whether or not concerns about the seriousness of the applicant and/or speculation in licences are raised by or to the regulator. Therefore, we request the Authority to address the issue of delay in granting license before said phrase is defined.

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?

BIF would want to refrain from commenting on this issue.

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.

The ability to transfer existing licences on the secondary market, subject to reasonable government oversight, is generally healthy and likely to lead to more efficient allocation of resources for the reasons stated in the Consultation Paper. Mergers, de-mergers and spinoffs are aimed at making companies more efficient and ensuring their survival and future prosperity. License transfer rules should be liberalized and brought into alignment with the provisions of the Companies Act so as to facilitate that process.

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.

In the interests of promoting a dynamic broadcasting sector and to promote Government's vision of "ease of doing business", we request that no "lock-in" requirements be placed upon up-link – downlink permission holders.

Should TRAI nevertheless adopt a lock-in period, it is suggested that licensees should be provided a meaningful opportunity to show that waiver of the lock-in period would be in public interest.

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?

Please refer to our response to 4.21, above.

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.

Please refer to our response to 4.2, above.

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.

We are not convinced that any definition of a teleport is useful, beyond those in common use.

In our response to 4.25 to 4.30, which mainly concern with Entry fee, Processing fee, and License fee for teleport license, we have already stated that all fees should be commensurate with the expenses incurred by the Government in processing such application and should never be used as a means of revenue maximization.

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.

There is no basis for restricting the number of teleports in India.

A vibrant Indian television broadcasting sector has evolved without any restrictions on the number of teleports, and there is no evidence to indicate that a limit is required to address a dysfunction in the market or any other perceived public harm.

In a dynamic and evolving market, it would be particularly difficult for a regulator to derive an “optimum” number of teleports. If the limit is set too low, however, then prices for teleport services from already licenced providers will likely rise – artificially benefitting only those licenced providers – and the expected growth of the Indian television broadcasting sector would likely be inhibited.

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?

Please refer to our response to 4.31 above.

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.

There are already a number of constraints on teleport locations, including availability of land, land use controls, and the frequency licensing and SACFA site clearance process. Therefore, any additional constraints on location of teleports than is already the case is not advisable.

As for the creation of “teleport parks”, we are supportive of the idea only if such parks should come along with benefits available to special economic zones (SEZ) such as low taxation and availability of land at cheaper prices along with automatic SACFA Clearance

4.34 Please suggest the ways for the optimal use of existing infrastructure relating to teleports.

There are already adequate incentives in the market and the regulatory framework for optimal use of existing teleport infrastructure. Therefore, we see no merit on providing any further comments on this issue.

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.

In BIF’s opinion, there are already multiple agencies available at Government’s disposal such as NOCC which could be involved in monitoring to detect unauthorized uplinks.

Any Other Issues

“Broadcasters should be permitted to use any of its free transmission satellite capacity available for Occasional Use (OU) purposes with prior notification to the authorities. This is not only in line with the Government of India’s Ease of Doing Business norms but it is also one of the ways of optimum utilization of available bandwidth capacities.