

Subject: **Fwd: CII Inputs on TRAI Consultation Paper on Up-linking and Downlinking Guidelines**

To: sksinghal <singhal.sunil@gmail.com>, V Agarwal <vk.agarwal@traigov.in>

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----- Original Message -----

From: **Amita Sarkar** <amitasarkar@cii.in>

Date: Feb 2, 2018 6:39:57 PM

Subject: CII Inputs on TRAI Consultation Paper on Up-linking and Downlinking Guidelines

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Cc: Vaishali Shrivastava <vaishali.shrivastava@cii.in>, Ahladini Injeti <ahladini.injeti@cii.in>, CII Big Picture Summit 2017 <bigpicture@cii.in>

Dear Mr Singhal,

As a response to TRAI Consultation Paper on Issues relating to Up-linking and Downlinking of Television Channels in India, the Confederation of Indian Industry (CII) would like to make the following submissions:

1. The Function of Ministry of Information & Broadcasting ("MIB") to Issue TV Channel Permissions Bears no Relationship with Telegraph Act, 1885

TRAI has found it befitting to mention in the present consultation paper that broadcasters in India are 'licensee' under Section 4 of the Telegraph Act, 1885. We as CII believe that this position adopted by TRAI is sans any foundation in law.

It is true that broadcasters use many facilities that are licensed under Section 4 of the Telegraph Act, however, broadcasters cannot be said to be 'licensees' merely because they use the facilities that are licensed under Section 4 of the said Act. However, here it becomes necessary to differentiate between the owner/operator of the telegraph apparatus such as the teleports and the mere user of such facilities. We submit that broadcasters do not own or operate any technology which would constitute as a telegraph and hence cannot be considered as licensees under the Indian Telegraph Act, 1885.

Under the Indian Telegraph Act, 1885, Telegraph means:

"S. 3(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.

Explanation - 'Radio waves' or 'Hertzian waves' means electromagnetic waves of frequencies lower than 3,000 giga-cycles per second propagated in space without artificial guide"

Broadcasters are mere permission holders who are accorded the permission to uplink and downlink TV channels under the Uplinking Guidelines and Downlinking Guidelines (collectively referred to as "Guidelines"). There is no license required by the broadcasters for operating a television channel in India. The broadcasters position is

akin to that of the publishers such as newspapers and periodicals, who are only required to be registered for title and are not required to procure any license. In fact, the broadcasters have a Fundamental Right of Speech and Expression under the Article 19(1)(a) of the Constitution of India, and as such no restrictions can be put on this Fundamental Right except through an act of legislature only for the purposes set out in Article 19(2) of the Constitution of India. This point is further elucidated in Point 3 below.

As per the Guidelines, before requesting for Permissions, broadcasters are required to enter into contracts with: (i) teleport service providers for uplinking of channels to satellites; and (ii) satellite service providers for the bandwidth.

In the present scenario, broadcasters intending to get their channels uplinked from India are mandated to use Teleports for such uplinking of signals which are licensees under the Department of Telecommunications (“DoT”).

Further, after such grant of Permissions to a broadcaster, Ministry advises the Teleport Operators to get an endorsement of the channels in their operating licenses and acquire frequency approvals from Wireless Planning and Coordination wing (“WPC”) under the DoT.

Moreover, broadcasters in India do not have any direct relationship with the subscribers / viewers but merely ensure (through Teleports) to make available the signals to distributors like Direct to Home operators, Cable Operators (MSOs and LCOs), Internet Protocol Television Operators and Headend In The Sky Operators who are licensed, registered or authorised under relevant laws (“DPOs”). It is these DPOs who actually make the content available to the subscribers / viewers and use Telegraphs to achieve such retransmission. All DPOs are permitted to only redistribute such television channels which have downlinking Permissions. Broadcasters thus have more business to business (B2B) relationships with its advertisers and DPOs, while the DPOs use telegraphs to downlink and redistribute the signals of channels.

In lieu of the aforesaid reasons, it is thus submitted that broadcasters are not licensees and cannot be treated as licensees under the Indian Telegraph Act, 1885.

2. Auctioning of Satellite Spectrum and TV Channel permissions are not viable options.

The Authority has tried to exposit in detail its suggestions regarding the auctioning of TV channel permissions and the “attached” satellite spectrum in the same manner as terrestrial FM radio licenses and spectrum is auctioned. It even discussed the possibility of separately auctioning the TV channel up-link – downlink permissions and the satellite spectrum.

We firmly believe that auctioning methodology for spectrum allocation for satellite TV channels should not be adopted as television broadcasting is not the same as FM Radio broadcasting, auctioning of spectrum for which may have been a feasible option. FM Radio broadcasting is terrestrial in nature and as mentioned by the Authority in the present consultation paper, the maximum number of FM Radio channels are limited by design in a given geographical area, and auction for FM Radio channels is carried out geographical area wise due to the reasons of scarcity. Also, FM Radio stations use their own terrestrial transmitter capacity, license for which is granted under the Telegraph Act, 1885, on the other hand, satellite broadcasters do not require their own transmission

infrastructure and can hire a teleport and satellite transponder capacity from commercial operators of the same as has been discussed in the previous sub-heading in detail.

Further, India is a member of International Telecommunication Union (ITU) which as per its Constitution and Radio Regulations (“RR”) addresses the rights and obligations of Member administrations, including those for obtaining access to satellite orbital slots and the attached spectrum. Since India has ratified ITU’s Radio Regulations, before adopting the auctioning methodology for spectrum allocation for satellite television channels, it has to take all the necessary measures in order to prevent contravention of any provisions of these regulations. The Authority has discussed these ITU provisions in detail in para 2.31 of the instant consultation paper, therefore, we shall not go into detail over here. However, we would definitely like to urge the Authority to avoid taking the route (i.e. auctioning of satellite spectrum) which is fraught with international complications.

We would also like to mention that auctioning can only be performed over scarce resources such as coal, minerals etc. However, there’s no dearth of satellite spectrum either in India or even globally, therefore, auctioning makes little sense.

Auctioning of satellite TV channel permissions, first of all shall be possible only by creating artificial scarcity of such permissions either on an annual or quarterly basis and the steep increase in CAPEX will only push away the new businesses and small industry players as they will not be able to bid for the same. In the recent past, auctioning of spectrum to the telecom companies has negatively impacted the growth of telecom industry and Department of Telecommunications (“DoT”) is already in the process of attempting to ease the anxieties created by telecom spectrum auctions and AGR based license fee. In this regard we cannot help but refer to the suggestions made by the Authority with respect to telecom operators in the Consultation Paper on “Inputs for National Telecom Policy – 2018” dated 03 January 2018, where the Authority has asked for “review” of license fees and USOF levies, Therefore, we fail to understand why just the opposite treatment of burdening broadcast sector with ever increasing cost burden is being adopted by the Authority.

3. Issues pertaining to fees and levies:

Fee issues relating to uplink permission.

No entry fee for grant of license for up-linking of TV channels from India, downlinking of TV channels uplinked from India, and downlinking of foreign TV channels should be introduced. Introduction of entry fees will act as a barrier for the new players to enter the market and therefore will hamper the growth of industry. This will lead to lack of diverse content and impact prices which will adversely affect the consumers.

For grant of permissions for satellite TV channels, only such fees should be levied which is necessary to cover the expenses incurred by the Ministry of Information and Broadcasting in processing the application. Therefore, a *status quo* should be maintained for the fees levied for granting permissions for satellite TV channels. There is no need to bring a fee structure which is variable or semi-variable in nature.

To facilitate ease of doing business, a ‘single window’ clearance system should be introduced so that the procedural hurdles in grant of permission/license can be done away with and applicants do not have to approach different ministries for permission and license. Also, after every 10 years when the validity of the license expires, a review of the entry fee and license fee can be done.

Apart from the aforementioned concerns, we would like to draw special attention to the suggestion by the Authority to impose “Adjusted Gross Revenue” (“AGR”) based revenue sharing fee structure upon broadcasters. We would like to unequivocally say that such a move would be destructive as it force many broadcasters out of existence and may lead to other broadcasters sharply curtailing their operations. Again we would like to say that AGR based fees mechanism has not worked in telecom and we can say with near certainty that broadcasting, bring a much smaller sector compared to telecom in terms of size, shall not be able to bear high AGR based fees.

1) **Fee issues relating to Teleports.**

The non- refundable processing fee to be payable with the applications for teleport licenses should not be increased as it will act as a barrier for the new players and small businesses to survive in the market and therefore will hamper the growth of industry. This will lead to lack of diverse content and impact prices which will adversely affect the consumers. In fact, the administrative costs incurred on processing of the applications can be reduced by processing the applications online. A ‘single window’ clearance system for granting teleport licenses should be introduced so that the procedural hurdles in grant of teleport license can be done away with and applicants do not have to approach different ministries for permission and license.

Also, no entry fee should be levied for grant of licenses to set up teleports as it will hamper the growth of the industry and act as an entry barrier for new entrants and small businesses. We should maintain *status quo* on the license fee structure for teleport licenses and should not adopt a semi-variable or variable license fee structure. The periodicity of payment of license fee to the government should remain the same as prescribed in the up-linking and downlinking guidelines.

With warm regards,

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