CONSULTATION PAPER ON "EASE OF DOING BUSINESS IN BROADCASTING SECTOR" ISSUED BY THE TELECOM REGULATORY AUTHORITY OF INDIA DATED JULY 31, 2017

TO

THE TELECOM REGULATORY AUTHORITY OF INDIA

FOR AND ON BEHALF OF

SONY PICTURES NETWORKS INDIA PVT. LTD.

Dated: August 28, 2017

I. INTRODUCTION

In recent years, India has witnessed significant economic reforms and relatively high growth. The UN Economic and Social Council for Asia and Pacific (ESCAP) survey forecasts India's GDP projected growth to be stable at 7.1 per cent in 2017 and rising to 7.5 per cent in 2018, driven by higher private and public consumption and increased infrastructure spending[1].

The broadcasting sector has witnessed remarkable growth over the years. KPMG in their India Media & Entertainment Report - 2017 estimated the Indian M&E size at INR 1262 billion in 2016 with a CAGR of 9.1%. Television forms over half of the overall size of the M&E industry and is a key driver for the growth of the sector. The Gross Value Added (GVA) for broadcasting related services currently stands at 7.8 percent[2]. The Ministry of Information and Broadcasting (MIB) has already implemented complete digitization for cable television network to bring in transparency and addressability in line with the Government's vision of 'Digital India'. We share the Telecom Regulatory Authority of India's (TRAI's) belief that the Media & Entertainment industry and its affiliate support industries can and should spearhead the economic growth, creativity and job creation for India over the long term, and that government and the industries working together can help achieve this goal. The TRAI has taken a welcome initiative by releasing the Consultation Paper on 'Ease of Doing Business in the Broadcast Sector' on July 31, 2017 ("**Consultation Paper**") to address procedural bottlenecks and policy issues and thereby facilitate ease of doing business.

We have provided our thoughts on the specific queries outlined under the Consultation Paper herein below for your perusal.

II. ISSUES

Query 1:

Is there a need for simplification of policy framework to boost growth of satellite TV industry? If yes, what changes do you suggest in present policy framework relating to satellite TV channels and why? Give your comments with justification? (Chapter III &IV Query 1)

Response1:

→ **Net Worth Requirements[3]**

Issues:

- Presently separate net-worth requirements are imposed on broadcasters for downlinking/uplinking of television channels as follows:

Type	Item	Required Net Worth
Non-news & current affairs channels	First television channel	Rs. 5 crore
	Each additional television channel	Rs. 2.50 crore
News and current affairs channels	First News and Current Affairs television channel	Rs. 20 crore

[1] https://www.forbes.com/sites/timworstall/2017/05/02/un-prediction-indias-gdp-will-grow-at-7-1-this-year-and-why-not-it-should/#6d4dd5e45da8

[2] http://eaindustry.nic.in/key_economic_indicators/Key_Economic_Indicators.pdf

[3] *Policy Guidelines for Uplinking of Television Channels from India issued by the MIB on December 05, 2011 [File No: 1501/34/2009-TV(I) dated December 05, 2011 read with amendment order of the same date.]*

	Each additional television channel	Rs. 5 crore
Teleports	For the first Teleport	Rs. 3 crore
	Each additional Teleport	Rs. 1 crore

This creates an entry barrier to the industry and deters new players.

- For calculating the abovementioned net-worth thresholds, MIB sends each of the applications of both existing non-news broadcasters and news broadcasters to its empanelled auditors without any mandated timelines. In addition, each of the applications are also referred to Ministry of Corporate Affairs (MCA), even though these details are available online on the website of the Registrar of Companies (ROC). Further the empanelled auditors of the MIB and the MCA do not have any accountability/face any consequences for the deferment incurred in the process due to their delayed action and therefore, the process of verification of the net worth in unnecessarily extended beyond reasonable time limit. It is also a fact that these empanelled auditors of MIB and MCA only cross-verify the Balance Sheets and Audited Account Statements certified by the statutory auditors of the concerned broadcaster companies.

Recommendations:

- The net-worth requirements for broadcasters should be done away with and it should be left to the judgement of the entrepreneurs as to the finances required to operationalise a channel. In any case, from a practical standpoint, it would be challenging for an entrepreneur investing lower than the prescribed net-worth to sustain the television business. Entrepreneurs should be given the ability to determine the amount to be invested in the business.

- In the alternative, it is suggested that Net-worth Certificates, Balance Sheets and Audited Account Statements as certified by the statutory auditors of the concerned broadcaster companies should be the basis for processing of applications. Existing process of verifying applicant's net worth through MIB's empanelled auditors and then again through the MCA makes the entire process of ascertaining the net worth of the broadcaster complex and elongated creating unnecessary impeding elements in the entire process. The concerned finance wing of the MIB should be entrusted with the task of carrying out the verification process in a time bound manner.

→ **Security Clearance[4]**

Issue: The requirement of the MIB for broadcasters to obtain security clearance from the Ministry of Home Affairs (MHA) for operationalizing its businesses/channels, for its directors and key executives should be done away with since this provision is vague, ambiguous and provides no purpose, process or timelines.

Currently, applications are referred to MHA without any clear timelines and in some of the cases it almost takes more than three years for the necessary clearance to be issued.

Recommendation:

- We understand that the reason behind involvement of the MHA in the approval process is for national security concerns. In light of the content that is broadcast on 'non-news

[4] *Supra*

channels & current affairs' channels which do not embrace any news or current affairs programmes or deal with any critical information dissemination to the masses (unlike 'news and current affairs' channels), these norms should specifically exclude companies broadcasting 'non-news and current affairs' channels.

In the alternative, our suggestion is that only a fresh non-news broadcaster's application should be referred to the MHA for security clearance. Existing broadcasters applying for additional channel licenses within the validity period of ten years should not be referred to MHA. To the same effect, each time a fresh license is issued, it should contain details regarding the issuance of security clearance to the broadcaster company and its expiry date.

Further, as regards approval required to be obtained in case of its directors and key executives, we suggest that the MIB should prescribe a comprehensive list of 'Guidelines' from a security perspective which are to be strictly adhered to by the broadcaster company's directors and key executives. Any approval requirements for these categories of persons should accordingly be done away with. The said list of "Guidelines" may be prepared and finalized along with experts from MHA, Ministry of Information Technology (IT) and Ministry of Communications, under the supervision and guidance of the MIB. The applicant broadcaster company should be granted the authority to self-certify the list and MHA may, thereafter obtain the credentials of the applicant broadcaster company from its confidential/secret records for assessing the issuance of security clearance for operationalisation of its business/channels as a broadcaster.

- Further, a strict time frame in terms of number of working days should be clearly spelt out in the uplinking and downlinking guidelines for obtaining the MHA clearance on the basis of self-certification by the applicant company in respect of the list of "Guidelines" and also for new broadcasters (if at all).

→ **High Operational Costs[5]:**

Issues:

- For downlinking of channels into India, uplinked from other countries, an amount of Rs. 10 lakhs per annum is required to be paid at the time of grant of permission. In addition to this, Rs. 15 lakhs are required to be paid per channel per annum for downlinking of television channels uplinked from abroad.

- Also, the requirement of providing a Performance Bank Guarantee of Rs. 1 crore ("**PBG**") for operationalization of new channels uplinked from India serves no purpose other than being an additional hassle and burden on the broadcaster. In any case, if a broadcaster does not operationalize its channel, it will continue to pay downlinking and uplinking fee which in itself are very high and act as entry barrier. It would not be an ideal situation wherein a broadcaster is unable to operationalize its channels due to constant expense of very high downlinking/uplinking fees.

Recommendation:

- It is suggested that the annual renewal fee be brought down to reasonable levels of less than Rs. 5 lakhs per annum and the requirement of providing PBG be done away with since the credibility of a broadcaster is already established after the operationalisation

[5] *Policy Guidelines for Downlinking of Television Channels from India issued by the MIB on December 05, 2011 [File No: 1501/34/2009-TV(I) dated December 05, 2011 read with amendment order of the same date.]*

of its channel and its continuance for a period of one year successfully. The MIB should consider accepting a one-time renewal fee at the time of grant of uplinking/downlinking licenses to the broadcasters for the entire period of 10 years

- In the alternative, if our recommendation as regards the PBG is not acceptable to the TRAI, then atleast the PBG should be reduced to Rs. 25 lakhs alongwith the annual renewal fee reduced to Rs. 5 lakhs per annum.

→ **Hiring of transponders from foreign satellite operators**

Issue:

- Under the present regulatory regime, any company uplinking from India must use either an Indian satellite, or a satellite system approved by the Indian Department of Space (DoS). The approval process for using a non-Indian satellite or a foreign satellite involves DoS, the Wireless Planning & Coordination (WPC) Wing of the Department of Telecommunications and the MIB. Preference is always given to INSAT satellites, operated by ISRO over foreign satellite.[6]

- Broadcasters require prior approval from the MIB before remitting foreign exchange towards hiring of transponders from foreign satellite operators for uplinking of television channels[7]. It is to be noted that once the agreement with the foreign satellite operator is executed, the charges payable by the broadcasters towards such capacity commence immediately. While as per the MIB Advisory, any proposal seeking approval of the MIB is required to be submitted at least 30 days in advance i.e. date before which the payment is due, however, we have experienced that the MIB approval takes time to come through, at times extending to more than 4-5 months. This results in the following:

  - ❖ Charges are required to be paid to the satellite operator, upon signing of the channel agreement but the channel is not operational.

  - ❖ Such charges can only be paid post MIB approval, hence, the process at present is irrational and impracticable, apart from causing wastage of transponder charges.

***Recommendations*:**

- When there is an agreement between an Indian broadcaster or a teleport operator with a foreign satellite operator, the foreign satellite operator would have already coordinated their satellite with Indian Space Research Organization (ISRO) and WPC. The ISRO should publish their own list of INSAT satellites and the list of INSAT-coordinated foreign satellites on their own website so that MIB does not have to send each fresh application and change of satellite applications to DoS for verification. Presently, even an up-linking application involving the use of INSAT satellite is also sent to ISRO. Similarly, when a broadcaster changes the transponder on the ISRO approved satellite (Indian and / or foreign) for up-linking its licensed channel, MIB would not be required to send the application to ISRO for approval.

[6] *http://www.lexcounsel.in/attachments/article/102/Provision%20of%20Satellite%20Services%20by%20Foreign%20Satellite%20Operators%20in%20India%20-%20Regulatory%20Framework%20In%20India.pdf*

[7] *MIB Advisory No. 1403/3 1/2013-TV (I) dated June 25, 2014 ("**MIB Advisory**") alongwith FEMA Master Circular bearing no. 6/2014-15 dated July 01, 2014 (Rule 4)*

- The payment for hiring the transponder of a foreign satellite is a financial burden and, therefore, the approval of MIB should be granted prior to the effective date of payment. It will eliminate any possibility of financial burden on the applicant broadcaster, by way of payment of transponder charges without utilising the capacity of the same immediately thereafter. It is a wasteful expenditure of possessing the spectrum in the space without its utilisation. It results in increase in cost of television channels. Therefore, in the larger public interest, the permission of the MIB is required to be expedited to be available on or before the date of payment of transponder hiring charges to a foreign satellite operator.

- Further, strict time-frame should be prescribed for issuance of permission. The permission should ideally be deemed to be granted on the date of payment for hiring the transponder, however, in case any infirmity/inconsistency is found in the process of seeking the permission, the same can be withdrawn by the MIB because of the default on the part of the applicant broadcaster.

- The payment to the foreign company should not require any approval of MIB, after liberalisation in the availability of foreign exchanges for such purposes and approval of the Reserve Bank of India. As per Rule 4 of the Foreign Exchange Management (Current Account Transactions) Rules, 2000 issued vide Notification No. G.S.R.381 (E) dated 3rd May, 2000, ***"****no person shall draw foreign exchange for a transaction included in the Schedule II without prior approval of the Government of India".* The payment of hiring of transponders is included in Schedule II of the said Rules. To simplify the process, we suggest that the item pertaining to "remittance of hiring charges of transponders by TV Channels and Internet Service Providers" should be deleted from Schedule II Rule 4.

  Given ISRO's current and planned satellites, foreign satellites in Indian skies are now a fact of life. It is thus vital for India to make better and more cost-effective use of the permanence of foreign satellites.

→ **Mergers/Amalgamations**

***Issues*:**

- The provisions relating to approval of the MIB for mergers, demergers and restructuring of broadcasting companies ("**Restructurings**") are vague and ambiguous. The no objection from the MIB is a time consuming process and takes several months even after the High Court or the National Company Law Tribunal (NCLT) order is provided to the MIB sanctioning the Restructurings. In our experience, we have witnessed that for a merger approved by the High Court and completed in August 2016, MIB approval is still awaited. Restructuring are sanctioned by a High Court or NCLT after following detailed procedures laid down under the Companies Act, 2013 and it also gives directions to concerned parties to act as per its order. In spite of this, the MIB takes significantly long time to provide its no objection to such Restructurings which leads to inordinate and excessive delays.

- The extant Uplinking/Downlinking Guidelines[8] recognise transfer only by 'merger/demerger/ amalgamation, or from one Group Company to another' with

[8] *Policy Guidelines for Uplinking/Downlinking of Television Channels from India issued by the MIB on December 05, 2011 [File No: 1501/34/2009-TV(I) dated December 05, 2011 read with amendment order of the same date.]*

regard to transfer of unlink/downlink permission issued by the MIB. The relevant guideline is extracted and reproduced below:

"*11.1. The permission holder shall not transfer the permission without prior approval of the Ministry of Information and Broadcasting. On a written request from the permission holder, the Ministry shall allow transfer of permission in case of* ***merger/demerger/ amalgamation, or from one Group Company to a1nother*** *provided that such transfer is in accordance with the provisions of the Companies Act, and further subject to the fulfilment of following conditions:*

(i) The new entities should be eligible as per the eligibility criteria including the net worth and should be security cleared;
(ii) The new entities should undertake to comply with all the terms and conditions of permission granted."

Further, for transfer of permission, in addition to the MIB, approvals are required to be sought from the Ministry of Home Affairs (MHA) and other departments which makes the entire process cumbrous and time consuming.

***Recommendation*:**

- It is suggested that the MIB should take on record any Restructuring approved by an order of the High Court/NCLT and give effect to the provisions of the scheme sanctioned by such order immediately. This will encourage consolidation within the industry.

- Further, we submit that the present era is that of consolidation and conversion. Transfer of business or undertaking through slump sale, business transfer agreements, etc. are recognized methods of transfer in accordance with applicable laws. The existing provisions do not envisage such methods of transfer. Also, requirement for obtaining additional approvals from the MHA and any other departments should be withdrawn. MHA had issued an official memorandum to MIB[9] specifying applicability of security clearance of any media venture for 10 years (instead of 3 years) and doing away with additional security clearance for a second channel or a newspaper or a subsequent venture of the same group thereby simplifying the procedural requirements. Similarly, any transfer of permission due transfer of business should be subject to the approval of the MIB only (which approval should not be unreasonably withheld).

  In light of the above, we suggest that the extant Uplinking and Downlinking Guidelines relating to the transfer of permission be amended to read as follows:

  "The permission holder shall not transfer the permission without prior approval of the Ministry of Information and Broadcasting (which shall not be unreasonably withheld). On a written request from the permission holder, the Ministry shall allow transfer of permission in case of (a) merger/demerger/ amalgamation which has been duly approved by the Court/Tribunal in accordance with the provisions of the Companies Act, 2013 provided that the permission holder files a copy of the order of the Court/Tribunal sanctioning the said scheme; or (b) transfer of business or undertaking such as through slump sale, business transfer agreements or by such other means in accordance with the provisions of the applicable laws in India, provided that the permission holder file a copy of the agreement/arrangement executed between the permission holder and the transferee company, provided that

[9] *http://www.ey.com/Publication/vwLUAssets/EY-doing-business-in-india-2015-16/$FILE/EY-doing-business-in-india-2015-16.pdf*

such transfer is in accordance with the provisions of the Companies Act/applicable laws, and further subject to the fulfilment of following conditions (as applicable) :

(i) The new entities should be eligible as per the eligibility criteria including the net worth;
(ii) The new entities should undertake to comply with all the terms and conditions of permission granted.

→ **Requirement of approval from Department of Revenue (DoR)**

***Issue*:** We want to draw your attention to the following provisions of 'Policy Guideline for Downlinking of Television Channels' issued by the MIB[10]:

"1.3 The applicant company must either own the channel it wants downlinked for public viewing, or must enjoy, for the territory of India, exclusive marketing/ distribution rights for the same, inclusive of the rights to the advertising and subscription revenues for the channel and must submit adequate proof at the time of application.

1.4 In case the applicant company has exclusive marketing / distribution rights, it should also have the authority to conclude contracts on behalf of the channel for advertisements, subscription and programme content."

Uplinking of channels of Broadcasters who own the television channels and downlink them in India, originate from international regions, for instance in our case from Singapore. Although it is evident that Guideline No. 1.3 and 1.4 reproduced above relate to agency arrangement and it could have never been the intention of the MIB for the foregoing regulations to be applicable to group of broadcasters, each time an application for a new channel is submitted, MIB sends intimation to DoR to examine the applicability of these guidelines. In the past, the broadcasters have requested the MIB multiple times to refrain from sending such cases to the DoR on grounds of non-applicability. However, this practice continues to exist resulting in overall delay and interruption in smooth processes.

***Recommendation*:** We suggest that the MIB re-looks these guidelines and draws an express carve-out for broadcasters who are tax residents in India but uplink channels from abroad.

Query 2:

Is there a need in present policy framework relating to seeking permission for making changes in the name, logo, language, format, etc. related to an operational satellite TV channel? If so, what changes do you suggest and why? Give your comments with justification? (Chapter III &IV Query 2)

Response 2:

***Issue*:** With increase in competition, every broadcaster's ultimate business goal is to maximize eyeballs for which conversion is a critical driver, for instance, change in colour/format of an approved logo of a sports channel to grab attention for a specific tournament, etc. Hence, the requirement for obtaining prior approval from the MIB along with endorsement by WPC/Network Operation and Control Centre (NOCC) in the teleport license to effect any change in the name, logo, language, format etc. makes the entire process counter-productive and redundant.

[10] *File No: 1501/34/2009-TV(I) dated December 05, 2011*.

The approval process involves elaborate documentation and is a time consuming process. These changes are driven by business and creative needs of a particular channel and should be left to the broadcaster. In any case, the broadcaster is bound by the Uplinking/Downlinking Guidelines, Programming Code and The Trademarks Act, 1999 etc. Also currently, SD and HD formats carrying same feed are considered separate channels and permissions are required to be separately obtained.

Recommendation: In our view, once a channel of a broadcaster is granted an uplink/downlink licenses, there should be no further permissions required in case there are modifications in the name, logo, language, format etc. for business/operational/any other reasons whatsoever. At most, an intimation may be filed with the MIB for any such change in name, logo, language, format etc. of an already permitted channel.

The requirement of endorsement by WPC/NOCC should be removed. The technical parameters and NOCC clearance from the point of view of the lobe patterns vis-à-vis emitted power, does not at all change because of the change of name of the channel. The other cosmetic changes, like logo, language, format, also do not affect the test pattern of the transmitted power in the NOCC records, and therefore, these cosmetic changes should only be for the purpose of intimation without any reverse endorsement by the NOCC.

"WPC Application Form for TV Channel Endorsement (New/Shifting)/Name Change /Deletion/Mode Change", vide no. WPC/TV-1, lays down the requisite application format as obtained from the website of the WPC. It can be seen that except for the intimation asked for as mentioned against Serials 7, 8 & 9, there is no other change in the technical parameters of the emission characteristics of the broadcast signal.

If there is any change in respect of the information other than the information mentioned against Serials 7, 8 and 9 of the form mentioned hereinabove, the WPC may be asked to endorse the change, otherwise not.

It is further suggested that the broadcasters should be permitted to use different variants of a television channel such as SD, HD, 4K, virtual reality etc. when content of the TV channel remains the same, with a single permission instead of having separate permission for each variant of a channel. Further requiring the name and logo to be first registered with the Trademarks Authority and making continued registration a condition for the grant of a licence should be removed as this serves no purpose. If the name or logo is similar to the other name or logo of any other person, recourse is available to the aggrieved party before the appropriate forum under The Trademark Act, 1999.

Query 3:

Do you agree with some of the stakeholders' comment at pre-consultation stage that Annual Renewal process of TV channels needs simplification? Give your comments with justification? (Chapter III &IV Query 3)

Response 3:

***Issue*:** We appreciate the MIB's initiative of simplifying the annual renewal process by submission of an online annual fee only by broadcasters who have been given the permission for uplinking/downlinking, up to 60 days before the due date which by itself will be treated as permission, for continuation of the channel for a further period of one year[11]. However, a further simplification of process by the MIB would help reduce onus on the broadcasters.

[11] *F. No. DIR: (BC)/2016 issued by the MIB on November 11, 2016.*

***Recommendation*:** To the best of our knowledge no other industry has a requirement of seeking a renewal of its license to carry on business on an annual business. A licence once granted should be for a sufficiently long period to enable the licensee to plan for the future. It takes time and considerable resources to make a channel profitable and for the licensee to be required to seek a renewal year on year is an onerous requirement completely against the ease of doing business principle. No other industry has a separate registration period and a separate license period and separate fees for both. This irrational constraint needs to be done away with at the earliest.

The MIB should consider accepting a one-time renewal fee at the time of grant of unlinking/downlinking licenses to the broadcasters for the entire period of 10 years. Renewal fee may be taken from the broadcaster on the basis of a self-certification that no other parameter, as intimated vide their initial application seeking permission, has changed, and renewal shall thereafter, be automatically granted without interrupting the service on no delay basis.

If a broadcaster discontinues a channel before the specified time period, pro-rated refund should be given to the broadcaster. This would also be pragmatic for the MIB.

Query 4:

Do you agree with stakeholders' comments that coordination with multiple agencies/ Government departments related to starting and operating of a TV channel can be simplified? If so, what should be the mechanism and framework for such single window system? Give your comments with justification? (Chapter III &IV Query 4)

Response 4:

***Issue*:** The grant of permission of television channels for broadcasters involves not only the MIB but other ministries/ departments of the governments such as MHA, Ministry of Finance, DOR, Department of Corporate Affairs, DOS, WPC and NOCC. Further, issues as stated in the Consultation Paper are that all internal and inter-ministerial processes are presently done manually and the process of approval is a lengthy one and usually takes upto six months' time. Further there is no transparency in the process. The applicant receives no feedback on the status of its application except for intermittent queries that are sent by the MIB as and when they receive a query from one of the ministries or departments. Further the MIB sends the application to an external chartered accountant for review. Unfortunately, quality and understanding of the panel of chartered accountants who are engaged on the lowest cost basis is poor and with their limited understanding of the industry, the queries they raise are mostly irrelevant but the time taken to respond further delays the process.

The entire procedure acts as a deterrent in the broadcasting and as an entry-barrier for fresh broadcasters. Hence, a single-window system has been proposed by the broadcasters alongwith a framework for resolution of all concerns related to approval process for launching of new channels by a broadcaster which would give conclusion to 'ease of doing business in the broadcasting sector' in true letter and spirit

At present, in order to set up a new television channel, a company needs to file application with the MIB. Once this application is scrutinised by MIB, it is then sent to MHA, the Department of Corporate Affairs and the DoR, apart from being sent to external chartered accountants. Thus a single application is being reviewed by three or four different bodies at different stages. There is no time limit prescribed for clearance of an application from MIB, MHA and DoR at any given stage. These agencies may raise certain queries which first travel to MIB first and then to the applicant. The response submitted by the applicant again travels from MIB to the respective agency. This entire process takes a very long time. Also, in cases where an application for new channels is made, and the Downlinking Guidelines related with agency arrangement do not apply, MIB sends an intimation to DoR to examine the applicability of these Guidelines. This procedure is avoidable. Delays in obtaining approvals for applications to start new channels, leads to discontent and disruptions in business plans of the broadcasters.

***Recommendation*:**

→ **Single window system**

Though a single window interface has been implemented by the MIB, however, the nature of the application/supporting documents are such which require involvement of several ministries/authorities which in turn makes the single window interface infructuous with extended timelines.

While we understand the need for the MIB to consult with the other ministries/authorities at the time of grant of fresh license, for any additional channels launched by the same broadcaster or other broadcasters within the same "group", the original report/remarks issued by the ministries/authorities may be referred to rather than obtaining fresh clearances each time. Existing broadcasters applying for additional channel licenses within the validity period of ten years should not be referred to MHA or any other Ministry. To the same effect, each time a fresh license is issued, it should contain details regarding the issuance of security clearance to the company and its expiry date. This is necessary because all other parameters confirming the credibility of the broadcaster have neither changed nor create any variation in the approved parameters/content of the self-certification.

The power of clearing a television channel should in fact be delegated to sectoral regulator i.e. TRAI. The delegation will enable the MIB to discharge its sovereign functions and operational responsibilities can be discharged by sector regulator i.e. the TRAI. This would result in taking the work load off MIB officials and speed up the work flow. TRAI can set-up its own process to discharge such operational functions by inviting comments from concerned stakeholders through a consultation process

It is also suggested that the applications for new channels should be examined by the MIB and should be sent to the DoR only if Downlinking Guidelines related with agency arrangement are applicable in any particular case.

Also, clearance from other Ministries should be sought in parallel and the progress of clearance should be available on the website of the concerned Ministries as in the case of movement of files maintained in the Cabinet, Secretariat and all other Ministries, through networking and appropriate software program. For instance, in the case of Standing Advisory Committee on Radio Frequency Allocation (SACFA) clearance, all the concerned organisations are simultaneously intimated about the relevant parameters in the form of an online application, and not in series (meaning thereby, that after approval from one Ministry, the case is referred to another Ministry and so on and so forth).

→ **Online submission**

In the age wherein digitization has been given effect by the TRAI, to ease the burden on broadcasters in terms of paperwork, a portal should be developed for submission of application forms online for uplinking/downlinking of television channels.

Further, it should also be possible that objections raised, if any, should reflect on the portal for the case under examination, so that the concerned broadcaster can promptly reply to those queries, without any instigation from the concerned Ministry in a pre-emptive manner. This would bring transparency to the system and eliminate the cause of concern on the part of the broadcaster, who can take pre-emptive action to eliminate the shortcoming in the case filed, by submitting the relevant document. Further, it would not be out of place to mention that even the Postal Department has adopted a transparent mode of movement of a Speed Post letters to the knowledge of the sender, so that, the sender is aware of the actual passage details till the letter is delivered to the addressee.

→ **Timelines**

Grant of permission for broadcasters' channels should be mandated within precise timelines to be specified upfront. The other related Ministry/ Department should also have specific time frame to furnish the reports to the MIB.

Query 5:

Is present framework of seeking permission for temporary uplinking of live coverage of events of national importance including sports events complicated and restrictive? If yes, what changes do you suggest and why? Give your suggestions with justification. (Chapter III&IV Query 5)

Response 5:

Issue: For any live telecast of an event of a non-news and current affairs channel, a temporary uplinking permission is required to be obtained from the MIB. The application requires complete particulars about the timing, location and other details about the event. Along with the application for seeking such permission, the applicant broadcasting entity which downlinks the uplinked feed, is required to submit bandwidth arrangement as well as teleport permission. After the receipt of MIB permission, the applicant broadcasting entity is also required to obtain the permission from NOCC & WPC.

While rights to sporting events are granted for a fixed period of time, the holding of a specific event is usually decided in a short time frame as it depends on many variables- access, security, availability of the location, etc. Hence it is not possible to make applications well in advance. The rights to sporting events at times are granted by the authorities only a few days before the scheduled live telecast of the event. Further, per the Sports Broadcast Signals (Mandatory Sharing with Prasar Bharati) Act, 2007 ("**Mandatory Sharing Act**"), live feed of sporting events of national importance is required to be mandatorily shared with the Prasar Bharati per the provisions of the Mandatory Sharing Act read with the Supreme Court judgement dated August 22, 2017.

***Recommendation*:** Broadcast of programs/content by broadcasters are already governed by several other laws/authorities such as:

→ The Cable Television Networks (Regulation) Act, 1995 and the Rules thereunder;
→ The Code for Self-Regulation of Advertising Content in India/ Advertising Standards Council of India (ASCI);
→ Indian Broadcasting Foundation's Self-Regulatory Content Guidelines for Non-News & Current Affairs Television Channels/the Broadcasting Content Complaints Council's (BCCC);
→ Central Board of Film Certification Guidelines;
→ Cinematograph Act, 1952 read with the rules;
→ Mandatory Sharing Act;
→ The Copyright Act, 1957;
→ Flag Code of India, 2002;
→ The Prevention of Insults to National Honour Act, 1971
→ Emblems and Names (Prevention of Improper Use) Act, 1950;
→ Judicial Pronouncements – Judgement of the Delhi High Court in the NDTV matter[12],

[12] *New Delhi Television Ltd. (Appellant) v. ICC Development (International) Ltd. & Another (Respondent) [(FAO) OS 460/2012] dated October 12, 2012*

judgement of the Supreme Court in the clean feed matter filed by Star India Pvt. Ltd.[13], judgement of the Supreme Court in the mandatory sharing of sporting events with Prasar Bharati matter[14] etc.

→ TRAI notifications – for instance the 12 minute advertisement cap per hour[15]

→ Broadcasters' own contractual obligations to sports authorities which *inter alia* includes compliance with applicable laws.

Considering the applicability of manifold laws and the stringent timelines involved with the live broadcast of sporting events, the requirement for obtaining temporary uplink license for the live coverage of events of national importance including sports events should be removed as it is merely a procedural bottleneck that adds uncertainty and makes little difference from a security standpoint.

Further, the teleport/DSNG vans used for uplinking of the live events from India are in any case cleared by MIB for carrying live uplink for news channels. This further calls for dispensation of the requirement for prior approval for uplinking of the live events.

At best an intimation may be filed with the MIB along with appropriate details/documents for uplinking of the live event at least 7 (seven) days prior to the proposed airing of such live event, provided that in the case of events to which rights have been obtained within the 7 (seven) day period or as soon as is reasonably practicable.

Query 6:

Do you feel the need to simplify policy framework for seeking permission/license for starting and running of following services–

(i) Teleport services

(ii) DTH service

If yes, what changes do you suggest so that process of grant of permission/license can be simplified and expedited? Give your comments with justification. (Chapter III&IV Query 6)

Response 6:

Teleport:

***Issue*:** Presently WPC/NOCC issues a teleport license to the teleport operator with specified capacity[16]. Once any channel is added/deleted/renamed, there is a requirement for the teleport to obtain WPC/NOCC permission for addition/deletion/renaming of the channel. This is a cumbersome process and adds further layers to an already complex process. Since in the circumstances mentioned above, MIB approval is in any case required to be obtained, any such pre-approval from WPC/NOCC becomes unnecessary.

***Recommendation*:** If a teleport has a valid teleport license, any further changes in the license should be subject to the approval of the MIB only. The teleport should be granted the ability to file an intimation with WPC/NOCC in case of changes in channels. An exception may be carved out for change of satellite and transponder.

[13] *Star Sports India Pvt. Ltd. (Appellant) v. Prasar Bharati & Ors. (Respondent) (S.L.P. (CIVIL) NO. 8988/2014) dated May 27, 2016*

[14] *Union of India (Appellant v. Board of Control for Cricket in India and Ors. (Civil Appeal Ni. (s) 10732-10733/2017) dated August 22, 2017*

[15] *TRAI notification no. F. No. 23-1/2012- B&CS dated March 22, 2013*

[16] *http://www.dot.gov.in/data-services/2577; Indian Wireless Telegraphy Act, 1933*

DTH Service

***Issue*:** Currently, a broadcaster cannot directly own more than 20% in a DTH service and also the FDI component is restricted to 20%[17]. In today's world of competition, globalization and liberalization, these stringent restrictions act as deterrent in the investment route and ultimately impacts the quality of services provided to the consumers.

***Recommendation*:** The need of the hour is to remove the restriction on shareholding of broadcasters in DTH services along with the FDI component on DTH platforms and allow such platforms to also gain on the economies of scale by making it easier for them to merge. This would also result in greater choice and savings to the DTH consumers along with better customer services due to influx of superior infrastructure. We believe the reason behind restriction on the shareholding of a broadcaster in DTH services is because of the fear of vertical integration of the broadcaster and the disseminator of the signal upto to the last mile. In our opinion, this concern is already addressed by way of various TRAI regulations and judgements of courts pertaining to 'Must Provide' 'Non-Discrimination', 'Parity' etc.

Query 7:

As per your understanding, why open sky policy for Ku band has not been adopted when it is permitted for 'C' band? What changes do you suggest to simplify hiring of Ku band transponders for provision of DTH/HITS services? Give your comments with justification. (Chapter III&IV Query 7)

Response 7:

Issues: While C-Band transponders are used by broadcasters to uplink its television channels from India, KU-band transponders are the lifeline for DTH operations. Limitations on the availability of KU band transponders can critically hamper their growth which would adversely impact the broadcasters and thereby the entire synergy. It is to be noted that while HD format of television channels allows a viewer to enjoy better picture quality as it offers a resolution that is much higher than that of SD format, it takes up more bandwidth on a satellite transponder. There is a looming capacity crunch in the satellite transponder industry that could affect any expansion plans of DTH operators has been captured in a "thought leadership" report prepared by consulting firm PricewaterhouseCoopers (PwC). The report was released by CASBAA[18] at its India Forum 2016 held on 22 March in New Delhi. The report concluded that despite sometimes being referred to as "conditional open skies," the policy for Ku-band was "in effect a very restrictive satellite policy as presently operated in India," which "artificially suppress(es) demand, which in turn leads directly to a reduction in growth, profits, and therefore lower tax revenues," and, therefore, is negatively affecting consumer welfare, private business, and the public interest. "This expanding customer base along with the proliferation of HD channels will mean a large need for transponders" as stated in the report.

It is alarming that most DTH operators are able to carry only 50% of the total channels available through cable networks owing to the limited number of transponders that are available. This puts them in disadvantageous position vis-a-vis cable operators. According to the report, this gap will only widen going forward. The DTH industry will require 200 transponders in the next three years.

[17] *Guidelines for obtaining license for providing direct-to-home (DTH) broadcasting service in India issued by the MIB*

[18] *CASBAA is Asia Pacific's non-profit media association for the multi-channel television, audio-video content and distribution industries.*

At the CASBAA India Forum, J.S. Mathur, special secretary in the MIB, said: "Scarcity of transponders is a major issue…stakeholders should get together to see how we can resolve the issue."

In terms of why we believe a more open policy for Ku-band has not been adopted:

→ The process of identifying and securing the transponder mandates the involvement of ISRO and its marketing arm Antrix. All transponder demands are routed through Antrix. Antrix sources international transponder capacity and sub-lets it to Indian DTH operators through back-to-back agreements. This delays the process and limits the Indian operators' ability to procure favourable commercial terms through direct negotiations as per PwC report. We believe, there are two plausible reasons for implementing a policy of contracting all transponder capacity through ISRO/Antrix: one is stimulating utilization of Indian transponders and the other is security issues involved in contracting from foreign operators. With today's abundance of transponders on foreign satellites, the first reason has clearly lost its relevance. India would greatly benefit from allowing its companies to draw on overseas resources, rather than restricting their economic growth. Further, we are skeptical about the relevance of security requirements associated with contracting for Ku-band transponders, as the satellite network operator does not have any control over the content offered on licensed DTH broadcast platforms.

→ The other major issue troubling the industry is that the contracts with foreign satellite suppliers are short term. Antrix offers them three-year deals. The original thought behind the move was to limit the term so that the foreign satellites could be replaced by Indian satellites when they were ready. This clause also puts significant constraints on commercial negotiations with transponder suppliers, most of whom are looking for 10-15 year contracts. Consequences of this are:

- ❖ Foreign satellite operators pass the cost of the uncertainty to Indian DTH service providers per the report.
- ❖ This brings down operational efficiency and adds to the overall cost of operating their consumer platforms–costs which are ultimately shouldered by Indian consumers.
- ❖ Foreign satellite operators, hampered by the lack of long-term visibility, do not proactively plan and deploy satellites to meet the full needs of Indian DTH markets.

As an economic matter, satellite operations require significant upfront investment during the build and launch phase. Of the total lifetime cost of a satellite during the 15 years of its useful life, approximately 90% (satellite manufacture, satellite launch and launch insurance) is incurred before it becomes operational. While in India, telecom spectrum contracts are awarded for 20 years and FM radio spectrum is allocated for a period of 15 years, its deleterious that ISRO awards satellite transponders capacity agreements for just 3 years.

Recommendations:

→ ISRO/Antrix can regularly publish a list of pre-cleared satellites and operators who are permitted to supply transponders to the Indian market. Indian DTH operators should be free to directly negotiate the contract capacities with satellite providers that have been authorized to provide the service.

→ An efficient procedure can be established for DTH operators to obtain security clearance from ISRO before contracting the transponder capacity directly from foreign satellites.

→ Contracting for incremental capacity or extending the contracts of existing ones should be completely left to DTH operators without any need to seek additional, duplicative approvals

from ISRO/Antrix. DTH operators would need to keep the ISRO updated with the contracted capacities and contract durations.

→ Entering into longer-term contracts between capacity suppliers and DTH providers would yield huge benefits to the DTH operators by allowing them to leverage their size and stability in negotiations with transponder suppliers.

Query 8:

What are the operational issues and bottlenecks in the current policy framework related to-
(i) Teleport services
(ii) DTH service
How these issues can be simplified and expedited? Give your comments with justification. (Chapter III &IV Query 8)

Response 8:

Responded in Response 6.

Query 9:

What are the specific issues affecting ease of doing business in cable TV sector? What modifications are required to be made in the extant framework to address these issues? Give your comments with justification. (Chapter III &IV Query 9)

Response 9:

***Issues*:**

→ Inspite of implementation of complete digitization effective April 01, 2017, there are many areas with cable operators running analogue operations especially in Phase III and Phase IV regions.

Based on the Ministry sources, we are given to understand that seeding of set-top boxes (STBs) in Phases I & II has been completed except for Tamil Nadu. The MIB in March, 2017 had said that a total of 64.4 million set-top boxes (excluding Tamil Nadu) were seeded in Phase 3 and Phase 4 areas till 14 March, 2017, which accounted for 67.7% of the requirement. The estimates given by the Ministry are based on the assumption that there are only 140 million television households (as per census 2011) in the country. However, the recent data (based on Broadcast India-2016 survey) by television viewership agency Broadcast Audience Research Council (BARC) India, shows that there are 183 million TV households across the country. If we include all these figures for digitization, more than 50% TV households are yet to get a digital signal.[19]

Hence, we believe that the digitization process in Phase III and Phase IV are only partially complete and analog/unencrypted signals continue to be transmitted in these areas.

Further the recent 2017 Tariff Order and QoS Regulations notified by TRAI have created more disharmony amongst stakeholders. The restrictions on offering bouquets of channels priced over Rs. 19/-, not permitting HD and SD channels to be offered in the same bouquet, different retail pricing for broadcasters and MSOs, legalisation of carriage fee, and other

[19] *http://www.livemint.com/Consumer/RIGVdxbOwErMDzO7ULeSqI/A-month-after-digital-switchover-cable-operators-transmit.html*

minutiae, strike at the heart of broadcasters' freedom to carry on business in the manner of their choosing.

Also, MSOs are not adhering to the TRAI mandate on report submission, system requirements and audit related inquiries.

→ Unreasonable demand for carriage by cable operators.

→ Consolidation has led to monopolies being created when smaller, independent LCOs merge with larger MSOs who in turn leverage their monopoly power by taking advantage of the "Must Provide" provision[20] that invariably leads to accumulation of huge unpaid subscription fees causing prejudice to the broadcasters. Also, such rampant consolidation helps smaller entities to avoid paying their dues to the broadcasters as they cease to exist as independent entities and the entire recovery process becomes cumbersome and expensive for broadcasters.

***Recommendations*:**

→ "Light touch" regulation by TRAI on QoS, interconnection- no pricing of content which should be left to the Copyright Board, if at all required.

→ Section 11(2) of the Telecom Regulatory Authority of India Act, 1997 categorically empowers the Authority, from time to time, by order, to notify in the Official Gazette, the rates by which the telecommunication services (broadcasting services) within India or outside India shall be provided. The provision of service is to the end user, i.e. the subscriber, and not for any intermediary, i.e. in respect of B2B, but in respect of B2C which is relevant to service the end user and therefore, TRAI is supposed to notify only the rates at which B2C service is to be provided under Section 11(2).

→ Greater enforcement actions are required to be taken against errant cable operators running analogue signals needs to be taken more swiftly and effectively.

→ Carriage as a concept was applicable to the analogue regime. Post digitization, there is no bandwidth issue in terms of the number of channels since the DAS system allows carrying of at least 400-500 channels, while analogue system could take only about 100 channels. It was due to this reason that carriage and placement fee assumed importance and was allowed during analogue regime. Hence, during DAS regime (with full addressability), the concept of carriage/placement fee should not exist.

→ Exceptions to be carved out to the 'Must Provide' provision to avoid merger of LCOs with MSOs with outstanding to the broadcasters.

→ Registration process of the LCOs should be made more stringent and scrutiny of the cases should be done to check any cases of the defaulting LCOs to obtain registration with the help of false and duplicate identities.

→ Grant of industry status to the cable industry would encourage consolidation, lower tax implications, bring in flexibility and would enable the workers to avail of the labour law benefits.

[20] *The Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 issued by the TRAI*

Query 10:

Is there a need to increase validity of LCO registration from one year? In your view, what should be the validity of LCO registration? Give your comments with justification. (Chapter III &IV Query 10)

Response 10:

LCOs are affiliated to MSOs and broadcasters do not deal with LCOs directly. We have no comments on this query.

Query 11:

What are the issues in the extant policy guidelines that are affecting the ease of doing business in FM sector? What changes and modifications are required to address these issues? Give your comments with justification.

(Chapter III &IV Query 11)

Response 11:

This is not related to us. We have no comments on this query.

Query 12:

Is there a need to streamline the process of assignment of frequency by WPC and clearances from NOCC to enhance ease of doing business? What changes do you suggest and why? (Chapter III &IV Query 12)

Response 12:

Issue: Following issues are currently being faced by the broadcasters in relation to WPC/NOCC approval processes:

→ Approval requirement from WPC/NOCC for new channel in addition to approval from the MIB.

→ Approval from ISRO, WPC and NOCC for change in teleport license.

Recommendations:

→ If the broadcaster has an approved frequency, then there should not be any need for the broadcaster to seek WPC / NOCC approval for new channels on the same frequency. An intimation can however be filed with the WPC/NOCC.

→ Applications for change of teleports are referred to ISRO, WPC and NOCC. In the case of a teleport operator with a valid operating license, the requirement to once again go through the elaborate multi-department approval process is meaningless. An intimation may however be filed with these authorities.

Query 13:

What are the reasons for delay for allocation of frequencies by WPC? What changes do you suggest to streamline the process? Give your comments with justification.
(Chapter III &IV Query 13)

Response 13:

***Issue*:** Delay in allocation of frequency by the WPC is a major challenge being faced in the industry. TRAI had earlier recommended to the DoT that operators be assigned spectrum 18 months before expiry of their licences so that they can make necessary changes in their network without compromising on quality of service[21].

***Recommendation*:** The aforementioned TRAI recommendation should be implemented by the DoT.

Query 14:

What are the key issues affecting the indigenous manufacturing of various broadcasting equipments and systems? How these issues can be addressed? (Chapter III &IV Query 14)

Issue: Minister for Information & Broadcasting, Shri M Venkaiah Naidu has stated that[22] "*the Government's initiatives like Make in India, Skill India and Digital India campaigns were clearly positive signals for new transformation including GST which would prove to be a game changer for Indian Media and Entertainment sector, especially the Broadcasting sector. The Minister stated this while inaugurating the Two Day seminar organized by Telecom Authority of India on the occasion of completing two decades here today. Elaborating further, Shri Naidu mentioned that the broadcasting sector in the country was at the threshold of entering into new era of digital broadcasting, which would open lots of opportunities to use latest technological innovations to not only enhance reach but also enhance the quality of the reach……..****The Minister also mentioned that indigenous manufacturing of various digital broadcasting equipment had taken roots under the initiative of Make in India and that he urged all the stake holders to encourage and promote indigenous development of equipments in the country".***

In our view, following could be material hindrances being faced in the realm of indigenous manufacture of broadcaster equipment/system:

→ Complex approval process: For Teleport services, in addition to approval from the MIB, additional approvals are required to be obtained from the Ministry of Communications & Information Technology (WPC[23] and NOCC[24]). The entire approval process is cumbersome[25], time consuming and expensive.

→ Lack of implementation of existing guidelines - We, in our dealings with operators, have experienced that sub-standard quality of equipments (CAS/SMS/STB) are being imported at lower cost due to ineffective implementation of the guidelines issued by the Bureau of

[21] *http://www.dot.gov.in/sites/default/files/1_4.pdf; http://economictimes.indiatimes.com/industry/telecom/idea-cellular-lets-rivals-bharti-airtel-vodafone-use-its-airwaves-up-to-january-15/articleshow/45286594.cms*

[22] *Press Release pertaining to 'Indian M&E industry on the cusp of strong phase of growth' issued by the MIB on May 04, 2017.*

[23] *(i)Official Memorandum dated July 10, 2014 issued by the DoT pertaining to Modified Performa for Earth Station License and New Performa for TV channel endorsement;*
(ii)http://www.wpc.gov.in/WriteReadData/userfiles/file/New_proforma_endorsement.pdf

[24] *http://www.dot.gov.in/data-services/2577*

[25] *Official Memorandum dated October 10, 2012 issued by the DoT pertaining to the procedure for seeking WPC clearance in case of change of satellite*

Indian Standards[26] (BIS) and regulations issued by the TRAI[27] with regard to the standard of the said equipments.

→ Ground realities reflect that the cost involved in the setting up of a digital head end and lack of proper infrastructure act as a deterrent in the smooth transitioning from analogue to digital by smaller operators thereby resulting in either complete reluctance in switching over or closure of business or merger into larger entities.

***Recommendation*:**

→ Simplification of approval process for teleport/DSNG vans restricting it to the MIB and filing of mere intimations with WPC and NOCC are need of the hour.

→ Strict implementation of the guidelines/regulations is crucial which reprimand MSO(s)/LCO(s) using equipment below a set threshold by having revised laws in place at par with advanced technology and by ensuring swift and strict actions are taken against defaulting MSO(s)/LCO(s).

→ The BIS should be given instructions by competent authorities to improve the standards with the help of the technical personnel involved in the process and the testing of the equipment should be done in a more rigorous and meticulous manner to improve the performance of the indigenous components.

→ Attractive investment and tax incentives should be encouraged for indigenous manufacturing of broadcast equipment.

Query 15:

Is there any other issue which will be relevant to ease of doing business in Broadcasting sector? Give your suggestions with justification.
(Chapter III &IV Query 15)

Response 15:

The Government's approach to the broadcasting sector in terms of regulatory intervention should be kept to minimal. Transparency in licensing, rationalisation of licensing and registration fees, speeding up the process for frequency allocation, "light touch" regulation on tariffs and QoS, abolition of entertainment tax on STBs alongwith the authority granted to local bodies to implement entertainment tax, grant of "industry" status to enable consolidation through mergers and amalgamations, strict enforcement of copyright violations both online and on the ground, encouraging self-regulation on content, these are measures which if properly implemented will certainly lead to enhanced growth of the industry. We also wish to highlight that any tax over and above 15% rate is onerous and regressive. Currently GST on set top boxes stand at 18%[28].

[26] *(i)Digital Set Top Box for MPEG-4 Digital Cable TV Services – Specifications.*
(ii)http://digitalindiamib.com/cable_tv_network.html
[27] *The Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 issued by the TRAI*
28http://www.cbec.gov.in/resources//htdocs-cbec/gst/gst_rates_approved%20_by_gst_council%20_11.06.2017.pdf;jsessionid=E41F8B19AD818778C3D3DED7E6828937

Query 16:

Are there any issues in conducting trial projects to assess suitability of a new technology in broadcasting sector? Give your comments with justification.
(Chapter IV Query 16)

Response 16:

Broadcast technology has evolved from SD to HD and in future we could see 3D and Virtual Reality transmissions. However, to encourage new technologies, an enabling eco-system needs to be created that allows broadcasters to innovate without having to go back to Government for uplinking permissions, frequency allocations, payments to satellite providers, etc. Trial projects should be encouraged to ensure the new technology can become a source of enjoyment for the population at large and does not remain a niche product affordable only to a few.

For trial projects of induction of the state-of-art technology, special cell for granting permission should be created in the MIB to accord approval in a time bound manner. In some instances, the equipment imported for this purpose is obtained through customs for a restricted period of time for the purpose of testing and the same is required to be returned to the exporting country upon intimation to the custom department and, therefore, the limited period should be utilised in an effective manner by granting uplinking and downlinking permissions expeditiously.

Query 17:

What should the policy framework and process for consideration and approval of such trial projects?
(Chapter IV Query 17)

As mentioned at Response to Query 16.

Query 18:

Stakeholders may also provide their comments with justification on any other issue relevant to the present consultation paper.
(Chapter IV Query 18)

Response 18:

Issue: The Interconnection Regulations and Tariff Order [29] notified by TRAI on March 03, 2017 have been challenged on the grounds of lack of jurisdiction to issue the same in Writ Petitions before Hon'ble Madras High Court. Though matter is sub-judice and judgment in the case is awaited, we would like to highlight that this is a rather regressive step taken by the TRAI placing hurdles in the growth and ease of doing business in the broadcasting sector. The Interconnection Regulations and Tariff Order are contrary to International best practices whereby bundling without restrictions is the norm for offering TV Channels.

The Interconnection Regulations and Tariff Order directly regulate the pricing of television channels, thereby also result in regulating pricing of individual programmes and impinges on the right of content creators like authors, singers, writers etc. and limits the discount option available to the consumer.

[29] *Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff Order,2017 (1 of 2017); & The Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017*

Recommendation: Regulatory approach should be light touch. e.g., telecom, where tariff is under forbearance, affordable prices are being offered as a result of negotiations between stakeholders and there are only tariff reporting requirements. In the quarter ended March, 2017 as per The Indian Telecom Services Performance Indicators January - March, 2017, there were 295 pay channels as reported by 48 broadcasters as compared to 287 pay channels reported in the previous quarter along with 63.61 million active DTH subscribers. Looking at the fragmented nature of the market, there should be minimum regulations and forbearance should be the order of the day, which shall not only result in creation of a state of art broadcasting network but shall also give the required impetus to the phenomenal growth of the sector.

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