



**TRAI'S PRE-CONSULTATION PAPER ON EASE OF DOING  
BUSINESS IN BROADCASTING SECTOR DATED 17<sup>TH</sup> APRIL  
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**For and on behalf of STAR India Pvt. Ltd.**

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## **I. Introduction**

In keeping with the efforts of the Government of India to facilitate ease of doing business, the Telecom Regulatory Authority of India (TRAI) has called upon the stakeholders within the industry to identify areas which could be reformed in order to catalyze further development in the broadcasting sector. We welcome this move and have given our inputs for contributing towards the same in the sub-headings given hereafter. We believe that for any meaningful consultation on ease of doing business in the sector the following key issues should be taken into account and made part of the ongoing consultation process.

## **II. Issues related to processes for obtaining permission/license/registration for broadcasting services and related compliances.**

### **a. Up-linking and downlinking of TV channels**

#### **i. Timeline for processing of applications**

A “Single Window” interface has been implemented by the Ministry of Information and Broadcasting (“MIB”) whereby applicant can submit the application through a single window. However, it should be noted that multiple set of ministries and departments other than MIB are also involved in the approval process, such as Ministry of Home Affairs (“MHA”), Department of Space (“DoS”), empaneled auditors of MIB, Ministry of Corporate Affairs (“MCA”), Ministry of Finance (“MoF”) Wireless Planning Commission (“WPC”) and National Operations and Control (“NOCC”).

To improve ease of doing business, it is crucial that single window clearance with clear-cut timelines for processing of applications from the date of submission be implemented, say 90-180 days in total.

Though a “Single Window” interface has been implemented by the Ministry whereby applicant can submit the application through a single window at MIB, however, since the nature of the application is such that clearances/ inputs from multiple Ministries/ departments are required, it is taking time much more than recommended 3 months for majority of the applications.

Any delay in grant of permission could result in expensive resources idling away. Thus, we believe that it would be in the interest of the sector as a whole, if TRAI initiates a consultation exercise on the same so as to lay down the technicalities of achieving the said objective.

Towards this objective, the following processes may be considered by the Ministry:

- MHA (Ministry of Home Affairs):

Only a new broadcaster's application should be referred to 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 company and its expiry date.

- DoS (Department of Space):

When a foreign satellite approaches an Indian broadcaster or a teleport operator, they would have already coordinated their satellite with Indian Space Research Organization ("ISRO") and WPC. All ISRO has to do is to 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. At the moment, 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 require to send the application to ISRO for approval.

- MCA / MIB Auditors :

Net-worth certificates, balance sheets and audited account statements as certified by the statutory auditors should be the basis for processing of applications as companies already do regular filings with the Registrar of Companies ("ROC").

- MEA / MOF (Department of Revenue) :

Except for a few negative list of countries and investment destinations, this process should not be resorted.

- WPC / NOCC :

When a teleport operator has a valid “Operating License”, it should be between the teleport operator and the broadcaster to enter into agreements to uplink the channel using that teleport. Also if the broadcaster has an approved frequency then there should not be a need for the broadcaster to seek WPC / NOCC approval for new channels on the same frequency. There should be no need for WPC/NOCC to endorse/re-endorse channels, as the same is avoidable. A mere intimation/self-declaration by the teleport operator/ broadcaster should be introduced.

- ii. Process followed for verification of applicant's net-worth

Currently, the net-worth requirements as laid down in the up-linking and downlinking guidelines are as follows: -

- Non-news & current affairs channels – Up-linking and Downlinking: single channel – 5 crore; and additional channel: 2.50 crore.
- News and current affairs channels – Up-linking and downlinking – single channel: 15 crores; and additional channel: 5 crores.
- Teleport operator (Irrespective of the channel capacity) : 3 crore; and additional teleport : 1 crore

For calculating the abovementioned net-worth thresholds, MIB sends each of the applications of both existing non-news broadcasters and news broadcasters to its empaneled auditors without any strict timelines. In addition, each of the applications are also referred to MCA, even though these details are available online on the ROC's website.

It is suggested that “Net-worth Certificates”, “Balance Sheets” and “Audited Account Statements” as certified by the statutory auditors of the concerned companies should be the basis for processing of applications. Existing process of verifying applicant's net worth through MIB's empaneled auditors and then again through the MCA constitutes wasteful duplication of effort.

iii. Annual Renewal Permission

To avoid paperwork and remove uncertainty, annual renewal fee for 10 years should be payable at single go, while issuing fresh licenses. This would alleviate the huge backlog of annual renewals currently pending with MIB.

iv. Prior approval for change in the directorship and need for key executives to obtain security clearance for such changes to be effected

Currently, the application is referred to MHA. MIB should publish necessary credentials for appointing an individual as the key executive and/or on the board of directors of the company.

A self-declaration format should to be introduced which can be verified in consultation with the MHA.

A provisional confirmation letter can be issued to the company pending security clearance by MHA. Currently, application is referred to MHA without any clear timelines and in some of the cases it almost took more than three years for the necessary clearance to be issued.

v. Change of format from SD to HD

Presently, considered as a separate application even though the content may be same in both formats due to the use of fresh frequency/bandwidth for up-linking the same. Also, SD and HD formats carrying same feed are considered separate channels for network criteria, up-linking and downlinking license fees and annual renewal purposes. We suggest that a channel be permitted in both formats at one go but separate license and annual renewal fee be collected for registration purposes.

vi. Prior approval of MIB for change of name and logo:

If there is no change in the applicant company's name – a mere change in name and logo of any channel should not require elaborate documentation and time consuming process. A mere intimation with a processing fee of RS.25,000/- (if it is changed within a year of getting license) should be enough.

The endorsement by WPC/NOCC should be done away with and instead a process of mere “intimation” should be introduced.

Already this process is being adopted with regard to DTH and HITS operators. They don't need to get prior approval or endorsement of MIB/WPC/NOCC when they add a channel on their platforms. Thus, even in case of channels, mere intimation should suffice.

vii. Prior Approval of MIB for modification / change of style in the existing logo:

A mere change in color and style of name/logo requires a long drawn process. As stated in the previous point, a mere intimation should suffice.

b. Local cable operators

Despite digitization of cable distribution network having been completed by the MIB, there seem to be many gaping holes remaining still. In effect only 70-80% of the actual last mile network has been digitized leading to continuing under declaration by local cable operator (LCOs). We propose that the Authority along with the MIB should work closely with the Authorized Officers under the Cable Television Networks (Regulation) Act 1995 on making digitization effectiveso as to make the last mile actually transparent in its operations.

**III. Allocation of broadcasting spectrum**

a. Clearance from DoS

Apart from the inputs given on the same subject in sub-heading – I, we would like to state that a regime of prior approval from MIB for change of satellite / transponders needs to be implemented.

Presently, applications for change of satellites/transponders are forwarded to ISRO, Bangalore for obtaining NOC. When a foreign satellite approaches an Indian broadcaster or a teleport operator, they have already coordinated their satellite with ISRO and WPC. As already stated above, all ISRO has to do is to 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 change of satellite /transponder applications to DoS for verification. This would help save time, money and effort for concerned stakeholders.

It should be noted that MIB has initiated certain changes in its practice with regard to the above, however, currently the same has not been given any formal recognition. We request that as part of the ongoing consultation process, the suggestion as given here be recommended by the Authority for formalization by MIB.

b. WPC clearance for broadcasting services

When a teleport operator has a valid “Operating License” and there is no change of satellite and transponder then for other changes like change of name and logo, a mere intimation/self-declaration by the teleport operator/ broadcaster should be introduced.

Also, presently applications for change of teleport are referred to ISRO, WPC and NOCC. In the case of a teleport operator with a valid operating license there is no need to once again go through the elaborate multi-department approval process. For the same, a self-declaration process should be introduced.

#### **IV. Other Issues**

a. Improving ease of doing business for sports broadcasters

The operational requirements of sports channels/broadcasters are unique in the sense that they are currently mandated to perform detailed compliances and obtain licenses for live programming. With respect to the same we suggest the following key issues which if tackled will go a long way in improving ease of business for sportsbroadcasters:

- i. Temporary live up-linking of events under non-news and current affairs category (including sporting events) for transmission through DSNG/SNG/Flyway/Optic fibre:

Permitted entertainment channels uplinked from India are required to seek temporary up-linking permission for using SNG/DSNG for any live coverage/footage collection and transmission on case to case basis. An application needs to be filed before 15

days from the start of the event giving micro details of the event like: (1) name of the tournament/series; (2) date/time (including testing of feed); (3) name of the venues and confirmation from the ground authorities; and (4) names of the teams involved for the events happening within India. To encourage hosting more sporting events and to encourage development of sports the clauses pertaining to temporary live up-linking need to be simplified.

Following options are available for achieving the above objective:

- Sports broadcasters should be allowed to broadcast live sporting events by way of a self-declaration stating that it will only live up-linking sporting events and no news or news related content shall be carried on such feed.
- For both sports and GEC channels: Applicants should merely intimate and get approval of the MIB within a prescribed time limit by giving macro details of the event which include, name of the tournament and teams involved, start and end date, details of the venue etc. and a self-declaration that the live feed will only consist of sporting or general entertainment events. Within the total approved calendar schedule if there is any last minute change (due to unavoidable reasons like rain, law and order etc.), the sports broadcaster should merely be asked to intimate rather than wait for last minute amendment and approval.
- Sports broadcasters should be permitted to seek temporary up-linking permission for their entire annual calendar of sporting events in one go.
- A broadcaster should be allowed to use single frequency in “Multi Channel per Carrier” (“MCPC”) mode for sending more than one contribution feeds from the venue. This will help better utilization of the bandwidth and allow advanced technology of multiple camera feeds etc. to be provided to the viewers by the broadcaster.
- A broadcaster should be allowed to use the same transmission frequency of a satellite transponder for which it may have the appropriate frequency approvals to be used for sending contribution feeds from the venue to the teleport in a reverse direction. This technology allows for utilizing the same transponder for contribution that is used for channel transmission and thus increasing the efficiency of utilizing satellite capacity.

b. Location of play-out equipment in broadcasters' premises

It is necessary that the provision in the current guidelines requiring broadcasters to mandatorily use play-out facilities belonging to teleport operators be repealed and a new enabling provision be enacted allowing broadcasters to maintain and use their own play-out facilities subject to certain safeguards. Such provision as suggested before and safeguards can be subject of the proposed consultation paper.

c. Formalization of separate feeds for insertion of regional advertisements and content

The requirement to have only one national feed should ideally be repealed and a new enabling provision be enacted in its place allowing region-wise feeds subject to appropriate monitoring. This would allow broadcasters to serve diverse regional interests and consumers better and also improve the overall economic viability of their business.

d. Restrictions on advertising

Setting up of advertising caps is a futile exercise as broadcasters inserting excessive amounts of advertisements run the risk of consumers moving on to other channels. Hence, this would only harm a broadcaster in the long run, since fewer eyeballs means lower reach. Thus, the market dynamics are capable of taking care of the issue of excessive advertising and regulations on the same are not required.

e. Disaster recovery plan for teleports being utilized by broadcasters

In today's times marred by recurring natural and human tragedies, it is important that "Disaster Recovery Plan" (DRP) for teleports be framed by all broadcasters. In furtherance of the same, permission to locate DRP teleport in different time zones and jurisdictions should be granted which would allow broadcasts to continue operations even during times of disasters and this would also aid in effective dissemination of information during such unforeseen occurrences and allow better coordination of disaster management activities.

f. Broadband through cable TV

We propose that the last mile cable TV infrastructure be opened to all service providers interested in providing internet services. This would lower entry barriers in the business of providing broadband through cable and also deter duplication of investments and efforts that would occur otherwise. We propose that a consultation in this regard be initiated as any push towards making this segment attractive would ultimately contribute in a significant manner to the Government's "Digital India" program.

g. Digital platforms

Online digital platforms allowing greater choice and freedom, of communication and of access to content, are rapidly emerging in response to increasing consumer demand. As this industry is still at a nascent stage, any regulatory intervention will impede development and innovation. Besides, there is no demonstrable harm or economic rationale that justifies regulation of online digital platforms. Hence it would be in the fitness of things to allow online digital platforms to grow at their pace, and regulations be kept at bay from this dynamic, consumer-centric and rapidly evolving ecosystem.

h. Content restrictions

Media and entertainment sector being a creative industry, freedom of expression allows content creators to produce quality product. The Program and Advertising Code has been caught up in a time warp and there is hardly any vehicle for mature or adult content to reach its audience in Television. There is an urgent need to review the extant program and advertising guidelines to ensure the growth and maturity of the Indian content market and send out positive signals to potential investors thereby incentivizing greater competition. The required measures for the same could be a subject matter of the proposed consultations.

i. Rationalization of Investment policy in broadcasting sector

It is suggested that the investment policy with respect to broadcasting sector be reformed on the following lines:

- i. Clarity is required with respect to filing of fresh application where 100% FDI is allowed through automatic route. Basically, the question of relevant authority for the same (i.e. FIPB or DIPP or MIB) needs to be resolved at the earliest.
- ii. Level playing field for foreign and domestic broadcasters in owning stakes in DPOs should be ensured. Currently, a broadcaster cannot directly own more than 20% of a DPO as stipulated under the DTH Guidelines. However, domestic broadcasters are able to evade these requirements through corporate structuring which is out of bounds for foreign broadcasters. Moreover, the rationale behind such restriction could only be to resolve anti-trust issues. It is submitted that today there is a plethora of distribution platforms for the consumers to choose. Further the Competition Commission of India ("CCI") is already empowered to look into complaints which pertain to anti-competitive practices or abuse of dominance issues. In such scenario, the blanket restriction on broadcasters restraining them from directly investing in a DTH entity and vice versa seems out of place. Furthermore Distribution Platforms are running their own channels that are not even registered with the Central Government, but TV channels cannot have a stake in a DTH platform in excess of 20 percent. Such irrational skewedness need to be addressed at the earliest.
- iii. The business of news broadcast in India is reeling from serious investment and fund crunch. To ease the same and improve the quality of news content in the country, FDI regulations for this sector need to be relooked. Specifically, the requirement to have an Indian shareholder holding the single largest shareholding needs to be revisited.

j. Developing India as a teleport hub

Attractive investment and tax incentives for foreign investors in teleport hubs could be explored & single window clearance for use of foreign satellites by Indian broadcasters needs to be facilitated in letter and spirit if India is to be developed as a teleport hub.

k. Transparency and accountability at grass-root level

Within the Distribution sector, there's a serious dearth of transparency and accountability at the grassroots level. This phenomenon has a serious impact on ease of business in broadcasting sector and the following points could be considered by the Authority to alleviate the situation:

- i. If any cable operator is found to be pirating signals then such operator should not be entitled to any protection under the TRAI regulations. This would also create an environment of respect for intellectual property ("IP") of stakeholders.
- ii. Any merger/acquisition/amalgamation of or between distributors or surrendering of DAS license by the same should require prior approval by the Authority. Such move would help in preventing the malpractice of distributors using amalgamation of their business or surrendering of license as an excuse to avoid paying broadcasters' dues. Also, this would help in reducing litigation.
- iii. Distributors should be required to include the names of their whole time directors/key managerial personnel/compliance officer(s) (i.e. company secretary) in their declaration forms so that it is easier to hold concerned functionary accountable for any wrongful conduct affecting subscriber declaration and other compliances.

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