Annexure A

Attached to DO letter No. 23-5/2009-B&CS dated 22 Feb 2011

Comments of TRAI on the views of the Ministry of Information &Broadcasting on TRAI's recommendations on Policy issues relating to Uplinking/Downlinking of Television channels in India dt. 22nd july 2010.

S No	Para No.	Summary of Recommendations of TRAI	Views of the Ministry	Comments of TRAI
	4.1	The Authority recommends that no cap be placed on the number of satellite broadcasting channels to be permitted to be downlinked for viewing in India or to be uplinked from India. (Paragraph 1.48).	Ministry agrees with this recommendation.	--
	4.2	The Authority recommends that, since the technology is continuously evolving, mandating a particular digital technology is not desirable. (Paragraph 1.56).	Ministry agrees with this recommendation.	--
	4.3	The Authority recommends that total Networth requirement should	Views of the Ministry are as below; • The suggested Networth criteria of	Current networth stipulation of Rs.1.5 crore for the first channel

		be Rs.25 core for first channel, and enhanced by Rs.10 crore for each additional channel for uplinking of Non-News and Current Affairs Channel and downlinking of channels. (Paragraph 2.11).	Rs 25 Crores for the first channel and Rs 10 Crores for every additional channel will benefit only big companies thereby denying an opportunity to the medium and small players in TV channel business. • It will also adversely affect new/first generation entrepreneurs. • There has been a significant growth in the Regional channels. Such channels do not require huge production and establishment costs as their markets are limited to the local population where they provide an innovative mix of diverse contents catering to the population in the local language. • As far as Downlinking of channels is concerned the Indian company seeking permission is engaged primarily in marketing and distribution of foreign channel in India. It is not engaged in the production of content, the owner of the channel being a different entity. • TRAI in its analysis has assessed that	and Rs.1 crore for each additional channel were set more than 5 years back. TV broadcasting has significant impact on the public mindspace and it is important that non serious operators be discouraged. The investment requirement for running channels and the break-even period is high, hence some minimum financial stability is required. After careful consideration of the concerns of the Government, it is recommended that the networth requirement be fixed at Rs. 15 crores for the first channel and Rs. 5 crores for each additional channel. The Performance Bank Guarantee (PBG) proposal of Rs. 1 crore for each channel may be for the first year alone. If the channel is not operationalised even after one year, the permission may be cancelled.

			the average estimated capital cost for a Non News Channel is in the range of Rs 10-15 Crores, whereas the operating cost is roughly estimated to be in the range of Rs 15-20 Crores per annum. Based on the capital cost requirement it is proposed that the **Networth requirement** of Non News and Current Affairs channels and Downlinking of channels **may be increased from 1.5 Crores to be pegged at 5.00 Crores and enhanced by Rs.2.50 Crores for each additional channel .** • Many companies are in the habit of not operationalising their permitted channel within the stipulated time period of one year as per the Guidelines. In order to discourage this the permission holder can be required to deposit a P**erformance Bank Guarantee(PBG)** from any scheduled bank, in the format notified**,** **<u>for an amount of Rupees One Crore</u>** for each channel valid for a period of two years at the time	

			of grant of permission for fulfilling the roll out obligations. (a) If the permission holder fulfils the roll out obligation within one year of issuance of permission, then full amount of performance bank guarantee will be refunded. (b) If the permission holder meets the roll out obligation after one year but within two year of the issuance of permission, then half of performance bank guarantee will be refunded. (c) If the operator does not operationalise the channel within two years, then full performance bank guarantee will be forfeited and action for revocation of the permission will also be considered. Ministry is of the view that for the existing permissions which have not yet been operationalised, extensions beyond the period already permitted/extended may be given for a further period of one year only on submission of a PBG for an amount of Rs One crore for each channel valid for one	

			year. The entire PBG will be forfeited if the channel is not operationsed within this extended period. No further extension will be given and permission cancelled.	
	4.4	The Authority recommends that total Networth requirement should be Rs.100 crore for first channel, and enhanced by Rs.25 crore for each additional channel for uplinking of News and Current Affairs Channel. (Paragraph 2.13)	For News and Current Affairs services, TRAI has estimated that the Capital cost of a News Channel at National Level with multiple bureaux is more than Rs 50 Crores and operating cost is in the range of Rs 100-150 Crores per annum. Ministry is of the view that the Networth requirement should not become so stiff so as to stifle the growth of independent and divergent sources of news and views which is the essence of a healthy democracy. The Ministry therefore proposes that the Networth should be pegged at Rs 15 crores for News and Current Affairs Channels. For every additional channel it will be Rs 5.0 Crores. For News and Current Affairs channels the PBG requirement should be Rs 2 Crores with same conditions as prescribed for Non News and Current Affairs Channels.	In view of the sensitivity of News and Current Affairs channels and the higher capital and operating costs, it is recommended that the networth requirement may be fixed at Rs. 75 crores for the first channel and Rs. 15 crores for each additional channel. The PBG requirement of Rs. 2 crores may be only for the first year. If the channel is not operationalised even after one year, the permission may be cancelled.
	4.5	The Authority recommends that	As of now the Networth requirements for a	TRAI had pointed out that the

		Networth requirement for operating a Teleport should be Rs.5 crore. (Paragraph 2.15)	single channel, 6, 10 and 15 channel capacity Teleport respectively have been prescribed as Rs 1 crore, 1.5 crore, 2.5 crore and 3 crore. TRAI has recommended that a graded Networth may create procedural problems for the Teleports, therefore it is better to have a single Networth requirement which gets assessed at the time of permission. TRAI has recommended that the Networth requirement irrespective of the channel capacity should be fixed at Rs 5 crore. Ministry is of the view that the Networth requirement of Rs 3 Crores should be fixed for the first Teleport taking the highest Networth from the existing guidelines, and Rs 1 Crore for every additional Teleport for the same company to facilitate competition and fuel growth. At present no time limit has been prescribed for operationalisation of Teleports. Ministry is of the view that a period of one year from the date of permission may be fixed for companies to operationalise their permitted Teleports. It is also suggested to prescribe a PBG to be given for Rs 25 lakh to meet the roll out	gradation of teleports, based on additional channels, may create procedural problems. Hence our recommendations are reiterated. The rollout time frame and PBG suggested are acceptable to the Authority.

			obligations as stipulated for each Teleport.	
	4.6	The Authority recommends that for Kids/Scientific/Educational channels, the networth requirement should be Rs. 5 crore. (Paragraph 2.17).	There is no such separate classification in the existing guidelines except for News and Non-News channels and the channel is free to choose any genre within the Non-news category. In any case the Ministry is of the view that the networth requirement for Non-NCA channels be pegged at 5.00 Crores and enhanced by Rs.2.50 Crores for each additional channel which meets the TRAI recommendations.	It is essential to encourage those channels which contribute to the spread of knowledge and the scientific tamper. Hence our recommendations are reiterated.
	4.7	The Authority recommends that for recognised Universities who may come up with Educational channels, there should not be any networth requirement. (Paragraph 2.19).	As per the present uplinking and downlinking guidelines the permission to operate a TV channel can be given only to a company and thus Universities are not eligible at present to operate TV channels. Ministry is of the view that there is no bar on Universities to own companies which can then apply for permission. The Ministry therefore suggests that the	Permission may be granted to societies / companies sponsored by Universities for the purpose of setting up of educational channels. However, the networth requirements for TV channels, set up by such societies / companies, may be dispensed with.

			present stipulation of granting permissions to eligible companies alone may continue.	
	4.8	The Authority recommends that, in the Applicant company, one of the persons occupying a *top management position** should have had minimum 10 years of prior experience in a top management positions in a reputed media company for News and Current Affairs Channels. In so far as other channels are concerned, the Authority recommends 5 years of prior experience in the top management position . [Note: **The term "top management position" in a company, in this context, means Chairperson or MD or CEO or COO or CTO or CFO.]*. (Paragraph 2.32).	The first permission for a TV Channel was issued in the year 2000, therefore the private sector TV Industry in India is hardly 10 years old. Since the number of professionals with prior experience of working in Media Companies especially in TV sector would be very less due to its nascent stage, it will be practical to keep the experience criteria at 3 years. The Ministry therefore proposes to restrict the minimum experience requirement to 3 years for both news and non-news channels. The definition of top management position is agreed to by the Ministry. The words 'reputed media company' are open to interpretation; instead, Ministry suggests that this should be replaced with 'in a media company or companies which are operating NCA/non-NCA channels, as the case may be'.	It is recommended that the experience criteria be fixed at 5 years for News and Current Affairs channels and 3 years for other channels. The Ministry's qualification of 'media company' is acceptable to the Authority.
	4.9	The Authority recommends that the period of permission for uplinking/downlinking of channels be made uniform at 10 years. (Paragraph 2.42).	Ministry agrees with this suggestion	--

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<tr><td></td><td>4.10</td><td>The Authority recommends that the applications seeking permission for uplinking/downlinking of TV channels should be processed quickly and the decision on the application should be finalised within three (3) months from the date of submission of fully compliant and eligible application. For this purpose, Min. of I&B may explore the feasibility of setting up a single-window clearance mechanism. (Paragraph 2.46).</td><td>Since the examination of applications requires Interministerial consultation, it is not practically feasible to fix a time frame and set up a single window clearance mechanism.
The Ministry on its part, however will ensure that the applications are examined within one month of receipt in the prescribed form and either communicated to the applicant company for rectification of deficiencies or sent to the other Ministries/departments for clearance.</td><td>TRAI had only suggested that decision regarding application be finalised within 3 months. If an application is defective, it cannot be considered to be a valid application to be processed within 3 months. Our recommendations are reiterated.</td></tr>
<tr><td></td><td>4.11</td><td>The Authority recommends that the permission fee should be as follows:
<table>
<tr><td>Operation</td><td>Permission Fee (Rs. in lakh)</td></tr>
<tr><td>1. Teleport
2. Uplinking of TV channels
3. Downlinking of TV channels (uplinked from India)</td><td>2 (per teleport/annum)
2 (per channel/annum)
5 (per channel/annum)</td></tr>
<tr><td>4. Downlinking</td><td>15 (per channel/annum)</td></tr>
</table></td><td>Ministry agrees with this recommendation</td><td>--</td></tr>
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		of TV channels (uplinked from abroad) (Paragraph 2.48)		
	4.12	The Authority recommends that Permission fee be charged annually (Paragraph 2.50).	The Ministry is of the view that the permission fee may be taken annually as suggested by TRAI; however a financial Bank Guarantee (FBG) equivalent to one year's license fee will have to be provided for the duration of the license, to secure the next year's license fee. In case the permission holder does not deposit the annual fee for the next year the FBG will be encashed by the Ministry and the permission holder required to replenish the required FBG to the Ministry. The event of encashment of FBG and non replenishment of the FBG within the time frame indicated may be treated as a breach of terms and conditions of permission and action taken accordingly. An appropriate interest for delayed payment will have to be charged from the Company.	It is recommended that the permission fee be charged annually and the succeeding year's fee be collected 60 days before such fee becomes due. As such, there may be no need for FBG, which is fraught with administrative procedures.
	4.13	The Authority recommends that no minimum commitment period be prescribed as part of the eligibility	Ministry agrees with this recommendation.	--

		criteria. (Paragraph 2.56).		
	4.14	The Authority recommends that the revocation of permission should be resorted to only for non compliance of terms and conditions of the uplinking/downlinking guidelines by the permission holder. (Paragraph 2.66).	Ministry agrees with this recommendation.	--
	4.15	The Authority recommends that the renewal of permission shall not be denied to the compliant companies. Permission may be renewed for 10 years at a time, at Government's discretion, on terms and conditions to be mutually agreed upon between the Government and the permission holder. (Paragraph 2.71).	Ministry agrees to the recommendation of TRAI for renewal of permission subject to the condition that the channel should not have been found guilty of violating the terms and conditions of permission including violations of the programme and advertisement code on five occasions or more. The renewal will also be subject to channel's acceptance of all of the terms and conditions of permission as the Government may prescribe by way of policy pronouncements from time to time.	This is acceptable to the Authority.
	4.16	The Authority recommends that the transfer of permission should not be allowed. (Paragraph 2.76).	Ministry agrees with this recommendation; however a provision should be made to provide for transfer of permission in case of mergers, demergers and amalgamations. It may be mentioned in the guidelines that in case of merger/demerger/ amalgamation following due processes or transfer of permission from one group company to another, the permission may be transferred with the approval of the Ministry subject to	This is acceptable to the Authority.

			the following conditions: (i) The new entities should be eligible as per the eligibility criteria except the Networth criteria and should be security cleared. (ii) The new entities should undertake to comply with the terms and conditions of permission granted.	
	4.17	The Authority recommends that i) The existing permission holders will continue to be governed by the existing terms and conditions of the permission during the current permission period. ii) At the time of considering the renewal of permission of the existing permission holders, the eligibility criteria of networth of the company and experience of the top management will not apply. However, other terms and conditions like period of permission, annual permission fee, revocation of permission, renewal of permission and transfer of permission would be applicable, as per modified terms and conditions of the permission. (Paragraph 2.79)	(i) Ministry agrees with this recommendation of TRAI. However the channels which have been permitted but which have not yet operationalised by the date of issuance of the amended guidelines should also be required to fulfill the criteria with regard to Top management positions. The PBG for fulfilling roll out obligations as suggested in Para 4.3 and 4.4 above should also be applicable. (ii) Ministry agrees with this recommendation	The amendments are acceptable to the Authority subject to the amendments in the PBG obligations suggested at paras 4.3 and 4.4.
	4.18	The Authority recommends that	The Ministry agrees with this	In view of comments of the

		India should be developed as a teleport hub. The applications seeking permission under uplinking guidelines for those channels, which are not for viewing in India, should be processed and decided within a period of 3 months. (Paragraph 3.15).	recommendation. With regard to expeditious clearances, views of the Ministry as mentioned in Para 4.10 may be referred.	Authority at para 4.10, the Authority reiterates its recommendation.
	4.19	The Authority recommends that the content for the channels which are brought to India to be uplinked from India and not being viewed in India should not be counted as import because it is not being used in India and should not attract any duty. (Paragraph 3.17).	Ministry agrees with this recommendation.	--
	4.20	The Authority recommends that the channels, being uplinked from India but not downlinked in India, should not attract the programme code and the advertisement code of India. Responsibility of content should be left to the broadcasters who have to take care of the rules and regulations of the target country for which content is being produced and uplinked. However, the uplinked content should not contain anything which is against the sovereignty,	Ministry agrees with this recommendation.	--

		integrity and national security of India as well as its friendly countries. For the monitoring purpose, these channels should be required to preserve the recordings of the proceedings for at least six months. (Paragraph 3.21).		