



Telecom Regulatory Authority of India

Stakeholders Responses on Consultation Paper 4/2008 Dated 25th February, 2008

**Issues relating to entry of certain entities into Broadcasting
and Distribution activities**

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ISSUES FOR CONSULTATION

- 6.8.1 Whether, having regard to entry 31 in List I (Union List) of the Seventh Schedule to the Constitution of India [Posts and telegraphs, telephones, wireless, broadcasting and other like forms of communication], it would be in the interest of broadcasting sector and in the interest of the public at large, to permit Union Government and its organs, State Governments and their organs, urban and rural local bodies, publicly funded bodies and political bodies to enter into broadcasting activities such as -
- (a) starting of a television broadcast channel;
 - (b) starting of a radio broadcast channel (including an FM channel) ?
- 6.8.2 Whether permitting these entities (including State Governments or their enterprises) to enter into broadcasting activities would be within the scheme of the distribution of subjects in the Constitution between the Centre and State Governments?
- 6.10.1 In case the Governments and government owned or controlled enterprises, local self government institutions, other publicly funded bodies, and political bodies (both at the national and regional level) are to be allowed entry into the broadcasting service, in that case, what type of broadcasting activities should be permitted to each one of such organisations and to what extent?
- 6.11.1 What are the safeguards needed for ensuring bonafide usages of the broadcasting permission granted to such entities? Are they enforceable particularly if the state machinery is the prime mover?
- 6.14.1 Whether the disqualifications proposed in clause 12 of the Broadcasting Bill, 1997 and Part I of the Schedule thereto are still relevant as on date, either as they are or with some modifications, for incorporation in the proposed Draft Broadcasting Services Regulation Bill or in any other relevant legislation? Correspondingly, which element of various policy guidelines (referred to in Chapter 3) would require amendments in the respective provisions relating to eligibility for entry into the broadcasting sector?
- 6.15.1 (i) Whether religious bodies may be permitted to enter into broadcasting activities such as -

(a) starting of a television broadcast channel;

(b) starting of a radio broadcast channel (including an FM channel) ?

(ii) If such religious bodies are permitted to enter into broadcasting activities, then, what are the safeguards to be stipulated to ensure that the permission /license so granted is not misused? How should a distinction be maintained between religious bodies running a channel and non-religious bodies offering religious content in their channels?

(iii) If the answer to (i) is affirmative, then, How should such religious bodies be defined? Should such religious bodies be a trust or a society or a company under section 25 of the Companies Act, 1956?

6.17.1 (i) Whether, having regard to entry 31 in List I (Union List) of the Seventh Schedule to the Constitution of India [Posts and telegraphs, telephones, wireless, broadcasting and other like forms of communication], it would be in the interest of broadcasting sector and in the interest of the public at large, to permit Union Government and its organs, State Governments and their organs, urban and rural local bodies, publicly funded bodies, political bodies to enter into distribution activities such as cable, DTH, HITS, etc.

6.17.2 Whether permitting these entities (including State Governments or their wholly owned enterprise) to enter into distribution activities would be within the scheme of the distribution of subjects in the Constitution between the Central and the State Governments.

6.17.3 If such entities are to be permitted to enter into the area of distribution, then what are the safeguards to be provided to prevent misuse of such permission?

6.18.1 Whether the entities, other than citizens of India, should be considered as "person" under sub-clauses (ii) and (iii) of clause (e) of section 2 of the Cable Television Networks (Regulation) Act, 1995.

6.18.2 Whether the provisions of the Cable Television Networks (Regulation) Act, 1995, particularly, the definition of "person" as contained in the said Act, requires any

clarificatory amendment or not with respect to entry of entities such as State Governments, urban and local bodies, 3-tier Panchayati Raj bodies, publicly funded bodies, political parties and religious bodies.

6.18.3 In case such bodies are to be given permission to enter into the business of distribution of broadcast channels, what are the other amendments which would be required in the Cable Television Networks (Regulation) Act, 1995 and Rules thereunder, other Acts and in the various policy guidelines relating to other distribution platforms.

6.23.1 In view of the setting up recently of the Commission on Centre State Relations, is it necessary now for the Telecom Regulatory Authority of India to look into the issue of permitting State Governments or their enterprises to enter into broadcasting activity? If the answer is in the affirmative, then the views on the following issues may be furnished.

(a) Whether permitting the State Governments and their enterprises to enter into the broadcasting sector or into the business of distribution thereof would have impact on the Centre-State Relationship and the inter-se relationship among the States.

(b) In the light of foregoing paragraphs, whether political bodies and religious bodies should be permitted to enter into the business of distribution of broadcasting channels. If the answer is affirmative, what amendments in the laws and in the various policy guidelines will be necessary for this purpose?

.....

RESPONSES FROM STAKE-HOLDERS

1. Comments received from Broadcasters

1.1 ETV Network

1. State Governments, Municipal bodies and Panchayats entering the field of radio or television broadcasting –

We are not at all happy with this prospect for the simple reason that it undermines the principle of independent and free media. No media organization which is owned and controlled by the government or a political party controlling a panchayat or municipal body can be free and independent. Secondly, it militates against the concept of media plurality. When we talk of a plural media we do not certainly mean more governments jumping into the fray. Ideally, we should work towards even the union government completely and honestly exiting from the business of media. Though the Prasar Bharati Corporation is a public broadcasting corporation constituted by parliament, we all know how manipulative the government of the day is in regard to news operations in Doordarshan. So, it makes no sense to allow 28 state governments and hundreds of panchayats and municipalities to enter broadcasting. Finally, this is a sheer waste of public money. Broadcasting is a cost-intensive affair. Technology changes so rapidly that obsolescence is a major problem. Broadcasting therefore is a bottomless pit that will suck in tons of money. Only private organizations which are commercially driven can stay afloat. Government attitudes and government ways is certainly not conducive for the business of broadcasting. These governments will only squander public funds just to promote the interests of the persons in power. Therefore, it would be in the public interest to discourage state governments, municipal bodies and panchayats from entering the field of broadcasting.

2. State governments, municipalities and panchayats entering the field of cable distribution –

There cannot be anything more pernicious than the entry of governments into the area of cable distribution. If a state government floats a cable distribution company, the cadres of the party in power will arm twist others in the distribution business and "capture" the distribution system in a city or state. Once this is done, they will prevent channels which are critical of the party in power from being seen by people. Therefore, the entry of government into cable distribution is the most dangerous idea that is currently in circulation. We would request TRAI to nip this idea at the bud. India is not ready for it.

1.2 Essel Group of Companies

(Zee Network, Dish TV, Wire & Wireless India Ltd referred as Zee Network in the response)

1. Introductory Comments

The Zee Network welcomes the process of consultation on the entry of certain entities in the field of “Distribution” and “Broadcasting” activities which we believe was overdue. At the outset, we would like to say that the issue which is being raised is not unique to India and most countries have well developed regulations to address these aspects. This is particularly so because the media has a special role which may sometimes go even against the establishment, Government as well as the State organs. It is also for such reasons that the media regulators have been kept outside the purview of the direct administrative control of the Government in almost all countries. The TRAI in the consultation paper has also briefly dwelt on the situation prevailing in other countries.

We would also like to mention that in most countries there has been a trend towards converting the state run TV or radio stations into autonomous organizations for maintaining the sanctity of the democratic process. Hence at the outset we would like to state that we are strongly supportive of continuance of the role of media as a watchdog rather than an instrument in the hands of the Central or State Governments. Consequently we believe that the approach should be to have suitable regulations in place so as to ***prevent political or state control of media in any manner, whether in broadcasting or in distribution sector.***

In this context, it is also necessary to understand the special nature of “broadcasting & content distribution” activities with reference to the Constitutional provisions, fundamental rights, political & social implications and its impact on the society as a whole.

2. Broadcasting

2.1 Broadcasting is the most pervasive, powerful means of communication in the world. In many places with high levels of illiteracy or poverty, the only access to news and information is by word-of-mouth, or radio. Of the two, radio is certainly the more authoritative. In more developed areas, television has replaced radio as the most trusted and main source of news. And as well as news, broadcasting provides education and entertainment; in Western societies like the UK, people spend an average of 24.4 hours a week watching television, and 23.9 hours listening to radio. ***Whoever controls access to so much viewing and listening, and whoever controls the content of what is watched and heard, is in a prime position to influence the way in which viewers and listeners see the world and their attitudes towards their own and other's cultures.***

2.2 In this context, it is also useful to refer to the observations of Hon’ble Supreme Court in Union of India vs. Cricket Association of Bengal dated 9.2.1995 {(AIR 1995 (SC) 1236}.

.....What is further, the electronic media is the most powerful media both because of its audio-visual impact, and its widest reach covering the section of the society whether the print media does not reach. The right to use the airwaves and the

content of the programmes, therefore, needs regulation for balancing it and as well as to prevent monopoly of information and views relayed, which is a potential danger flowing from the concentration of the right to broadcast/telecast in the hands either of a central agency or of few private affluent broadcasters.....

*.....True democracy cannot exist unless all citizens have a right to participate in the affairs of the polity of the country. The right to participate in the affairs of the country is meaningless unless the citizens are well informed on all sides of the issues, in respect of which they are called upon to express their views. **One-sided information, disinformation, misinformation and non-information all equally create an uninformed citizenry which makes democracy a farce when medium of information is monopolized either by a partisan central authority or by private individuals or oligarchic organizations. This is particularly so in a country like ours where about 65 per cent of the population is illiterate and hardly 1-1/2 per cent of the population has an access to the print media which is not subject to pre-censorship.....***

- 2.3 Since the dawn of broadcasting, governments have been well aware of its power and have sought to control its output. In many parts of the world the only source of television and radio – at least initially – has been the State. The State has determined what its citizens have access to, and has often used the power of broadcasting to underpin its own

objectives to retain power. But over the years State control of broadcasting has been eroded: commercial operators have introduced broadcasting supported by advertising. Almost without exception, governments have tried to limit the numbers of new commercial operators through instigating systems of licensing. This licensing system has then been applied to restrict the content which new, non-State broadcasters can offer.

Sometimes restricting content can be a means of protecting citizens from harmful material, ***but it has also been used as a means of restricting access to news and information in order to maintain strict government control to prevent opposition views and opinions being heard.*** But increasingly, international opinion and pressure has reinforced the importance of broadcasting in supporting the development of democracy; without the free flow of news, information and opinion, citizens will not be adequately informed and so able to exercise their democratic rights. An informed citizenship can make informed choices at the ballot box. There is no doubt that the effects of both the internet and satellite broadcasts from other countries have forced a pragmatic acceptance from otherwise totalitarian States to relax controls on their own, domestic broadcasting.

3. Constitutional Provisions*

- 3.1 The impact of constitutional law on communications & Broadcasting can be divided into four broad categories:

- (i) First, under India's federal system, the Constitution ordains whether, and to what extent, the Centre and the states have competence to regulate, control, and tax communications.
- (ii) Second, the Constitution protects citizens and other persons from arbitrary and invasive state action by guaranteeing them certain fundamental rights. These guarantees, notably the right to free speech, ensure that communications content is not unreasonably curtailed, monitored, or censored by the government.
- (iii) Third, a set of constitutional provisions called the directive principles are at the core of a yet-to-be concluded debate about the appropriate role of the state in economic matters, including the provision of communications services.
- (iv) Finally, the Constitution's guarantee of equal protection is the underpinning for administrative law principles that affect the manner in which licensing and regulatory decisions are made.

The seventy-third and seventy-fourth amendments to the Constitution passed in the 1990s created a third tier of governance at the local level. These amendments permit municipalities in urban areas and *panchayats* in rural areas to exercise powers and responsibilities over various local subjects. Those subjects include roads, local amenities, and drinking water, and are listed in the Constitution's Eleventh and Twelfth Schedules. However, the extent to which local bodies may exercise their powers and responsibilities over

{* See *Communications Law in India – Vikram Raghavan*
– *Legal Aspects of Telecom, Broadcasting & Cable Services*}

local subjects is determined under specific laws made by state legislatures. {Refer Article 243-G(powers, authority, and responsibilities of panchayats) and Article 243-W (powers, authority and responsibilities of municipalities)}

- 3.2 As a general principle, the Constitution assigns all legislative and executive powers over communications & Broadcasting to the Union. Only Parliament can make laws to govern and regulate communications. The enforcement of these laws is usually the Central Government's prerogative. The Union's exclusive competence over communications is derived from entry 31 in the Union List. That entry reads:

Posts and telegraphs; telephones, wireless, broadcasting and other like forms of communication.

- 3.3 Entry 31 is worded broadly. It has been interpreted to imply that only Parliament can enact laws that directly regulate telecom, broadcasting and cable services. Some of these services, such as telephones and broadcasting, are mentioned in entry 31 itself. Other services are covered by the expression "other like forms of communications' in entry 31. This expression was included in entry 31 to ensure that the means of communications identified when the Constitution was enacted are not an exclusive enumeration frozen in time. It gives the Union the ability to make laws for new technologies and services that evolve over time. Therefore, although the Internet and satellite-based communications are not expressly mentioned in entry 31, these services are within the Union's executive and legislative jurisdiction, as they constitute other like forms of communication." **States are forbidden from directly regulating communications because Art 246 declares that Parliament has exclusive power to enact laws for**

items, such as entry 31, which are on the Union List. It should be noted that entry 13 in the State List also uses the term communications.' That entry, however, focuses on physical means of communications, such as roads, bridges, and ferries. It does not cover electronic or audio-visual communications, which are the subject of entry 31 in the Union List.

3.4 Entry 31 in the Union List is based on a similarly worded provision in the Government of India Act 1935 (the 'Government Act 1935'). The 1935 statute was a pre-independence legislation passed by the British Parliament to provide greater autonomy to undivided British India. Like the Seventh Schedule of the Constitution, the Government Act 1935 contained a schedule with legislative lists. That schedule included a federal legislative list that enumerated subjects on which only the Central Legislative Assembly could make laws. Entry 7 in this list gave the Central Legislative Assembly and the federation the ability to regulate communications. This entry was the basis for entry 31 in the present Constitution's Union List.

3.5 The Government Act 1935 contained a unique, but rarely noticed, provision-sec 129. This section granted provinces and princely states certain broadcasting rights. It declared that the Federal Government could not unreasonably prevent provinces and princely states from constructing and using broadcast transmitters within their territories. It allowed provinces and princely states to regulate the construction of transmitters and the use of receiving apparatus. However, in exercising these functions, the provinces and princely states were subject to conditions imposed by the Federal Government. Significantly, s 129 made it unlawful for the

3.6 Federal Government to affect the broadcasting content of provincial and princely state radio stations. It also contained a dispute -resolution

mechanism for disputes between the Federal Government and the state and princely states. The Governor General of India, and not the courts, would resolve these dispute.

The relevant extracts of Section 129 of the Government Act, 1935 are reproduced as under:

Section 129 the Government of India Act, 1935 --

"(1) The Dominion Government shall not unreasonably refuse to entrust to the Government of any Province or the Ruler of any Acceding State such functions with respect to broadcasting as may be necessary to enable that Government or Ruler --

(a) to construct and use transmitters in the Province or State;

(b) to regulate and impose fees in respect of the construction and use of transmitters and the use of receiving apparatus in the Province or State."

Sub-section (2) of this section further lays down that:

"Any functions so entrusted to a Government or Ruler shall be exercised subject to such conditions as may be imposed by the Dominion Government, including, notwithstanding anything in this Act, any conditions with respect to finance, but it shall not be lawful for the Dominion Government so to Impose any conditions regulating the matter broadcast by, or by authority of, the Government or Ruler."

Sub-section (4) of this section further lays down that:

"If any question arises under this section whether any conditions imposed on any such Government or Ruler are lawfully imposed, or whether any refusal by the Dominion Government to entrust functions is unreasonable, the question shall be determined by an arbitrator appointed by the Chief Justice of India.

- 3.6 It is pertinent to point out that during the debates in the Constituent Assembly of India, the members specifically referred to the above mentioned provisions of Section 129 of the Government Act, 1935. However, after an exhaustive debate on the issue, ***the Constitution did not incorporate the special provision for provincial broadcasting found in Section 129 of the 1935 statute.*** Accordingly, now as per Entry 31 of the Union List, the broadcasting & cable services etc. are exclusively within the domain of Central Government and State has no power whatsoever in respect of the items contained in Entry 31.

4. Fundamental Rights - Article 19 (1)(a) - Freedom of Speech & Expression

- 4.1 The Constitution includes a catalogue of basic freedoms in Art 19. This catalogue includes the right to freedom of speech and expression in Art 19(1)(a). That article is of tremendous significance to communications, and it reads as follows:

All citizens shall have the right - (a) to freedom of speech and expression;

Article 19(1)(a) is an important constitutional guarantee. It implies the right to speak freely and to express oneself through writing, painting, drawing, acting, gestures, and other modes of expression. Free speech and expression lies at the core of India's democracy. Without it, the concepts of the rule of law, democracy and governance would be impossible to establish and maintain. For this reason, the Constitution assigns an important place to this basic freedom. Yet, the freedom of speech guaranteed under art 19(1)(a) is not absolute. Article 19(2) provides a list of various grounds on which reasonable restrictions can be imposed on the freedom. These grounds are India's sovereignty and integrity, state security, foreign relations, public order, decency, morality, contempt of court, defamation, and incitement of offences. Moreover, the enforcement of art 19(1)(a) can be suspended during a state of emergency due to war, external aggression or armed rebellion.

- 4.2 The Constitution's guarantee of the freedom of speech and expression in Art 19 (1)(a) is especially important to the communications sector. This is because most telecom, broadcasting, and cable services carry expressive content.

In *Indian Express Newspapers (Bombay) Private Ltd. And Others etc. v. Union of India and others*, the Apex Court dealt with the validity of customs duty on the newsprint in context of Article 19(1)(a). The Court observed (in para 32) thus:

"The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic country cannot make responsible judgments." The Court further referred (in para 35) to the following observations made by this Court in *Ramesh Thappar v. State of Madras* :

"(The freedom) lay at the foundation of all democratic organizations, for without free political discussion no public education so essential for the proper functioning of the processes of popular Government is possible. A freedom of such amplitude might involve risks of abuse. (But) "it is better to leave a few of its noxious branches to their luxuriant growth, that, by pruning them away, to injure the vigour of those yielding the proper fruits"."

Again in paragraph 68, the Court observed:-

"The public interest in freedom of discussion (of which the freedom of the Press is one aspect) stems from the requirement that members of a democratic society should be sufficiently informed that they may influence intelligently the decisions which may affect themselves (Per Lord Simon of Glaisdale in *Attorney-General v. Times Newspapers Ltd.*, Freedom of expression, as learned writers have observed, has our broad social purposes to serve; **(i) it helps an individual to attain self-fulfillment, (ii) it assists in the discovery of truth, (iii) it strengthens the capacity of an individual in participating in decision-making and (iv) it provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change.**

- 4.3 The above mentioned observations of Hon'ble Supreme Court equally apply to Electronic Media and the means of delivering content of Electronic Media viz. distributions platforms such as DTH, cable services, HITS etc. All members of society should be able to form their own beliefs and communicate them freely to others. In sum, the

fundamental principle involved here is the people's right to know. Freedom of speech and expression should, therefore, receive a generous support from all those who believe in the participation of people in the administration."

4.4 Freedom of Expression - Government Control

The Apex Court in Cricket Association of Bengal case inter alia observed :

.....From the standpoint of Article 19(1)(a), what is paramount is the right of the listeners and viewers and not the right of the broadcaster-whether the broadcaster is the State, public corporation or a private individual or body. A monopoly over broadcasting, whether by government or by anybody else, is inconsistent with the free speech right of the citizens. *State control really means governmental control, which in turn means, control of the political party or parties in power for the time being. Such control is bound to colour the views, information and opinions conveyed by the media. The free speech right of the citizens is better served in keeping the broadcasting media under the control of public. Control by public means control by an independent public corporation or corporations, as the case may be, formed under a statute.* As held by the Constitutional Court of Italy, broadcasting provides an essential service in a democratic society and could legitimately be reserved for a public institution, provided certain conditions are met. The corporation (s) must be constituted and composed in such a manner as to ensure its independence from government and its impartiality on public issues. When presenting or discussing a public issue, it must be ensured that all aspects of it are presented in a balanced manner, without

appearing to espouse any one point of view. This will also enhance the credibility of the media to a very large extent; a controlled media cannot command that level of credibility.

.....It would be appropriate at this stage to deal with the reasoning of the European Court of Human Rights in the case of Informationsverein Lentia. The first thing to be noticed in this behalf is the language of Article 10(1) of the European convention, set out hereinbefore. Clause (1) of Article 10 not only says that everyone has the right to freedom of expression but also says that the said right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The clause then adds that Article 10 shall not, however, prevent the State from requiring the licensing of broadcasting, television or cinema enterprises. Clause (2) of course is almost in para materia with Sub-clause (2) of Article 19 of our Constitution. ***What is, however, significant is that Article 10(1) expressly conferred the right "to receive and impart information and ideas without interference by public authority". The only power given to public authority, which in the context means the State/Government, is to provide the requirement of license and nothing more. It is this feature of Sub-clause(1) which has evidently influenced the decision of the European court.....***

.....All the Constitutional Courts whose opinions have been referred to hereinbefore have taken the uniform view ***that in the interest of ensuring plurality of opinions, views, ideas and ideologies, the broadcasting media cannot be allowed***

to be under the monopoly of one - be it the monopoly of Government or an individual, body or organization.....

5. **Fundamental Rights - Religious, Cultural, and Educational Rights**

Reflecting India's pluralism and diversity, the Constitution guarantees the freedom of religion as well as certain cultural and minority rights. There are three provisions among these guarantees that could possibly relate to communications. Article 25 declares that all persons are entitled to freedom of conscience and to freely profess, practice, and propagate religion. Similarly, Art 29 states that any section of Indian citizens with a distinct language, script, or culture of its own has the right to conserve the same. In seeking to propagate religion or conserve culture, can a religious or minority group demand the right to establish its own television or radio station? Could the group claim that a broadcasting presence is more effective than handing out flyers at street corners or holding prayer meetings in public? Furthermore, art 30 recognizes that all religious and linguistic minorities have the right to establish and administer educational institutions of their own choice. Does this right, extend to establishing religious or minority-oriented broadcast stations?

Our views in this regard have been given while responding to various specific issues raised in the Consultation Paper.

6. **International Scenario:**

The chapter 4 of the consultation paper has mentioned in detail the prevalent provisions in various countries in respect of involvement of governments and their agencies in the Broadcasting Sector.

In addition to the countries covered in the said chapter, the provisions prevalent in various other countries where the respective governments, political parties and their connected organizations, religious organisations are not permitted to hold broadcasting and content distribution platform licenses are given below:-

1 REPUBLIC OF MACEDONIA

The Broadcasting Law

Article 11

"A political party, a religious group, or a holder of public position, or a position in a political party can not be a founder, or co-founder of a broadcasting organisation."

A holder of a public position or a position in a political party cannot be appointed a manager or an editor-in-chief of a broadcasting company."

2 NIGERIA

National Broadcasting Commission Decree No.38 of 1992

Law of Federation of Nigeria

Section 10

"The Commission shall not grant a licence to-

- (a) a religious organization; or
- (b) a political party.

3 REPUBLIC OF CHINA (TAIWAN)

Cable Radio and Television Act

Article 19

"The government and political parties, as well as foundations established with their endowments, and those commissioned by them, may not directly or indirectly invest in cable radio and/or television systems. Existing situations for the government, political parties, and foundations established with their endowments, and those commissioned by them, that do not meet the provisions of the preceding paragraph prior to the implementation of the revision of this Act, shall be corrected within two years of the implementation of the revision of this Act.

Cable radio and/or television systems may not broadcast programs, short films, or commercials funded or produced by the government in which election candidates participate. The same applies to programs, short films, and commercials with election candidates as the theme and which are funded or produced by the government.

4 GEORGIA

Georgian Law on Broadcasting

- Article 37
- (1) A license holder may be any natural person or legal entity resident in Georgia.
 - (2) A broadcasting licence should not be held by:
 - (a) An administrative authority, officials, or employees of an administrative authority;
 - (b) A legal entity interdependent with, or controlled by, an administrative authority;

5 SERBIA

Serbian Broadcasting Laws

- Article 42
- The following may not be broadcasting licence holders;
1. An enterprise, institution or another legal person established by the Republic of Serbia or an autonomous province, with the exception of public broadcasting service institutions;
 2. A political party, organisation or coalition, or a legal person founded by a political party, organisation or coalition.

6 REPUBLIC OF MONTENEGRO

Broadcasting Law

LICENSE FOR TRANSMISSION AND BROADCASTING OF RADIO AND TV SIGNALS

The following entities shall not be holders of the license for the transmission and broadcasting of radio and TV signals;

1. Religious community or another religious organization or legal entity founded by it, except when the license for radio programme broadcasting on local level is concerned;

- 2 Political party, organisation or coalition, or a legal entity founded by the political party, organization or coalition.

7 UNITED KINGDOM

Broadcasting Law

1 Political Party

As a means of seeking to protect political impartiality and balance in broadcasting, many countries prohibit political bodies from holding licences. In the UK, the restriction extends to shareholder participation such that political bodies can not hold more than 5% of licence-holding companies.

8 MALAWI

The Malawi Communications Act, 1998

Section 48 (7)

No broadcasting licence shall be issued to any association, party, movement, organisation, body or alliance which is of a party-political nature.

9 AUSTRIA

Private Radio Broadcasting Act

Section 8

A licence must not be granted to:

- 1 legal entities under public law, with the exception of legally recognized churches and religious communities and of the Federal Ministry of Defence for the purpose of operating an information radio station for servicemen, in particular in a case of a mission under § 2 para 1 subparas a through of the Military Defence Act 1990, Federal Law Gazette No. 305,
- 2 political parties as defined in the Political Parties Act,
- 3 the Austrian Broadcasting Corporation,
- 4 foreign legal entities to be considered of equal status as such legal entities stated in paras 1 through 3, and

5 legal entities or sole proprietorships or partnerships in which legal entities as specified in paras 1 through 4 directly hold any shares.

Television & Radio

Foreign ownership print and TV : 49% limit of ownership share for non EEA members

Political parties and organisations : Political parties and organisations are not allowed to hold a TV radio licence.

10 BELGIUM

Television

Francophone Community - Significant position : more than 24% of capital of a two-television broadcaster or more than 20% of the total audience of TV broadcasters in the Francophone community

Foreign ownership Print and TV : No restrictions

Political parties and organisations : Flemish community - Political parties and organisations are excluded from providing broadcasting services. Francophone community - "Editeur de service" has to be independent from a political party.

11 BULGARIA

Television

Political parties and organisations : Political parties do not have the right to undertake commercial activities or to own commercial companies.

12 DENMARK

Television & Radio

Political parties and organisations : Political parties and organisations are excluded from holding a licence of a broadcasting Company or radio station

13 GERMANY

Television & Radio

Political parties and organisations : Political parties and organisations are excluded from holding a licence of a broadcasting Company or radio channels

14 GREECE

Television & Radio

Political parties and organisations : Contracts of all kinds between the public administration and other public organisations with owners, shareholders and managers of mass media enterprises are prohibited

of mass media enterprises are prohibited.

Political parties are not among the entities entitled to radio or television ownership.

15 HUNGARY

Television

A Minimum of 26% of the shares of a broadcasting Company must be owned by Hungarian Citizens and residents.

Political parties and organisations : Political parties and organisations are not entitled to broadcast.

16 LATVIA

Television

Foreign ownership : Non-EU owner of a mass media is restricted to 49%

Political parties and organisations : The monopolisation of electronic mass media in the interests of a political organisation (party), etc. is not permitted. A political organisation (party) as well as an undertaking (company) established by it (where the investment by the political organisation (party) ensures the control of it) may not establish broadcasting organisations.

17 LITHUANIA

Television

Political parties and organisations : Political party or organisation may not be owner of a broadcaster and operator.

18 PORTUGAL

Television & Radio

Political parties and organisations : Political parties and organisations are excluded from owning a private television company or radio channel.

7. Response to various issues raised in Consultation Paper

In the above mentioned background, the approach of the Zee Network in addressing these issues is based on the analysis of the desirable

framework for entry of entities in media, broadcasting and distribution sector and then to examine the specific provisions in the statues which need to be addressed if there is a variance with the .

I. Issues regarding entry into Broadcasting Activities:

Whether, having regard to entry 31 in List I (Union List) of the Seventh Schedule to the Constitution of India [Posts and telegraphs, telephones, wireless, broadcasting and other like forms of communication], it would be in the interest of broadcasting sector and in the interest of the public at large, to permit Union Government and its organs, State Governments and their organs, urban and rural local bodies, publicly funded bodies and political bodies to enter into broadcasting activities such as –

- (a) starting of a television broadcast channel;**
- (b) starting of a radio broadcast channel (including an FM channel) ?**

- (i) The Zee Network would like to respond by referring to the observations of Hon'ble Supreme Court in Cricket Association's case mentioned at para 2.2 & 2.3 hereinabove and would like to categorically state that permitting Union Government and its organs, State Governments and their organs, urban and rural local bodies, publicly funded bodies and political bodies to enter into broadcasting activities would severely compromise the independence of this sector, would introduce political bias and would also be directly contrary to the judgement of Hon'ble

Supreme Court. The relevant observations of Hon'ble Supreme Court are once again reproduced below:

.....What is further, the electronic media is the most powerful media both because of its audio-visual impact, and its widest reach covering the section of the society whether the print media does not reach. The right to use the airwaves and the content of the programmes, therefore, needs regulation for balancing it and as well as to prevent monopoly of information and views relayed, which is a potential danger flowing from the concentration of the right to broadcast/telecast in the hands either of a central agency or of few private affluent broadcasters.....

.....True democracy cannot exist unless all citizens have a right to participate in the affairs of the polity of the country. The right to participate in the affairs of the country is meaningless unless the citizens are well informed on all sides of the issues, in respect of which they are called upon to express their views. **One-sided information, disinformation, misinformation and non-information all equally create an uninformed citizenry which makes democracy a farce when medium of information is monopolized either by a partisan central authority or by private individuals or oligarchic organizations. This is particularly so in a country like ours where about 65 per cent of the population is illiterate and hardly 1-1/2 per cent of the population has an access to the print media which is not subject to pre-censorship.....**

2.3 Since the dawn of broadcasting, governments have been well aware of its power and have sought to control its output. In many parts of the world the only source of television and radio – at least initially – has been the State. The State has determined what its citizens have access to, and has often used the power of broadcasting to underpin its own objectives to retain power. But over the years State control of broadcasting has been eroded: commercial operators have introduced broadcasting supported by advertising. Almost without exception, governments have tried to limit the numbers of new commercial operators through instigating systems of licensing. This licensing system has then been applied to restrict the content which new, non-State broadcasters can offer.

Sometimes restricting content can be a means of protecting citizens from harmful material, ***but it has also been used as a means of restricting access to news and information in order to maintain strict government control to prevent opposition views and opinions being heard.*** But increasingly, international opinion and pressure has reinforced the importance of broadcasting in supporting the development of democracy; without the free flow of news, information and opinion, citizens will not be adequately informed and so able to exercise their democratic rights. An informed citizenship can make informed choices at the ballot box. There is no doubt that the effects of both the internet and satellite broadcasts from other countries have forced a pragmatic acceptance

from otherwise totalitarian States to relax controls on their own, domestic broadcasting.

- (ii) It may be mentioned that the Central, State and local governments are funded by Public exchequer and there is no justification whatsoever for them to enter into the broadcasting or distribution sectors.

Developed economies have already provided independence from Government control to state run broadcasting stations which were a legacy of the past. The international scenarios as mentioned in chapter 4 of the consultation paper as well as in para 6 hereinabove clearly reflect that in order to maintain and secure the independence of media and to safeguard the fundamental rights of the citizens, the restrictions/prohibitions have been put in place in various legislative enactments whereby the Union Govt. and or federal /provincial government and/or their connected organizations are not permitted to undertake the broadcasting and distribution activities in this sector. In UK, the BBC, though government funded, operates in complete independence from government influence. Even in developing economies such as Philippines, the state networks such as the National broadcasting network (NBN) are being converted to independent broadcasting organizations.

- (iii) We would like to cite the case of USA where, Since 1951, the following prohibition on the use of appropriated funds for propaganda purposes has been enacted annually:

“No part of any appropriation contained in this or any other Act shall be used for publicity or propaganda purposes within the United States not heretofore authorized by Congress.”

Subsequently a bill was moved in the senate in 2005 called the “Stop Government Propaganda Act” with the objectives of government control of media, directly or indirectly.

The act had the following provisions amongst others:

- any message with the purpose of self-aggrandizement or puffery of the Administration, agency, Executive branch programs or policies, or pending congressional legislation;
- a message of a nature tending to emphasize the importance of the agency or its activities;
- any attempt to manipulate the news media by payment to any journalist, reporter, columnist, commentator, editor, or news organization
- any message designed to aid a political party or candidate

We would like to point out that the FCC already has a Policy of “**Equal opportunity Doctrine**” under the political broadcasting rules wherein the FCC rules require equal opportunity to all political candidates for all news interview programs. This requires broadcasting stations to allocate equal time to all qualified opposing candidates.

- (iv) We would also like to cite recent action by the FCC in the form of its consultation and consequent orders issued on 5 March 2008 on the promotion of diversification of public service broadcasting. The FCC report and order comes in the wake of the US Supreme court observing that:

“Safeguarding the public’s right to receive a diversity of views and information over the airwaves is ... an integral component of the FCC’s mission.”

Consequently the FCC report and order is issued with the objective of:

“By broadening participation in the broadcast industry, we seek to strengthen the diverse and robust marketplace of ideas that is essential to our democracy”.

FCC Report and order on Promoting Diversification of Ownership in Broadcast Services (05 March 2008) (FCC 07-217)

The above said report and order has adopted measures for promotion of ownership of broadcast stations by small business. Small business for TV stations is defined as those with less than \$13 million in revenues and for radio stations as less than \$6.5 million in revenues. It has also adopted the doctrine of “Zero Tolerance” Policy for Ownership Fraud.

The drivers of the above order arise from the concentration of ownership of broadcasting in a few hands and consequent suppression of views of minorities and other communities.

- (v) In a similar manner **Ofcom** has rules on political broadcasting under the section 333 of the communications Act 2003. These require Ofcom to ensure that Party Political Broadcasts (including Party Election Broadcasts) and Referendum Campaign Broadcasts are included in the UK regional ITV, Channel 4, Five, Classic FM, talkSPORT and Virgin 1215 services. In effect this amounts to giving equal opportunity to political parties to be carried on common channels. Ofcom rules also require equal time to all political parties.
- (vi) Considering the sensitiveness of the sector, and the potential of state agencies in being able to influence the news and other content which are telecast or events carried on the channel, it would not be in public interest to permit entities controlled by Political parties to be eligible to seek permissions for broadcasting stations or control distribution in any manner in India, where the Supreme court has placed identical importance on media independence as in the US or UK. Further, we suggest that in order that the ownership is not hidden, Zero tolerance to ownership fraud should be introduced as in the case of the FCC order of 5 March 2008.*

Whether permitting these entities (including State Governments or their enterprises) to enter into broadcasting activities would be within the scheme of the distribution of subjects in the Constitution between the Centre and State Governments?

- (i) At present granting permissions for broadcast stations falls under the exclusive purview of the Union government as per the central schedule as also the allocation of frequencies for telecast (Refer para 3.2 hereinabove). Thus permitting State governments or their enterprises to enter into broadcasting activities would not be within the scheme of distribution of subjects in the Constitution between Central and State governments.

- (ii) In this context, we would like to point out that while granting permissions, at present the rules which are followed for scrutiny of applications within the MIB perhaps do not focus on the ownership aspects and affiliations of potential broadcasters. The present process includes examination of the ownership(FDI guidelines), identity of Directors and whether the licenses sought are within permissible limits in quantitative terms (e.g. for radio). In the absence of any provisions for screening for political affiliations, the ministry has not been able to do the same. Accordingly, in order to ensure the full compliance of the eligibility norms so that the entities referred to above are not able to get the license for broadcasting activities even in an indirect manner, a thorough scrutiny by following “see through” ownership criteria must be applied in order to ascertain the actual identity of the applicant seeking such permission. In this context, it is useful to refer to the ownership criteria adopted by Reserve Bank of India while granting the licenses to the scheduled banks in private sector.

- (iii) With regard to the distribution, the registration process of a cable operator is by merely submitting the details of operations in a post office. As such the MIB exercises little control on the cable operations and thus effectively the distribution of broadcast

programming. There is a need for amendment of Cable TV regulations (already under consideration by the TRAI) to also bar ownership by political entities .

In case the Governments and government owned or controlled enterprises, local self government institutions, other publicly funded bodies, and political bodies (both at the national and regional level) are to be allowed entry into the broadcasting service, in that case, what type of broadcasting activities should be permitted to each one of such organizations and to what extent?

- (i) The Zee Network would like to recommend that government entities including local self governments, State governments and their PSUs should not be allowed in broadcasting or distribution as this is liable to harm the fairness and independence of broadcasting stations. The state organs, which derive their funding from public exchequer can potentially present unfair competition to small local and regional players and ultimately thwart the airing of any news or events which show them in a poor image. This will adversely affect the fairness of broadcasting.
- (ii) As per examples set by even developing countries, the trend is towards freeing even the existing media from state control. The trend is towards citizen reporting, for which the small independent stations are key. State owned media, broadcast stations and distribution control are a recipe for disaster. Increasingly throughout the world where State broadcasters still exist, steps are being taken to transfer them to being independent public service broadcasters accountable to an independent board, appointed by government. Wherever a public

service broadcaster is being set up the key issues are determining the method of governance and accountability, deciding how it is to be funded, and what the key programming obligations are to be.

- (iii) The social objectives sought to be achieved by establishing independent broadcasting channels by the government /States at present is being adequately taken care of and met by Prasar Bharti which besides telecasting National channel is also airing channels in almost all regional languages (19 channels in all) thus, fulfilling the requirement of regional diaspora. In this context, it is useful to refer to the aims & objects of Prasar Bharati as contained in **PRASAR BHARATI (BROADCASTING CORPORATION OF INDIA) ACT, 1990:**

Section 12 - Functions and powers of Corporation

(1) Subject to the provisions of this Act, it shall be the primary duty of the Corporation to organise and conduct public broadcasting services to inform, educate and entertain the public and to ensure a balanced development of broadcasting on radio and television.

Explanation.- For the removal of doubts, it is hereby declared that the provisions of this section shall be in addition to, and not in derogation of, the provisions of the Indian Telegraph Act, 1885(13 of 1985).

(2) The Corporation shall, in the discharge of its functions, be guided by the following objectives, namely :-

(a) upholding the unity and integrity of the country and the values enshrined in the Constitution ;

(b) safeguarding the citizen's right to be informed freely, truthfully and objectively on all matters of public interest, national or international, and presenting a fair and balanced flow of information including contrasting views without advocating any opinion or ideology of its own ;

(c) paying special attention to the fields of education and spread of literacy, agriculture, rural development, environment, health and family welfare and science and technology ;

(d) providing adequate coverage to the diverse cultures and languages of the various regions of the country by broadcasting appropriate programmes ;

(e) providing adequate coverage to sports and games so as to encourage healthy competition and the spirit of sportsmanship ;

(f) providing appropriate programmes keeping in view the special needs of the youth :

(g) informing and stimulating the national consciousness in regard to the status and problems of women and paying special attention to the upliftment of women ;

(h) promoting social justice and combating exploitation, inequality and such evils as untouchability and advancing the welfare of the weaker sections of the society ;

(i) safeguarding the rights of the working classes and advancing their welfare ;

(j) serving the rural and weaker sections of the people and those residing in border regions, backward or remote areas ;

(k) providing suitable programmes keeping in view the special needs of the minorities and tribal communities ;

(l) taking special steps to protect the interests of children, the blind, the aged, the handicapped and other vulnerable sections of the people ;

(m) promoting national integration by broadcasting in a manner that facilitates communication in the languages in India; and facilitating the distribution of regional broadcasting services in every State in the languages of that State ;

(n) providing comprehensive broadcast coverage, through the choice of appropriate technology and the best utilisation of the broadcast frequencies available and ensuring high quality reception ;

(o) promoting research and development activities in order to ensure that radio and television broadcast technology are constantly updated ; and

(p) expanding broadcasting facilities by establishing additional channels of transmission at various levels.

(3) In particular, and without prejudice to the generality of the foregoing provisions, the Corporation may take such steps as it thinks fit:—

(a) to ensure that broadcasting is conducted as a public service to provide and produce programmes ;

(b) to establish a system for the gathering of news for radio and television ;

(c) to negotiate for purchase of, or otherwise acquire, programmes and rights or privileges in respect of sports and other events, films, serials, occasions, meanings, functions or incidents of public interest, for broadcasting and to establish procedures for the allocation of such programmes, rights or privileges to the services ;

(d) to establish and maintain a library or libraries of radio, television and other materials ;

(e) to conduct or commission, from time to time, programmes, audience research, market or technical service, which may be released to such persons and in such manner and subject to such terms and conditions as the Corporation may think fit ;

(f) to provide such other services as may be specified by regulations.

What are the safeguards needed for ensuring bonafide usages of the broadcasting permission granted to such entities? Are they enforceable particularly if the state machinery is the prime mover?

As suggested in the preceding para, we are against granting any permission to state controlled broadcast or distribution entities.

Whether the disqualifications proposed in clause 12 of the Broadcasting Bill, 1997 and Part I of the Schedule thereto are still relevant as on date, either as they are or with some modifications,

for incorporation in the proposed Draft Broadcasting Services Regulation Bill or in any other relevant legislation? Correspondingly, which element of various policy guidelines (referred to in Chapter 3) would require amendments in the respective provisions relating to eligibility for entry into the broadcasting sector?

- (i) We would like to point out that we endorse the disqualifications criteria proposed in clause 12 of the Broadcasting Bill, 1997 except the disqualification of religious bodies (for religious bodies see our comments below). This criteria can be incorporated in the proposed Broadcasting Bill and till the time the Broadcasting Bill 2007 is notified as an Act, in all other relevant legislations, notification, guidelines etc. so that the government and local authorities and political bodies as also publicly funded bodies are disqualified from grant of license for broadcasting as well as for DTH, cable services, HITS, terrestrial television service, radio broadcasting (both terrestrial and satellite) and any other content delivery service as may be notified by the central government in this regard.

- (ii) We are in favor of an independent Broadcast regulator, under whose purview the matters of broadcast licensing and distribution control are to be placed. We make these submissions as the licensing of Spectrum and frequencies is of a different nature than that of content and media companies' ownership. Licensing requires detailed examination of the nature of channel and its source of funding. It also needs to ascertain that it is not being run at the instance of foreign interests or political alignment. The possibility of ownership frauds, acquisitions and

transfer of ownership control also needs to be looked into on an ongoing basis.

- (iii) We would like to suggest a Broadcast regulator with Judicial powers and powers of licensing. This is necessary as the MIB is also indirectly under the state control. Hence an independent regulator alone can prevent media freedom and independence to be vitiated particularly where controls by political parties is concerned.

(i) Whether religious bodies may be permitted to enter into broadcasting activities such as –

(a) starting of a television broadcast channel;

**(b) starting of a radio broadcast channel (including an FM channel)
?**

- (i) Religious broadcasting is another sensitive area where perhaps special rules may be applied to ensure that due respect is given to all religious beliefs, and religious intolerance is not provoked. In most countries there are no restrictions on religious bodies, although some states, such as Turkey, do prohibit religious organisations running broadcasting services. There is some question about whether an outright ban contravenes the human right to freedom of religious expression.

- (ii) Again, to prevent religion being used as a source of potential community tension, it may be wise to include an overarching provision prohibiting incitement to religious hatred, alongside rules which serve to protect the basic human right to religious freedom.
- (iii) Whether or not religious stations should be licensed is a matter to be decided, depending on the culture, the popular demand for such services and the availability of frequencies. In Germany, where the major churches are recognised as formal elements of civil society, each recognised church is entitled to own a television channel. In other countries, such as the UK, where there are a very limited number of available terrestrial analogue television frequencies and a great number of religious groups, the decision has been taken to prohibit religious bodies from holding such licences. However, where spectrum is not so limited – for example local radio, or satellite television – religious bodies may hold licences.
- (iv) Whatever position applies, it is contrary to the Universal Declaration of Human Rights to prevent religious broadcasting or the ownership of television or radio stations by religious groups. However, such religious groups must otherwise comply with other pertinent rules on ownership.
- (v) On an application from a Christian group in the UK which questioned the UK's restriction of religious ownership to certain classes of licence only, the European Court of Human Rights advised that limitations might be reasonable where frequency availability is limited. So, for example, if there were only enough spectrum to licence four national television services, it would be

reasonable to restrict one of these services being run by a religious organisation. However, it would be unreasonable to apply limits to satellite television services, where there is an abundance of available spectrum.

- (vi) The religious channels are already a reality in India, with over a dozen channels having been in business for over two years. Our view is that a religious body has every right to have a TV or a radio channel in order to convey its views to the followers of the religion. The situation is no different elsewhere in the world with channels based on religions such as Christianity (Daystar, TCT-World ,God Channel, The World Network etc), Islamic (The Islam Channel, Unity TV, Urdu Islamic TV etc), Hindu (Aastha, Jagran, etc) being available on global platforms. For example, Sky Platform has 17 Christian Channels, over 7 Islam Channels and channels belonging to Jewish faith, Hispanic and other religions. Echostar, DircTV and Sirius Radio in the US have been broadcasting religious channels based on different faiths and are considered one of the important categories amongst Sports, movies and other genres. Even in the field of Radio, the Ofcom had initiated a consultation process in 2004 and permitted religious and community channels in the UK Citizen Band. Transmission of religious channels is a mainstream activity worldwide and in our view quite a legitimate one. Hence so long as the religious channels conform to the broadcasting code (just as other channels should) including;
- (i) Not inciting religious hatred or violence
 - (ii) Threaten national integrity or peace
 - (iii) Preach religious intolerance, terrorism or hatred etc.

(vii) The channels should be allowed to be owned by religious entities, trusts as per the extant FDI guidelines.

(ii) If such religious bodies are permitted to enter into broadcasting activities, then, what are the safeguards to be stipulated to ensure that the permission /license so granted is not misused? How should a distinction be maintained between religious bodies running a channel and non-religious bodies offering religious content in their channels?

(i) As recommended by us earlier in the consultation note, we are in favor of a Broadcast regulator independent of the Telecom regulator and looking after the licensing and content issues with judicial and licensing powers. Misuse of the channel or violation of broadcasting code is an issue which is identical to all channels. On the Sky Platform the Islam channel was fined Pounds 30,000 by the Ofcom in 2007 for violation of the broadcasting code. However this did not result in the channel being denied license to continue operations.

(ii) We would also like to point out that in June 2006, there was a consultation by Ofcom on the same topic i.e. how to prevent the misuse of religious channels. Religious organizations had responded to this consultation paper and had agreed for a code of self regulation. For example the Christian broadcasting Council (CBC) had suggested guidelines for channels seeking donations or promising extraordinary or miraculous results through religious discourses.

- (iii) For the purpose of effective monitoring of content on religious channels, it is suggested that the religious body running /owning the channel should not be allowed to have its own teleport i.e. such channel should be uplinked only from teleport owned by some other entity. The criteria adopted by MIB for grant of license for community radio can be applied here as well. This would ensure that proper monitoring of content is carried out. More over strict adherence to the applicable content code should be a precondition for grant of permission to such a channel. The self-regulatory content code recently put up by the Ministry on its website has a separate section devoted to religious content. The same is reproduced below for ready reference:

Theme 6: Religion & Community

Subject Matter Treatment: The subject-matter treatment of any program under all categories shall not in any manner:

1. Defame religions or communities or be contemptuous of religious groups or promote communal attitudes or be likely to incite religious strife or communal or caste violence.

2. Incite disharmony, animosity, conflict, hatred or ill will between different religious, racial, linguistic groups, castes or communities.

3. Counsel, plead, advise, appeal or provoke any person to destroy, damage or defile any place of worship or any object held sacred by any religious groups or class of persons.

4. Proselytize any particular religion as the `only' or `true' religion or faith or provoke, appeal, advise, implore or counsel any person to change his religion or faith.

5. Play on fear of explicit or implicit adverse consequences of not being religious or not subscribing to a particular faith or belief.

6. Promote any dangerous, retrogressive or gender discriminatory practices in the name of religion or faith or ideology.

(iii) If the answer to (i) is affirmative, then, How should such religious bodies be defined? Should such religious bodies be a trust or a society or a company under section 25 of the Companies Act, 1956?

The religious bodies can either be a registered trust, societies or can be a section 25 company.

II. Issues regarding entry into Distribution Platforms:

Whether, having regard to entry 31 in List I (Union List) of the Seventh Schedule to the Constitution of India [Posts and telegraphs, telephones, wireless, broadcasting and other like forms of communication], it would be in the interest of broadcasting sector and in the interest of the public at large, to permit Union Government and its organs, State Governments and their organs, urban and rural local bodies, publicly funded bodies, political bodies to enter into distribution activities such as cable, DTH, HITS, etc.

We feel that it would harm the interests of the broadcasting sector as a whole if the State or Union governments, or their organs were allowed to enter the distribution sector. We would like to cite the following for our reasoning:

- (i) The distribution system (i.e. cable or DTH) is a vital link in the receipt of programming by the end customers. Most cable systems, analog today have limited capacity of 70-100 channels of capacity against over 300 Pay and FTA channels which require carriage. The involvement of state organs in the industry can lead to certain channels based political or religious content, ownership etc. find carriage on the cable systems. This carriage may not be based on commercial considerations but rather political lobbyist mechanisms.
- (ii) The distribution sector is today based on commercial considerations and competitive carriers which require the operators to operate efficiently and in the best interests of viewers. The presence of state players vitiates this atmosphere

and leads to non-competitive practices coming to the fore. They will be able to have the benefit of sharing state infrastructure to the exclusion of others, thus leading to the monopolization of the distribution which would be detrimental to the competition and fair play. This is particularly true in the sphere of cable services where the polls owned by state government or their PSUs are required by MSOs and cable operators for laying down the cables. This would also lead to non level playing field as in case of levy of state taxes also such as entertainment tax etc., the state organs / entities will enjoy the exemption etc. in the name of public interest. This has been a reason why in all fields where there is a policy of private operators, the state owned operators are dispensed with. The privatization of Comsat and Intelsat in the US satellite industry is example of this rule being put to practice.

- (iii) Placing government funded players in competition with private operators will be against all international practices where the trend is to privatize even the remaining distribution players. In fact across Asia, Europe and Americas, it will be difficult to find distribution companies (cable or satellite) which are still state owned with the exception of China.
- (iv) No interest of state, except of political parties and individuals connected with the state is likely to be served by the distribution companies coming under the state umbrella. It is pertinent to point out that at the state level and in fact at the city level itself various local cable channels are being run by the MSOs /cable operators. In case the state organs are allowed to own the distribution platform, these channels are likely to be misused for the political gains by the party in power. In addition, once the state is able to establish the monopoly of owning distribution

platforms, the party in power can also block the information, news and other communications which are not in accordance with its political interest, thus depriving the viewers from getting an informed view of the actual state of affairs, events and developments. This would seriously jeopardize their fundamental rights under Article 19 (1)(a) of the Constitution.

Whether permitting these entities (including State Governments or their wholly owned enterprise) to enter into distribution activities would be within the scheme of the distribution of subjects in the Constitution between the Central and the State Governments.

If such entities are to be permitted to enter into the area of distribution, then what are the safeguards to be provided to prevent misuse of such permission?

- (i) This will not be within the scheme of distribution of subjects between the central & state governments as per Constitution. It is pertinent to point out that even cable services are covered under the provisions of Indian Telegraph Act. The attention in this regard is invited to the judgment of Hon'ble High Court of Rajasthan in Shiv Cable TV System vs. The State of Rajasthan and Ors. – AIR 1993 RAJ 197 wherein the Hon'ble High Court inter alia held

“The disc antenna as well as the cable network installed by the petitioners, therefore (both) require licence under the Indian

Telegraph Act read with Indian Wireless Telegraphy Act, 1933. The transmission of prerecorded cassette through cable network also requires licence under these Acts. “

- (ii) Zee Network is strongly disapproving any consideration of entry of state agencies or state organs in the cable or satellite based distribution.

Whether the entities, other than citizens of India, should be considered as “person” under sub-clauses (ii) and (iii) of clause (e) of section 2 of the Cable Television Networks (Regulation) Act, 1995.

Whether the provisions of the Cable Television Networks (Regulation) Act, 1995, particularly, the definition of “person” as contained in the said Act, requires any clarificatory amendment or not with respect to entry of entities such as State Governments, urban and local bodies, 3-tier Panchayati Raj bodies, publicly funded bodies, political parties and religious bodies.

In case such bodies are to be given permission to enter into the business of distribution of broadcast channels, what are the other amendments which would be required in the Cable Television Networks (Regulation) Act, 1995 and Rules thereunder, other Acts and in the various policy guidelines relating to other distribution platforms.

- (i) The Zee Network has given its recommendations separately for the review of the Cable and Television Networks regulation Act of 1995. In any event the State or its organs do not fall within the definition of cable operator (2 (aa)), person (2 (e)) and that of multi system operators as given in the Cable Network Regulation Act and Cable Network Rules 1994 including the rules notified by Ministry of I&B on 31/7/2006 for CAS areas. The attention in this regard is also invited to Form No. 6 prescribed vide above mentioned rules for application for grant of permission to multi system operators to provide cable television services with addressable system in any or more notified areas.
- (ii) We do not favour the consideration of State governments, urban and local bodies or panchayati Raj bodies under any of the categories of distribution platforms (viz. cable services, DTH etc). These entities should only comprise of Companies under the Indian companies Act, HUFs or individuals. More specifically, we would like to clarify that the companies should not be controlled by the central or state governments or local bodies in any manner. The regulator (broadcast regulator) should apply the Ownership fraud criteria, if necessary to arrive at the actual source of control of the bodies which are seeking registration.
- (iii) We have also suggested that the local authorities which provide registration to the cable operators should not be parts of the state government or local bodies but authorized officers forming a part of the ministry of information and broadcasting, being the nodal ministry.

III. From Constituent Assembly debates, Sarkaria Commission Report, and Terms of Reference of the Commission on Centre-State

Relations On Issues of whether the broadcasting as a subject should be with the Centre or State

The following issues arise for consultation namely:-

In view of the setting up recently of the Commission on Centre State Relations, is it necessary now for the Telecom Regulatory Authority of India to look into the issue of permitting State Governments or their enterprises to enter into broadcasting activity? If the answer is in the affirmative, then the views on the following issues may be furnished.

There is no doubt that Broadcasting including content distribution platforms are and have to be within the exclusive domain of the Union and can not be given to the State otherwise it would be contrary to the Constitutional mandate. Having regard to the fact that Constituent Assembly specifically discussed this aspect in detail and consciously decided to exclude the rights of States to have their own Broadcasting Station is a clear indicator that no re-look whatsoever is required on this aspect of the matter. The report/recommendations of Sarkaria Commission are quite explicit in this regard. The commission has also favoured and categorically mentioned the exclusion of political entities, states or their organs from owning broadcasting station and distribution platforms.

As per the comments already furnished by us, the Zee network is against the permission to state governments or their enterprises into

broadcasting activity. As already detailed by us, **this can impact the freedom of media, harm small independent broadcasters and lead to biased political reporting. This can have cascading impact on freedom of media and factual reporting of the state of affairs.**

(a) Whether permitting the State Governments and their enterprises to enter into the broadcasting sector or into the business of distribution thereof would have impact on the Centre-State Relationship and the inter-se relationship among the States.

(i) Permitting the State government and their bodies into the broadcasting and/ or distribution will open a pandora's box of problems and will lead to a divergent trend from rest of the world where the governments are moving away from the functions of broadcasting or its distribution.

If broadcasting is permitted to state governments, every state will be entitled to it and seek broadcasting frequencies. Where are the frequencies which can be allotted to all state governments, local bodies or their broadcasting and distribution organs? Moreover if State governments have their own channels, they will also seek carriage on the national platforms such as DD Direct without discrimination. Where is the satellite capacity available for all state, local body and other channels to be carried?

(ii) Moreover even if such frequencies or satellites are to be found, they will seriously deplete the availability for any other players. Such players after bidding astronomical charges for spectrum will

not be able to compete with state sponsored television. If distribution platforms are allowed to state bodies, then they will carry the state and area specific channels on the cable systems. They will also carry the Lok Sabha, Rajya Sabha, DD news, DD National, DD Regional and perhaps their own state assembly channels. Where then is the space available for the other commercial channels numbering over 300? They will also seek free carriage of major sports events or other live events on the lines DD National. **They may also seek to enact local regulations for compulsory carriage of their channel in their state whether on a public or private Cable or DTH platform. This will lead to completely chaotic conditions.**

If such decisions are taken, we will be moving towards the state of television in China where only state sponsored cable and TV networks are allowed to be in service. Hence, we would like to reiterate that any consideration of granting permission for state owned broadcasting or distribution is a retrograde step.

It will lead to high investments, complete obsolescence of technologies as the state sponsored agencies will not migrate quickly from MPEG2/ MPEG 4 or to HD technologies, evolutions which require changes almost every alternate year in equipment.

(b) In the light of foregoing paragraphs, whether political bodies and religious bodies should be permitted to enter into the business of distribution of broadcasting channels. If the answer is affirmative, what amendments in the laws and in the various policy guidelines will be necessary for this purpose?

In summary, we would like to say that there is no case from any angle to grant permission to political bodies or to state sponsored / owned entities in any form of distribution or broadcasting. On the other hand, transmission of religious channels is a legitimate activity and subject to the broadcasting code being observed entities (with the exclusion of state or state sponsored entities) should be permitted to obtain a license and provide services on the lines of Community Radio.

We have also recommended the setting up of an independent broadcast regulator with judicial and licensing powers to regulate the broadcast sector in line with the extant licensing policies.

2. Comments received from Multi System Operators (MSOs)

2.1 MSO Alliance

I. Issues regarding entry into Broadcasting Activities:

- Whether, having regard to entry 31 in List I (Union List) of the Seventh Schedule to the Constitution of India [Posts and telegraphs, telephones, wireless, broadcasting and other like forms of communication], it would be in the interest of broadcasting sector and in the interest of the public at large, to permit Union Government and its organs, State Governments and their organs, urban and rural local bodies, publicly funded bodies and political bodies to enter into broadcasting activities such as –

(c) starting of a television broadcast channel;

(d) starting of a radio broadcast channel (including an FM channel) ?

- Whether permitting these entities (including State Governments or their enterprises) to enter into broadcasting activities would be within the scheme of the distribution of subjects in the Constitution between the Centre and State Governments?
- In case the Governments and government owned or controlled enterprises, local self government institutions, other publicly funded bodies, and political bodies (both at the national and regional level) are to be allowed entry into the broadcasting service, in that case, what type of broadcasting activities should be permitted to each one of such organisations and to what extent?
- What are the safeguards needed for ensuring bonafide usages of the broadcasting permission granted to such entities? Are they enforceable particularly if the state machinery is the prime mover?
- Whether the disqualifications proposed in clause 12 of the Broadcasting Bill, 1997 and Part I of the Schedule thereto are still relevant as on date, either as they are or with some modifications, for incorporation in the proposed Draft Broadcasting Services Regulation Bill or in any other relevant legislation? Correspondingly, which element of various policy guidelines (referred to in Chapter 3) would require amendments in the respective provisions relating to eligibility for entry into the broadcasting sector?

(i) Whether religious bodies may be permitted to enter into broadcasting activities such as –

(a) starting of a television broadcast channel;

(b) starting of a radio broadcast channel (including an FM channel)?

(ii) If such religious bodies are permitted to enter into broadcasting activities, then, what are the safeguards to be stipulated to ensure that the permission /license so granted is not misused? How should a distinction be maintained between religious bodies running a channel and non-religious bodies offering religious content in their channels? (iii) If the answer to (i) is affirmative, then, How should such religious bodies be defined? Should such religious bodies be a trust or a society or a company under section 25 of the Companies Act, 1956?

II. Issues regarding entry into Distribution Platforms:

- Whether, having regard to entry 31 in List I (Union List) of the Seventh Schedule to the Constitution of India [Posts and telegraphs, telephones, wireless, broadcasting and other like forms of communication], it would be in the interest of broadcasting sector and in the interest of the public at large, to permit Union Government and its organs, State Governments and their organs, urban and rural local bodies, publicly funded bodies, political bodies to enter into distribution activities such as cable, DTH, HITS, etc.

- Whether permitting these entities (including State Governments or their wholly owned enterprise) to enter into distribution activities would be within the scheme of the distribution of subjects in the Constitution between the Central and the State Governments.
- If such entities are to be permitted to enter into the area of distribution, then what are the safeguards to be provided to prevent misuse of such permission?

- Whether the entities, other than citizens of India, should be considered as “person” under sub-clauses (ii) and (iii) of clause (e) of section 2 of the Cable Television Networks (Regulation) Act, 1995.

- Whether the provisions of the Cable Television Networks (Regulation) Act, 1995, particularly, the definition of “person” as contained in the said Act, requires any clarificatory amendment or not with respect to entry of entities such as State Governments, urban and local bodies, 3-tier Panchayati Raj bodies, publicly funded bodies, political parties and religious bodies.
- In case such bodies are to be given permission to enter into the business of distribution of broadcast channels, what are the other amendments which would be required in the Cable Television Networks (Regulation) Act, 1995 and Rules thereunder, other Acts and in the various policy guidelines relating to other distribution platforms.

III. From Constituent Assembly debates, Sarkaria Commission Report, and Terms of Reference of the Commission on Centre-State Relations

On Issues of whether the broadcasting as a subject should be with the Centre or State

The following issues arise for consultation namely:-

- In view of the setting up recently of the Commission on Centre State Relations, is it necessary now for the Telecom Regulatory Authority of India to look into the issue of permitting State Governments or their enterprises to enter into broadcasting activity? If the answer is in the affirmative, then the views on the following issues may be furnished.
 - (a) Whether permitting the State Governments and their enterprises to enter into the broadcasting sector or into the business of distribution thereof would have impact on the Centre-State Relationship and the inter-se relationship among the States.

 - (b) In the light of foregoing paragraphs, whether political bodies and religious bodies should be permitted to enter into the business of distribution of broadcasting channels. If the answer is affirmative, what amendments in the laws and in the various policy guidelines will be necessary for this purpose?

RESPONSE NOTE FROM MSO Alliance

The main issue under this paper is whether State Governments, urban local bodies etc should be permitted to enter into the Broadcasting service / enter into a distribution platform e.g. cable services.

The government has already got Doordarshan (DD) and All India Radio (AIR) as its arms for broadcasting, regulated under the Prasar Bharti Act. Under the uplinking and downlinking guidelines issued by the Ministry of Information & Broadcasting (MIB), all platforms delivering cable television on to consumers must carry DD channels.

This would amount to the "State" already having a platform to air its channels. Besides this, any broadcaster having the rights to sports of national interest, must share a live feed with DD, in the interest of the general public. Under Article 246 of the Constitution, only the Central Government can legislate on subjects, inter-alia related to broadcasting, which comes under the purview of the MIB.

For any person (company) to enter into a distribution platform, it must conform to the laws and is governed by the Cable TV Networks Act (CTN) and the rules made thereunder.

Besides cable being a mode of delivery for television, technology has developed for other forms of delivering cable television such as IPTV, HITS, Mobile TV and DTH.

The Supreme Court in its judgment in the case of Union of India vs Cricket Association of Bengal 1995 observed, inter-alia, as under:

- 1. Broadcasting Media should be under the control of the public as distinct from the government, which is implicit under Article 19 (1) (a) of the constitution of India.**
- 2. Government control means in effect control by a political party or parties in power for the time being. Such a control is bound to colour the news and views expressed through the media.**

The Government has rejected applications made to it by the states of Punjab, Andhra Pradesh and Tamil Nadu Arasu Cable Corporation on the lines of the judgment stated above. Where does the need now arise for this consultation paper?

In order for the authority to now permit the State government to enter this it would have to

(1) Bring broadcasting within the purview of state legislation by amending the Constitution

(2) Find ways and means to go contrary to the observations of the Supreme Court in the case cited above

(3) Override its own powers as upheld by the Delhi high Court in the case of Star India Pvt. Ltd vs TRAI and others and

(4) Since this business can be conducted by an enterprise, it would have to be registered as a company.

The state cannot register itself as a company and doing this business through any state corporation would be contrary to the observations of the Supreme Court cited above. Importantly – what would then happen to the applications that were rejected, citing the observations of the Supreme Court by the authority themselves.

The consultation paper also relies on certain portions of the Broadcasting Bill of 1997. This has yet to see the light of day. Any reliance on its provisions at best can be illusory as no one knows when it would become a law. Legally, there are impediments for permitting the entry of any state government into this sector for reasons stated above.

There is no guarantee / assurance that in the event the state government enters the field, a level playing field would still be there as the state would have more clout with the authorities. Would the state pay service tax and entertainment tax as other operators have to pay?

Overall views – [1] The Constitution would have to be amended to bring broadcasting within the purview of state legislation. This can only be done by parliament as there would have to be change in the entries to the Constitution. [2] Entry of the state government would not give a level playing field to others in the business. [3] The observations of the Supreme Court would have to be overturned in the case cited above as the court was categorical in its observations.

Based on the above views, we consider that any political body or state cannot and should not enter in the Broadcasting and distribution segment now, except for Prasar Bharati, which already has over 25 channels and has a distribution platform in DTH.

However, it is regretted that Tamil Nadu State Government has been cleared to start cable operations (as per some media reports), even when TRAI recommendations are pending for submission to Government.

2.2 Ortel Communications Limited

6.8.1 Whether, having regard to entry 31 in List I (Union List) of the Seventh Schedule to the Constitution of India [Posts and telegraphs, telephones, wireless, broadcasting and other like forms of communication], it would be in the interest of broadcasting sector and in the interest of the public at large, to permit Union Government and its organs, State Governments and their organs, urban and rural local bodies, publicly funded bodies and political bodies to enter into broadcasting activities such as –

(a) Starting of a television broadcast channel;

(b) Starting of a radio broadcast channel (including an FM channel) ?

- The observation of the Hon'ble Supreme Court in the Cricket Association of Bengal matter has clearly deliberated on the subject. The Union government is already providing these thru Prasar Bharti. We do not feel there is any further requirement of government or its agency to enter into broadcasting activities.

6.8.2 Whether permitting these entities (including State Governments or their enterprises) to enter into broadcasting activities would be within the scheme of the distribution of subjects in the Constitution between the Centre and State Governments?

No Comment

6.10.1 In case the Governments and government owned or controlled enterprises, local self government institutions, other publicly funded bodies, and political bodies (both at the national and regional level) are to be allowed entry into the broadcasting service, in that case, what type of broadcasting activities should be permitted to each one of such organizations and to what extent?

No Comment

6.11.1 What are the safeguards needed for ensuring bonafide usages of the broadcasting permission granted to such entities? Are they enforceable particularly if the state machinery is the prime mover?

No Comment

6.14.1 Whether the disqualifications proposed in clause 12 of the Broadcasting Bill, 1997 and Part I of the Schedule thereto are still relevant as on date, either as they are or with some modifications, for incorporation in the proposed Draft Broadcasting Services Regulation Bill or in any other relevant legislation? Correspondingly, which element of various policy guidelines (referred to in Chapter 3) would require amendments in the respective provisions relating to eligibility for entry into the broadcasting sector?

Yes the disqualifications proposed in clause 12 of the Broadcasting Bill, 1997 and Part I of the Schedule thereto are still relevant as on date.

6.15.1 (i) Whether religious bodies may be permitted to enter into broadcasting activities such as –

(a) starting of a television broadcast channel;

(b) starting of a radio broadcast channel (including an FM channel) ?

Religious body should not be permitted to enter into these sensitive sector.

(ii) If such religious bodies are permitted to enter into broadcasting activities, then, what are the safeguards to be stipulated to ensure that the permission /license so granted is not misused? How could a distinction be maintained between religious bodies running a channel and non- religious bodies offering religious content in their channels?

The Broadcasting sector should be kept apart from Religious bodies.

(iii) If the answer to (i) is affirmative, then, How should such religious bodies be defined? Should such religious bodies be a trust or a society or a company under section 25 of the Companies Act, 1956?

6.17.1 (i) Whether, having regard to entry 31 in List I (Union List) of the Seventh Schedule to the Constitution of India [Posts and telegraphs, telephones, wireless, broadcasting and other like forms of communication], it would be in the interest of broadcasting sector and in the interest of the public at large, to permit Union Government and its organs, State Governments and their organs, urban and rural local bodies, publicly funded bodies, political bodies to enter into distribution activities such as cable, DTH, HITS, etc.

No they should not be permitted to undertake distribution activities. The objective of government is not to do business for its own but to encourage competition among private players.

The Judgement of Hon'ble Supreme Court in the case of Cricket Association of Bengal (1995 AIR(SC) 1236 :: 1995 (2) SCC 161) delivered on February 9, 1995 has a clear deliberation on the issue at a time when broadcasting in India was virtually a Government monopoly .

The main objective behind the creation of Prasar Bharati was to emphasis on upholding the unity and integrity of the country, nurturing the democratic and social values enshrined in the Constitution and projecting the varied cultural traditions of different regions of the country.

Moreover Govt. is making disinvestment of its holding from public sector, which clearly indicates that Govt. is not to run business for its profit rather encourages private competition.

So Govt. should not venture into these activities.

6.17.2 Whether permitting these entities (including State Governments or their wholly owned enterprise) to enter into distribution activities would be within the scheme of the distribution of subjects in the Constitution between the Central and the State Governments.

These entities should not be allowed in distribution activities.

6.17.3 If such entities are to be permitted to enter into the area of distribution, then what are the safeguards to be provided to prevent misuse of such permission?

These entities should not be allowed in distribution activities.

6.18.1 Whether the entities, other than citizens of India, should be considered as “person” under sub-clauses (ii) and (iii) of clause (e) of section 2 of the Cable Television Networks (Regulation) Act, 1995.

These entities should not be allowed in distribution activities.

6.18.2 Whether the provisions of the Cable Television Networks (Regulation) Act, 1995, particularly, the definition of “person” as contained in the said Act, requires any clarificatory amendment or not with respect to entry of entities such as State Governments, urban and local bodies, 3-tier Panchayati Raj bodies, publicly funded bodies, political parties and religious bodies.

The Cable Television Network (Reg) Act may be amended by inclusion of non-eligible person as defined under section 12 of Broadcasting Bill 1997.

6.18.3 In case such bodies are to be given permission to enter into the business of distribution of broadcast channels, what are the other amendments, which would be required in the Cable Television Networks (Regulation) Act, 1995 and Rules thereunder, other Acts and in the various policy guidelines relating to other distribution platforms.

These entities should not be permitted to distribution of broadcast channels.

6.23.1 In view of the setting up recently of the Commission on Centre State Relations, is it necessary now for the Telecom Regulatory Authority of India to look into the issue of permitting State Governments

or their enterprises to enter into broadcasting activity? If the answer is in the affirmative, then the views on the following issues may be furnished.

(a) Whether permitting the State Governments and their enterprises to enter into the broadcasting sector or into the business of distribution thereof would have impact on the Centre-State Relationship and the inter-se relationship among the States.

(b) In the light of foregoing paragraphs, whether political bodies and religious bodies should be permitted to enter into the business of distribution of broadcasting channels. If the answer is affirmative, what amendments in the laws and in the various policy guidelines will be necessary for this purpose?

For Ortel Communications Limited

Manoranjan Sarangi

Company Secretary

Mob No. 09937288002

011-26166871

0674-3911303

3. Comments received from State Governments & Public Sector Undertakings

3.1 Government of Tamil Nadu **(Copy of letter dated 25.03.2008)**

(Emblem of Government of Tamil Nadu)

Information Technology
Department
SECRETARIAT,
Chennai- 600 009
Ph: 25670783 Fax: 25670505
e-mail: secyit@tn.nic.in

Letter No. 1099/IT(B-I)/2008-1, dated, 25.3.2008

From

Dr. C. CHANDRAMOULI, I.A.S.,
Secretary to Government.

To

Shri V.K. Bhasin,
Principal Advisor (Legal)
Telecom Regulatory Authority of India,
Mahanagar Door Sanchar Bhavan,
Hussain College,
Jawaharlal Nehru Marg,
New Delhi- 110 002.

Sir,

Sub: Formation of “Arasu Cable TV Corporation Ltd.” – Consultation Paper by Telecom Regulatory Authority of India (TRAI) – Response of the Government of Tamil Nadu (As State Government)-Furnished-Reg.

I am directed to state that as Arasu Cable TV Corporation of this State has already sent its response enclosing the legal opinion of the Additional Solicitor General of India to TRAI, this State Government is not sending any separate response in this regard. This is for your kind information.

Yours faithfully,

Sd./-
For Secretary to Government

3.2 Arasu Cable TV Corporation Limited, Chennai
(Copy of letter with enclosure)

ARASU CABLE TV CORPORATION LIMITED
CHENNAI

[A Government of Tamilnadu Undertaking]

PHONE: 24992266 FAX: 24993377

Brijeshwar Singh, I.A.S.
Chairman and Managing Director

February 26, 2008

Shri V.K. Bhasin
Principal Advisor [Legal]
Mahanagar Door Sanchar Bhavan
Hussain College
Jawaharlal Nehru Marg
New Delhi 110 002

Dear Shri. V.K. Bhasin:

Please find enclosed a copy of the legal opinion obtained by Arasu Cable TV Corporation [ACTV] from Mr. Amarendra Sharan, the Additional Solicitor General of India to the effect that there is no legal or constitutional bar for ACTV to become an Multi System Operator for your perusal.

Yours sincerely

Sd/-
Brijeshwar Singh

(Copy of enclosure to letter dated the 26th February, 2008 from Arasu Cable TV Corporation Limited, Chennai)

Amarendra Sharan

*Additional Solicitor General of India
Supreme Court, New Delhi 110001
Ph. 23386587 Telefax: 23386587*

November 26, 2007

OPINION

1. I have perused the brief for opinion and documents appended thereto sent to me by Mr. Rajeev Sharma Advocate on behalf of ARASU Cable T.V Corporation Pvt. Ltd. (hereinafter referred as queriest)

2. Brief Facts:

- 2.1 The querist is a Government Company incorporated under the Companies Act, 1956.
- 2.2 As per the Memorandum of Association of the Company, one of the objects for which it was incorporated was carrying on the business of Cable Television operations.
- 2.3 Consistent with the above said object, the Company intends to enter the field of Cable Television Network business by becoming a Multiple System Operator.

3. Query:

- 3.1 In the backdrop of the above facts, my opinion has been sought by the querist on the following question:
“Whether there is any bar in law to a State Government or a State Government controlled entity from operating a Cable TV Network?”

4. Opinion:

- 4.1 At the outset it will be apposite to notice the laws, which can have a bearing on the question on which my opinion has been sought. In so far as the Cable Television business is concerned, the law, which governs the same, is the Cable Television Network (Regulation) Act, 1995 (Cable Act) and the Rules (Cable Rules) and Regulations (Cable Regulation) made thereunder.
- 4.2 The expressions “Cable Operator”, “Cable Service”, “Cable Television Network”, “Company” and “Person” are defined in Section 2 of the Cable Act in the following terms:

- “2(a) “Cable Operator: means any person who provides cable service through a cable television network or otherwise controls or is responsible for the management and operation of a cable television network;
- (b) “Cable Service” means the transmission by cables of programmes including re-transmission by cables of any broadcast television signals;
- (c) “Cable Television Network” means any system consisting of a set of closed transmission paths and associated signal generation, control and distribution equipment designed to provide cable service for reception by multiple subscribers;
- (d) “Company” means a company as defined in Section 3 of the Companies Act, 1956 (1 of 1956);
- (e) “Person: means-
 - (i) an individual who is a citizen of India;
 - (ii) an association of individuals or body of individuals, whether incorporated or not, whose members are citizens of India;
 - (iii) a company in which not less than fifty one per cent of the paid up share capital is held by the citizens of India.

- 4.3 Section 3 of the Act inter alia provides that no person shall operate a Cable Television Network unless he is registered as a Cable Operator under the Act. Section 4 of the Act provides the mode and manner of the registration of a Cable Operator. The remaining provisions of the Act are not relevant for the purposes of the question on which my opinion has been sought.
- 4.4 From Section 2 of the Cable Act, it is obvious that only a “person” as defined therein can operate a Cable Television Network. A “person” can be an individual, who is a citizen of India or an association of individuals whose members are citizens of India or a Company in which not less than fifty one percent of the share capital is held by the citizens of India. Any entity/individual falling within the definition of “person” as contained in Section 2(e) of the Cable Act has the right to operate a Cable Television Network. A Multi System Operator also operates a Cable Television Network only.
- 4.5 The querist company satisfies the condition of Section 2(e)(iii) in as much as it is a Company in which not less than fifty one per cent of the paid up share capital is held by citizens of India, and is thus a person within the meaning of the said Section. This fact is evident from the Memorandum and Articles of the Company.
- 4.6 The Company being a “person” within the meaning of Section 2(e) of the Act, there can be no legal bar to its starting a business as a Multi System Operator and thereby operating a Cable Television Network.
- 4.7 Viewed from another angle, it may be seen that under Article 298 of the Constitution of India and as has been interpreted by the Hon’ble Supreme Court that State is free to enter into trade and business, like any private company and can enter into contract for any purpose. (See 1999 (9) SCC 700, 1995 (1) SCC 478, 1990 (3) SCC 280 etc.). Therefore, a State owned company can carry on business of multi system operator. Analogy could also be drawn from the fact that even Doordarshan is providing Direct to Home (DTH) network.

5. Answer:

In view of the fact that a State instrumentality is free to enter into trade and business, like any private company and can enter into contract for any purpose and in view of the provisions of the Cable Television Network (Regulation) Act, 1995 and the rules framed thereunder for a Government company to operate a Cable Television Network, I am of the opinion there is no bar for a Government company to operate a Cable Television Network subject to conditions of licence and other regulations.

6. The query is answered accordingly and I have nothing to add further.

Sd/-
[A. SHARAN)

4. Comments received from others (including individuals)

4.1 R.L.Saravanan M.B.A., B.L., Advocate-consumer activist
Legal advisor, Thandurai Pattabiram Consumer Centre.

On careful examination of the said consultation paper the following are the comments made on the observation.

1.2(i)

(a) In respect to the State Governments:

1. YES the state governments can be allowed to start their own TV channel in order to take the welfare measures of the Government to the people. However it should be done by a separate entity formed for this purpose with adequate number of competent professionals governing it. The same should be monitored by a professional central government body like Prasar Bharathi to prevent the misuse of the ruling party using the channel to spread its ideology at the cost of the government.

2. State Governments can be allowed to operate FM radio channels with limited under the supervision of a professional body like Prasar Bharathi.

3. As the distribution platform in cable services would be a 24 X 7 service which is consumer oriented. It is impractical for a state government to maintain standards of service (since they have already proved less efficient in 24X7 services like electricity, water supply and etc.). Hence the entry of state governments into the distribution would not contribute anything better than the existing system.

Further to cater the needs of the consumers the State Government may Outsource its operations to private operators. As an event of outsourcing its operation by the Tamil Nadu cable corporation a state government entity in the state of TamilNadu has short listed M/S Hathway as its agent. It has to be taken in to account that M/S Hathway by itself is an MSO in the CAS area of Chennai and being a competitor its service to the consumers of the state entity as an agent is highly questionable.

Inter alia outsourcing is as good as leaving the control to the private operators and hence the entry of state governments in the distribution platform is not a recommendable one.

In respect to urban, local bodies & 3 tier panchayat raj bodies

None of these local administration bodies should be allowed to into broadcasting or distribution activities of cable services. Let them be focused on providing the basic infrastructure, Amenities, health and Hygiene to the needy people and try to fulfill them to the satisfaction of the public.

Further allowing them into distribution platform would empower certain persons who are the local power centre to dictate terms on the contents of prime band and etc. Hence they should not be permitted to enter into any sort of broadcasting/ distribution activities in the larger interest of consumers.

In respect to Publicly funded bodies

The function of such bodies are directly proportional to the office bearers who extend their services to their maximum efficiency. Any change in the office bearers by the process of their internal laws would affect the functionality of the bodies. Since broadcasting is an activity of taking the messages to the masses the contents of the channels would depend on the present team of office bearers which would lead to an unbalanced functioning and hence allowing them in to the broadcasting/distribution is not recommendable.

In respect to Political Bodies

Since political bodies are already backed up by certain entertainment & news channels a separate channel for them would merely add to the list of existing channels.

Further the MSOs and LCOs would be forced to include their channel in the prime band by the local politicians which in turn would go against the desires of the viewers.

Allowing political bodies into distribution platform is not recommendable one. The disqualification under section 3 of the schedule under section 12 of the Broadcasting Bill 1997 should be held good.

In respect to Religious Bodies

The hazard of spreading mythical ideas and thoughts would be enlarges if the religious bodies are permitted into the area of broadcasting and hence section 2 of the schedule under section 12 of the broadcasting Bill 1997 should be held good.

4.2 Media Content & Communications Services (India) Pvt. Ltd.



COMMENTS ON BEHALF OF MEDIA CONTENT & COMMUNICATIONS SERVICES (INDIA) PVT. LTD. TO THE TRAI CONSULTATION PAPER DATED 25 FEBRUARY 2008 ON ISSUES RELATING TO ENTRY OF CERTAIN ENTITIES INTO BROADCASTING AND DISTRIBUTION ACTIVITIES

I. Broadcasting in India: Present situation:

1.1 As on November 15, 2007, Government of India (Ministry of Information and broadcasting) has permitted **149 News and current affairs TV channels** and **106 non-News & current affairs TV channels to uplink from India.**

1.2 A total of 57 TV channels, uplinked from abroad, have been permitted to downlink in India, including 52 TV channels who have been provisionally permitted. This permission is for operation on an All-India basis and are not State-wise.

1.3 Out of the total 255 channels permitted to be uplinked from India, 123 channels have Indian ownership whereas 132 channels have varying component of foreign equity in the parent company.

1.4 Out of the total 57 TV channels uplinked from abroad and permitted to be downlinked in India, two TV channels have Indian equity whereas the remaining 55 TV channels have foreign equity.

II. Some other Entities allowed permission to broadcast TV Channels:

2.1 The Lok Sabha Secretariat has been granted permission by the Government of India to launch their own television broadcasting channel, namely, Lok Sabha television channel.

2.2 Similarly, the Indira Gandhi National Open University (IGNOU) has been granted permission earlier by the Government of India to broadcast its own television channels.

III. General Definitions of Religious Body and Political Body (as contained in the existing regulatory framework):

3.1 A “religious body” shall be:

- i. A body whose objectives are wholly or mainly of a religious nature;
- ii. A body, which is controlled by a religious body or an associate of religious body

3.2 A “political body”, shall be:

- i. A body whose objects are wholly or mainly of a political nature;
- ii. A body affiliated to a political body;
- iii. A body corporate, which is an associate of a body corporate controlled, held by, operating in association or controlling a body of political nature as referred above.

IV. Existing Disqualifications for Religious & Political Bodies: At present, the entry of, inter alia, the following bodies is disqualified in terms of the disqualifications laid down in the applicable eligibility criteria from the following:

- 4.1 Private Terrestrial Television: Religious bodies and Political bodies;
- 4.2 Frequency Modulation (FM) Radio: where any company controlled by or associated with a religious body or a company controlled by or associated with a political body is disqualified;
- 4.3 Community Radio: Political Parties and their affiliate organisations; [including students, women’s, trade unions and such other wings affiliated to these parties.];
- 4.4 Mobile TV (in terms of the TRAI recommendations on the Issues Relating to Mobile Television Service dated January 23, 2008):
 - (i) A company controlled by or associated with a religious body.
 - (ii) A company controlled by or associated with a political body.

V. Issues For Consultation regarding entry into Broadcasting Activities:

Issue 1: Whether, having regard to entry 31 in List I (Union List) of the Seventh Schedule to the Constitution of India [Posts and telegraphs, telephones, wireless, broadcasting and other like forms of communication], it would be in the interest of broadcasting sector and in the interest of the public at large, to permit Union Government and its organs, State Governments and their organs, urban and rural local bodies, publicly funded bodies and political bodies to enter into broadcasting activities such as -

- (a) starting of a television broadcast channel;
- (b) starting of a radio broadcast channel (including an FM channel) ?

5.0 MCCS Comments:

5.1 MCCS feels that it would not be in the interest of the broadcasting sector and in the interest of the public at large to permit the Union Government and its organs, State Government and their organs, urban and rural local bodies, publicly funded bodies and political parties to enter into broadcasting activities such as

- (a) starting of a television broadcast channel;
- (b) starting of a radio broadcast channel (including an FM channel)?

because of the following reasons:

5.1.1 Hon ble Supreme Court Judgment on airwaves:

The following observations of the Hon , ble Supreme Court in its judgment in the case of Union of I ndia v. Cricket Association of Bengal dated 9.2.1995 (AIR 1995 (SC) 1236:1995 (2) SCC 161) are relevant herein:

(a) "Broadcasting media should be under the control of the public as distinct from Government. This is the command implicit in Article 19(1) (a). It should be operated by a public statutory corporation or corporations, as the case may be, whose constitution and composition must be such as to ensure its/their impartiality in political, economic and social matters and on all other public issues."(Justice Jeevan Reddy) (para 201)

(b) "Government control in effect means the control of the political party or parties in power for the time being. Such control is bound to colour and in some cases, may even distort the news, views and opinions expressed through the media. It is not conducive to free expression of contending view points and opinions which is essential for the growth of a healthy democracy". (Justice Jeevan Reddy) (para 199)

5.1.2 Having regard to the aforesaid observations, it is submitted that in order to ensure impartiality in political, economic and social matters and in other public issues, it is imperative not to permit the Union Government and its organs, State Government and their organs, urban and rural local bodies, publicly funded bodies and political parties to enter into broadcasting activities.

5.1.3 Conflict of Interest:

As per the Government of I ndia (Allocation of Business) Rules, 1961, the Ministry of Information & Broadcasting is mandated to deal with all matters relating to radio and television broadcasting activities within the Union. Thus, there is an inherent conflict of interest in allowing Union Government / State Government and their organs, etc. from entering into broadcasting activities as this will lead to a situation where the " Licensor itself becomes the " Licensee.

5.1.4 Wasteful expenditure of public funds:

The source of funding for the Union Government and its organs, State Government and their organs, urban and rural local bodies, publicly funded bodies and political parties is to a large extent, public funds in the form of taxes and other levies. Therefore, allowing these entities into broadcasting activities, will tantamount to a wasteful expenditure of public funds, in the

absence of any mechanism to ensure the proper utilization of these funds. This is more relevant as in the case of Panchayati Raj bodies seeking permission to set up community radio stations. These Panchayati Raj bodies will essentially fall back upon the State for their funding and capital requirements which will again be translated in the public itself funding the setting up of these broadcasting bodies and then paying again to receive these channels, thereby creating completely unworkable dual levels of their source of funding.

5.1.5 Credibility and Unjust Enrichment Issues:

A state sponsored/ promoted Broadcasting mechanism/ institution also militates against the fundamental principles of a democracy such as India. Since the broadcast media is a powerful tool to formulate public opinion, by virtue of its enormous reach and impact, by allowing Union Government / State Government and their organs, etc. from entering into broadcasting activities will expose the citizens of India to the unbridled risk of distortion and tampering of public opinion by the State misusing its propaganda machinery thereby reducing the broadcast media to their handmaiden. This dangerous tendency, therefore, must be avoided at any cost to preserve India's democratic institutions and culture. Besides, this will also upset the delicate balance between political parties as the political party in power will have the tendency to misuse the state machinery to achieve its own political ends.

5.1.6 Public Service Broadcasting Argument:

India's Private Broadcasters are mature enough and well aware of their responsibilities towards public service broadcasting and programming. Therefore, there is no merit in the argument that only by allowing Union Government / State Government and their organs into the broadcasting sector will this sector see enough public service broadcasting.

5.1.7 Monopolistic Trade Practices and Competition Issues:

It is submitted that the entry of Union Government / State Government and their organs into the broadcasting sector will also have to be carefully tested against the touchstone of India's MRTP (Monopolistic and Restrictive Trade Practices) Laws and Competition Laws. It is quite logical to suggest that owing to the enormous clout and power of these political entities, there is a real risk that their entry into this sector will pose serious issues of creating "State Monopolies" and distort and obstruct competition especially in view of there being already in existence the Prasar Bharati (Broadcasting Corporation of India) that has been created in terms of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990.

Issue 2: Whether permitting these entities (including State Governments or their enterprises) to enter into broadcasting activities would be within the scheme of the distribution of subjects in the Constitution between the Centre and State Governments?

5.2 MCCS Comments:

5.2.1 Constitutional Provisions:

Entry No. 31 in List I (Union List) of the Seventh Schedule to the Constitution of India covers "Posts and telegraphs, telephones, wireless, broadcasting and other like forms of communication". Thus, only the Central Government, as per Article 246 of the Constitution, is empowered to legislate on these subjects.

5.2.2 Sarkaria Commission findings:

The issues relating to amendment of Entry 31 of List I of Seventh Schedule to the Constitution have also been considered by the Justice R.S. Sarkaria Commission. Paragraphs 2.10.32 and 2.10.33 of the Report of the said Commission dealt, inter alia, with the aforesaid issue and the said paragraph reads as under:- "2.10.32 Entry 31, List I - It relates to "Posts and Telegraphs: telephones, wireless, broadcasting, and other like forms of communication".

Para 2.10.32 Entry 31, List I - I t relates to "Posts and Telegraphs: telephones, wireless, broadcasting, and other like forms of communication".

It has been suggested by one State Government that Broadcasting and Television should be transferred to the State List. Another State Government has suggested that these matters should be transferred to the Concurrent List.

Para 2.10.33: There are various facets of Broadcasting. These powerful media, inter alia, have a vital role in national integration, education and socio-economic development of the country. Establishment and working of this media involve large investments and complex technological requirements. "Broadcasting" includes not only 'Radio and Television' but also other forms of wireless communication. The criticism of most of the States is mainly directed against the functional and not against the structural aspect of this Entry. Their main grievance is about lack of access to these media, which is an entirely different issue. We have considered these complaints and suggestions in detail in the Chapter on "Mass media". **Suffice it to say here, that Broadcasting and Television are a part of the Broad head of "Communications" which are universally recognised as matters of national concern.** These media have even inter-national dimensions.

It is, therefore, submitted that permitting these entities (including State Governments or their enterprises) to enter into broadcasting activities would **not** be within the scheme of the distribution of subjects in the Constitution between the Centre and State Governments.

Issue 3: In case the Governments and government owned or controlled enterprises, local self government institutions, other publicly funded bodies, and political bodies (both at the national and regional level) are to be allowed entry into the broadcasting service, in that case, what type of broadcasting activities should be permitted to each one of such organisations and to what extent?

5.3 MCCS Comments:

5.3.1 As stated earlier, MCCS believes that the Governments and government owned or controlled enterprises, local self government institutions, other publicly funded bodies, and political bodies (both at the national and regional level) should not be allowed entry into the broadcasting service. However, in the unlikely event that they are, then, the type of broadcasting activities that should be permitted to each one of such organizations is related to the following sectors:

- (i) Education-esp. Primary Education;
- (ii) Rural Employment Issues;
- (iii) Eradication of Poverty
- (iv) Agricultural issues.
- (v) Infant & Child Health-Rural and Semi Urban India.
- (vi) Rural Infrastructure issues.

5.3.2 In these instances also, the role of the Governments and government owned or controlled enterprises, local self government institutions, other publicly funded bodies, and political bodies should be that of a mere facilitator and not that of a profit making corporation.

Issue 4: What are the safeguards needed for ensuring bonafide usages of the broadcasting permission granted to such entities? Are they enforceable particularly if the state machinery is the prime mover?

5.4 MCCS Comments: It is submitted that in such an unlikely scenario, it will be impossible to enumerate and enforce any safeguards to ensure bonafide usage of the broadcasting permission granted to such bodies and these safeguards will be merely on paper as they will prove ineffective in a scenario where state machinery is the prime mover.

Issue 5: Whether the disqualifications proposed in clause 12 of the Broadcasting Bill, 1997 and Part I of the Schedule thereto are still relevant as on date, either as they are or with some modifications, for incorporation in the proposed Draft Broadcasting Services Regulation Bill or in any other relevant legislation? Correspondingly, which element of various policy guidelines (referred to in Chapter 3) would require amendments in the respective provisions relating to eligibility for entry into the broadcasting sector?

5.5 MCCS Comments:

5.5.1 The disqualifications proposed in clause 12 of the Broadcasting Bill, 1997 and Part I of the Schedule thereto are still relevant as on date, for incorporation in the proposed Draft Broadcasting Services Regulation Bill or in any other relevant legislation in this regard.

Issue 6:

- (i) Whether religious bodies may be permitted to enter into broadcasting activities such as
 - (a) starting of a television broadcast channel;
 - (b) starting of a radio broadcast channel (including an FM channel)?

5.6 MCCS Comments:

(i) MCCS believes that religious bodies should **not** be permitted to enter into broadcasting activities enumerated above.

(ii) If such religious bodies are permitted to enter into broadcasting activities, then, what are the safeguards to be stipulated to ensure that the permission /license so granted is not misused? How should a distinction be maintained between religious bodies running a channel and non-religious bodies offering religious content in their channels? (iii) If the answer to (i) is affirmative, then, How should such religious bodies be defined? Should such religious bodies be a trust or a society or a company under section 25 of the Companies Act, 1956?

(ii) This issue does not arise in view of response to Issue 6 (i) being in the negative.

V A. Issues regarding entry into Distribution Platforms:**Issue 7:**

Whether, having regard to entry 31 in List I (Union List) of the Seventh Schedule to the Constitution of India [Posts and telegraphs, telephones, wireless, broadcasting and other like forms of communication], it would be in the interest of broadcasting sector and in the interest of the public at large, to permit Union Government and its organs, State Governments and their organs, urban and rural local bodies, publicly funded bodies, political bodies to enter into distribution activities such as cable, DTH, HITS, etc.

5.7 MCCS Comments:**5.7.1 Existing situation:**

The cable TV sector, as a distribution platform, is almost entirely in the hands of private cable operators including MSOs (multi-system operators). Some State owned entities such as MTNL have also reportedly registered themselves as cable operators in some areas under the Cable Television Networks (Regulation) Act, 1995. DTH distribution platform is in the hands of private

players except for the DTH free-to-air service of Doordarshan under Prasar Bharati.

MCCS reiterates all the comments stated hereinabove in paras 5.1 above (5.1.1 to 5.1.7). For all the reasons stated therein, it is submitted that having regard to Entry 31 in List I (Union List) of the Seventh Schedule to the Constitution of India [Posts and telegraphs, telephones, wireless, broadcasting and other like forms of communication], it would **not** be in the interest of broadcasting sector and in the interest of the public at large, to permit Union Government and its organs, State Governments and their organs, urban and rural local bodies, publicly funded bodies, political bodies to enter into distribution activities such as cable, DTH, HITS, etc.

Issue 8:

Whether permitting these entities (including State Governments or their wholly owned enterprise) to enter into distribution activities would be within the scheme of the distribution of subjects in the Constitution between the Central and the State Governments.

5.8 MCCS Comments:

MCCS reiterates all the comments stated hereinabove in paras 5.2 above. For all the reasons stated therein, it is submitted that permitting these entities (including State Governments or their wholly owned enterprises) to enter into distribution activities would be not within the scheme of the distribution of subjects in the Constitution between the Central and the State Governments.

Issue 9:

If such entities are to be permitted to enter into the area of distribution, then what are the safeguards to be provided to prevent misuse of such permission?

5.9 MCCS Comments: It is submitted that in view of the clout and power of the administrative machinery of the State Governments, it will be difficult to prevent misuse of such permission.

Issue 10:

Whether the entities, other than citizens of India, should be considered as “person” under sub-clauses (ii) and (iii) of clause (e) of section 2 of the Cable Television Networks (Regulation) Act, 1995.

5.10 MCCS Comments:

5.10.1: For the purpose of the Cable Act, “person” has been defined as under:-Section 2, Clause (e) of the Cable Television Networks (Regulation) Act, 1995.

‘person’ means -----

(i) an individual who is a citizen of India;

(ii) an association of individuals or body of individuals, whether in-corporated or not, whose members are citizens of India;

(iii) a company in which not less than fifty-on per cent of paid-up share capital is held by the citizens of India;”

MCCS, therefore, submits that the entities, other than citizens of India, should not be considered as “person” under sub-clauses (ii) and (iii) of clause (e) of section 2 of the Cable Television Networks (Regulation) Act, 1995.

Issue 11:

Whether the provisions of the Cable Television Networks (Regulation) Act, 1995, particularly, the definition of “person” as contained in the said Act, requires any clarificatory amendment or not with respect to entry of entities such as State Governments, urban and local bodies, 3-tier Panchayati Raj bodies, publicly funded bodies, political parties and religious bodies.

5.11 MCCS Comments:

In view of the submissions made hereinabove, MCCS, therefore, submits that the provisions of the Cable Television Networks (Regulation) Act, 1995, particularly, the definition of “person” as contained in the said Act, **does not** require any clarificatory amendment with respect to entry of entities such as State Governments, urban and local bodies, 3-tier Panchayati Raj bodies, publicly funded bodies, political parties and religious bodies.

Issue 12:

In case such bodies are to be given permission to enter into the business of distribution of broadcast channels, what are the other amendments which would be required in the Cable Television Networks (Regulation) Act, 1995 and Rules thereunder, other Acts and in the various policy guidelines relating to other distribution platforms.

5.12 MCCS Comments:

In view of the submissions made hereinabove, it is submitted that in case such bodies are

to be allowed permission to enter into the business of distribution of broadcast channels, the other amendments that would be required in the Cable Television Networks (Regulation) Act, 1995 and Rules thereunder are the following:

(i) Enlarging the scope of the definition of “person” in terms of Section 2, Clause (e) of the Cable Television Networks (Regulation) Act, 1995;

(ii) Enlarging the scope of the “Programme Code” and the “Advertising Code” in terms of Rules 6 & 7 respectively of the “The Cable Television Networks Rules, 1994;

(iii) Amending the foreign investment limits & norms for Cable, DTH, HITS, Mobile TV;

(iv) Amending several provisions of the envisaged & proposed Broadcasting Services Regulation Bill.

III. From Constituent Assembly debates, Sarkaria Commission Report, and Terms of Reference of the Commission on Centre-State Relations

On Issues of whether the broadcasting as a subject should be with the Centre or State

Issue 13:

In view of the setting up recently of the Commission on Centre State Relations, is it necessary now for the Telecom Regulatory Authority of India to look into the issue of permitting State Governments or their enterprises to enter into broadcasting activity? If the answer is in the affirmative, then the views on the following issues may be furnished.

5.13 MCCS Comments:

After examining the terms of reference of the Commission, MCCS submits that in view of the setting up recently of the Commission on Centre State Relations, it is not necessary now for the Telecom Regulatory Authority of India to look into the issue of permitting State Governments or their enterprises to enter into broadcasting activity.

Issue 14:

(a) Whether permitting the State Governments and their enterprises to enter into the broadcasting sector or into the business of distribution thereof would have impact on the Centre-State Relationship and the inter-se relationship among the States.

5.14 MCCS Comments:

Yes, it will have an impact on the Centre-State Relationship and the inter-se relationship among the States.

(b) In the light of foregoing paragraphs, whether political bodies and religious bodies should be permitted to enter into the business of distribution of broadcasting channels. If the answer is affirmative, what amendments in the laws and in the various policy guidelines will be necessary for this purpose?

5.15 MCCS Comments:

Having regard to the aforesaid submissions, MCCS submits that political bodies and religious bodies should **NOT** be permitted to enter into the business of distribution of broadcasting channels.

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4.3 Cable Operators Federation of India
(Copy of letter dated the 9th April, 2008)

Cable Operators Federation of India
13/97, Subhash Nagar, New Delhi-110027, Ph. 011-25139967, 9810269272

Ref/COFI/TRAI/02/08
09 April 2008

The Chairman
Telecom Regulatory Authority of India
New Delhi-110001

Subject: Comments on TRAI's Consultation Paper dated February 25, 2008 –Issues relating to entry of certain entities into Broadcasting and Distribution activities

Sir,

WE welcome TRAI's initiative to issue a consultation paper on the above subject.

We wish to state that, where as the general approach should be to have suitable regulations to prevent political or state control of media in any manner, whether distribution or broadcasting, permitting state bodies to carry out distribution of broadcast signals by any means will have the following positive effect:-

1. It will benefit the economically weaker section of the population who are being serviced by the local cable operators providing them with infotainment at a low cost for the last 15 years. State government, if providing them the signals as an MSO will ensure that the consumer is not unnecessarily burdened with undesired channels at exorbitant rates. Reports from Tamilnadu where a state run MSO is operational have indicated that all cable operators are very happy with the services.

2. Since our cross-media laws are very weak, large corporates are building nationwide monopolies and because of their political connections get away with all kinds of content and violation of the rules which is detrimental to the interest of the masses who are forced to see these programmes. This can be checked if state bodies are involved in broadcasting.
3. State run entities will also look after the interests of the employment of more than 15 lakh people involved with the cable TV and broadcasting industry, particularly in the smaller entities.
4. Broadcasts of national/state importance like the sports events are given sufficient coverage.

I. Issues regarding entry into Broadcasting Activities:

■..... Whether, having regard to entry 31 in List I (Union List) of the Seventh Schedule to the Constitution of India [Posts and telegraphs, telephones, wireless, broadcasting and other like forms of communication], it would be in the interest of broadcasting sector and in the interest of the public at large, to permit Union Government and its organs, State Governments and their organs, urban and rural local bodies, publicly funded bodies and political bodies to enter into broadcasting activities such as –

- (a) starting of a television broadcast channel;
- (b) starting of a radio broadcast channel (including an FM channel) ?

Comments:

States can have independent corporations to run these businesses just like Prasar Bharti. Infact they can also function under Prasar Bharti. Community channels and e-governance channels, whether on radio, television or broadband, can pave the way for mass education of the masses in a big way.

Since these ventures will be run by professionals, political parties will not have any control over them.

What we need is an Independent Broadcast Regulator to register these entities like any private entity and have a strict control on their functioning and content. The Registering authority has to ensure that the ownership of these entities must be thoroughly checked before giving them permission so that no ownership frauds take place.

Yours faithfully,

Roop Sharma

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NOTE: The Inter-State Council Secretariat of the Government of India (Ministry of Home Affairs), vide their letter No.1/7/2008-ISC dated the 25th March, 2008 informed this Authority that the matter is under active consideration of the said Secretariat and the Commission on Centre-State Relations serviced by the said Secretariat and comments will be sent shortly. However, no comments have been received from them in the matter till date, i.e., the 11th April, 2008.