March 30, 2008

Shri Rakesh Gupta
Telecom Regulatory Authority of India
New Delhi

Re : Comments to TRAI by Zoom on the Consultation Paper on FDI limits for Broadcast Sector

Dear Sir,

Our views on foreign investment limits for the TV sector are contained in the note below.

Zoom is a non-news television channel and is part of Bennett, Coleman & Co. Ltd. We welcome TRAI's initiative on an issue of long term significance for this country and we agree that foreign investment should not be a short-term stop gap solution for quick money --which is what FDI in media has come to signify.

May we request you to kindly keep us informed of the Open House discussions on this subject and update us of any further developments in this regard.

Thanking you,

Sincerely,
For Zoom
a division of Bennett, Coleman & Co. Ltd.

Aamod Gupte
Vice President - Legal and Business

Encl : a/a

Consultation paper on foreign investment limits on Broadcasting sector

Comments to TRAI from Zoom, a division of Bennett, Coleman & Co. Ltd.

Overview:

The Government has prescribed various limits for foreign investment in relation to different sectors of industries, which apply uniformly to all Indian entities constituting each such industry. The main purpose of these limits is to be found in the degree of protection sought to be provided by the Government to each such industry from the control of the foreign investors. In other words, how much control is the Government willing to allow the foreign investors to have over the Indian industry for such industry sectors.

The control is broadly of two kinds i.e. managerial control and financial control. Managerial control is normally achieved through financial control. Hence the importance of foreign investment limits.

The Indian media industry has, much in the same way as in other countries across the world, always been protected against foreign control - be it in terms of editorial control, managerial control or content.

As demonstrated below, the higher the FDI content in the Indian media companies, the higher would be the foreign control and that would militate against the above policy of protecting the Indian media industry.

Higher investment brings with it higher control as summarized below:

	Extent of Shareholding (Investment)	Nature of Control provided by such investment
	(In terms of the Indian Companies Act, 1956)	
(A)	Less than 10%	Insignificant

(B) 10% & above	Enables the Foreign Investor to (a) demand a Poll for passing of any Resolutions at the General Body Meetings of the Indian Investee Company; and (b) make a complaint to the Central Govt. for investigation into Oppression & Mismanagement of the Indian Investee Company. Such complaints could at times be frivolous and a means to harass.
(C) Above 25%	The Foreign Investor could prove to be a roadblock by not allowing Special Resolutions to be passed by the General Body Meetings of the Indian Investee Company.
(D) More than 50%	The Indian Investee Company would become a Subsidiary of the Foreign Investor Company and would become obliged to obey the dictates of the Foreign Investor. Also the Foreign Investor can dictate its terms for passing of the Ordinary Resolutions.
(E) 75% and above	This would provide 3/4th majority to the Foreign Investor who can then get approved all the Special Resolutions in the Indian Investee Company. Special Resolutions are required for all major decisions like alteration of Memorandum, change of name, commencement of new lines of business, sanctioning remuneration to Directors, winding-up of the Company etc.

It may be mentioned that all the above shareholding limits are in terms of percentage of the entire nominal value of Equity Capital (Issued Equity Share Capital) of the Investee Company.

It is keeping in view the above, the SEBI Takeover Code and the Competition Act have prescribed the various disclosure norms and open public offer trigger points and define concepts like “group” and “persons acting in concert”.

It may be mentioned that with every increase in the percentage of FDI – including between 25-49% - the Foreign Investor would demand, and be given, more and more number of seats on the Board of the Indian Investee Company.

This would bring with it more and more control on, and might be obstacles in, operational matters. Right to speak and to express is a Constitutional Right. By having a control in the operational matters, the Foreign Investor may dictate the contents of the TV or radio channel.

Moreover, until and unless the Indian government and all related entities including the RBI, have **fool-proof processes to check inflow of source of funding, including foreign institutional investment, there should be a ban on any further increases in foreign investment norms for media as a whole.**

In this regard, we would also like to flag the fact that the differential foreign investment limits are necessary and a uniform FDI policy across media is a flawed argument. Hon’ble I&B minister Shri Priya Ranjan Dasmunsi in response to a question in Parliament in mid-March 2008 had put it well: “Separate policies for foreign investment for different media had been adopted as the scope and requirements of different mediums are different. The reason for adopting separate policies is to meet the special requirements of the different mediums in the print, broadcasting and movie sectors”, he added.

We submit as under :

I. Status quo should be maintained in all FDI limits for TV broadcasting:

We are of the opinion there is no need for change in any sector of TV broadcasting. FDI in News and Current Affairs Channels should remain at 26% while that in Non-News Channels should remain at 100%. FDI in Cable networks should remain at 49% as this does not require huge amounts of capital investment, and Indian companies are more than able to raise these sums. Moreover, since cable operators are also allowed to run their own cable channels (including news), and for the reasons outlined above, this TV content is a sensitive area, there should be no further hike in FDI for cable networks. The same argument applies for DTH and other broadcasting infrastructure since unlike telecoms, the investments required are not huge and can be amply raised by Indian corporates including via the stock market or debt, without ceding control to foreign interests.

Hence, we recommend the following foreign investment limits for Broadcasting:

Sub-sector	**Limit**
Cable network	49 % (FDI + FII)
DTH	49 % (FDI + FII) FDI component not to exceed 20 %
Uplinking Hub/ Teleports	49 % (FDI + FII)
News & Current Affairs TV Broadcaster	26 % (FDI + FII)
Non-News TV Broadcaster	No limits laid down

II. We disagree with TRAI's contention that there should be a uniform foreign investment regime across all media sectors:

This is a highly flawed assumption as:

(a) Each sector of the media industry –TV, radio, cable, DTH, IPTV, etc, is a **different industry altogether** and cannot be given the one-size-fits-all treatment

(b) All these **sectors are at different stages of growth**, and a powerful instrument like sudden infusion of foreign money, can stall the progress of small and medium Indian companies which have only recently invested in these sectors. For instance, radio has been opened up under a new policy only 2 years ago.

(c) While it is correct that carriage platforms are moving towards a converged environment –but only from the standpoint of the *end-user or consumer*, **the *industries* that make up these areas are not converged, and hence require differential treatment.**

In this regard, we support the following response from the Hon'ble I&B minister Shri Priya Ranjan Dasmunsi in response to a question in Parliament in mid-March 2008: "Separate policies for foreign investment for different media had been adopted as the scope and requirements of different mediums are different. The reason for adopting separate policies is to meet the special requirements of the different mediums in the print, broadcasting and movie sectors", he added.

III. We agree with TRAI (and Ministry of Information and Broadcasting) that no change is required in 26% foreign investment limit (FDI+FII) for news and current affairs channels as:

(a) Media has special obligations --given its protected and privileged status under the Constitution

The reason why the foreign investment limit for news channels (and Print media) has been capped at 26%, is that the media has special obligations, given its protected and privileged status under the Constitution, under Article 19 (i) (a). Unlike other sectors, media is a part of the State and this sanctity must be protected. On the other hand, sectors such as telecom, energy, retail, finance and banking, insurance and so on, are purely commercial ventures and belong to an altogether different category, being pure consumer products and services.

Therefore, what applies to other industries and services does not apply to the media. Just as the other estates of society – executive, legislature and judiciary are best guarded in Indian hands, likewise the media is best protected under Indian control.

(b) Indian-controlled news channels are imperative viz national security

All Indian governments have appreciated the fact that Indian news channels have always defended the integrity and unity of the nation, irrespective of whether a channel is ideologically inclined towards the left, right or centre. In the past, the nation's attention has also been drawn to the fact that foreign reportage has been at variance with India's legal rights; especially pertaining to the Line of Control in Kashmir. In fact, this was underlined when the world's most internationally respected public broadcaster had, for months on end, shown even the Jammu region (and not just Pak-Occupied Kashmir or even Kashmir) as a disputed area during its blanket coverage of the earthquake in POK and surrounding areas some years ago.

(c) Globally, countries have protected their news industry even as they welcome FDI/FII in other sectors

Globally, countries that have followed the path of liberalization and welcome FII and FDI in all other sectors, have protected their news industry, recognizing the sanctity of the media and the need to preserve its independence from overseas control.

(d) News media does not need huge volumes of capital for modernization, unlike other capital intensive sectors like telecoms

While some corporates have argued in favour of foreign investment in order to get access to quick money, we have always maintained that the media industry does not require huge volumes of capital for modernization, unlike capital-intensive sectors such as telecoms or power.

(e) Indian media companies are getting much higher valuations through IPOs in the Indian capital market, as compared to selling their shares to foreign partners (which also leads to loss of control)

Today, when an Indian company sells its shares to strategic foreign partners or investors, it gets lower valuations than what it would get if its shares are offered through an IPO in the Indian market. In fact, it can be argued that the reasons for bringing in FDI/FII which were argued by some other companies decades ago, are no longer relevant. Indian companies have best captured their value in the Indian stock market. Raising capital for expansion or modernization can be done better in a market with deep pockets, rather than through foreign tie-ups.

(f) News channels are a function of journalism, not of technology/machinery & FDI will not come in with any proprietory technology

News channels are in the business of creating, gathering and aggregating opinion and information. Their core functions are not heavily technology dependent. Good journalism, balanced opinion and information-gathering ability, rather than rocket science technology and machinery, is what is required for good TV channels. Our journalists are world class and our TV channels are excelling in all domains. In fact, the corollary is that thanks largely to the Indian TV channels' efforts, today TV channels are priced extremely low --at very nominal amounts per month. There is no proprietary technology or knowledge that comes with FDI in the news channel industry, unlike sectors where the government has favoured FDI for technological advance and expertise.

(g) Sole policy objective cannot be increase in FDI inflows

As outlined above, FDI in broadcasting also has implications regarding perceived outside influence (news) and politico-strategic interests of the country. Hence, the sole policy objective cannot be increase in FDI inflows as foreign investments entail other serious considerations.

(h) Indians already have access to content from across world and hence suffer no disadvantage if news media is owned by Indians

In today's era of high-speed telecom and Internet, most Indians have access to content from across the world. Therefore, Indians suffer no disadvantage when news media are owned by Indians.

(i) Foreign investment rules have been liberalized only recently & do not need any further changes

The Government of India currently allows foreign equity investment up to 26% in television news channels. Originally this limit was earmarked only for FDI, but subsequently, these have recently been made fungible, thus providing flexibility to foreign investors, who may choose to invest either through FDI or FII routes. Hence there is no need to make further changes in policy.

(j) Foreign investment: Other shortcomings

We agree with TRAI's view that there is the apprehension that the entry of foreign firms may raise the level of concentration in host country markets which can impede competition. It can have a negative effect on the balance of payments as profits are repatriated (albeit often offset by incoming FDI). It may lead to crowding out of domestic industry in case of credit constraints in an economy. It may discourage the development of technical know-how and may be detrimental to the growth of domestic producers.

Hence, there is no need to change the existing 26% cap for FDI, whether directly or indirectly, and whether by a single Foreign Investor or a number of them taken together.

IV. Summary of other points including automatic route, calculation of foreign investment, etc:-

5.2.1. Whether the foreign investment limits need to be revised as proposed.

Response : Not for News & Current Affairs for the multiple reasons given above in I

5.2.2. Whether the proposed limits are acceptable for the reasons given in the reference or there are some other reasons? Any other reasons in favour of the proposed limits may please be elaborated.

Response : NA

5.2.3. If the proposed limits are not acceptable then the reasons for non-acceptance may be given. In such a case, the comments should also indicate the appropriate foreign investment limits.

Response : NA

5.2.4. Whether the foreign investment limits could be revised to some other level with sub limits for FDI and FII within these limits.

Response : NA

5.2.5. Whether the foreign investments should be permitted through the automatic route or should there be a sub limit beyond which foreign investments would need FIPB approval?

Response : For FDI, prior FIPB is an achievable goal but when FII investment happens in a listed entity as "stock-i-trade" investment, prior FIPB approval may often be impractical- To level the playing field, FDI/FII may be allowed on automatic route to a limit (say upto 20% of allowed limit i.e if 26% permitted then upto 5% without Prior approval, to be regularized]. Alternatively, FII investment in listed entities beyond a threshold limit should alone be counted for FIPB clearance as well as determining extent of FDI+FII Vs the limits defined.

However, apart from the issues arising from the proposal of the Government, there are other issues which relate to the need for a comprehensive policy on foreign investment limits for different segments of the broadcasting sector. These are:-

5.3.1. Whether it will be more reasonable to classify the different segments of broadcasting sector in terms of carriage services (such as Cable Services, Headend In The Sky (HITS), DTH, Teleport etc.) and content services (such as Private FM radio, Television Broadcasting etc.) for the purposes of laying down foreign investment limits (FDI limits, FII limits and composite foreign investment limits). Such a classification would enable liberal foreign investment limits for one category and more conservative limits for the other category of services.

Response :sub sector based limits have merit, as the investments requirements, technological upgradation/ indigenization and in most cases level of interaction with the direct consumer would vary for each of these sub-sectors. Points outlined in IV above.

5.3.2. The convergence of technologies in telecom and broadcasting sectors has made it possible to provide many broadcasting services (such as mobile television services, IPTV services) using telecom networks as

well as broadcasting networks. Whether the foreign investment limits for such segments of broadcasting sector should be brought in line with the foreign investment limits for Telecom operators.

Response : No, as per III above.

5.3.3. Whether the methodology for calculation of foreign investments in different segments of broadcasting sector should be standardized. If so, the comments may specifically suggest the appropriate method for calculations in this regard. While doing so, the methodology referred to in paras 4.10 and 4.11 may also be appropriately commented upon.

Response : What constitutes FDI/ FII needs to be clarified in terms of the investing entity itself having some foreign Holding (grand father clause) may be not considered so long as such holding is nominal, say less than 5%

5.3.4. Whether the foreign investment limits should be raised to 100% so as to permit companies incorporated in India but with 100% foreign holding to provide broadcasting services in the country with appropriate monitoring mechanism in place coupled with content regulation through programme and advertising codes. Reasons in support of the comments may be given.

Response : No. Higher FDI/FII should be limited to unique technology which would benefit the customers in terms of lowered delivery cost and operating transparency, but with a pre agreed transition for indigenous participation in management and ownership.