



Telecom Regulatory Authority of India

Recommendations

On

Foreign Investment Limits for Broadcasting Sector

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Preface

Presently, the rules regarding FDI vary from segment to segment in the media sector. There is a strong case for review of the FDI policy to bring in consistency in policy and level playing field among competing technologies. This issue has gained importance on account of increasing convergence in Broadcasting and Telecommunications technologies and its impact on competition in the market. The Authority has highlighted this suggestion in its recommendations to the Government on various issues.

The Ministry of Information & Broadcasting, Government of India, has sought recommendations of the Telecom Regulatory Authority of India (TRAI) on foreign investment limits for various segments of broadcasting sector. The Authority has accordingly analysed the issues related with foreign investment limits in broadcasting sector and is giving comprehensive recommendations in the matter.

The basic approach of the Authority in the matter has been to consider broadcasting services as falling into carriage services and content services. Thereafter, the foreign investment limits have been recommended for different segments with an objective of having a consistent policy that promotes level playing field conditions.

It is hoped that revision of foreign investment limits for various segments of broadcasting sector would ensure that foreign investment policies do not throw up opportunities of arbitrage and are not a stumbling block where there is a natural convergence of technologies.

(Nripendra Misra)
Chairman, TRAI

Chapter - 1: Background

- 1.1 In its recommendations on “2nd Phase of Private FM Radio Broadcasting” dated 11th August, 2004, the Authority had pointed out “... The rules regarding FDI vary from segment to segment in the media sector. ... This leads to anomalies in media policy – whereas foreign news channels can be seen even for news, FDI is not permitted even for pure entertainment FM radio.” The Authority had recommended “...It is therefore necessary for the Government to review the policy in a holistic manner and bring about a greater degree of consistency in the rules for various segments.”
- 1.2 The recommendations on Digitalization of Cable Television dated 14th September 2005 reiterated the earlier recommendations on the issue by stating “...The Authority has already stated in its recommendation on “Issues relating to Broadcasting and Distribution of TV channels” that there should be consistency in policy and level playing field between competing technologies and therefore had recommended that there is need for a complete review of the FDI policy so that it is consistent across all sectors. This would ensure that policies are not a stumbling block where there is a natural convergence of technologies. This recommendation is reiterated in the context of digitalisation also.”
- 1.3 The Ministry of Information & Broadcasting, Government of India, had sought recommendations of the Telecom Regulatory Authority of India (TRAI) under Section 11(1)(a) of the Telecom Regulatory Authority of India Act, 1997 on foreign investment limits for various segments of broadcasting sector vide letter dated December 11, 2007 (annexed as Annexure I to these recommendations). The letter specifically sought recommendations for different segments of broadcasting sector such as teleport, DTH, satellite radio, HITS, cable operators and FM radio.

- 1.4 In line with its consultative approach, the Authority issued a Consultation Paper on March 3, 2008 for comments from the stakeholders before giving its recommendations to the Government on foreign investment limits for various segments of broadcasting sector. The stakeholders were also asked to offer suggestions regarding classification of the different segments of broadcasting sector in terms of carriage services (such as Cable Services, Headend In The Sky (HITS), DTH, Teleport, mobile TV, IPTV etc.) and content services (such as Private FM radio, Satellite radio, Television Broadcasting etc.) for the purposes of laying down foreign investment limits consisting of FDI limits, FII limits and composite foreign investment limits and the methodology for calculation of foreign investments in different segments of broadcasting sector. An Open House Discussion was held by the Authority on these issues on 4th April, 2008 in Mumbai.
- 1.5 The Authority has carefully examined all the responses received from various stakeholders. The Authority has kept in mind that there is increasing convergence of technologies in telecom and broadcasting sectors on account of digitalization and in this specific case, it is technically feasible to provide many broadcasting services by both telecom networks as well as by broadcasting networks. Therefore, the recommendations are being made for enabling and facilitating a level playing field between telecom and broadcasting sectors.
- 1.6 While making these recommendations, the Authority has been guided by the principles of consistency in policy and ensuring a level playing field as outlined in its earlier recommendations on “Issues Relating to Convergence and Competition in Broadcasting and Telecommunications” dated 20th March 2006. The said recommendations stated “...The Authority has already taken a view on this issue in several of its recommendations and would again urge the Government to undertake a complete review of the FDI policy for the various sub sectors in telecommunications and broadcasting so that there

is consistency in policy and a level playing field between competing technologies.”

- 1.7 The Recommendations on various issues relating to Foreign Investment limits for various segments of Broadcasting Sector have been grouped together under the broad headings “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.). This is because the Authority feels that there should be a reasonable degree of level playing field among various platforms providing carriage services, and similarly among various content service providers. However it is recognized that any rigid classification criterion would not be able to muster undisputed and puritanical framework and special features of each activity should impact on foreign investment limits.

Chapter - 2: Foreign Investment in Carriage Services

- 2.1 The broadcasting services can be broadly grouped into carriage services and content services. Service providers which provide carriage services essentially provide the medium for carriage of content/ information. The carriage service providers create infrastructure for distribution of content. This category broadly refers to the service providers providing Cable TV Services, Headend in the Sky (HITS) services, DTH services, teleport services, mobile TV services and IPTV services. Such distributors of TV channels fall in the category of carriage service providers. Technically, it is possible for cable TV networks to provide voice telephony and broadband (including Internet). Similarly, the modern telecommunications networks are also capable of triple play, i.e. offering voice, video and data services and the terms and conditions of Unified Access Service License (UASL) agreement as well as of Cellular Mobile Telephone Service (CMTS) license agreement already permit the same. This is often referred to as convergence of broadcasting and telecom technologies with the consequential blurring of boundaries between these two technologies. Thus, convergence of technologies in telecom and broadcasting sectors has made it possible to provide broadcasting carriage services using telecom networks as well as broadcasting networks.
- 2.2 Generally, the content service providers create and package content and sell it to the carriage service providers. Primarily Broadcasters fall in the category of content service providers. Private FM radio services and Satellite radio service combine both content and carriage services as these service providers create their own content and also deliver the same to the listeners directly.

Comments of the stakeholders

- 2.3 The consultation paper sought comments, among others, on foreign investment limits in different segments of carriage services mentioned in para 2.1 above. Majority of stakeholders have suggested 74% foreign investment limit for television distribution, i.e. DTH, HITS, Cable Network and Teleport. Some suggestions for 49% foreign investment limit in these segments have also been received.

Analysis of Comments and Recommendations of the Authority

- 2.4 The majority of the stakeholders appreciate the need of attracting foreign investments for growth of the sector by enhancing the foreign investment limits. Some stakeholders have also indicated that to maintain parity with the telecom sector, the foreign investment limits should be brought up to the level of 74%. Some stakeholders have expressed in favour of lower foreign investment limits on the grounds that broadcasting is a sensitive sector.
- 2.5 The Authority has dealt with the issue of foreign investment for carriage services in its recommendations on HITS (a carriage service) sent to the Government on October 17, 2007. In these recommendations, the issue of media being a sensitive sector had also been covered and it was pointed out that:-

“2.35As far as the issue of media being a sensitive sector is concerned, it is to be kept in mind that HITS operation is only a means of carriage of the content of different broadcasters. Even today, for non news broadcasters, there is no FDI ceiling specified and these channels are being governed primarily by the downlinking guidelines. Therefore, when foreign investments can be allowed without any ceiling for content

producers such as non-news broadcasters, there is no reason why HITS, which is only a carriage service provider, should be mandated to have a foreign investment ceiling of only 49%.”

2.6 The Authority is also aware of the three issues facing the cable TV sector today. The first of these relates to a very high degree of fragmentation in the last mile cable TV network. The number of such cable operators is estimated to be between 40,000 to 60,000 in the country. The fragmentation leads to sub-optimal funding and poor quality of operations. The second issue relates to low capacity of the analogue cable TV network as a result of which they are able to carry between 30 to 70 channels only. There is an urgent need to upgrade the networks and to adopt digital transmission technologies. This would require significant investment. The third issue relates to monopoly in the last mile cable TV network, which works to the disadvantage of consumers. This monopoly in the last mile network is intimately linked to the fragmented and highly localized cable TV operations, where each cable operator tries to protect his area of operations.

2.7 A step in the direction of tackling these three problems associated with present day cable TV operations is to have a framework which will encourage flow of funds into this segment. This will then lead to consolidation in the last mile cable operations as well as upgradation of the network. It is also expected that consolidation will lead to greater competition in the last mile because large corporate entities cannot be easily stopped from expanding their area of operation into the territory served by the rival cable operators. This will greatly benefit the consumers.

2.8 The lower limits of foreign investment is sometimes advocated on the ground that there is enough domestic funding available and, therefore, there is no need to take recourse to external sources of funding. But, foreign investment is not only about opening the doors to foreign investors, it is also about bringing in world class technology and

international best practices. These are essential if we have to bridge the digital divide and to reap the benefits not only in terms of improved entertainment, but in terms of successfully exploiting the whole range of communication and information technology offerings.

Cable Networks

- 2.9 All the responding MSOs except one, have suggested enhancing the foreign investment limit for cable networks to 74%. The two associations of cable operators whose response was received are divided on this issue and have suggested 49% and 74% foreign investment limits. While giving due weightage to the suggestions received from the stakeholders, the most important factor to be kept in mind is that foreign investment limit for this segment should be part of a roadmap for modernization and upgradation of the cable infrastructure in the country. A roadmap for upgradation of cable infrastructure has to be based on the present state of cable network in the country. The roadmap should protect the existing investments in the cable networks and guide the incremental investments towards upgradation and modernization of the infrastructure.
- 2.10 Presently, the cable infrastructure in the country is predominantly one way analog network. This has resulted in limitation on channel carrying capacity of the network, which in turn leads to demand for payment of carriage charges. Moreover, lack of addressability results in frequent disputes amongst service providers relating to subscription charges. Also, the subscribers do not have a choice in selection of the channels that they wish to watch and pay for in the existing analogue transmission.
- 2.11 Although numerically the number of households receiving cable television services in the country is very large (about 80 million households), technologically, the country is trailing behind other advanced countries, where the cable networks are digital two-way networks which support triple play services. Upgradation of cable

networks would help in spreading broadband penetration and other telecom services in the country. To harness the advantages of advancement in technology, it is very important to upgrade the existing cable infrastructure in the country and augment its capacity by digitalization and increasing use of optical fiber links. This would require large amount of investment as well as technological inputs.

2.12 The Ministry of Information & Broadcasting in its letter dated 11th December 2007, has indicated its preference about continuing the existing limit of 49% for the cable TV network segment. The reason given by the Ministry is that cable TV network is presently the backbone of TV distribution system and therefore, it is not advisable to allow it to pass on into foreign hands. This approach appears to be overcautious, because we need to remember that there are nearly 40,000 to 60,000 last mile cable TV operators and about 6000 multi system operators. It is inconceivable that even after consolidation, all these networks will pass on into foreign hands. Secondly, there are already four functional DTH operators, and three more are in the pipeline. All these DTH operators are large corporate entities of the country and they would provide excellent competition and alternative in times to come to the incumbent cable operators, whether foreign owned or domestically held. The cable network will be in a better position to face competition if revamping through higher investment is accomplished.

2.13 An estimate of the investment required for digitalization of cable television networks in the country was given by the Authority in its recommendations on Headend-In-The-Sky (HITS) sent to the Government on October 17, 2007. Extracts of the relevant para of the recommendations are as under:-

“2.25 ...If such a vast cable network, serviced by 6000 MSOs and nearly 60,000 last mile cable operators, is to be digitalised in a conventional manner by setting up digital headends for each MSO in each city/town, then it will require an investment of more than Rs 15,000 crores, apart from a very long time required for the same...”

This estimate of Rs. 15,000 Crores is for the cost of conversion of existing one way analogue cable network to one way digital cable network. If the cable networks are to be upgraded to two-way 750-850 MHz broadband digital cable networks, then the cost of upgradation would work out to be still higher. This cost has been estimated in the range of US\$ 200 per home in a publication by Media Partners Asia, Ltd., STAR Group, Macquarie Media Group and Liberty Global, Inc. This cost covers an upgrade to a two-way 750-850 MHz broadband digital cable network; cable modem deployment, and merger and acquisition related costs relating to last mile consolidation. This would translate into a sum of Rs. 64,000 Crore for 80 million cable homes in the country (at a conversion rate of Rs. 40 per US\$). Thus, it is clear that enormous amount of investment is required for upgrading the cable networks in the country.

- 2.14 In this context, it may be appropriate to recall the following observations of the Authority in its Recommendations on Digitilisation of Cable Television dated 14th September 2005:-

“Introduction of digital services involves substantial investments at the Head End and could also require upgradation of the distribution network depending on the status of the plant. It was noted during the process of consultation that there was hardly any interest shown by new entrants. The possibilities are there for consolidation amongst existing digital/analog Head End operators but it would primarily be dependent upon the judgments made by the players of the commercial opportunities which digitilisation can provide.”(Para 3.4.3)

“Provision of FTA/Pay Channel TV services in digital format requires a very high level of investment and conditions have to be created for entry of serious players having credentials in terms of capacity to make investment, a good business track record.....” (Para 3.4.11)

- 2.15 It is a known fact that the industry has hardly seen any consolidation since the time the Authority made its Recommendations on Digitilisation. It is estimated that the much needed conversion from analog to digital and the associated upgradation of the network across the country involves a total outlay of not less than Rs.15000-20000 crores. Available evidence suggests that such an amount of investment is not likely to emanate from the existing operators within the country who are too small in size and operations to finance such a huge expansion. Further, it is to be noted that such a financing did not take place during the last 3-4 years when the interest rates ruled at historically low levels in India. Therefore, it is unlikely to happen in a rising interest rate environment which is being currently witnessed.
- 2.16 It is a well known fact that the basic rationale of opening up of certain sectors to competition including participation of foreign investments has always been the size of investments required and the need to bring in cutting edge technology and the associated best practices of the industry. Cable Television sector qualifies in all these respects listed above and therefore there is need to facilitate larger capital inflow from abroad into the country. This policy has worked in telecommunication services and today India is the second largest network in the world which is by no means an ordinary achievement considering the fact that the sector was liberalized in the mid 90s.
- 2.17 Further the present limit of 49% in the cable networks was fixed when digitalization was not on the horizon.
- 2.18 Some stakeholders have strongly commented that the Authority must promote level playing field between competing technologies and therefore there should be a complete review of the foreign investment policy so as to make it consistent across different platforms of delivery. What it means is benefits of digitization needs to be reached to all end consumers irrespective of the delivery platforms be it DTH or cable network or IP TV.

- 2.19 Therefore, from the point of view of consistency and in the interest of level playing field, **the Authority recommends hike in the limits of foreign investment for cable networks from 49% to 74%.**

HITS

- 2.20 In its recommendations on HITS sent to the Government on October 17, 2007, the Authority had stressed the need for consistency across all sectors in foreign investment policy relating to carriage aspects of electronic media. **The Authority had also recommended that the total foreign investment including FDI for HITS should be 74% as in case of telecom sector in view of convergence of technologies. The Authority reiterates its earlier recommendations in the matter.**

Teleport

- 2.21 A Teleport (hub) is similar to HITS platform. Initially the HITS permission was also given to the two permission holders for teleport operations. Teleport essentially provides point to point connectivity and turn around facility for TV channels. For broadcasting purposes, the teleport is also a purely carriage service provider. Therefore, to maintain consistency in the policy, **the Authority recommends that the total foreign investment including FDI for Teleport should be 74% as in case of HITS.**

DTH

- 2.22 The DTH platform provides digital television signals directly to subscribers as against digital television signals provided to subscribers through cable operators by HITS. Other than this technical difference, the DTH and HITS platforms are similar. Both platforms are digital, both platforms are satellite based and both platforms provide carriage services for digital encrypted television signals. Therefore, there is no reason for differential treatment of the two platforms and **the Authority recommends that the total foreign investment including FDI for DTH should be 74% as in case of HITS and teleports.**

Mobile Television

- 2.23 In its recommendations on issues relating to Mobile Television services sent to the Government on January 23, 2008, the Authority had pointed out the similarity between HITS and mobile television service in the sense that both are carriage service providers. The Authority had emphasized the need to have an FDI policy relating to carriage aspects of electronic media that is consistent across all sectors and **recommended that the composite foreign investment limit including FDI should be 74% for mobile television service.** It was further recommended that within this limit, foreign investments upto 49% may be permitted under the automatic route, beyond which FIPB approval would be required. It was pointed out by the Authority in these recommendations that this would be necessary for this license in view of the fact that UASL/ CMTS licensees are also eligible to provide this service, where such limit is 74%. **The Authority reiterates its earlier recommendations in the matter.**

Chapter - 3: Foreign Investment in Content Services

- 3.1 The content service providers create and package content and sell it to the carriage service providers. While delivery of broadcasting services is dependent on both carriage and content service providers, the content service providers are generally assessed on a different platform/yardstick. The reason for this differential treatment is that carriage services are in the nature of infrastructural services whereas content services are considered sensitive as these influence the minds and opinions of people in a big way across all sections of society. Within the content services, the News & Current Affairs related content services are considered more sensitive as the power of news content to influence public opinion may have a bearing on maintenance of public order, security of the State, maintenance of communal harmony.
- 3.2 Television Broadcasters fall in the category of content service providers. Private FM radio services and Satellite radio service combine both content and carriage services as these service providers mostly create their own content and deliver the same to the listeners directly. Presently, the entry of television broadcasters for providing content services in India is regulated by Uplinking and Downlinking guidelines.
- 3.3 In so far as Downlinking Guidelines are concerned, no restrictions on foreign ownership have been placed on the persons/ entities providing Television Satellite Broadcasting Services (TV Channels) uplinked from other countries to viewers in India, receivable in India for public viewership. The eligibility conditions listed in the downlinking guidelines specify that:-

“1.1 The entity applying for permission for downlinking a channel, uplinked from abroad, (i.e. Applicant Company), must be a company registered in India under the Indian Companies Act, 1956, irrespective of its equity structure, foreign ownership or management control.”

However, at the same time, clause 2.4 stipulates that any foreign news channel should be a standard international channel and should not have been designed specifically for Indian Audiences.

3.4 However, in the Uplinking Guidelines, a distinction has been made between the permissible foreign investment limits for a non-news & current affairs TV channel and a news & current affairs TV channel. While no foreign investment limits have been laid down for a non-news & current affairs TV channel, the Uplinking guidelines prescribe that for a news & current affairs channel, foreign equity holding including FDI/ FII/ NRI investments should not exceed 26% of the Paid Up equity of the applicant company and that equity held by the largest Indian shareholder should be at least 51% of the total equity, excluding the equity held by Public Sector Banks and Public Financial Institutions.

3.5 As far as FM radio is concerned, the Authority had sent its recommendations on 3rd Phase of Private FM Radio Broadcasting to the Government on 22nd February, 2008. In these recommendations, the issue of foreign investment limits for Private FM Radio broadcasting service was also covered. The Authority has recommended that:-

- *The FDI including FII for FM Radio broadcasting permission holders, who are interested to broadcast news, may be enhanced to 26% from present 20% in view of FDI provision of 26% in news and current affairs in TV Broadcasting. All other terms and conditions will remain the same.*
- *Similarly, the FDI including FII for FM Radio broadcasting permission holders, who do not opt for news broadcasting, may be enhanced to 49% from present 20%. All other terms and conditions will remain the same.*
- *FM Radio broadcaster can opt later to broadcast news only if they bring down the FDI including FII to 26%. For this, such broadcasters have to seek specific permission from Ministry of I&B after submitting the proof of FDI including FII not more than 26%.*
- *The FDI including FII for FM radio will be revised as and when Government takes any further decision to revise FDI for TV broadcasting including news and current affairs.*

Comments of the stakeholders

- 3.6 The comments of the stakeholders indicate that while most of the news broadcasters want the existing cap of 26% on foreign equity holding including FDI/ FII/ NRI investments for news & current affairs TV channels (as per the Uplinking guidelines) to be raised to 49%, a few news broadcasters want the existing limit of 26% to be retained. As regards Satellite Radio, suggestions for 49% and 74% foreign investment limit have been received.

Analysis of Comments and Recommendations of the Authority

- 3.7 The comments of the stakeholders indicate that the stakeholders also realize the need for tighter foreign investment controls for content services as compared to carriage services. At the same time the need to have additional sources of funding for the sector is highlighted by suggestions for increase in the foreign investment limits. In order to have a consistent foreign investment policy for broadcasting sector, the foreign investment limits for various content services should be brought to the same level. In this context, it is important to recall the recommendations of the Authority on 3rd Phase of Private FM Radio Broadcasting, which were sent to the Government on 22nd February, 2008. In these recommendations it was clearly mentioned that the FDI limits including FII for FM radio will be revised as and when Government takes any further decision to revise FDI for TV broadcasting including news and current affairs. Therefore, any change in the foreign investment limits for TV broadcasters would necessitate revisiting the recommendations of the Authority on foreign investment limits for FM radio for the sake of consistency.

Television Channels – Downlinking Guidelines

- 3.8 Under the Downlinking guidelines, no restrictions on foreign ownership have been placed on TV Channels uplinked from other countries. The

analysis of issues and responses of stakeholders do not indicate any need for changing the provisions. Accordingly, **the Authority recommends that the status quo regarding foreign investment limits in the Downlinking guidelines should be maintained.**

Television Channels – Uplinking Guidelines

- 3.9 Similarly, no foreign investment limits have been laid down for a non-news & current affairs TV channel in the Uplinking guidelines. Therefore, in order to have a consistent policy, the provisions need not be changed. Accordingly, **the Authority recommends that the status quo in regard to foreign investment limits for a non-news & current affairs TV channel in the Uplinking guidelines should continue.**
- 3.10 The Uplinking guidelines prescribe that for a news & current affairs channel, foreign equity holding should not exceed 26% of the Paid Up equity of the applicant company. The Uplinking guidelines also prescribe a number of terms and conditions for news & current affairs channels regarding employment of resident Indians in key positions (CEO of the applicant company, 3/4th of the Directors on the Board of Directors, all key Executives and Editorial staff), prescribing that the largest Indian shareholder should hold at least 51% of the total equity, reporting requirements when any persons who is not a resident Indian is employed/ engaged etc. News & current affairs channels uplinked from abroad are not subjected to any foreign investment limits. An increase in foreign investment limit for news & current affairs channels will enable access to more resources for these channels. Moreover, an increase in the foreign investment limits to 49% will not result in management or editorial control getting transferred to foreign entities. The better way to ensure that subversive content is not broadcast through TV channels is by having proper content monitoring and regulation through content code, instead of using foreign investment limits as the the tool for this purpose. However, in the first instance, **the Authority recommends that the foreign investment limit for news & current affairs channels in the Uplinking guidelines may be increased from 26% to 49%.**

FM Radio

- 3.11 As mentioned earlier in this chapter, the recommendations of the Authority on 3rd Phase of Private FM Radio Broadcasting, which were sent to the Government on 22nd February, 2008 clearly mentioned that the FDI limits including FII for FM radio will be revised as and when Government takes any further decision to revise FDI for TV broadcasting including news and current affairs.
- 3.12 Presently, the FM radio stations are not permitted to carry news & current affairs. However, a radio service using Short Wave transmission coming from outside the country does not render itself to any kind of regulation. Therefore, if someone wishes to use radio for disruptive purposes, then it is possible for him to use Short Wave transmissions. Therefore, the concern that security issues may get diluted in FM radio if foreign investment is increased from 26% to 49% is somewhat overstretched because alternative forms of radio transmission such as Short Wave are easily available. The Authority had earlier recommended in its recommendations on 3rd Phase of Private FM Radio Broadcasting, dated 22nd February, 2008 that FM Radio broadcasters may be permitted to broadcast news subject to certain conditions. In order to have a uniform and consistent policy for content services, **the Authority recommends that the foreign investment limits for FM radio should be revised to 49%** in line with the recommendation of revising the foreign investment limit for news & current affairs television channels to 49%. At the same time the FM radio broadcasters should be permitted to broadcast news subject to the conditions listed in the recommendations dated 22nd February, 2008.

Satellite Radio

- 3.13 The Ministry of Information & Broadcasting has recently made a reference to the Authority vide its letter dated March 11, 2008 on the issue of Satellite radio. The Ministry has referred to the recommendations of the Authority on the issues relating to Satellite

radio service, which were sent to the Government on 27th June, 2005 and informed that these recommendations have been accepted by the Government with some modifications. The Ministry has forwarded draft policy guidelines for Satellite radio services and a representation received from the existing Satellite radio service provider along with the aforementioned letter. The Ministry has sought the comments of the Authority on the proposed draft policy guidelines and the representation of the service provider. The Authority is in the process of examining the proposed draft policy guidelines alongwith the representation of the service provider and will be sending its comments to the Government separately. The issues relating to foreign investment limits for Satellite radio service will also be covered in the comprehensive response of the Authority on Satellite radio service. Accordingly, no recommendations are being made regarding the foreign investment limits for Satellite radio service in the present recommendations.

Chapter - 4: Other Issues

- 4.1 Apart from the foreign investment limits for different segments of broadcasting sector other related issues such as the procedure of approval for foreign investments, methodology of calculation of foreign investments and security concerns also need to be addressed while formulating or revising foreign investment policy. In this regard, the Authority has relied heavily on Press Note No. 3 (2007 Series) dated 19th April, 2007 issued by SIA (FC Division) of the Department of Industrial Policy & Promotion (Ministry of Commerce & Industry), Government of India for telecom sector.

Definition of Foreign Investment

- 4.2 It was highlighted in the Consultation Paper that different definitions of Foreign Direct Investment have been adopted by various agencies. For the sake of adopting a uniform definition, **the Authority recommends that as laid down in Press Note No. 3 (2007 Series) dated 19th April, 2007 issued by the Department of Industrial Policy & Promotion, both direct and indirect foreign investment in the licensee company will be counted for the purpose of foreign investment ceiling. Foreign Investment will include investment by Foreign Institutional Investors (FIIs), Non-resident Indians (NRIs), Foreign Currency Convertible Bonds (FCCBs), American Depository Receipts (ADRs), Global Depository Receipts (GDRs) and convertible preference shares held by foreign entity. Indirect foreign investment will mean foreign investment in the company/ companies holding shares of the licensee company and their holding company/companies or legal entity (such as mutual funds, trusts) on proportionate basis. Shares of the licensee company held by Indian public sector banks and Indian public sector financial institutions will be treated as `Indian holding`. In any case, the `Indian` shareholding will not be less than 26 percent.**

Procedure for Approval

- 4.3 As per Press Note No. 3 (2007 Series)) dated 19th April, 2007 issued by SIA (FC Division) of the Department of Industrial Policy & Promotion (Ministry of Commerce & Industry) foreign investments upto 49% are permitted on the automatic route for the Telecom sector. For maintaining consistency across all carriage services, **the Authority recommends that for carriage segments (Cable TV, DTH, HITS, teleport, mobile TV etc.) of broadcasting sector, foreign investment up to 49 percent should be on the automatic route. Foreign investment in the licensee company/ Indian promoters/ investment companies including their holding companies, will require approval of the Foreign Investment Promotion Board (FIPB) if it has a bearing on the overall ceiling of 74 percent. While approving the investment proposals, FIPB will take note that investment is not coming from countries of concern and/or unfriendly entities.**
- 4.4 As far as content segments (television channels, FM radio etc.) of broadcasting sector are concerned, it has already been pointed out that the content service providers are generally assessed on a different platform/ yardstick from the carriage service providers as content services influence the minds and opinions of people in a big way across all sections of society. In view of the sensitive nature of content services, **the Authority recommends that FIPB approval would be required for foreign investment in content segments of broadcasting sector.**

Methodology of Calculation

- 4.5 It was pointed out in the consultation paper that the methodology for calculation of foreign investments in different segments of broadcasting is different. In order to have a consistent and uniform policy, **the Authority recommends that the methodology used in telecom sector for calculation of foreign investments (as outlined in Press Note No. 3 (2007 Series) dated 19th April, 2007 issued by SIA (FC Division) of the Department of Industrial Policy & Promotion (Ministry of**

Commerce & Industry), Government of India, should be adopted for the broadcasting sector.

Security Concerns

- 4.6 A number of conditions have been listed in the Uplinking Guidelines for uplinking a news & current affairs TV channel to address the security concerns. These conditions appear in sub paras 3.1.6 to 3.1.12 of the Uplinking Guidelines dated December 2, 2005. **The Authority recommends that these conditions be made applicable to all the carriage segments of broadcasting sector also where the composite foreign investment limits have been recommended to be enhanced to 74%.**
- 4.7 While the existing provisions relating to broadcasting sector have been pointed out in para 4.6 above, the entry of foreign investment in broadcasting sector and transfer of management control to foreign investors on account of increase in foreign investment limit for 74% for certain segments could result in security concerns. **The Authority recommends that such security related issues should be addressed in consultation with the concerned agencies. For this purpose, the Authority recommends that the Government should consider Press Note No. 3 (2007 Series) dated 19th April, 2007 from Department of Industrial Policy & Promotion, relating to the telecom sector as a basis for formulating further guidelines/ terms & conditions, wherever appropriate for the broadcasting sector.**

Chapter - 5: Summary of Recommendations

5.1 Carriage Services

- 5.1.1. The Authority recommends hike in the limits of foreign investment for cable networks from 49% to 74%.
- 5.1.2. The Authority reiterates its earlier recommendations that the total foreign investment including FDI for HITS should be 74% as in case of telecom sector in view of convergence of technologies.
- 5.1.3. The Authority recommends that the total foreign investment including FDI for Teleport should be 74% as in case of HITS.
- 5.1.4. The Authority recommends that the total foreign investment including FDI for DTH should be 74% as in case of HITS and teleports.
- 5.1.5. The Authority reiterates its earlier recommendations that the composite foreign investment limit including FDI should be 74% for mobile television service.

5.2 Content Services

- 5.2.1. The Authority recommends that the status quo regarding foreign investment limits in the Downlinking guidelines should be maintained.
- 5.2.2. The Authority recommends that the status quo in regard to foreign investment limits for a non-news & current affairs TV channel in the Uplinking guidelines should continue.
- 5.2.3. The Authority recommends that the foreign investment limit for news & current affairs channels in the Uplinking guidelines may be increased from 26% to 49%.

5.2.4. The Authority recommends that the foreign investment limits for FM radio should be revised to 49%.

- 5.3 The Authority recommends that as laid down in Press Note No. 3 (2007 Series) dated 19th April, 2007 issued by the Department of Industrial Policy & Promotion, both direct and indirect foreign investment in the licensee company will be counted for the purpose of foreign investment ceiling. Foreign Investment will include investment by Foreign Institutional Investors (FIIs), Non-resident Indians (NRIs), Foreign Currency Convertible Bonds (FCCBs), American Depository Receipts (ADRs), Global Depository Receipts (GDRs) and convertible preference shares held by foreign entity. Indirect foreign investment will mean foreign investment in the company/ companies holding shares of the licensee company and their holding company/companies or legal entity (such as mutual funds, trusts) on proportionate basis. Shares of the licensee company held by Indian public sector banks and Indian public sector financial institutions will be treated as 'Indian holding'. In any case, the 'Indian' shareholding will not be less than 26 percent.
- 5.4 The Authority recommends that for carriage segments (cable TV, DTH, HITS, teleport, mobile TV etc.) of broadcasting sector, foreign investment up to 49 percent should be on the automatic route. Foreign investment in the licensee company/ Indian promoters/ investment companies including their holding companies, will require approval of the Foreign Investment Promotion Board (FIPB) if it has a bearing on the overall ceiling of 74 percent. While approving the investment proposals, FIPB will take note that investment is not coming from countries of concern and/or unfriendly entities.
- 5.5 The Authority recommends that FIPB approval would be required for foreign investment in content segments of broadcasting sector.

- 5.6 The Authority recommends that the methodology used in telecom sector for calculation of foreign investments (as outlined in Press Note No. 3 (2007 Series) dated 19th April, 2007 issued by SIA (FC Division) of the Department of Industrial Policy & Promotion (Ministry of Commerce & Industry), Government of India should be adopted for the broadcasting sector.
- 5.7 The Authority recommends that the conditions listed in sub paras 3.1.6 to 3.1.12 of the Uplinking Guidelines dated December 2, 2005 be made applicable to all the carriage segments of broadcasting sector also where the composite foreign investment limits have been recommended to be enhanced to 74%.
- 5.8 The Authority recommends that security related issues should be addressed in consultation with the concerned agencies. For this purpose, the Authority recommends that the Government should consider Press Note No. 3 (2007 Series) dated 19th April, 2007 from the Department of Industrial Policy & Promotion relating to the telecom sector as a basis for formulating further guidelines/ terms & conditions, wherever appropriate for the broadcasting sector.

Annexure-I



ASHA SWARUP
Tel: 23382639

D.O. No. 18/15/2007-BP&L (Pt.)

सचिव
SECRETARY
सूचना और प्रसारण
INFORMATION & BROADCASTING
भारत सरकार
GOVERNMENT OF INDIA

नई दिल्ली-१, तारीख २००
Dated New Delhi-1, the December 11, 2007

Office:	
Diary No:	3047
Date:	14/12

Dear *Shri Mishra*,

Telecom Regulatory Authority of India in its various recommendations with respect to broadcasting service has been suggesting that foreign investment limits need to be reviewed to bring about greater consistency in the rules pertaining to various segments of media sector especially in view of the likely convergence in future of telecommunications and broadcasting services.

2. The matter has since been reviewed at the Ministry in consultation with Department of Industrial Policy and Promotion. It is felt that the broadcasting network service providers, except the cable operators, which include teleport/hub/earth station, DTH broadcasting network, satellite radio broadcasting network and HITS operators can be kept at a level of a composite cap of 74% for FDI and FII investment including the indirect foreign investments. Though TRAI has recommended 100% foreign investment to be allowed in the satellite radio sector, the Government is of the view that to provide parity, the satellite radio broadcasting network should also be kept at the level of 74% for the time being to enable entry of Indian companies in a relatively new sector.

3. As far as Cable operators are concerned, it will not be proper to raise the foreign investment limit from 49% to 74% at present as the control does not then remain in Indian hands and shifts to the foreign partner. Cable television with a reach of approximately 68 million households is still the most pre-dominant mode of distribution of broadcast channels. In the absence of alternative modes of delivery to the subscriber it would not be desirable to increase the level beyond 49% and allow the management control to pass on to the foreign investors. It is also seen that as of now, it has not been attracting even 49% of the foreign investment limit prescribed so far. Thus in the light of the sensitivity involved and the nation wide distribution through cable, for the time being, it is not proposed to increase the foreign investment limit from the present level of 49%.

4. On the FM Radio side, it is felt that this sector has been opened up only recently and has had a good response from domestic players. The FM channels are still in the process of being operationalised and uptill now 150 private FM channels have become operational out of a total of 266 channels permitted. It is felt that Indian players need adequate gestation time to enable them to grow and compete with the foreign broadcasters. Moreover, the level of investment required is not so high that the sector cannot grow without foreign investment. However, as per discussions with the Deptt. of Industrial Policy and Promotion, the Ministry may have no objection to increasing the level from the present 20% to 24% as no additional rights will accrue to the foreign shareholders as per the Company Law and it will rationalise the FDI regime from the point of view of Deptt. of Industrial Policy and Promotion.

5. There is no change proposed in the existing level of 26% foreign investment (FDI+FII) in the news and current affairs channels.
6. In light of the above, TRAI is requested to send its recommendations on the proposal as provided under Section 11(1)(a) of the TRAI Act.

Best regards,

Yours sincerely,


(ASHA SWARUP)

Shri Nripendra Mishra
Chairman
Telecom Regulatory Authority of India
Mahanagar Doordarshan Bhavan
Jawaharlal Nehru Marg (Old Minto Road)
New Delhi - 110002

Government of India
Ministry of Commerce & Industry
Department of Industrial Policy & Promotion
SIA (FC Division)

PRESS NOTE NO. 3 (2007 SERIES)

Subject: Enhancement of the Foreign Direct Investment ceiling from 49 per cent to 74 per cent in the Telecom sector – revised guidelines

The Government, vide Press Note 5 (2005 Series) dated 3.11.2005, had notified the enhancement of Foreign Direct Investment (FDI) limits from 49 per cent to 74 per cent in certain telecom services subject to specified conditions.

2. The Government has on a review of the policy in this regard, decided to enhance the Foreign Direct Investment limit from 49 per cent to 74 percent in telecom services subject to the following conditions;

A. Foreign Direct Investment (FDI):

- (i) The enhancement of the FDI ceiling will be applicable in case of Basic, Cellular, Unified Access Services, National/ International Long Distance, V-Sat, Public Mobile Radio Trunked Services (PMRTS), Global Mobile Personal Communications Services (GMPCS) and other value added Services.
 - (ii) Both direct and indirect foreign investment in the licensee company shall be counted for the purpose of FDI ceiling. Foreign Investment shall include investment by Foreign Institutional Investors (FIIs), Non-resident Indians (NRIs), Foreign Currency Convertible Bonds (FCCBs), American Depository Receipts (ADRs), Global Depository Receipts (GDRs) and convertible preference shares held by foreign entity. Indirect foreign investment shall mean foreign investment in the company/ companies holding shares of the licensee company and their holding company/companies or legal entity (such as mutual funds, trusts) on proportionate basis. Shares of the licensee company held by Indian public sector banks and Indian public sector financial institutions will be treated as 'Indian holding'. In any case, the 'Indian' shareholding will not be less than 26 percent.
 - (iii) FDI up to 49 percent will continue to be on the automatic route. FDI in the licensee company/Indian promoters/investment companies including their holding companies, shall require approval of the Foreign Investment Promotion Board (FIPB) if it has a bearing on the overall ceiling of 74 percent. While approving the investment proposals, FIPB shall take note that investment is not coming from countries of concern and/or unfriendly entities.
 - (iv) The investment approval by FIPB shall envisage the conditionality that Company would adhere to licence Agreement.
 - (v) FDI shall be subject to laws of India and not the laws of the foreign country/countries.
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B. Security Conditions:

- (i) The Chief Officer Incharge of technical network operations and the Chief Security Officer should be a resident Indian citizen.
- (ii) Details of infrastructure/network diagram (technical details of the network) could be provided on a need basis only to telecom equipment suppliers/manufacturers and the affiliate/parents of the licensee company. Clearance from the licensor (Department of Telecommunications, Government of India) would be required if such information is to be provided to anybody else.
- (iii) For security reasons, domestic traffic of such entities as may be identified /specified by the licensor shall not be hauled/routed to any place outside India.
- (iv) The licensee company shall take adequate and timely measures to ensure that the information transacted through a network by the subscribers is secure and protected.
- (v) The officers/officials of the licensee companies dealing with the lawful interception of messages will be resident Indian citizens.
- (vi) The majority Directors on the Board of the company shall be Indian citizens.
- (vii) The positions of the Chairman, Managing Director, Chief Executive Officer (CEO) and/or Chief Financial Officer (CFO), if held by foreign nationals, would require to be security vetted by Ministry of Home Affairs (MHA). Security vetting shall be required periodically on yearly basis. In case something adverse is found during the security vetting, the direction of MHA shall be binding on the licensee.
- (viii) The Company shall not transfer the following to any person/place outside India:-
 - (a) Any accounting information relating to subscriber (except for international roaming/billing) (Note: it does not restrict a statutorily required disclosure of financial nature) ; and
 - (b) User information (except pertaining to foreign subscribers using Indian Operator's network while roaming).
- (ix) The Company must provide traceable identity of their subscribers. However, in case of providing service to roaming subscriber of foreign Companies, the Indian Company shall endeavour to obtain traceable identity of roaming subscribers from the foreign company as a part of its roaming agreement.
- (x) On request of the licensor or any other agency authorised by the licensor, the telecom service provider should be able to provide the geographical location of any subscriber (BTS location) at a given point of time.
- (xi) The Remote Access (RA) to Network would be provided only to approved location(s) abroad through approved location(s) in India. The approval for location(s) would be given by the Licensor (DOT) in consultation with the Security Agencies (IB).

- (xii) Under no circumstances, should any RA to the suppliers/manufacturers and affiliate(s) be enabled to access Lawful Interception System(LIS), Lawful Interception Monitoring(LIM), Call contents of the traffic and any such sensitive sector/data, which the licensor may notify from time to time.
 - (xiii) The licensee company is not allowed to use remote access facility for monitoring of content.
 - (xiv) Suitable technical device should be made available at Indian end to the designated security agency/licensor in which a mirror image of the remote access information is available on line for monitoring purposes.
 - (xv) Complete audit trail of the remote access activities pertaining to the network operated in India should be maintained for a period of six months and provided on request to the licensor or any other agency authorised by the licensor.
 - (xvi) The telecom service providers should ensure that necessary provision (hardware/software) is available in their equipment for doing the Lawful interception and monitoring from a centralized location.
 - (xvii) The telecom service providers should familiarize/train Vigilance Technical Monitoring (VTM)/security agency officers/officials in respect of relevant operations/features of their systems.
 - (xviii) It shall be open to the licensor to restrict the Licensee Company from operating in any sensitive area from the National Security angle.
 - (xix) In order to maintain the privacy of voice and data, monitoring shall only be upon authorisation by the Union Home Secretary or Home Secretaries of the States/Union Territories.
 - (xx) For monitoring traffic, the licensee company shall provide access of their network and other facilities as well as to books of accounts to the security agencies.
 - (xxi) The aforesaid Security Conditions shall be applicable to all the licensee companies operating telecom services covered under this Press Note irrespective of the level of FDI.
 - (xxii) Other Service Providers (OSPs), providing services like Call Centres, Business Process Outsourcing (BPO), tele-marketing, tele-education, etc, and are registered with DoT as OSP. Such OSPs operate the service using the telecom infrastructure provided by licensed telecom service providers and 100% FDI is permitted for OSPs. As the security conditions are applicable to all licensed telecom service providers, the security conditions mentioned above shall not be separately enforced on OSPs.
3. The conditions at para 2 above shall also be applicable to the existing companies operating telecom service(s) with the FDI cap of 49%.
4. The relevant provisions of FDI policy for 'investment companies', as given in Press Note 2 (2000 series) dated 11.2.2000 issued by Department of Industrial Policy and Promotion will no longer be applicable to telecom sector.
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5. Press Note 15 (1998 series) and Press Note 2 (2000 series) issued by Department of Industrial Policy & Promotion stand modified to the above extent.
6. An unconditional compliance to the aforesaid conditions shall be submitted by the existing telecom service providers to the licensor within 3 months from date of the Press Note and, thereafter, compliance report shall be submitted on 1st day of July and January on six monthly basis.
7. Press Note 5 (2005 Series) dated 3.11.2005 stands superceded by this Press Note.

(Gopal Krishna)
Joint Secretary to the Government of India

F. No. 12/2/2006-FC dated the 19th April, 2007

Copy forwarded to Press Information Officer, Press Information Bureau, for giving wide publicity to the above Press Note.
