

**Dr. J. S. SARMA** (IAS)  
Chairman  
Telecom Regulatory Authority of India



Mahanagar Doorsanchar Bhawan,  
Jawahar Lal Nehru Marg,  
(Old Minto Road), New Delhi-110002

Tel. Off. : (91-11) 23211236  
(91-11) 23213409  
Fax : (91-11) 23236026  
e-mail : cp@traf.gov.in

D.O. No.23-3/2009 B&CS  
June 3<sup>rd</sup>, 2011

Dear *Shri Menon,*

Please refer to your D.O. letter No. 8/15/207-B&PL dated 18<sup>th</sup> May 2011, referring to the recommendations of the Authority on 'Foreign Investment limits for Broadcasting Sector' dated 30<sup>th</sup> June 2010, wherein the views of the Ministry regarding these recommendations have been forwarded for further recommendations of the Authority in accordance with the provisions of Section 11 (1) of the TRAI Act, 1997.

2. The Authority has accorded careful consideration to each of the issues raised in your letter. The revised recommendations of the Authority *vis-a-vis* each of these recommendations are enclosed as Annexure A.

3. As per procedure, a copy of this letter alongwith the enclosed annexure is being placed on the TRAI website ([www.traf.gov.in](http://www.traf.gov.in)).

*With Regards,*

Yours sincerely,

*J.S. Sarma*  
(J.S. Sarma)

Shri Raghu Menon,  
Secretary,  
Ministry of Information & Broadcasting,  
Government of India,  
Shastri Bhawan, New Delhi – 110 001.

**Annexure-A**

Attached to the DO No. 23-2/2009- B&CS dated 3<sup>rd</sup> June 2011

**Revised recommendations of TRAI to the MIB reference dated 18<sup>th</sup> May 2011 on TRAI's recommendations on 'Foreign Investment limits for Broadcasting Sector' dated 30<sup>th</sup> June, 2010.**

SL. No	Summary of recommendations	Views of the Government	TRAI response / Revised recommendations
1.	<p>The Authority recommends a limit of 74% for foreign investment for the broadcast carriage services i.e. DTH, IPTV, Mobile TV, HITS and Teleport with the following additional conditions:</p> <p>(i) The conditions listed in sub paragraph 3.1.6 to 3.1.12 of the Uplinking Guidelines dated December 2, 2005 to be applicable to all the carriage segments of broadcasting sector.</p>	<p><b>Acceptable.</b> In pursuance of the recommendations of TRAI, the conditions listed in sub paragraphs 3.1.6 to 3.1.12 of the Uplinking Guidelines, as well as Security Conditions as per clause 5.38.2 of the new FDI policy, have been examined by the Ministry vis-a-vis the extant guidelines of various carriage services i.e. DTH, IPTV, Mobile TV, HITS and Teleport. A set of broad security conditions/terms applicable to the broadcasting Sector has been evolved, and is appended in the Annexure-I. Depending on their applicability, these security conditions/terms,</p>	<p>1. In respect of the proposed security conditions/terms, as at Annexure-I of the present MIB reference dated 18<sup>th</sup> May 2011, the Authority is broadly in agreement, subject to the following observations :</p> <p>a) Ref. Condition at Sr. No. iii: Since these guidelines are proposed to be made applicable to a variety of carriage services,</p>

	<p>(ii) <b>The relevant Security Conditions as per clause 5.38.2 of the new FDI policy,</b> duly modified for broadcasting sector, to be worked out in consultation with the security agencies of the Government and incorporated in the permission/license.</p>	<p>whichever appropriate, would be duly incorporated in the sectoral guidelines of each platform. Authority may give its comments on the broad security conditions for the broadcasting sector set out at Annexure-I</p>	<p>the number of companies coming within their ambit would presumably be large. Hence MIB may consider whether it would be practical and feasible to have a provision necessitating prior permission of the MIB before effecting changes in the Board of Directors, CEOs and MDs of each of these companies.</p> <p>b) Ref. Condition at Sr. no. xii: This condition seems to be necessary only for the Telecom Sector and would not be relevant for the Broadcasting Sector.</p> <p>c) Ref. Condition at Sr. no. xv: It may be made explicit that the</p>
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			<p>'continuous monitoring' provision would be confined only to security related aspects, including screening of objectionable content.</p> <p>d) Ref. Condition at Sr. no. xix: In this condition the training and familiarisation provision should include the officials of TRAI also.</p> <p>2. The Authority recommends that the following security conditions, incorporated in the 'License Agreement for provision of Unified Access Service in Circle / Metro dated 28.01.2010' at para nos. 41.5 and 41.6, may be stipulated <i>mutatis-mutandis</i> for the broadcasting sector also:</p>
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			<p><b>“Licensor reserves the right to modify these conditions or incorporate new conditions considered necessary in the interest of national security and public interest or for proper provision of Telegraph.”</b></p> <p style="text-align: center;">and</p> <p><b>“Licensee will ensure that the Telecommunication installation carried out by it should not become a safety hazard and is not in contravention of any statute, rule or regulation and public policy.”</b></p> <p>3. The Authority recommends that these guidelines may be vetted in consultation with the security agencies of the Government and suitably incorporated in the requisite</p>
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			<p>permissions/licenses.</p> <p>4. When the sectoral guidelines arising from these broad guidelines are being formulated for specific platforms like DTH, IPTV, Mobile TV etc., the same may be referred to TRAI for further comments/recommendations in the event that any substantive changes are being introduced.</p>
2.	<p>The Authority recommends a limit of 74% for foreign investment in respect of MSOs operating at the National or State level and taking up digitalization with addressability. <b>For other MSOs, the foreign investment limit would continue to be 49%.</b> In both the cases, the</p>	<p><b>Acceptable.</b> However, the Authority, while giving recommendations, has not explicitly mentioned the level of foreign investments for district level MSOs providing digital addressable systems. The Ministry, however, interprets that the intention of TRAI's recommendation is to enhance foreign investment limit from 49% to 74% in respect of all MSOs</p>	<p>Substantial investment is required to be made by MSOs at all levels for up-gradation of equipment for implementing digitisation with addressability. It is clarified that TRAI's recommendation of enhancing foreign investment limits to 74%</p>

	<p>conditions (i) and (ii) mentioned above would be applicable. (For this purpose, the MSO would be as defined in the Cable TV Network Rules, 1994 and TRAI Regulations)</p>	<p>irrespective of National, State or District level that are taking up digitalization with addressability. This will need amendments to definition of “cable operator” and “persons” given in the Cable Act. The Ministry proposes to amend the existing definition of “cable operator” under section 2(aa) in the Cable Act as follows:- (aa) ‘cable operator’ means any person, <b>with such eligibility conditions as may be prescribed</b>, 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</p> <p><b>Provided that different eligibility criteria may be prescribed for different categories of cable operators.</b></p> <p>Similarly, definition of “person” defined under sections 2 (e) of the Act would be amended as under:</p> <p>(e) “person” means-</p>	<p>would apply to all MSOs who take up digitisation with addressability, whether they be at the District, State or National level.</p> <p>The functions, structure and role of MSOs are different from that of LCOs, and different foreign investment ceilings have been prescribed for these two entities. Hence instead of attempting to define different categories of cable operators, as proposed by MIB, the MSO should be defined as a separate legal entity in the Cable Television Networks (Regulation) Act 1995 (Cable TV Act).</p> <p>While defining a ‘person’ under Section 2(e) of the Cable TV Act, companies may be categorised into</p>
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		<p>(i) an individual who is a citizen of India;</p> <p>(ii) an association of individuals or body of individuals, whether incorporated or not, whose members are citizens of India</p> <p>(iii) <b>a company as defined in section 3 of the Companies Act, 1956 (1 of 1956)</b></p> <p>The proposed amendment of the definition of ‘cable operator’ enables the Ministry to define different categories of the cable operators through the Rules and prescribe different eligibility criteria including different FDI limits for each category. The proposed amendments in the definition of “person” permit any other Indian entity including an Indian company or firm holding shareholding in cable TV sector. The security conditions as proposed at Annexure-I above would also be applicable to MSOs. However, as of now, there is no provision in the Act that empowers the Government to prescribe the security conditions if</p>	<p>two classes:</p> <p>(a) a company intending to be registered as a LCO, or as an MSO which would not be implementing digitisation with addressability, should be a company as defined in Section 3 of the companies Act, 1956 (1 of 1956) and having a foreign investment limit of 49%, and</p> <p>(b) a company intending to be registered as a MSO which would be implementing digitisation with addressability, should be a company as defined in Section 3 of the companies Act, 1956 (1 of 1956) and having a foreign investment limit of 74%.</p> <p>Consequently, <i>mutatis-mutandis</i> changes may be made in other relevant</p>
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		<p>the Ministry has to enhance the FDI limits for MSOs, as recommended by TRAI. In view of this, it is proposed to insert a proviso under the section 4 of the Cable Act. The proposed formulation is as follows:-</p> <p><b>“The Central Government may lay down such terms and conditions of registration under sub-section (3) for different categories of cable operators as may be deemed necessary and desirable in public interest or to ensure compliance with the provisions of this Act and any notification or rule or direction or order issued there under, and the regulations, directions and orders made by the Authority” .</b></p> <p>This proviso will empower the Government to lay down appropriate security conditions at the time of registration of cable operators.</p>	<p>sections of the Cable TV Act, as appropriate, including the proposed new proviso under Section 4 of the Cable TV Act.</p>
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3.	The Authority recommends a limit of 26% for foreign investment for the LCOs	The limits in FDI for the LCOs have been 49% since 1995. Further, the nature of control, as per the provisions of company Law, would also not undergo any change since the power to initiate a special resolution remains same at the 26% or 49% level. The Ministry is of the view that not much purpose would be served by reduction in the FDI limit and, therefore, 49% FDI may be retained for LCOs.	The Authority had recommended a limit of 26% in view of the relatively lower level of investment required for running cable operations. However, in light of the present views of the Ministry, the Authority would have no objection to retaining the FDI limit of 49% for the LCOs.
4.	The Authority recommends that status quo should be maintained regarding foreign investment limits (i.e. no restriction on foreign ownership) for uplinking of non-News and Current Affairs TV Channels and downlinking of TV channels uplinked from abroad.	Acceptable	No comments

5.	The Authority recommends a limit of 26% for foreign investment for News and Current Affairs TV channels in the Uplinking guidelines and FM Radio.	Acceptable	No comments
6.	<b>The Authority recommends that all foreign investment in broadcasting sector below the level of 26% should be allowed on the automatic route.</b> The foreign investment of 26% and above should only be with prior approval of FIPB.	<p>a. <u>Content Services</u></p> <p>The Ministry is of the view that there should be distinction between content and carriage services, and that foreign investment policy in content services needs to be dealt on a separate footing. It is felt that, in the content segments, on account of its sensitivity, FIPB clearance route will not only be essential but also inevitable for any percentage of foreign investment. This would enable the Government to have closer scrutiny with regard to investments in content services. The Ministry, therefore, is of the view that <b>all foreign investments (FI) in content services need to be routed through FIPB and no automatic route is provided.</b></p>	<p>a. <u>Content Services</u> : In view of the sensitivities related to content dissemination, the views of the Government are acceptable to the Authority.</p>

	<p><b>b. <u>Carriage Services</u></b></p> <p>The Ministry is of the view that as far as broadcast carriage services are concerned, the limit of 49% on automatic route in FI is essential since the platform services-DTH, IPTV, Mobile TV, HITS and Teleport-require substantial infrastructure augmentation and foreign investment needs to be encouraged to fill the investment gap for infrastructure being built up. Further, in view of convergence of technologies, broadcast carriage services i.e. DTH, IPTV, Mobile TV, HITS and Teleport need to be treated at par with the Telecom sector where 74% FI is permissible with the provision that foreign investment beyond 49% would require FIPB approval. IPTV Guidelines enable both broadcasting and telecom networks to provide services. While service providers rendering IPTV Services through telecom networks is permitted 74% foreign investment with 49% on automatic route, the cable operators who intends to</p>	<p><b>b. <u>Carriage Services</u> :</b> In view of the increasing convergence between broadcasting and telecom sectors, and the need to bring about uniformity in respect of investments in carriage, the Authority is in agreement with the views of the Government.</p>
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		<p>provide IPTV services will, as per TRAI recommendations, get subjected to 74% with 26% on automatic route. As such, there is a need to bring consistency, allowing level playing field between competing technologies and broadcasting policy for IPTV Services should be in sync with telecom policy for the same. The Foreign Investment in HITS Services is 74% with 49% on automatic route. Similarly, the proposed Mobile TV Policy, it is envisaged to have 74% FI with 49% on automatic route. The Ministry is of the opinion that since FI up to 49% on automatic route has already been provided for some of the carriage services, it is not desirable to slash it further, and that if the objective is to bring consistent policy across all the carriage services, it would be worthwhile to peg the same at 49%.</p>	
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