Telecom Regulatory Authority of India

Recommendations

on

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

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PREFACE

Ministry of Information and Broadcasting, Government of India sought from TRAI statutory recommendation on the matter of allowing certain entities including State Governments to enter into the broadcasting activities. Popularity of the Television and radio broadcasting and their effectiveness in communication with the masses has resulted in phenomenal growth of the Sector in India. The activities relating to broadcasting sector, is mainly in the hands of Prasar Bharti, an autonomous body created under the Act of Parliament and other Private Operators. The distribution platform of the broadcasting sector is mainly in the hands of Private Sector. In recent times the sector has generated interest amongst various other entities to enter into this sector. This required review of the existing policies relating to the entry of various entities into broadcasting and distribution Activities.

Broadcasting Sector in India has seen tremendous growth during the last two decades in terms of subscriber growth and various delivery platforms with the advent of the new technologies. The market potential of the sector in India generated interests amongst the private sectors to enter into the market. The sector is witnessing development of competitive market between different private operators and between different delivery platforms.

TRAI in order to generate discussion on the appropriate policy regarding commencement of broadcasting activities by certain entities including the State Governments, initiated a consultation process by way of issuing a Consultation Paper soliciting views of stakeholders. This was followed by an Open House Discussion with the stakeholders on 16th April, 2008 at New Delhi. The Consultation Paper covered issued like whether it would be in the interest of the broadcasting Sector and in the interest of the public at large to permit the Union Governments and its Organs, the State Governments and its Organs, urban and rural local bodies, political bodies etc to enter into broadcasting and distribution activities, whether religious bodies may be permitted to enter into broadcasting activities, whether permitting the State Governments and their enterprises into the broadcasting sector would have impact on the Center State Relationship etc.

The Authority has finalized its recommendations on the subject with due diligence, observing the spirit of transparency and carrying out wide ranging consultations with all the stakeholders. The Authority appreciating its statutory powers and functions under the TRAI Act, 1997 and realizing the close interlinking of various questions of a substantially constitutional and legal nature related to the matter under consideration, ventured to examine those issues and accordingly recommendations are based on its humble understanding of those constitutional and legal issues. The Authority has analysed the issues relating to the extant policies in different fields of broadcasting activities, information on the international practices, decisions taken by the Central Government on such requests, and the need for creation of a framework which will keep the information needs of the citizens in mind while ensuring growth of the sector. Accordingly, TRAI is giving comprehensive recommendations in the matter. The recommendations covered herein addresses issues like entry of state government, urban and local, political bodies and religious bodies into broadcasting activities, entry into distribution activities, legislative and other measures required, imposition of public service broadcasting obligations, etc.

The Authority expects that these recommendations will facilitate the Government in evolving a policy framework on the matter.

(Nripendra Misra)
Chairman, TRAI

CONTENTS

Sections	Description	Page No.
	Preface	i
Chapter 1	Introduction	1-10
Chapter 2	Present Legal Framework and Policy	11-15
Chapter 3	Recommendations for Policy Framework	16-106
Chapter 4	Summary of Recommendations	107-121
Annexure-A	Letter from the Ministry of Information and Broadcasting	122-127
Annexure-B	Gist of the responses received on the consultation paper	128-130
Annexure-C	A gist of the comments and suggestions made by the stakeholders who participated in the open house discussions on 16.04.2008 held in New Delhi	131-138
Annexure-D	Response from Indian Broadcasting Foundation	139-144
Annexure-E	Eligibility Conditions for entry into broadcasting and distribution activities	145-155
Annexure-F	Section 12 of the Broadcasting Bill, 1997	156
Annexure-G	Part I of the Schedule to the Broadcasting Bill, 1997	157-163
Annexure-H	Extracts of Debates of the Constituent Assembly of India	164-175

CHAPTER 1: INTRODUCTION

A. Reference from Government of India (Ministry of Information and Broadcasting) to the Telecom Regulatory Authority of India

1.1. In view of the phenomenal growth of the broadcasting sector and the diversity among various players in the sector, and in view of various other entities desiring to enter into this important sector, it has become necessary to have a relook at the policies relating to entry of various entities into broadcasting and distribution activities. It is with this in view that the Government of India (Ministry of Information and Broadcasting) has, vide its letter No. D.O. No. 9/32/2007-BP&L dated December 27, 2007 (placed at **Annexure A**), requested the Telecom Regulatory Authority of India (TRAI) to examine the matter of allowing certain entities including State Governments to enter into the broadcasting activities and has requested for submission of its recommendations as per the provisions of section 11(1)(a) of the Telecom Regulatory Authority of India Act, 1997 especially covering the following issues, namely:-

(i) Whether State Governments, urban and local bodies, 3-tier Panchayati Raj bodies, publicly funded bodies and political bodies should be permitted to enter into Broadcasting activities which may include starting of broadcast channel or entering into distribution platform like cable services.

(a) If 'yes', what are the kind of broadcasting activities which should be permitted to such organization and to what extent? What are the safeguards required to prevent monopoly or misuse? Whether any amendments are required in the extant Acts/Rules/Guidelines to provide for the same.

(b) If 'No', Whether disqualifications proposed in Section 12 of the Broadcasting Bill, 1997 and Part I of the Schedule thereto should be considered as it is or with some modifications for incorporation in the existing Cable Act and Rules relating thereto and in the proposed Broadcasting Services Regulation Bill, 2007, and policy guidelines with respect to broadcast sector issued by Ministry of Information and Broadcasting. If so, what are the amendments/provisions required to be made in them?

(ii) Whether similar disqualifications with respect to religious bodies on the lines of Broadcasting Bill, 1997 or with some modifications be also considered for religious bodies.

B. Requests from Various State Governments, public bodies, etc.

1.2. The Central Government has received a few requests from State Governments/ State Government undertakings, etc. for starting TV or Radio channels, and for entering into distribution platforms like cable service. One

such request for launch of a TV broadcasting channel was made in the year 1999 by the Government of West Bengal. It was proposed to set up an autonomous body and, till such time the body could be put in position, the channel was proposed to be owned, launched and operated by the West Bengal Film Development Corporation Ltd., a public sector undertaking of the State Government. The matter was considered by the Government of India and the request was not acceded. The following factors were, as informed by the Government of India (Ministry of Information and Broadcasting), taken into consideration while arriving at the said decision, namely:-

(i) The observations of the Hon'ble Supreme Court in their judgment in the case of Union of India vs. Cricket Association of Bengal dated 9.2.1995 (AIR 1995 (SC) 1236 :: 1995 (2) SCC 161). Relevant portions of the said judgment are reproduced below:-

"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."(Mr. Justice Jeevan Reddy) (para 201)

"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". (Mr. Justice Jeevan Reddy) (para 199)

(ii) It has been also mentioned that keeping in view the above judgment of the Hon'ble Supreme Court, the Government, local authorities and public bodies substantially funded from public fund were proposed to be disqualified in the draft Broadcast Bill, 1997 and that there was a special provision in the said Bill for public service broadcasters created under an Act of Parliament to avoid any contradiction or inconsistency.

1.3. Subsequently, the Central Government received a proposal from the Government of Punjab for setting up a TV Broadcasting Station in collaboration with a foreign broadcast company named Globe Satellite Communication. The reply dated 24.5.2000 has reportedly conveyed refusal of the Government of India stating that as per the extant policy, State Governments are not permitted to set up TV channels or broadcasting stations. It was also mentioned that even Doordarshan and All India Radio (AIR) which were earlier part of the Central Government have been distanced from the Central Government and brought under statutory body, viz., Prasar Bharati, under the Prasar Bharati Act, 1990.

1.4. Another request was received from the Government of Andhra Pradesh for providing for compulsory distribution of Ku Band signals of Mana TV through commercial cable operators within the State. The request was also not acceded to by the Government of India and the Central Government's reply was reportedly sent on October 20, 2005 and again on March 05, 2007.

1.5. In the year 2007, Tamil Nadu Arasu Cable Corporation Ltd, a Govt. of Tamil Nadu undertaking, filed an application with the Ministry of Information and Broadcasting for permission under rule 11 of the Cable Television Networks Rules, 1994 to work as a Multi System Operator in the CAS notified areas of Chennai. (The requisite permission has subsequently been granted by the Government of India.) A request from the Government of NCT of Delhi for starting an FM Radio Channel or a community Radio Station has also been received in the Ministry of Information and Broadcasting.

C. An Overview of the Sector

1.6. Radio and television are among the important communication tools to reach the masses. Radio broadcasting was started in India in 1927 with the proliferation of private radio clubs. The operations of All India Radio (AIR) began formally in 1936, as a Government organisation, with clear objectives to inform, educate and entertain the masses. When India attained independence in 1947, the coverage of AIR was 2.5% of the area and 11% of the population. AIR today has a network of 229 broadcasting centres with 148 medium wave (MW), 54 short wave (SW) and 168 Frequency Modulation (FM) transmitters. The coverage is 91.79% of the area, serving 99.14% of the population in the largest democracy of the world.

1.7. Keeping in line with the policy of liberalisation and reforms followed by the Government since 1991, Frequency Modulated (FM) Radio broadcasting was opened up for private participation in the year 2000. Today, apart from All India Radio, there are 236 private FM channels operating in different cities under Phase-II of FM Radio Broadcasting Scheme as on 10th June, 2008. *The Authority has made its recommendations to the Government of India (Ministry of Information and Broadcasting on the Third Phase of Private FM Radio Broadcasting on the 22nd February, 2008.* The number of private FM radio channels is expected to increase manifold, particularly, with the sharing of infrastructure by private FM radio operators among themselves as also with Prasar Bharati as recommended by the Authority in the said recommendations.

1.8. On the television side, Doordarshan's TV transmission was started in India in 1959. This had a modest beginning with an experimental telecast starting in Delhi. The regular daily transmission started in 1965 as a part of All India Radio. The television service was separated from All India Radio in 1976. Doordarshan is presently operating 30 satellite TV channels and has a terrestrial network of 66 studio centres and 1410 transmitters of varying

transmission power. Two Doordarshan channels, i.e., DD-1 and DD News, are being transmitted in terrestrial mode also through 1410 transmitters. DD National is covering 91.9% population and DD News is covering 49% population of India terrestrially.

1.9. Subsequently, Doordarshan and All India Radio have come under the Prasar Bharati established under the Prasar Bharati (Broadcasting Corporation of India) Act, 1990.

1.10. Government of India (Ministry of Information and Broadcasting) notified the "Guidelines for uplinking from India" in July 2000. This was followed by "Guidelines for Uplinking of News and Current Affairs TV Channels from India" in March 2003, which were amended in August 2003, "Guidelines for use of Satellite News Gathering (SNG)/Digital Satellite News Gathering (DSNG)" in May 2003 and addendum dated April 01, 2005 to the uplinking guidelines. The Government further amended these guidelines on October 20, 2005. All these were consolidated into one set of guidelines and the consolidated uplinking guidelines were notified on December 2, 2005. No broadcaster can uplink a channel from India without uplinking permission from the Government of India under these Guidelines.

1.11. Government of India (Ministry of Information and Broadcasting) has, on November 11, 2005, issued Policy Guidelines for Downlinking of Television Channels, applicable for downlinking satellite television channels in India for public viewing. Consequently, no person/entity shall downlink a channel, which has not been registered by the Ministry of Information and Broadcasting under the said guidelines. Thenceforth, all persons/ entities providing Television Satellite Broadcasting Services (TV Channels) uplinked from other countries to viewers in India as well as any entity desirous of providing such a Television Satellite Broadcasting Service (TV Channel), receivable in India for public viewership, is required to obtain permission from the Government of India (Ministry of Information and Broadcasting) in accordance with the terms and conditions prescribed under the said guidelines. *The Authority had made recommendations to the Government of India on November 28, 2007 regarding the Provision of IPTV Services wherein the Authority had recommended, inter alia, that down linking guidelines should be amended to enable the broadcasters to provide signals to all distributors of TV channels such as cable operators, multi-system operators, DTH operators, HITS operators, IPTV service providers and that similar conditions regarding downlinking of only the channels permitted by the Government of India be imposed on the IPTV service providers. Based on these recommendations, the Government has, on 8th September, 2008, notified the policy guidelines for IPTV operations and also amended the policy guidelines for downlinking of television channels to enable broadcasters to provide their content to IPTV service providers.*

1.12. Broadcasting sector in India has seen tremendous growth during the last two decades. As on August 27, 2008, Government of India (Ministry of Information and broadcasting) has permitted 194 news and current affairs TV

channels and 136 non-news & current affairs TV channels to uplink from India. A total of 59 TV channels, uplinked from abroad, have been permitted to downlink in India, out of which 10 TV channels are news and current affairs channels and 49 TV channels are non-news and current affairs channels. The permission is for operation on an All-India basis and not State-wise. The Lok Sabha Secretariat and the Indira Gandhi National Open University (IGNOU) are also operating their respective TV channels.

1.13. Cable TV operations in India were started around 1990. The cable TV segment in India, although fragmented, has shown a tremendous growth. As per the industry estimates, there are 128 million TV Homes in the country in 2007, out of which, about 78 million are served by cable TV network. There are between 40,000 to 60,000 cable operators serving these 78 million cable TV homes. Cable TV operations in India are governed by the Cable Television Networks (Regulation) Act, 1995. Conditional Access System (CAS) in cable services is right now operational in whole of Chennai and in the CAS notified areas of Delhi, Mumbai and Kolkata. In these areas, pay channels are being transmitted in addressable mode. In these CAS operational areas, around 0.7 million subscribers have opted for watching pay channels and enjoying the facility to pay for their subscribed pay channels.

1.14. The cable TV sector, as a distribution platform, is almost entirely in the hands of private cable operators including multi-system operators. Some Central Government owned entities such as MTNL have also reportedly registered themselves as cable operators in some areas under the Cable Television Networks (Regulation) Act, 1995. Apart from this, a State Government owned Corporation in Tamil Nadu (Arasu Cable TV Corporation Limited) has also recently commenced operations as a cable operator and the said Corporation has been permitted to operate as a multi system operator in the CAS notified areas of Chennai by the Government of India (Ministry of Information and Broadcasting).

1.15. Government of India permitted the reception and distribution of television signals in Ku band vide its notification no. GSR 18(E) dated January 09, 2001 issued by the Department of Telecommunications. This marked the beginning of Direct-to-Home(DTH) broadcasting services in India in Ku band. DTH distribution platform is in the hands of private players except for the DTH free-to-air service of Doordarshan under Prasar Bharati. At present, apart from Doordarshan's DTH free to air service, there are four DTH pay services in operation. Two new DTH operators are expected to launch their services in the near future. There are, at present, more than 5 million pay DTH subscribers of private operators in India.

1.16.1. Government of India, in the year 2003, issued permission to two companies to operate Headend-In-The-Sky (HITS) service for fast implementation of CAS. However, this service has not taken off so far. Recently, on 17th October, 2007, TRAI has forwarded its recommendations on the detailed policy framework for HITS operation to the Government of India.

1.16.2. The Authority had earlier made its recommendation separately on August 29, 2005 on the Issues Relating to Private Terrestrial TV Broadcast Service. The Authority had recommended that---

i. terrestrial television broadcasting should be allowed in the private sector also; and

ii. this should be allowed also for community television.

The Authority has also given recommendations for Mobile TV (issued on January 23, 2008) recently. These recommendations are under consideration of the Government.

D. The Consultative Process

1.17. After receiving the reference from the Government of India (Ministry of Information and Broadcasting), the Authority initiated the process of seeking comments of the stakeholders. A consultation paper on various issues which arose out of the reference was issued on the 25th February, 2008. The consultation paper covered issues like whether it would 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, the State Governments and their Organs, urban and rural local bodies, political bodies, etc. to enter into broadcasting activities or distribution activities such as cable TV, DTH, etc., whether religious bodies may be permitted to enter into broadcasting activities such as starting of a television broadcast channel or starting of a radio broadcast channel (including an FM channel), and whether permitting the State Governments and their enterprises to enter into 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, etc. The specific issues raised in consultation paper were as under:-

(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)?

(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?

(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?

(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) 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) (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?

(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.

(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.

(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?

(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.

(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.

(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.

(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.

(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?

1.18. The last date for receipt of comments/suggestions was 25th March, 2008. However, having regard to the need for wider participation of stake-holders in the consultation process, the last date for receiving comments was extended by 15 days, i.e., till 9th April, 2008. Comments were received from 9 stakeholders and the same were placed on the TRAI's website (www.trai.gov.in) on the 11th April, 2008. A gist of the responses received from these nine stake-holders is placed at **Annexure B** to these recommendations. An open house discussion with the stakeholders was held on the 16th April, 2008, at New Delhi. A gist of the comments and suggestions made by the stakeholders who participated in the open house discussions is placed at **Annexure C** to these recommendations. One more response was subsequently received on the 25th April, 2008 from the Indian Broadcasting Foundation. A copy of this response is placed at **Annexure D** to these recommendations.

1.19. With due diligence, observing the spirit of transparency and carrying out wide ranging consultations with the stakeholders, the Authority has now finalised its recommendations which are being forwarded to the Government of India (Ministry of Information and Broadcasting).

1.20. The Authority had, having regard to the limits of its functions under the Telecom Regulatory Authority of India Act, 1997 and also the close interlinking of various questions of a substantially Constitutional and legal nature with the issue under consideration of the Authority, forwarded copies of the Consultation Paper to the Commission on Centre-State Relations, the Secretariat of the Inter-State Council, the learned Attorney General of India, the learned Solicitor General of India, the Union Law Secretary, the Union Home Secretary and the Election Commission of India. The Secretariat of the Inter-State Council, vide its communication dated the 25th March, 2008, informed the Authority by way of *ad-interim* information that the matter was under active consideration of the said Secretariat and the Commission on Centre-State Relations, serviced by the said Secretariat and that comments will be sent to the Authority shortly. However, no views have been received from either the Council or the Hon'ble Commission on the subject till the making of these recommendations. The Ministry of Law and Justice (Department of Legal Affairs) has returned the original reference back to the Authority with the observation that they have no comments to offer in the matter as "the report contains only the administrative and policy aspects and no specific legal issue has been identified for furnishing our specific views/observations.". The other authorities (from amongst the addressees mentioned above) have not responded to the Authority's communication. The Authority has, fully appreciating its statutory powers and functions under the TRAI Act, 1997, ventured to examine those Constitutional and legal issues

and, therefore, the recommendations of the Authority on the policy issues are based on its own humble understanding of those Constitutional and legal issues and the governing law as discussed in Chapter 3 of these recommendations.

1.21. Any consideration of the question of entry into broadcasting sector by various entities has to necessarily include a consideration of the question of providing reasonable access to the broadcasting medium as a whole for such entities as part of such consideration. Therefore, while considering the issues relating to entry of certain entities like State Governments, etc. into the broadcasting sector, it has also become necessary to consider certain connected issues such as the aspirations and requirements of the State Governments and the people of different regions of the country in regard to use of the broadcasting medium as a whole and how the regional, linguistic and cultural aspirations of the people living in different parts of the country can be best met by the medium. Accordingly, the Authority has made certain recommendations touching upon these issues, which are of a consequential nature but critical to the completeness of the recommendations.

CHAPTER 2: PRESENT LEGAL FRAMEWORK AND POLICY

In this Chapter, some of the relevant provisions of law and policy are discussed briefly which would be inputs for the purposes of arriving at conclusions and giving recommendations on the reference made by the Central Government.

A. Constitutional Provisions:

2.1 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, can legislate on these subjects.

2.2. Article 19 of the Constitution of India on the Right to Freedom (including the right to freedom of speech and expression) reads as under:-

> **"19. Protection of certain rights regarding freedom of speech, etc.—**(1) All citizens shall have the right—
>
> (a) to freedom of speech and expression;
>
> (b) to assemble peaceably and without arms;
>
> (c) to form associations or unions;
>
> (d) to move freely throughout the territory of India;
>
> (e) to reside and settle in any part of the territory of India; and
>
> * * * * *
>
> (g) to practise any profession, or to carry on any occupation, trade or business.
>
> (2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.
>
> (3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(5) Nothing in sub-clauses (d) and (e) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.

(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,—

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise."

B. Provisions of Indian Telegraph Act, etc.

2.3 Section 4 of the Indian Telegraph Act, 1885 reads as under:-

" **4. Exclusive privilege in respect of telegraphs, and power to grant licenses.—** (1) Within India, the Central Government shall have exclusive privilege of establishing, maintaining and working telegraphs:

Provided that the Central Government may grant a license, on such conditions and in consideration of such payments as it thinks fit, to any person to establish, maintain or work a telegraph within any part of India:

Provided further that the Central Government may, by rules made under this Act and published in the Official Gazette, permit, subject to such restrictions and conditions as it thinks fit, the establishment, maintenance and working—

(a) of wireless telegraphs on ships within Indian territorial waters and on aircraft within or above India, or Indian territorial waters, and

(b) of telegraphs other than wireless telegraphs within any part of India.

Explanation—The payments made for the grant of a licence under this sub-section shall include such sum attributable to the Universal Service Obligation as may be determined by the Central Government after considering the recommendations made in this behalf by the Telecom Regulatory Authority of India established under sub-section (1) of section 3 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997).

(2) The Central Government may, by notification in the Official Gazette, delegate to the telegraph authority all or any of it its powers under the first proviso to sub-section (1).

The exercise by the telegraph authority of any power so delegated shall be subject to such restrictions and conditions as the Central Government may, by the notification, think fit to impose."

2.4. The Grant of Permission Agreements for establishment, maintenance and operation of uplinking hub (teleport) under the Guidelines for Uplinking from India provide, inter alia, as under:-

"5. Application of the Indian Telegraph Act and other Laws

5.1 The Permission shall be governed by the provisions of the Telecom Regulatory Authority of India Act, 1997, Indian Telegraph Act, 1885 and Indian Wireless Telegraphy Act, 1933 as amended from time to time and any other law as applicable to broadcasting which has or may come into force."

2.5. As far as creation of content is concerned, there is no bar for any entity to create content. However, television and radio broadcast channels are required to adhere to the Programme Code and Advertisement Code prescribed under the Cable Television Networks (Regulation) Act, 1995, as far as content is concerned.

2.6 The satellite television channels are permitted to be carried through different distribution modes such as cable TV, DTH, etc. by adhering to the uplinking/downlinking guidelines. The other type of channels created by the cable operators (more popularly known as local channels or Ground based Channels) which run only within the closed network of cable, do not currently need any specific permission, but these Ground based Channels are also required to follow the Programme Code and Advertisement Code as per the Cable Television Networks (Regulation) Act, 1995.

C. Provisions of the Cable Television Networks (Regulation) Act, 1995

2.7. The cable TV operations are governed by the Cable Television Networks (Regulation) Act, 1995 (hereinafter referred to as the Cable Act) and the Cable Television Networks Rules, 1994 (hereinafter referred to as the Cable Rules). Under sub-section (1) of section 4 of the Cable Act, any person who is operating or is desirous of operating a cable television network requires registration as a cable operator with the registering authority (as notified by the Central Government under the Act, being Head Post Masters of local Head Post Offices). For the purpose of the Cable Act, "person" has been defined as under :-

"(e) '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-one per cent of paid-up share capital is held by the citizens of India;"

2.8. In the distribution chain in Cable TV, there are entities functioning as Multi System Operators (MSOs) which mainly aggregate the contents from different broadcasters and then provide the signals for the same to last mile cable operators. The present legal position is that these MSOs also have to register themselves as a cable operator and the same eligibility conditions apply to MSOs also. In addition to registration as a cable operator, an MSO operating in CAS notified areas is also required to take necessary permission from the Government of India in the Ministry of Information and Broadcasting as per sub-rule (2) of rule 11 of the Cable Television Networks Rules, 1994.

2.9. Matters relating to television and radio broadcasting and the distribution of broadcast channels are under the purview of the Government of India (Ministry of Information and Broadcasting) and the legal regime governing these activities is contained in the provisions of the various Acts referred to in the preceding paragraphs and the guidelines and criteria laid down by the Government of India from time to time as referred to in Chapter I of these recommendations. A brief outline of the eligibility conditions for entering into TV channel broadcasting and news agencies, the eligibility conditions for radio operations and the eligibility conditions for distribution platforms for TV channels is given in **Annexure E** to these recommendations.

D. Disqualifications as contained in the Broadcasting Bill, 1997

2.10. The Broadcasting Bill, 1997 as introduced in the Lok Sabha in 1997 contained certain restrictions for grant of licences for the broadcasting sector. Sub-clause (1) of clause (12) of the said Bill read as follows :-

" **12.** (1) No person specified in Part 1 of the Schedule shall be eligible for the grant of a license under this Act.".

A copy of clause 12 of the said Bill is placed at **Annexure F** to these recommendations. Part 1 of the Schedule appended to the said Bill contained, inter alia, provisions disqualifying Government and local authorities, religious bodies, political bodies, publicly funded bodies and advertising agencies. A copy of the Schedule appended to the Broadcasting Bill, 1997 is annexed at **Annexure G** to these recommendations. **The said Bill not having been enacted into law,** the legal regime governing the broadcasting sector continues to be governed by the provisions of the Indian Telegraph Act, 1885 and other cognate legislations such as the Indian Wireless Telegraphy Act, 1933, the Cable Television Networks (Regulation) Act, 1995 and the guidelines and polices framed by the Government of India from time to time, as referred to in paragraph 2.9 above and in **Annexure E**.

CHAPTER 3: RECOMMENDATIONS FOR POLICY FRAMEWORK

A. INTRODUCTORY:

3.1. It has been stated in the letter of the Government of India (Ministry of Information and Broadcasting) dated the 27th December, 2007 that the requests received from the State Governments, etc. (for permitting them to enter into broadcasting and distribution activities) raise a broader policy issue of whether such requests from the State Governments should be entertained. It is in this context that the Government of India has requested the Authority to examine the matter and submit its recommendations as per the provisions of section 11(1)(a) of the Telecom Regulatory Authority of India Act, 1997 (TRAI Act).

3.2 Under clause (a) of sub-section (1) of section 11 of the TRAI Act, 1997, one of the functions of the Authority is to make recommendations, *inter alia*, on the following matters, namely:-

> "(i) need and timing for introduction of new service providers;
>
> (ii) terms and conditions of licence to a service provider;
>
> ….."

3.3 Upon close study of the relevant provisions of sub-clauses (i) and (ii) of clause (a) of sub-section (1) of section 11, as referred to in paragraph 3.2, and the scope of the reference made by the Government of India (Ministry of Information and Broadcasting), it is seen that all the issues raised in the reference would be covered under these sub-clauses of section 11 of the TRAI Act, 1997.

3.3.1. The first issue relating to grant of permission to certain entities to enter the broadcasting sector, being one relating to grant of permission to certain entities which have hitherto not been given such permission to enter the broadcasting sector, the question which actually arises is to examine need and timings for allowing such entry to these entities as new service providers in the sector. The reference can, therefore, be clearly considered to be one under sub-clause (i) of clause (a) of sub-section (1) of section 11 of the TRAI Act, 1997.

3.3.2. Similarly, the issues relating to safeguards required to prevent monopoly or misuse of such permission, amendments required in various Acts/Rules/Guidelines, etc. and modifications needed (if at all) as respects disqualifications (as contained in the Broadcasting Bill, 1997) and in the relevant policy guidelines of the Central Government are issues closely relatable to terms and conditions of licence to a service provider and,

therefore, would be covered under sub-clause (ii) of clause (a) of sub-section (1) of section 11 of the TRAI Act, 1997.

B. ENTRY OF STATE GOVERNMENTS INTO BROADCASTING ACTIVITIES.

3.4.1. Matter for giving recommendations by TRAI for laying down a clear cut policy on the entry of these entities, particularly, State Governments and their organs, cannot be examined merely as a matter of Executive policy. This is more so because of the history of the evolution of the broadcasting sector in the post-Independence era and also having regard to the need to ensure that any recommendations on such an important policy matter should appreciate the several Constitutional and legal issues which have arisen in relation to the said issue. In view of this, the Authority feels it necessary to refer to the Constitutional Scheme governing the subject and the law laid down by the Hon'ble Supreme Court of India in its relevant judgments touching upon the subject and to make only such policy recommendations which are in consonance with them.

3.4.2. Before it is deliberated whether the State Governments should be allowed in the domain of broadcasting, a reference to the following would be relevant, namely:-

(a) Constitutional provisions;
(b) Constituent Assembly debates;
(c) Judicial pronouncements;
(d) Report of Commission on Centre State Relations headed by Justice Sarkaria (Generally referred to as Sarkaria Commission);
(e) International Practices;
(f) Views of stake holders.

(a) <u>Constitutional Provisions:</u>

3.5. 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, under article 246 of the Constitution, can legislate on matters covered by aforesaid entry 31. The use of the expression "other like forms of communication" in the aforesaid entry 31 is of considerable significance. The expression would encompass all similar forms of communication, covering both those in existence at the time when the Constitution was framed and adopted and those which came into existence subsequently. Therefore, the expression "other like forms of communication" requires to be interpreted in such a manner that all similar modes of communication, ejusdem generis with those enumerated in the entry, would normally fall into its ambit.

(b) Constituent Assembly Debates:

3.6 While deliberating on item 32 (b) of the List I – Federal List (which corresponds to item 31 of List I of the Seventh Schedule to the Constitution), it had been decided by the framers of the Constitution (as per debates of the Constituent Assembly on the 26th August, 1947 – annexed as **Annexure H** to these Recommendations) that Broadcasting should be part of the Federal subjects. It is also pertinent to mention here that the Government of India Act, 1935 had a provision in section 129 which, inter alia, provided as under:-

"(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.".

The concept of the Federal Government allowing the Provincial Governments to set up broadcasting transmitters (broadcasting stations) and further allowing them to regulate broadcasting by other entities within their respective territories has not, however, found favour with the Constituent Assembly. (See Constituent Assembly Debates dated 26th August, 1947 placed at **Annexure-H**.) The absolute power of the Central Government under Article 246 to legislate on the subjects contained in Entry 31 of List I of the Seventh Schedule has to be necessarily seen in the light of the intention manifested in the debates in the Constituent Assembly.

(c) Judicial Pronouncements:

3.7. Some of the observations made by the Hon'ble Supreme Court in its judgment in the case of Cricket Association of Bengal (1995 AIR(SC) 1236 :: 1995 (2) SCC 161) are very relevant to the issue to be considered and are, therefore, worth reference for guidance. The Hon'ble Supreme Court has in its judgment observed as under:-

"78. There is no doubt that since the airwaves/frequencies are a public property and are also limited, they have to be used in the best interest of the society and this can be done either by a central authority by establishing its own broadcasting network or regulating the grant of licences to other agencies, including the private agencies. 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 where 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. ***That is why the need to have a central agency representative of all sections of the society free from control both of the Government and the dominant influential sections of the society.*** *(emphasis supplied).....".*

.....

82. ..... 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 monopolised either by a partisan central authority or by private individuals or oligarchic organisations. 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. When, therefore, the electronic media is controlled by one central agency or few private agencies of the rich, there is a need to have a central agency, as stated earlier, representing all sections of the society. ***Hence to have a representative central agency to ensure the viewers' right to be informed adequately and truthfully is a part of the right of the viewers under Article 19(1) (a).*** *(emphasis supplied) .....".*

194. ***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, corporation or a private individual or body*** *(emphasis supplied).* *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*** *(emphasis supplied).* *....*

.....

199. ..... 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 viewpoints and opinions which is essential for the growth of a healthy democracy. ..... I have

also mentioned hereinbefore that ***for ensuring plurality of views, opinions and also to ensure a fair and balanced presentation of news and public issues, the broadcast media should be placed under the control of public, i.e., in the hands of statutory corporation or corporations, as the case may be. This is the implicit command of Article 19(1) (a). I have also stressed the importance of constituting and composing these corporations in such a manner that they ensure impartiality in political, economic and social and other matters touching the public and to ensure plurality of views, opinions and ideas. This again is the implicit command of Article 19(1) (a).*** *(emphasis supplied.) This medium should promote the public interest by providing information, knowledge and entertainment of good quality in a balanced way. Radio and television should serve the role of public educators as well. Indeed, more than one corporation for each media can be provided with a view to provide competition among them (as has been done in France) or for convenience, as the case may be.*

……..

201. ……The right of free speech and expression includes the right to receive and impart information. For ensuring the free speech right of the citizens of this country, it is necessary that the citizens have the benefit of plurality of views and a range of opinions on all public issues. A successful democracy posits an 'aware' citizenry. Diversity of opinions, views, ideas and ideologies is essential to enable the citizens to arrive at informed judgment on all issues touching them. This cannot be provided by a medium controlled by a monopoly - whether the monopoly is of the State or any other individual, group or organisation. ……. The 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. It/they must be required by law to present news, views and opinions in a balanced way ensuring pluralism and diversity of opinions and views. It/they must provide equal access to all the citizens and groups to avail of the medium.".

3.7.1 The Hon'ble Supreme Court has observed, *inter alia*, that State control really means governmental control, which in turn means control of the political party or parties in power for the time being and have further observed that public service broadcasting should be in the hands of a statutory corporation or corporations set up under a statute and the constitution of such corporation or corporations should be such as to ensure their impartiality in political, economic and social matters and on other public issues and they should promote pluralism and diversity of opinions and views.

3.7.2. It is evident from the above discussions that, under the scheme of distribution of subjects between the Union and the States under the Constitution, it is only the Parliament which has power to legislate on the subject of broadcasting. Any corporation for the purpose of public service

broadcasting has to be set up only under a law enacted by Parliament and the State Governments do not have power to set up any such statutory broadcasting corporations. TRAI does not have any material or facts to deviate from this settled position.

(d) Sarkaria Commission Recommendations:

3.8. The issue relating to amendment of Entry 31 of List I of the Seventh Schedule to the Constitution was considered by the Commission under the Chairmanship of Hon'ble Mr. Justice R.S. Sarkaria. 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 paragraphs read as under:-

' 2.10.32 Entry 31, List I – It 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.

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.

One State Government has pointed out that while in the past the telephone facilities were departmentally run, now the Mahanagar Telephone Nigam, an autonomous body has been set up for the management and development of these facilities in Bombay and Delhi. It is argued that, in line with this trend, autonomous bodies set up by the Union are made responsible for telephone facilities in metropolitan towns while in other towns and rural areas similar autonomous bodies set up by States may be made responsible. It has proposed that for the purpose telephones may be shifted from List I to List III.

Telephones are a very important means of communication. Stretching over the length and breadth of the country, they help to bind the nation together. They are vital for practically every facet of the nation's life e.g. in trade and commerce. These facilities require large investments. Technological advances are taking place all the time in this field. For the successful operation of these

facilities, they lean on other facilities like satellites which are with the Union. Establishment of autonomous bodies at important centres is only an administrative arrangement decided upon by the Union for the more efficient discharge of its functions. But such an action cannot be made the basis for a plea to transfer part of the subject to the Concurrent List.

It is in the larger interests of the nation that this important means of communication remains within the exclusive jurisdiction of the Union so that the entire system develops as an integrated, sophisticated and modern facility.'.

3.8.1 Chapter XIX of the Sarkaria Commission's report under the heading "Mass Media" further dealt with the issue. The observations of the said Commission are contained in paragraphs 19.2.03, 19.2.04 and 19.2.05 which read as under:-

"19.2.03 We will first examine the suggestion for constitutional amendment to transfer Broadcasting from the Union to the State or the Concurrent List in the Seventh Schedule. A radio transmission system or a television transmission system works on an energy wave which carries the message across to the receiver system working synchronously on the same wave length. As energy waves do not observe any boundaries except the boundary of dissipation of its energy, national or linguistic boundaries are no bar to the reception as long as the energy can carry the message across. If Radio or TV transmission in two nations or two linguistic areas work on the same wave length, there is quite a chance of the two system interfering with each other. When there is stress between two nations or two linguistic areas, such interference can lead to greater stress. Therefore, the international community has agreed to control the wave lengths and bands on which each country can work. Every country has to honour this agreement. Transmission in each country has to be kept within the agreed frequencies. This control over frequencies is exercised by the International Telecommunications Union. There is no criticism on the working of this international agreement in the replies received by us. What the States seek is control over the message or the entertainment dissemination by the system and freedom to air their views through the system.

19.2.04 In a country where a substantial part of the citizenry is illiterate or semi-literate and the population, particularly in the rural areas, is not very mobile, and they have few opportunities to get information of men and affairs in the other parts of the country, the Radio and the TV are powerful media for influencing thinking, attitudes and options of the citizenry. Hence every political party seeks to have access to the media in the interest of the party. In the more educated and enlightened countries, with several systems of mass communication to which people have access, the citizen has some means of comparing notes and differentiating between propaganda and fact. In this country where, as we have emphasised elsewhere, parochialism, chauvinism, casteism and communalism are pervasive and are actively made use of by powerful groups, if uncontrolled use of these media is allowed, it may promote centrifugal tendencies endangering the unity and integrity of the nation. In the

context of the demand of some States to have their own broadcasting stations, it will be pertinent to quote the views of the Verghese Committee:

"The propagation of a national approach to India's problems, creating in every citizen an interest in the affairs, achievements and culture of other regions and helping them to develop a national consensus on issues which concern the country as a whole, is of such supreme importance that any structure which inhibits this cannot be accepted."

We agree with these views. Further, the message of unity and integrity and the basic cultural links of the various parts of the country has to be carried to all, especially to the backward areas of the country so that the impact becomes effective. From a purely economic angle, if other reasons are not conclusive, a devolution to the States to have their own broadcasting and control will help largely the richer States. The poorer States will not have the resources to avail of the freedom and their areas will continue to develop without an understanding of the basic unity, further strengthening centrifugal forces. The Verghese Committee has also drawn attention to these difficulties. If autonomous State level broadcasting corporations are also set up, a coordinated approach to many complex technical matters such as inter-regional and inter-State linkages, will become far more difficult. The telecommunication and space facilities which are vital for radio and television networks are also under the control of the Union. For all these reasons and particularly the need to control centrifugal tendencies, we cannot support the demand for either a concurrent or an exclusive power to the States with respect to broadcasting.

19.2.05 Nevertheless, it cannot be forgotten that it is a political party which controls the Union Executive. Lest there be a temptation to use these powerful media wrongly in the party interest and not necessarily in the national interest, 'Ground Rules' of behaviour have to be established and observed meticulously. The need for a watch-dog for both the Union and the States becomes obvious. We shall deal with these aspects in the next section." .

3.8.2. The Sarkaria Commission has also observed (in paragraph 2.10.33 of its report) that " 'Broadcasting' includes not only 'Radio and Television' but also other forms of wireless communication.". The Authority therefore, is of the opinion that any mode of communication which is ejusdem generis with 'broadcasting', such as satellite broadcasting, Direct-to-Home (DTH) broadcasting, cable broadcasting, IPTV broadcasting, Mobile TV broadcasting, Head-end-In-the-Sky (HITS), etc., , would also be covered by the expression "other like forms of communication" in Entry 31 of List I of the Seventh Schedule.

3.8.3. Thus, the Sarkaria Commission has dealt with this issue extensively and recommended against allowing State Governments to have their own broadcasting stations or broadcasting corporations.

(e) International Practices:

3.9. In the United States of America, all broadcast TV channels are entirely privately owned. The "public" TV and radio stations are privately owned non-profit entities, most of which are supported by the Congressionally chartered and funded Corporation of Public Broadcasting (CPB). There is no government-owned broadcast TV station or channel in the U.S.

3.9.1. In Australia, the Provincial governments do not have any public service broadcasting of their own. Australia has three national public service broadcasters, namely, Australian Broadcasting Corporation (ABC), Special Broadcasting service (SBS) and National Indigenous Television (NIT).

3.9.2. In Canada, the Canadian Broadcasting Corporation (CBC), a Canadian crown corporation is the country's national public radio and television broadcaster. Provincial educational communications authorities, "arms-length" public corporations, were established in the 1970s and 1980s which allowed the Canadian Radio-Television and Telecommunication Commission (CRTC) to license provincial educational broadcasters. Several provinces thus maintain their own provincial public broadcasting networks in addition to the CBC. Provincial public broadcasters broadcast through satellite as well as terrestrial mode. Mostly provincial public broadcasters are for educational purpose and receive funds from the provincial government. Funding comes essentially from provincial government grants, some specific program or project funding, program underwriting, on-air solicitation campaigns, and the sale of programmes. **(Source: EDUCATIONAL BROADCASTING IN CANADA - A Brief Overview by Ron Keast.**). However some provincial public broadcasters do get some income from commercial advertisements. It is to be noted here that the Canadian Broadcasting Act mandates that subject to the said Act and the Radio communication Act and to any directions to the Commission issued by the Governor in Council under this Act, the Commission shall regulate and supervise all aspects of the Canadian broadcasting system. The Act contains a specific provision (section 7) enabling the Governor in Council to, by order, issue to the Commission directions of general application on broad policy matters. The said provision reads as under:-

"Policy directions

7. (1) Subject to subsection (2) and section 8, the Governor in Council may, by order, issue to the Commission directions of general application on broad policy matters with respect to

*(*a*) any of the objectives of the broadcasting policy set out in subsection 3(1); or*

*(*b*) any of the objectives of the regulatory policy set out in subsection 5(2). Exception*

(2) No order may be made under subsection (1) in respect of the issuance of a licence to a particular person or in respect of the amendment, renewal, suspension or revocation of a particular licence.

Directions binding

(3) An order made under subsection (1) is binding on the Commission beginning on the day on which the order comes into force and, subject to subsection (4), shall, if it so provides, apply with respect to any matter pending before the Commission on that day.

Exception

(4) No order made under subsection (1) may apply with respect to a licensing matter pending before the Commission where the period for the filing of interventions in the matter has expired unless that period expired more than one year before the coming into force of the order.

Publication and tabling

(5) A copy of each order made under subsection (1) shall be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the making of the order.

Consultation

(6) The Minister shall consult with the Commission before the Governor in Council makes an order under subsection (1).".

Accordingly, the Direction to the CRTC (Ineligibility to Hold Broadcasting Licences) has been issued (SOR/85-627) which specifies the entities which shall not be eligible for the issuance of a licence for broadcasting . The said Direction, inter alia, contains the following provisions as regards entry of provincial governments into the broadcasting sector, namely:-

"3. The Commission is hereby directed that, on and after June 27, 1985, broadcasting licences may not be issued and renewals of broadcasting licences may not be granted to applicants of the following classes:

(a) Her Majesty in right of any province;

(b) agents of Her Majesty in right of any province; and

(c) municipal governments.

4. Notwithstanding section 3, the Commission may, on application, issue or grant a renewal of a distribution undertaking licence to an applicant of the class referred to in paragraph 3(c) or to any applicant that, as determined by the

Commission, is directly controlled by the governing body of a municipal government where the Commission is satisfied that

(a) a refusal to issue or grant a renewal of the licence would be contrary to the public interest; and

(b) the community programming to be provided by the applicant under the licence would afford a reasonable opportunity for the expression of differing views on matters of public concern."

3.9.3. Thus, it can be seen that the Provincial Governments have not been permitted into broadcasting activities but the provinces have been allowed to own educational broadcasting networks through independent corporations. The definition of independent corporations as given in the said Direction is as follows:-

"independent corporation" means ***a corporation that the Commission is satisfied is not directly controlled by Her Majesty in right of any province or by a municipal government*** *(emphasis supplied) and that is designated by statute or by the lieutenant governor in council of a province for the purpose of broadcasting the following types of programming, namely,*

(a) programming designed to be presented in such a context as to provide a continuity of learning opportunity aimed at the acquisition or improvement of knowledge or the enlargement of understanding of members of the audience to whom such programming is directed and under circumstances such that the acquisition or improvement of such knowledge or the enlargement of such understanding is subject to supervision or assessment by a provincial authority by any appropriate means, and

(b) programming providing information on the available courses of instruction or involving the broadcasting of special education events within the educational system,

which programming, taken as a whole, shall be designed to furnish educational opportunities and shall be distinctly different from general broadcasting available on the national broadcasting service or on privately owned broadcasting undertakings;" .

This would clearly show that in the matter of general broadcasting available on the national broadcasting service or on privately owned broadcasting undertakings, there is no scope for entry of the Provincial Governments in Canada.

3.9.4. The position in Germany is different where Public Service Broadcasting is the responsibility of twelve broadcasting corporations. Out of these twelve corporations, nine corporations are from provincial states and three are of Federal (Central) Government. Association of Public

Broadcasting Corporation of Germany (ARD) is an association of nine state/regional corporations and two federal corporations. Zweitee Deutsches Fernsehen or the second German Television (ZDF) is the main Public Service Broadcaster (PSB) at federal level. DW and DLF are other two PSBs which mainly provide services on radio. All these corporations are set up under the federal/state laws. Here again it is to be noted that in Germany each state is empowered to have its own set of legislation/rules/regulation on broadcasting activities. There are separate regulators at State and Federal level. Association of Public Broadcasting Corporation of Germany (ARD) and Inter State Agreement on the restructuring of Broadcasting signed by the federal states harmonises the regulating framework for the whole country. But under the Indian Constitution, the subject of broadcasting is in the exclusive domain of the Central Government. Therefore, no useful guidance is likely by comparing the system prevalent in Germany with that in India.

(f) Views Of Stake Holders:

3.10. The views of the various stake holders would also be relevant for guidance on the subject and their views are broadly discussed as under:-

3.10.1 Many of the responses from stake-holders, particularly, those received from the Indian Broadcasting Foundation and individual broadcasters and some of the major multi system operators (MSOs) have placed reliance upon the observations made by the Hon'ble Supreme Court in the above case. These stake-holders have expressed their view that State Governments, urban and local bodies, publicly funded bodies and political bodies should not be permitted to enter into broadcasting activities and into distribution platforms like cable services.

3.10.2. On the other hand, the Cable Operators Federation of India and the representatives of M/s Jain TV (in the Open House Discussions) have opined that State Governments should be permitted to enter into broadcasting and distribution activities. An advocate-consumer activist has also given the same view but suggested that "However it should be done by a separate entity formed for this purpose with adequate number of competent professionals governing it". The representative of Surya Foundation has stated that while in the broadcasting sector the resources are limited, in the distribution sector, the more number of people enter the sector, the better. He has also suggested that Centre-State ideological differences should be addressed if State Governments are to be allowed to enter into broadcasting. M/s Media Content & Communications Services (India) Pvt. Ltd. (MCCS) have, in their comments, opposed the entry of State Governments into the broadcasting sector as, according to them, the same would not be within the scheme of distribution of subjects between the Centre and the States in the Constitution and that the permitting of State Governments to enter the broadcasting sector would have an impact on Centre-State relations. They have also suggested that in case the State Governments are permitted to enter into the

broadcasting sector, they should be permitted to do so only in respect of areas like education, rural employment, eradication of poverty, agricultural issues, infant and child health and rural infrastructure issues. In all these varying shades of opinions, one common view expressed by most of the stake-holders is that political bodies should not be permitted to enter into the broadcasting sector.

3.10.3. The foregoing discussion of the Constitutional provisions, the Constituent Assembly debates, the relevant judicial pronouncements, the recommendations of the Commission on Centre State Relations (the Sarkaria Commission), international practices can be summarised briefly as follows:-

(a) under the scheme of distribution of subjects between the Union and the States under the Constitution, it is only the Parliament which has power to legislate on the subject of broadcasting, and, therefore, any corporation for the purpose of broadcasting has to be set up only under a law enacted by Parliament;

(b) it had been decided by the framers of the Constitution, after considerable deliberations, that Broadcasting should be part of the Federal subjects;

(c) the Hon'ble Supreme Court has, in the case of Cricket Association of Bengal (1995 AIR(SC) 1236 :: 1995 (2) SCC 161), observed that public service broadcasting should be in the hands of a statutory corporation or corporations set up under a statute since, in its view, State control really means governmental control, which in turn means, control of the political party or parties in power for the time being;

(d) The Commission on Centre State Relations (the Sarkaria Commission) has made a categorical observation that -----

(i) if autonomous State level broadcasting corporations are also set up, a coordinated approach to many complex technical matters such as inter-regional and inter-State linkages, will become far more difficult;

(ii) the telecommunication and space facilities which are vital for radio and television networks are also under the control of the Union;

(iii) from a purely economic angle, if other reasons are not conclusive, a devolution to the States to have their own broadcasting and control will help largely the richer States and the poorer States will not have the resources to avail of the freedom and their areas will continue to develop without an understanding of the basic unity, further strengthening centrifugal forces; and

(iv) for all these reasons and particularly the need to control centrifugal tendencies, it cannot support the demand for either a concurrent or an exclusive power to the States with respect to broadcasting;

(e) the international practices and experiences show that the trend is towards keeping both the federal and provincial governments away from broadcasting except as regards educational and community broadcasting;

3.10.4. Many of the stake holders have pointed out that if State Governments are allowed to enter into broadcasting sector, it would harm the fairness and independence of the broadcasting medium as, in their view, the State organs which derive their funding from the public exchequer can potentially present unfair competition to small and local and regional players and ultimately thwart the airing of any news or events which show them in a poor light, thus affecting the fairness of broadcasting. One stake-holder has, while expressing similar views, also pointed out that since the source of funding for the Union Government and the State Governments is, to a large extent, public funds in the form of taxes and levies, allowing these entities into broadcasting will tantamount to wasteful expenditure of public funds. One of the stake-holders has also drawn the attention of the Authority to ----

(a) the United States' prohibition, since 1951, on the use of appropriated funds for propaganda purposes, which reads as under:-

`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.'; and

(b) the Stop Government Propaganda Act, 2005 aimed at stopping taxpayer funded Government propaganda.

3.10.5. Further, the Authority, upon careful consideration of the issue, finds that recommendations of the Commission on Centre State Relations and the observations of the Hon'ble Supreme Court in their judgment in the case of Cricket Association of Bengal (cited supra), as referred to in the preceding paragraphs, are fully relevant even today and the Authority, is guided by the said recommendations and observations, particularly, the following basic principles as contained therein, namely:-

(a) public service broadcasting should be in the hands of a statutory corporation or corporations set up under a statute (such as the Prasar Bharati established under the Prasar Bharati (Broadcasting Corporation of India) Act, 1990;

(b) if autonomous State level broadcasting corporations are also set up, a coordinated approach to many complex technical matters such as inter-regional and inter-State linkages, will become far more difficult and having regard, particularly, to the need to control centrifugal

tendencies, the demand for either a concurrent or an exclusive power to the States with respect to broadcasting cannot be supported.

The Authority does not have any ground or material to deviate from the said recommendations which the Authority feels remain relevant in today's context also.

3.10.6. The Authority further notes that, at present, the State Governments have not been permitted, by any law or policy or otherwise, to enter into broadcasting activities. The background note of the Government of India (Ministry of Information and Broadcasting), forwarded to the Authority along with the present reference, records the following, *inter alia*, as reasons for rejection of some of the earlier requests of certain State Governments to enter into broadcasting activities, namely:-

(a) In almost all the developed democratic countries, the Governments are explicitly debarred under the relevant laws from holding broadcasting licence or do not do so by tradition or conviction. Broadcasting system controlled or managed by the State is found to be inconsistent with the basic principles of democracy. Not only does it affect adversely the citizen's right to free speech but also acts against the principle of level playing fields among the political parties; and

(b) On practical consideration also, a State owned or managed broadcasting is not likely to survive since it would be perceived as a propaganda machinery and would lose its credibility and viewership in due course. Example of newspapers is relevant in this regard. Even though there is no restriction on the Government owning or managing a newspaper, neither the Central Government nor any State Government has ventured in this area because it is not likely to have a sustained readership.

The Authority finds that these reasons hold good even today. From the point of view of availability of content, it has to be noted that there are, at present, nearly 370 television channels in different languages and genres for which the Central Government (Ministry of Information and Broadcasting) has already granted permission under the uplinking/downlinking guidelines. These do not include 30 numbers channels of Doordarshan in different languages which cater to the national as well as regional aspirations and the need for information and entertainment. Several more channels have, it is undersood, recently applied to the Central Government for permission. Such being the case, it is difficult to come to a conclusion that there is a need for state interventions because there is no perceived gap between the needs and the availability of channels for meeting such needs for information and entertainment. Also, from the point of view of financial and operational viability, it has to be kept in view that in today's scenario of commercially driven private broadcasting, with hundreds of private owned channels competing with each other to catch and retain viewership, there is little likelihood of any State Government owned broadcasting entity gaining or

retaining sustained interest of the listeners and viewers. Therefore, the Authority finds considerable merit in the contention of several of the stakeholders that the entry of State Governments and their entities into broadcasting sector, if permitted, would only become a drain on the public exchequer and would become yet another example of misapplication of the tax payers' money.

3.10.7. It may be worthwhile in this context to refer to the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 which came into effect after the Hon'ble Supreme Court delivered its judgment in the Cricket Association case. The Statement of Objects and Reasons of the Prasar Bharati Bill, 1989, *inter alia*, provide as under:-

"4. The Corporation will, while discharging its functions, be guided by specified objectives, with 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.

.....
6. The Bill also provides for the establishment of a Broadcasting Council, consisting of a President and ten other Members appointed by the President of India. The Council will ensure that the citizen's right to be informed freely, truthfully and objectively is fully protected and that the Corporation does not stray from the objective of ensuring adequate coverage to the country's diverse culture, and of catering to the various sections of society. This Council will consider complaints about programmes broadcast by the Corporation in this context and render suitable advice to the Board of Governors. "

3.10.8. To achieve the objects as contained in the Statement of Objects and Reasons of the Prasar Bharati Bill, 1989, section 12 of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 contains, inter alia, the following provisions as regards the objectives of the Prasar Bharati Corporation, namely:-

"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** (emphasis supplied) to inform, educate and entertain the public and **to ensure a balanced development of broadcasting on radio and television**(emphasis supplied).

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 or 1885)

(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 appropriate 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 the children, the blind, the age, the handicapped and other vulnerable Sections of the people; *(emphasis supplied)*

(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 utilization 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; (emphasis supplied)

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

(c) to negotiate for the purchase of, or otherwise acquire, programmes and rights or privileges in respect of sports and other events, films, serials, occasions, meetings, 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.

(4) Nothing in sub-sections (2) and (3) shall prevent the Corporation from managing on behalf of the Central Government and in accordance with such terms and conditions as may be specified by that Government the broadcasting of External Services and monitoring of broadcasts made by organizations outside India on the basis of arrangements made for reimbursement of expenses by the Central Government.
…….".

3.10.9. It may be seen from the above, the relevant provisions of the Prasar Bharati Act appear to capture the principles laid down by the Apex Court in its Cricket Association judgment as regards public service broadcasting.

3.11. The State Governments' demands for entry into the broadcasting sector are generally based on their aspirations to reach out to the people of the respective States and to inform and educate them about their various developmental programmes and policies so that the general public can derive maximum benefits from such programmes and policies. The Hon'ble Sarkaria Commission has also taken note of these aspirations of the State Governments. In fact, one of the State Governments had specifically stated before the Hon'ble Sarkaria Commission that State Governments are responsible for a substantial chunk of developmental activity and have in most cases been reorganized on linguistic lines and therefore they should have adequate access to radio and television facilities to propagate their language, culture, values, developmental programmes and different view points with regard to their special problems and opportunities. However, the demand for setting up of separate broadcasting stations by the State Governments based on this reasoning was not accepted by the Hon'ble Sarkaria Commission. Nevertheless, recognizing the needs of the State Governments as regards use of this powerful medium, the Hon'ble Sarkaria Commission recommended that ----

(a) De-centralisation to a reasonable extent in the day-to-day operations of radio and television is necessary; and

(b) the two mass media should constantly strive for a harmonious adjustment between the imperatives of national interest and the varied needs and aspirations of the States and their inhabitants. (Paragraphs 19.3.02 and 19.8.01 of the Report of the Hon'ble Commission).

The Authority finds that the aforesaid recommendations of the Hon'ble Sarkaria Commission continue to be relevant in today's context when the public broadcasting media (both All India Radio and Doordarshan) are in the hands of an independent statutory corporation, viz., Prasar Bharati.

3.12.1. As things stand today, the State Governments and their organs have not been permitted to enter into broadcasting activities. The Prasar Bharati, established under the Prasar Bharati (Broadcasting Corporation of India) Act, 1990, is catering to the needs of the State Governments to inform and educate the public about the Government policies, etc. through the broadcast route. It has separate satellite TV channels in almost all the national languages. These channels are being uplinked from the State capitals. Doordarshan's National Channel (DD1) is also delinked for about 3-4 hours a day for State level programming by the concerned Doordarshan Kendras situated in different States. Proceedings of Question Hours of the Lok Sabha and the Rajya Sabha are also being telecast live on the National Channel of Doordarshan. Thus, Prasar Bharati is playing an important role in meeting the requirements of Central and State Governments with regard to informing and educating the public about Government policies, etc. **In view of this, the Authority recommends that------**

(a) the aspirations of the State Governments, as regards broadcasting, can be, within the existing policy framework, adequately met by Prasar Bharati. The Prasar Bharati should, ----

(i) continue to strengthen its existing regional framework for this purpose by creating adequate facilities at the regional level;

(ii) suitably augment regional language capacities for providing increased airtime for its regional services,----

(iii) continue to ensure, at the same time, that there are no political overtones in such regional broadcast services and that there is no compromise with the basic tenets of national integration, secularism and the basic unity and integrity of the nation.

(b)The Central Government (Ministry of Information and Broadcasting) may take necessary steps for ensuring that the Prasar Bharati Corporation, through its regional kendras, continues to give all support and assistance to the State Governments in taking their policies and programmes to the inhabitants of the respective States without any political bias.

3.12.2. As regards some of the specific objectives as contained in the Prasar Bharati (Broadcasting Corporation of India) Act, 1990, such as (a) ensuring balanced development of broadcasting on radio and television, (b) paying special attention to the fields of education and spread of literacy, agriculture, rural development, environment, health and family welfare and science and technology, (c) informing and stimulating the national consciousness in regard to the status and problems of women and paying special attention to the upliftment of women, (d) promoting social justice and combating exploitation, inequality and such evils as untouchability and advancing the welfare of the weaker sections of the society, (e) safeguarding the rights of the working classes and advancing their welfare, (f) taking special steps to protect the interests of the children, the blind, the aged, the handicapped and other vulnerable sections of the people, etc., the Authority feels that the role of the Prasar Bharati needs to be supplemented in respect of public service broadcasting obligations through other broadcasters also. The Authority is making separate recommendations, at the end of this Chapter, as regards public service broadcasting obligations, which may be imposed on private broadcasters and the role Prasar Bharati can play in regard to those obligations.

3.12.3. While considering the question of allowing State Governments and their entities to enter into the broadcasting sector, it is also necessary to examine the need for the same from the following two angles, namely:-

(a) whether there is a need for augmenting the suppliers in the market by resorting to bring in enterprises run/sponsored by the State Governments; and

(b) whether such entities, if permitted, would be able to carry out their functions in a financially and operationally sustainable manner.

3.12.4. As far as the issue of need to bring in additional suppliers in the form of enterprises run/sponsored by State Governments is concerned, it is necessary to bear in mind that the need for such intervention in the market arises only when there is not enough competition in the market. In so far as the broadcasting activities are concerned, there is no dearth of suppliers in the market. This is evident from the fact that today there are over 370 different television channels (other than 30 channels of Doordarshan), covering a large number of genres and these are broadcast in a number of languages in the country. Reportedly, a number of applications for launching new channels have also been put in by the prospective suppliers. In fact, the position today is completely different from what was witnessed few years ago. Be it information or entertainment or sports or any other general content, the channels are now catering to the variety of needs of the television viewing population of the country. Therefore, from a market perspective, introduction of additional suppliers in the form of entities run or sponsored by the State Governments is not called for at this stage.

3.12.5. As far as the issue of the ability of the State Governments and their entities to run broadcasting stations in a financially sustainable manner is concerned, the track record of the State Governments has been found to be clearly dismal. In a study done by Institute of Public Enterprises, Hyderabad (R.K. Mishra and J.Kiramani, Economic & Political Weekly, 30th September, 2006), it was found that there were 1068 State level public enterprises in the country in 2002-2003, with an investment of Rs.3,06,493 crore. A majority of these enterprises were loss making and their net loss in one year alone (2002-2003) was nearly Rs.7000 crore, constituting about 8% of the revenues in that year. Such being the experience, it is difficult to affirm that the State Governments and their entities will be able to financially sustain such creative and highly competitive activity as broadcasting. It is more likely that such State enterprises, if permitted, would only become a drain on the public exchequer and thus become yet another example of misapplication of the tax payers' money.

3.13.1. As already stated in paragraph 1.20 of these recommendations, the Authority had, having regard to the close interlinking of various questions of a substantially Constitutional and legal nature of the issues under consideration of the Authority, forwarded copies of the Consultation Paper on this subject to the Commission on Centre-State Relations, the Secretariat of the Inter-State Council, the learned Attorney General of India, the learned Solicitor General of India, the Union Law Secretary, the Union Home Secretary and the Election Commission of India. Therefore, the recommendation of the

Authority on the policy issue is based on its own humble understanding (not interpretation, which is in the domain of the Hon'ble High Courts and the Hon'ble Supreme Court) of those Constitutional and legal issues and the governing law as discussed in the foregoing paragraphs. The Authority, in all humility, feels that the issue at this stage is one of framing a policy within the extant Constitutional and legal framework and, therefore, it would be not within the scope of the present reference to make any recommendation as regards the need or timing to modify such framework.

3.13.2. A question may arise, in the context of the provisions of entry 31 in List I (Union List) of the Seventh Schedule to the Constitution of India as to whether the Union may, in exercise of its powers under the said entry 31 in List I of the Seventh Schedule, as a matter of policy, grant permission to the State Governments to set up their own broadcasting stations, particularly in view of the fact that the entry does not appear to impose any restrictions on the discretion of the Central Government to allow such entities, as it deems fit, to enter into the broadcasting sector. This is a question which would require to be answered in the light of several factors such as -------

(a) the intention of the framers of the Constitution in not including a provision similar to section 129 of the Government of India Act, 1935 even though such inclusion was suggested by several members of the Constituent Assembly during debates on the said entry in the Constituent Assembly;

(b) the factors which were considered by the Sarkaria Commission in negating the demand raised before it for the inclusion of the subject of broadcasting in the Concurrent List as also the demand to allow them to set up their own broadcasting stations;

(c) whether the Union can exercise its powers under the said Entry 31 of List I of the Seventh Schedule to the Constitution in a manner which may appear to be against the Constitutional ethos (as can be culled out from the Constitutional Assembly debates on the subject, as noticed supra) and allow State Governments to own broadcasting stations in spite of the observations of the Hon'ble Supreme Court that broadcasting media should be under the control of public and that control by public means control by an independent public corporation or corporations, as the case may be, formed under a statute.

In fact, the question whether the Central Government can, at its discretion, permit the State Governments to establish their own broadcasting stations is a question which not only has substantial implications from the point of view of inter-regional and inter-State linkages and the need to contain centrifugal tendencies but it also appears to be one having a bearing on Centre-State relations as well as relations amongst States *inter se*.

3.14. Having regard to –

(a) the Constitutional provisions supported by the Constituent Assembly debates which indicate that the framers of the Constitution have intended that the Central Government must have control over broadcasting;

(b) the recommendation made by the Sarkaria Commission that if autonomous State level broadcasting corporations are also set up, a coordinated approach to many complex technical matters such as inter-regional and inter-State linkages, will become far more difficult (and that the telecommunication and space facilities which are vital for radio and television networks are also under the control of the Union) and that a devolution to the States to have their own broadcasting and control will help largely the richer States and the poorer States will not have the resources to avail of the freedom and their areas will continue to develop without an understanding of the basic unity, further strengthening centrifugal forces;

(c) the observations of the Supreme Court in the Cricket Association case that –

(i) 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, corporation or a private individual or body and that a monopoly over broadcasting, whether by Government of by anybody else, is inconsistent with the free speech right of the citizens;

(ii) State control really means governmental control, which in turn means, control of the political party or parties in power for the time being and that such control is bound to colour the views, information and opinions conveyed by the media;

(iii) The free speech right of the citizens is better served in keeping the broadcasting media under the control of public and that control by public means control by an independent public corporation or corporations, as the case may be, formed under a statute;

(d) the fact that the Prasar Bharati, established under the Prasar Bharati Act, 1990 is, under the specific provisions of the said Act, has been mandated, as its primary duty, 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 and has been further mandated with the objective of 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 and, accordingly, Prasar Bharati is already catering to the needs of the State Governments to inform and educate the public about their policies, etc. through the broadcast route through its separate satellite TV channels in almost all the national languages being uplinked from the State capitals and by delinking Doordarshan's National Channel (DD1) for about 3-4 hours a day for State level programming by the concerned Doordarshan Kendras situated in different States (as discussed in greater detail in paragraph 3.15. above); and

(e) the international practices discussed in the preceding paragraphs which generally do not support any devolution in favour of provincial governments,

the Authority is of the view that, as a matter of policy, as regards entry of State Governments and their organs into broadcasting activities, the present position as referred to in paragraphs 3.10.6 and 3.12.1 above may be allowed to continue and recommends accordingly.

C. Entry of urban and local bodies, etc. into broadcasting activities

(A) VIEWS OF STAKE HOLDERS:

3.15. As regards the issue of permitting urban and local bodies, 3-tier Panchayati Raj bodies and other publicly funded bodies, most of the stake-holders have not favoured the idea of grant of permission to such bodies to enter into broadcasting activities. One broadcaster has expressed the view that "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.".

3.15.1. Another stake-holder has referred to the American experience in the following words, namely:-

"We would like the 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;**"**.

Accordingly, it has expressed the view 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.".

3.15.2 . Another stake-holder has endorsed the above view as regards wastage of public money and stated that "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.".

3.15.3 . Yet another stake-holder, a consumer activist, has given the view that "None of these local administration bodies should be allowed to (enter) 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.".

3.16.1. The first and foremost question which arises in the context of permitting urban and local bodies, Panchayati Raj bodies and other publicly funded bodies into the broadcasting sector is as to whether such

bodies would need to own broadcasting stations. The mandates for such bodies being limited by the respective statutes, such as provision of basic amenities and services to the people living in specified areas, the question of owning a broadcasting station is one which does not appear even remotely connected to the specific objects for which such bodies are created. Further, urban and local bodies, panchayati raj institutions and other similar publicly funded bodies are entrusted with specified local developmental activities which are limited to the geographical areas of such bodies. The propagation of policies and developmental schemes adopted by such bodies at the local level, particularly having regard to the smaller geographical limits of their jurisdiction, is much easier and does not require extensive investments on propaganda of such policies and schemes.

3.16.2. The setting up of a broadcast station, be it radio or television, is highly capital intensive and is mainly driven by strong commercial considerations. In case an urban or local body is to own a broadcasting channel, it may, in the first place, require heavy investments from public funds. Such a broadcasting channel would have negligible revenues from commercial advertisements (which is the backbone of a commercially driven broadcasting channel) and, therefore, the sustained operation of such a broadcasting channel would again be dependent upon continuous availability of public funds. Thus, the undertaking of any broadcasting activities by such bodies would only result in the drain of public funds which may, otherwise, be available for utilization in the developmental activities of such bodies for the benefit of the inhabitants of the area. Thus, from a purely policy expediency angle, there appears to be no justification for permitting such bodies into broadcasting activities.

It should also be remembered that broadcasting activities involve usage of scarce frequencies which are also required for several other purposes and, given the ever increasing demand for the use of frequency spectrum, the allocation of frequency spectrum for broadcasting activities by such urban and local bodies would not serve the cause of optimum utilization of this scarce commodity.

In any case, the ownership of a broadcasting channel involves heavy financial implications for such bodies and also has larger economic and technological implications for the country as a whole and, therefore, existing broadcasting channels at the regional level can take care of the objective of propagation of developmental policies and schemes of such local bodies. The requirements of such bodies as regards use of the broadcasting media can be easily met by appropriate use of the regional kendras of the public service broadcaster or the community broadcast facilities available in the region.

3.16.3. The observations made by the Sarkaria Commission and by the Hon'ble Supreme Court in the Cricket Association case, as referred to supra in the context of the question of permitting entry to State Governments into broadcasting activities, are relevant in the context of the question of allowing

such entry to urban and local bodies, Panchayati Raj bodies and other publicly funded bodies.

3.16.4. Accordingly, the Authority recommends that urban and local bodies, Panchayati Raj bodies and other publicly funded bodies should not be allowed to enter into broadcasting activities.

3.16.5. At the same time, the Authority fully recognises the need to encourage the setting up of Community Radio and Television channels for broadcasting programmes of immediate relevance to the community and focusing on issues relating to education, health, environment, and agriculture and rural and community development in various parts of the country. One of the stake-holders, during the present consultation, has expressed the view that "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." The community radio and television broadcasting sector provides an alternative voice to commercial and public media. It is a vital source of independent programming, delivered to audiences with specific language or cultural requirements or in a particular location. It provides an opportunity for people to become involved in creating media, sharing information and participating in society more broadly. Community broadcasting contributes to cohesive communities, especially through maintenance and development of culture, language skills and the alternative voice they provide to mainstream media. The Ninth United Nations Round Table on Communications for Development, held in Rome in September 2004, in its final declaration, referred to community media in the following terms:

"Governments should implement a legal and supportive framework favouring the right to free expression and the emergence of free and pluralistic information systems, including the recognition of the specific and crucial role of community media in providing access to communication for isolated and marginalised groups.".

People and groups who face social and economic marginalisation, especially those in rural areas, are often poorly served or not served at all by private commercial media, and they lack easy access to finance capital to establish their own services. Community broadcasting provides an alternative social and economic model for media development that can broaden access to information, voice and opinion. Human rights and development experts have noted that people faced with social and economic exclusion also face systemic obstacles to freedom of expression that are associated with the conditions of poverty – low levels of education and literacy, poor infrastructure, lack of access to electricity and general communications services, discrimination and so on. Community media have become a vital means by which the voiceless are able to exercise their right to freedom of expression and access to information.

(Source: http://www.bnnrc.net/Seminar/AMARC_09072008/Steve%20Buckly.pdf
Community broadcasting: a global overview
Steve Buckley, President, World Association for Community Radio Broadcasters
Bangladesh Round Table on Community Radio, Dhaka, 9 July 2008)

The worldwide growth of community broadcasting during the last two decades is an indicator that it has a crucial contribution to make to a plural media landscape and that it addresses the needs of those sections of the society which are not generally addressed by mainstream commercial and public broadcasting media.

COMMUNITY RADIO STATIONS:

3.16.6. The policy guidelines of the Government of India for community radio stipulates the eligibility criteria for the applicants as under:-

"1. Basic Principles

An organisation desirous of operating a Community Radio Station (CRS) must be able to satisfy and adhere to the following principles:

(a) It should be explicitly constituted as a 'non-profit' organisation and should have a proven record of at least three years of service to the local community.

(b) The CRS to be operated by it should be designed to serve a specific well-defined local community.

(c) It should have an ownership and management structure that is reflective of the community that the CRS seeks to serve.

(d) Programmes for broadcast should be relevant to the educational, developmental, social and cultural needs of the community.

(e) It must be a Legal Entity, i.e., it should be registered (under the registration of Societies Act or any other such act relevant to the purpose).

2. Eligibility Criteria

(i) The following types of organisations shall be eligible to apply for Community Radio licences:

(a) Community based organisations, which satisfy the basic principles listed at para 1 above. These would include civil society and voluntary organisations, State Agriculture Universities (SAUs), ICAR institutions, Krishi Vigyan Kendras, Registered Societies and Autonomous Bodies and Public Trusts registered under Societies Act or any other such act relevant for the purpose. Registration at the time of application should at least be three years old.

(b) Educational institutions.

(ii) The following shall not be eligible to run a CRS:

(a) Individuals;

(b) Political Parties and their affiliate organisations; [including students, women's, trade unions and such other wings affiliated to these parties.]

(c) Organisations operating with a motive to earn profit;

(d) Organisations expressly banned by the Union and State Governments.".

Thus, under the existing guidelines, community radio stations can be set up by any legal entity, including civil society and voluntary organisations, State Agriculture Universities (SAUs), ICAR institutions, Krishi Vigyan Kendras, Registered Societies and Autonomous Bodies and Public Trusts registered under Societies Act or any other such Act relevant for the purpose and educational institutions.

3.16.7. Community Radio Stations have the advantage of reception of transmission through low cost, battery operated portable receiving sets. The utility of community radio stations in the fields of education, agriculture, rural development, weather forecasting, disaster management, etc. cannot be overemphasized in a country like India. Radio is the main source of news and entertainment for most of India. All India Radio under Prasar Bharati is the top tier in radio coverage, as the public service broadcaster of the Nation. The Private FM broadcasting has now become the second tier, but it has to be borne in mind that the private FM radio operation is mainly driven by commercial considerations. Community radio, in contrast, can be closest to the people, i.e., at the local level and thus serve as the third tier. The Community radio has many advantages over the national broadcaster and private FM radio stations as its programmes, mostly in the local languages, can deal with local issues involving ordinary people so that villagers, townspeople, students and members of local communities not only understand what they are about but also benefit directly and immensely from such programmes.

3.16.8. Having regard to the above factors, the Authority recommends that the Community Radio Stations, set up by community based organisations, including civil society and voluntary organisations, State Agriculture Universities (SAUs), ICAR institutions, Krishi Vigyan Kendras, Registered Societies and Autonomous Bodies and Public Trusts registered under Societies Act or any other such Act relevant for the purpose and educational institutions should be permitted and supported in their activities.

<u>Community Television Transmission:</u>

3.17. As regards television transmission by such bodies, the Authority has, in its recommendations on Issues Relating to Private Terrestrial TV Broadcast Service dated August 29, 2005, observed as follows:-

"2.3 Recommendations of the Authority

…… it is considered that there should not be any bar on throwing open terrestrial broadcasting to the private sector. The question as to whether this would make business sense in a market with high cable and satellite penetration is of course a relevant issue. However, it is considered that this option should be really left to the market to decide. ***In addition there are the possibilities thrown open by convergence as well as community TV*** *(emphasis supplied)****.*** *As a policy there does not appear to be any reason to bar the entry of the private sector for terrestrial television broadcasting any more.*

Accordingly it is recommended that :

i) Terrestrial television broadcasting in India should be allowed in the private sector also.

ii) This should be allowed also for community television."

3.17.1. Community television is internationally recognised as one of the important tools for local development, education and entertainment. It has a much wider impact than that of community radio stations because of its visual appeal to the public. Public-access television in the United States is a form of citizen media, similar to Canada's community channels, Australia's community television and other models of media created by private citizens.

3.17.2 In Australia, Community television stations, like community radio stations are non-profit organisations. This means that they do not make money from the services they provide. Community television stations use sponsorship arrangements to cover their day-to-day running costs. The Community Broadcasting Association of Australia (CBAA) is the apex body representing community radio and television stations. The CBAA represents both stations that already hold a full broadcasting licence and those aspiring to hold licences. Community television provides 'open access' television to all members of the community, including educational institutions, independent film makers, ethnic and specialist interest groups and local businesses. Community television stations produce and broadcast locally-produced programs that are relevant to the communities they are based in. Local news, entertainment and information are presented as a way of addressing issues and presenting information that commercial or government-funded stations do not cover. While community radio stations were quickly established around Australia, community television took longer to develop. This was because producing television programs and running television stations is a much more expensive process. It wasn't until 1984 that a community group based in Perth applied for a community television licence, and that application was unsuccessful. In the late 1980s, Imparja Television (now a commercial station), based in Alice Springs, was established. A few years later, RMITV was set up by students at RMIT University in Melbourne and became the first community television station to receive a test transmission permit. In 1992, the Government asked the ABA to conduct a trial of

community television using the vacant sixth television channel (UHF 31 in capital cities). Community television services have been provided on a trial basis since 1994 under the open narrowcast 'class licence'. These licences are issued on the condition that they are used only for community and educational non-profit purposes. Currently, these class licences are held in Melbourne, Brisbane, Lismore and Adelaide. In 2002, the legislation was changed to introduce new community television licences and in 2004 the first licences were issued in Sydney, Perth, Melbourne and Brisbane.

(Source: http://www.cultureandrecreation.gov.au/articles/communitytelevision/)

3.17.3.. In India, after the various experiments on educational television such as the Satellite Instructional Television Experiment (SITE), the UGC Higher Education Television Project (HETP), etc., the Ministry of Human Resource Development, Information & Broadcasting, the Prasar Bharti and IGNOU launched Gyan Darshan (GD) jointly on 26th January 2000 as the exclusive Educational TV Channel of India. IGNOU was given the responsibility to be the nodal agency for uplinking/ transmission. It started out as a two-hour daily test transmission channel for students of open and conventional Universities. This duration was increased in February to nine hours a day. The time slot transmission was further increased due to good response upto 16-hours by 1st June and by 1st November it turned out to be 19-hours channel. Within one year of its launching, 26th January 2001, it became non-stop daily 24 hours transmission channel for educational programmes. "The programming constitutes 23 hrs of indigenous programmes sourced from partner institutions and one hour of foreign programmes. Transmission of 12 hrs. each for curriculum based and enrichment programmes is being made. The programmes of IGNOU CIET-NCERT including NOS are telecast for four hours each, IIT programmes for three hours, CEC-UGC programmes for two and a half hours and one hour each for TTTI and Adult Education." (IGNOU Profile –2002) The signal for Gyan Darshan transmission are uplinked from the Earth Station (augmented as one plus one system for redundancy) set up at IGNOU HQs New Delhi, and downlinked all over the country through INSAT 3C on C Band Transponder. Although Gyan Darshan has made its presence felt in all Open Universities and most of the prominent conventional Universities /schools, it still has the potential to reach to the door steps of learners through cable TV network. At present Gyan Darshan through the cable transmission covers about 90% in Kerala, most parts of Tamil Nadu, a few pockets in the North East, Nashik, Ahmedabad and Pune. AsiaNet has been providing it free of cost in Kerala. Reportedly, efforts are being made to make Gyan Darshan available through terrestrial transmission.

(Source: http://tojde.anadolu.edu.tr/tojde8/articles/educationaltv.htm)

3.17.4. In the Indian context, the Hon'ble Supreme Court has observed in its judgment in the Cricket Association case that since the airwaves/frequencies are a public property and are also limited, they have to be used in the best interest of the society. The Hon'ble Supreme Court has

further held that 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, corporation or a private individual or body. Having regard to these observations of the Hon'ble Supreme Court, there is a need for creation of public access to the broadcasting medium so as to enable the common man to utilize the medium for expressing his views and opinions. Having regard to the difficulties involved in the creation of such public access for the common man in the general broadcasting media at the national level, particularly, because of the diversity of languages, culture, and needs of the people in different parts of the country, it would be much more meaningful to create such public access to the broadcasting media by the effective use of community television broadcasting, thus enabling all people at the community level (a) to have free access to the broadcasting media, (b) to express their views and opinions and (c) to create and propagate content within the communities they live in.

3.18. Having regard to the international trends in the matter of community television stations and the further fact that with the recent technological advancements in the field of production of television transmission equipments, and equipments for creation and editing of content and the substantial reduction in the cost of acquisition of such equipments as a consequence, the setting up of such community television stations has become technically and financially more viable today, the case for permitting such community television stations in India has become stronger today. It can play an important role in the social and economic development of various local communities in India, particularly in sectors like agriculture and education. However, considering the impact this visual media creates on the masses, it is important to provide adequate safeguards against its misuse. **Accordingly, the Authority reiterates its earlier recommendation, as referred to in paragraph 3.17 above, that terrestrial television broadcasting may be permitted for community television purposes. The eligibility conditions for entry into such terrestrial community television broadcasting may be broadly on similar lines as those already prescribed for community radio stations, with appropriate checks against possible misuse as may be deemed necessary by the Government of India.**

D. Entry of political bodies into broadcasting activities

VIEWS OF STAKE-HOLDERS:

3.19. In response to the issues raised in the Consultation Paper, almost all the stake-holders have expressed the view that political parties should not be allowed to enter into broadcasting activities. One of these stake-holders has stated that "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.". It has further pointed out that a number of countries including the USA, UK, have not permitted political parties to enter into the broadcasting sector and has provided a list of 18 such countries where political parties have been disqualified from entering into broadcasting. Another stake-holder, a consumer activist, has expressed the view that "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.".

3.20. As already stated while considering the question whether State Governments can be allowed entry into broadcasting, the Hon'ble Supreme Court, in its milestone judgment in the Cricket Association case, has emphasized the need to insulate the broadcasting media from being used for political purposes and to "ensure impartiality in political, economic and social and other matters touching the public and to ensure plurality of views, opinions and ideas.". The Hon'ble Supreme Court has further observed that "for ensuring the free speech right of the citizens of this country, it is necessary that the citizens have the benefit of plurality of views and a range of opinions on all public issues. A successful democracy posits an 'aware' citizenry. Diversity of opinions, views, ideas and ideologies is essential to enable the citizens to arrive at informed judgment on all issues touching them. This cannot be provided by a medium controlled by a monopoly - whether the monopoly is of the State or any other individual, group or organisation.".

INTERNATIONAL PRACTICES:

3.21. In the United Kingdom, Part II of Schedule I to the Broadcasting Act, 1990 contains, inter alia, the following provisions as regards disqualification of political parties from holding a licence to enter into broadcasting activity, namely:-

"…….
(d) a body whose objects are wholly or mainly of a political nature;

(e) a body affiliated to a body falling within paragraph (d);

(f) an individual who is an officer of a body falling within paragraph (d) or (e);

(g) a body corporate which is an associate of a body corporate falling within paragraph (d) or (e);

(h) a body corporate in which a body falling within any of paragraphs (c) to (e) and (g) is a participant with more than a 5 per cent. interest;

(i) a body which is controlled by a person falling within any of paragraphs (a) to (g) or by two or more such persons taken together; and

(j) a body corporate in which a body falling within paragraph (i), other than one which is controlled—

(i) by a person falling within paragraph (a), (b) or (f), or
(ii) by two or more such persons taken together,

is a participant with more than a 5 per cent. interest.".

3.22. In Nigeria, political bodies are prohibited from being given broadcasting licences. Section 10 of the National Broadcasting Commission Decree No 38 of 1992 of Nigeria reads as under:-

"10. *The Commission shall not grant a licence to -*
(a) a religious organization; or
(b) a political party."

(Source: http://www.nigeria-law.org/National%20Broadcasting%20Commission%20Decree%201992.htm)

3.23. In a number of other countries like Austria, Belgium, Bulgaria, China, Denmark, Germany, Malawi, etc., the political parties are not permitted to enter into broadcasting. For example, the Malawi Communications Law 1998 (sub-section (7) of section 48) contains the following provisions as respects entry of political parties into broadcasting, namely:-

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

3.24 Equal Opportunity Doctrine

3.24.1. Many jurisdictions have, while prohibiting the entry of political bodies into the broadcasting sector, also provided for the equal treatment of political parties and candidates in the elections to democratic institutions and electoral issues at the time of elections. For example, the Malawi Communications Law 1998, as referred to in the preceding paragraph, contains a code of conduct for broadcasting services. The said Code of Conduct for Broadcasting Services as contained in the Third Schedule to the aforesaid Act contains the following provision in item 6 of clause I of the said Schedule, namely:-

"6- During any election period, all broadcasting licensees shall ensure equitable treatment of political parties, election candidates and electoral issues."

3.24.2. In the United State of America the legal framework governing political propaganda over the broadcasting medium is contained in the Communications Act, 1934 and the rules framed by the FCC. Section 315 of the Communications Act, 1934, *inter alia*, provides as under:-

"SEC. 315. [47 U.S.C. 315] FACILITIES FOR CANDIDATES FOR PUBLIC OFFICE.
(a) If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station: Provided, That such licensee shall have no power of censorship over the material broadcast under the provision of this section. No obligation is hereby imposed under this subsection upon any licensee to allow the use of its station by any such candidate ….."

(source: http://www.fcc.gov/Reports/1934new.pdf)

The rules framed by the FCC provide for a level playing field in the matter of political propaganda to all political parties and they also ensure that the broadcaster does not exercise any editorial control over such broadcasts by candidates for public offices. The following extracts from the FCC's website throw light on the system devised under the Communications Act by the FCC in this regard:-

"Political Broadcasting: Candidates for Public Office*. In recognition of the particular importance of the free flow of information to the public during the electoral process, the Communications Act and the Commission's rules impose specific obligations on broadcasters regarding political speech.*

Reasonable Access*. The Communications Act requires that broadcast stations provide "reasonable access" to candidates for federal elective office. Such access must be made available during all of a station's normal broadcast schedule, including television prime time and radio drive time. In addition, federal candidates are entitled to purchase all classes of time offered by stations to commercial advertisers, such as preemptible and non-preemptible time. The only exception to the access requirement is for bona fide news programming, during which broadcasters may choose not to sell airtime to federal candidates. Broadcast stations have discretion as to whether to sell time to candidates in state and local elections.*

Equal Opportunities. *The Communications Act requires that, when a station provides airtime to a legally qualified candidate for any public office (federal, state, or local), the station must "afford equal opportunities to all other such candidates for that office." The equal opportunities provision of the Communications Act also provides that the station "shall have no power of censorship over the material broadcast" by the candidate. The law exempts from the equal opportunities requirement appearances by candidates during bona fide news programming, defined as an appearance by a legally qualified candidate on a bona fide newscast, interview, or documentary (if the*

appearance of the candidate is incidental to the presentation of the subject covered by the documentary) or on–the–spot coverage of a bona fide news event (including debates, political conventions and related incidental activities).

In addition, a station must sell political advertising time to certain candidates during specified periods before a primary or general election at the lowest rate charged for the station's most favored commercial advertiser.

(Source: http://www.fcc.gov/mb/audio/decdoc/public_and_broadcasting.html#_Toc197843506)

3.24.3. In Canada, the Television Broadcasting Regulations, 1987, made by the CRTC, contains the following provision as regards political broadcasts, namely:-

"POLITICAL BROADCASTS
8. During an election period, a licensee shall allocate time for the broadcasting of programs, advertisements or announcements of a partisan political character on an equitable basis to all accredited political parties and rival candidates represented in the election or referendum.".

3.24.4. In the United Kingdom, section 36 of the Broadcasting Act 1990 requires the ITC (now Ofcom) to ensure that Party Political Broadcasts (PPBs) are included in the regional Channel 3 (ITV), Channel 4 and Channel 5 services. Section 4 of the ITC Programme Code reflects the rules which the ITC has determined in accordance with the provisions of the said Act. Within the terms of these rules, the precise allocation of broadcasts is the responsibility of licensees. Unresolved disputes between licensees and any political party, as to the length, frequency, allocation or scheduling of broadcasts, should be referred by the party or the licensee to the ITC. Under the said rules, major parties in Great Britain will normally be offered a series of broadcasts before each election. Other parties may qualify for a broadcast on the basis of contesting one sixth or more of the seats up for election, modified as appropriate for proportional representation systems. Major parties in Britain will be offered one broadcast on each occasion, in relation to other key political events. The allocation of election broadcasts to Northern Ireland parties will be determined before each election by the relevant licensee. Election broadcasts by the Conservatives, Labour, the Liberal Democrats and Northern Ireland parties must be carried in peak-time (6pm to 10.30pm). Scottish National Party (SNP) and Plaid Cymru (Wales) broadcasts on ITV in Scotland and Wales must also be carried in peak. Other broadcasts should normally be carried in the period 5.30pm to 11.30pm. Editorial control of the content of Party Political Broadcasts (PPBs) and Party Election Broadcasts (PEBs) normally rests with the originating political party. However, licensees are responsible to the ITC for ensuring that nothing transmitted breaches the Programme Code, notably the requirements on matters of offence to good taste and decency set out in Section 1 of the said rules. Licensees are recommended to seek an indemnity from the parties against defamation, breach of copyright and similar legal risks. Licensees should issue parties with general guidelines on the acceptability of content (including Code compliance and avoidance of defamation), and technical matters. There

is no expectation that the time devoted to all parties and candidates in an election will be equal. Licensees must exercise their judgement, based on factors such as significant levels of previous electoral support, evidence of significant current support, and the number of candidates being fielded by a party. Due weight should be given to coverage of major parties as defined in the rules. However, smaller parties and independent candidates may also be among those with significant views and perspectives, to which appropriate coverage may need to be given. Discussion and analysis of election issues should finish when the polls open. A licensee may not publish the results of any poll it has commissioned or undertaken on polling day itself, until the polls have closed. Appearances by candidates in UK elections as newsreaders, interviewers or presenters of any type of programme should cease for the election period. Appearances in non-political programmes, that were planned or scheduled before the election period, may continue, but no new appearances should be arranged and transmitted during the period.

(Source: http://www.ofcom.org.uk/static/archive/itc/itc_publications/codes_guidance/programme_code/section_4.asp.html)

3.24.5. The international practices discussed above clearly show that in most countries, there is a ban on political parties owning broadcasting stations but at the same time, there exists in place a legal regime in several countries which provides the political parties and their candidates with equal opportunity to propagate their ideologies and to campaign during elections to public offices.

3.25.1. The question of entry into broadcasting activities by political bodies has to be considered from the following three perspectives, namely:-

(A) requirement of access for purposes of manifesto presentation;

(B) requirement of access for purposes of electoral campaigning; and

(C) ownership issues.

(A) REQUIREMENT OF ACCESS FOR PURPOSES OF MANIFESTO PRESENTATION:

3.25.2. As regards the requirement of access to the broadcasting media by political parties, it is not only rightful for political bodies to seek and secure such access to these media for taking their respective political manifestos to the people but it is equally the right of the people to be informed of the political ideologies and the policies of governance as propounded by the various political parties in the country so as to make an informed choice. There can be no doubt that plurality of news, views and ideas is a part of the citizen's right to freedom of speech and expression and his right to be informed of the diverse political opinions in a vibrant democracy. As observed by the Hon'ble Supreme Court in the Cricket Association case, "Diversity of

opinions, views, ideas and ideologies is essential to enable the citizens to arrive at informed judgment on all issues touching them.". Thus, it can be seen that reasonable access to the broadcast media for political parties is not only legitimate but is also necessary for a healthy democracy.

(B) REQUIREMENT OF ACCESS FOR PURPOSES OF ELECTORAL CAMPAIGNING:

3.25.3. Similarly, the requirement of political parties to have access to such media during their election campaigns for public offices is also legitimate and necessary in the interest of democracy. Therefore, there can be no doubt whatsoever as to the need to ensure that the broadcasting media in the country affords reasonable opportunity to all political parties to take their ideologies and political agendas to the masses at the time of elections. The international experience discussed in the earlier paragraphs would also show that in many countries, political parties generally have reasonable access to the broadcasting channels at the time of elections .

(C) OWNERSHIP ISSUES:

3.25.4. As regards the ownership of broadcasting stations by political parties and bodies affiliated or associated with political parties, however, there is need for careful consideration. The monopolisation of a broadcast medium by a political party would lead to a situation where the medium is used for propagation of the ideologies and manifesto of that party to the exclusion of others. In such a scenario, only those political parties which have been in existence for some time and which have adequate financial resources will be able to secure access to the masses through the ownership of their respective broadcasting stations. Political parties which newly enter the political arena and do not have adequate resources, howsoever good their policies and ideologies may be, may not be able to secure entry into the broadcasting media and would thus be deprived of the benefit of using the broadcasting media for the propagation of their policies and ideologies.

3.26. Democracy requires a media infrastructure that is open, accessible and diverse in ownership, content and point of view. The potential of the broadcasting media to strengthen democracy, increase civic knowledge and participation and bring disenfranchised people into the social dialogue need not be over-emphasized. In the context of strengthening the democratic process and people's participation in it, perhaps nothing will be more decisive than the success or failure of a country in building a media democracy with pluralistic vision which encompasses diverse ownership and access for independent voices. The following observations of the Sarkaria Commission in paragraph 19.2.04 of its report also appear to be relevant in this context, namely:-

"19.2.04 ***In a country where a substantial part of the citizenry is illiterate or semi-literate and the population, particularly in the rural areas, is not very mobile, and they have few opportunities to get information of men and affairs in the other parts of the country, the Radio and the TV are powerful media for influencing thinking, attitudes and options of the citizenry. Hence every political party seeks to have access to the media in the interest of the party. (emphasis supplied.)*** *In the more educated and enlightened countries, with several systems of mass communication to which people have access, the citizen has some means of comparing notes and differentiating between propaganda and fact. In this country where, as we have emphasised elsewhere, parochialism, chauvinism, casteism and communalism are pervasive and are actively made use of by powerful groups, if uncontrolled use of these media is allowed, it may promote centrifugal tendencies endangering the unity and integrity of the nation…….".*

Having regard to the above observations of the Sarkaria Commission, which, the Authority considers, are relevant even today, and considering the fact that the ownership of broadcasting media by political entities would result in the erosion of the basic tenets of plurality of views which the Hon'ble Supreme Court has enunciated in its judgment in the case of Cricket Association of Bengal (cited supra) and also considering the necessity to ensure that citizens have the benefit of plurality of views and a range of opinion on all public issues as observed by the Hon'ble Supreme Court in the said case, the Authority is of the view that the ownership of broadcast medium by political entities is clearly against the basic tenets of media democracy and plurality. On the other hand, if public service broadcasters are mandated by law to carry, on their channels, the views and ideas of all political parties by adhering to an "equal opportunity" principle, it would lead to the realisation of such plurality of news, views and ideas in the real sense.

3.27. In India, the general provisions relating to entry into broadcasting activities as contained in the Uplinking and Downlinking guidelines contain the requirement that the applicant seeking uplinking or downlinking permission should be a company under the Indian Companies Act, 1956. There do not appear to be any express provisions regarding the question of political bodies having or acquiring stakes in such companies. It is only natural that a television channel which is owned by a company in which a political body holds significant equity would, in its programming content, reflect, directly or indirectly, the ideologies of that political body. This would go against the observation of the Hon'ble Supreme Court that *"Diversity of opinions, views, ideas and ideologies is essential to enable the citizens to arrive at informed judgment on all issues touching them. This cannot be provided by a medium controlled by a monopoly - whether the monopoly is of the State or any other individual, group or organisation.".*

3.28.1. It is also pertinent to note here that the Broadcasting Bill, 1997 (which could not be made into law) had indeed incorporated the following

provisions as regards disqualification of political bodies in the broadcasting sector in item 3 of Part I of the Schedule to the said Bill , namely:-

"3. Disqualification of political bodies. (a) A body whose objects are wholly or mainly of a political nature;

(b) A body affiliated to a body, referred to in clause (a);

(c) An individual who is an officer of a body, referred to in clause (a) or (b);

(d) A body corporate, which is an associate of a body corporate referred to in clause (a) or (b);
(e) A body corporate, in which a body referred to in any of clauses (a) and (b) is a participant with more than a five per cent. interest;

(f) A body which is controlled by a person referred to in any of clauses (a) to (d) or by two or more persons, taken together;

(g) A body corporate, in which a body referred to in clause (f), other than one which is controlled by a person, referred to in clause (c) or by two or more such persons, taken together, is a participant with more than a five per cent. interest. ".

The said provisions appear to be comparable with the provisions of Part II of Schedule I to the Broadcasting Act, 1990 of the United Kingdom. The disqualifications in the UK Act, as contained in the Broadcasting Act, 1990 of the United Kingdom, as referred to in paragraph 3.21 above, effectively disqualify not only political bodies and bodies associated with political bodies, but they also seek to disqualify an individual who is an officer of a political body or of a body affiliated to a political body. They further seek to disqualify any body which is controlled by an individual who is an officer of a political body or of a body associated with a political body. The U.K. legislation also disqualifies any body in which a body covered under the above disqualification holds more than five per cent. interest as well as a body in which any individual who is covered under the said disqualifications, or two or more such individuals taken together, hold more than five per cent. interest.

3.28.2. It is also worthwhile to note here that in India, as regards private FM broadcasting, the eligibility conditions as prescribed in the invitation for Pre-Qualification Bids for expansion of FM Radio Broadcasting Services through Private Agencies (Vacant channels of Phase – II), as published by the Government of India in the Ministry of Information and Broadcasting, provide, inter alia, for disqualification of "A company controlled by or associated with a political body;". In its recommendations on "Issues Relating to Private Terrestrial TV Broadcast Service" dated August 29, 2005, the Authority has recommended a similar disqualification in the case of political bodies for entry into private terrestrial television.

3.28.3. The Authority feels that the disqualifications as contained in the UK Broadcasting Act, 1990, which were apparently adopted substantially in the

relevant provisions of the Schedule to the Broadcasting Bill, 1997 (which could not be enacted into law), are comprehensive and are, thus, worth emulating in the proposed legislation on broadcasting. This would go a long way in preventing politicization of the broadcasting media and ensure plurality of opinions and views to the citizens as postulated by the Constitution and as enunciated by the Hon'ble Supreme Court of India, while at the same time not curtailing the rights of individuals and other legal entities to undertake broadcasting activities.

3.29. Having regard to the above, the Authority recommends that political bodies should not be allowed to enter into broadcasting activities. Accordingly, the Authority recommends that the disqualifications as contained in item 3 of Part I of the Schedule to the Broadcasting Bill, 1997 as regards political bodies be incorporated in the proposed legislation on broadcasting.

3.30.1. At the same time, it has to be also kept in view that, as already mentioned in paragraphs 3.25.2 and 3.25.3 above, it is not only rightful for political parties to seek and secure access to the broadcasting media for taking their respective ideologies and political manifestos to the people, it is equally the right of the people to be informed of the political ideologies and policies of governance as propounded by the various political parties in the country so as to make an informed choice. Plurality of news, views and ideas is a part of the citizen's right to freedom of speech and expression and his right to be informed of the diverse political opinions in a vibrant democracy. In view of this, reasonable access to the broadcasting media for political parties is not only legitimate but is also necessary for a healthy democracy. Therefore, while political bodies may not be permitted to own broadcasting stations, it is necessary, at the same time, to ensure that the broadcasting media in the country afford reasonable opportunity to all political parties to take their ideologies and political agendas to the people.

3.30.2. Having regard to the particular importance of the free flow of information to the public during the electoral process, it is necessary to mandate, by law, that broadcasting stations provide "reasonable access" to recognized political parties during the run up to elections to Parliament and to the State Legislative Assemblies. Such reasonable access to recognized political parties should continue to be provided free of cost by the public service broadcaster, namely, Prasar Bharati, as is being done now.

3.30.3. Certain specified categories of private broadcasting channels (such as news and current affairs channels, etc.) may also be subjected to a legal obligation to provide reasonable access to recognized political parties for specified time periods during the run up to elections to Parliament and State Assemblies. The Government of India (Ministry of Information and Broadcasting) may seek the guidance of the Hon'ble Election Commission of India and may frame appropriate guidelines or

yardsticks as regards the quantum of compensation payable by the concerned political parties to such broadcasting channels for the use of airtime.

3.30.4. There should be norms for distribution of time slots amongst various recognized political parties, both by Prasar Bharati and by other private broadcasting channels. The Government of India (Ministry of Information and Broadcasting) may seek the guidance of the Hon'ble Election Commission of India with a view to evolving suitable guidelines or other mechanism so as to provide for the earmarking of ----

(a) specified number of days during the run up to an election to Parliament or to a State Assembly;

(b) specified time periods during which such time slots are to be earmarked for each day;

(c) the distribution of such time slots amongst various political parties, etc.

3.30.5. Fairness in electoral competition requires that every recognised political party which is fielding its candidates in an election be given reasonable access to any private broadcasting channels of its choice

(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*; (emphasis supplied)*

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

(c) to negotiate for the purchase of, or otherwise acquire, programmes and rights or privileges in respect of sports and other events, films, serials, occasions, meetings, 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.

(4) Nothing in sub-sections (2) and (3) shall prevent the Corporation from managing on behalf of the Central Government and in accordance with such terms and conditions as may be specified by that Government the broadcasting of External Services and monitoring of broadcasts made by organizations outside India on the basis of arrangements made for reimbursement of expenses by the Central Government.
…….".

Clause (a) of sub-section (3) of section 12, as referred to above, clearly mandates Prasar Bharati to ensure that broadcasting is conducted as a public service to provide and produce programmes. The expression used in the clause appears to be very wide and to include, within its amplitude, the objective of ensuring that broadcasting in the entire country, whether by Prasar Bharati itself or by private broadcasters, is conducted as a public service. The objective appears to be both to provide and produce public service programmes so that such public service programmes can be carried to the masses through the entire broadcasting media and thus ensuring that broadcasting is conducted as a public service. Viewed from this perspective, Prasar Bharati Corporation has, under the Act, the necessary mandate of the Parliament to produce and provide programmes that serve the public interest to the entire broadcasting media in the country.

3.83. Some of the important objectives of Prasar Bharati as contained in the said Act, namely, paying special attention to the fields of education and spread of literacy, agriculture, rural development, environment, health and family welfare and science and technology, providing adequate coverage to the diverse cultures and languages of the various regions of the country by broadcasting appropriate programmes, providing appropriate programmes keeping in view the special needs of the youth, informing and stimulating the national consciousness in regard to the status and problems of women and paying special attention to the upliftment of women, promoting social justice and combating exploitation, inequality and such evils as untouchability and advancing the welfare of the weaker sections of the society, safeguarding the rights of the working classes and advancing their welfare, providing suitable programmes keeping in view the special needs of the minorities and tribal communities, taking special steps to protect the interests of the children, the blind, the aged, the handicapped and other vulnerable sections of the people, etc., as contained in section 12 of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 can be effectively realised by Prasar Bharati by taking necessary initiative both by producing, on its own, public service broadcasting content and by commissioning the production of the same by others. These programmes may then be made available through the Ministry of Information and Broadcasting (or the Committee or body set up by the said Ministry for approval and certification of PSB content) to all broadcasters in the country for wide dissemination to the masses. This would, in the Authority's view, give full meaning and effect to the mandate contained in sub-section (3) of section 12 of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990. In case of any doubt, clarificatory amendments may be incorporated in the Prasar Bharati (Broadcasting Corporation of India) Act, 1990.

3.84. The Authority, therefore, recommends that Prasar Bharati may produce on its own or commission the production of programmes by other entities and individuals for the purpose of not only meeting its own public service broadcasting obligations but also for the purpose of providing such programmes to the Ministry of Information and Broadcasting (or to the Committee or body set up by the said Ministry for approval and certification as PSB content) so that such programmes are made available to the private broadcasters, community based radio and television broadcasters, etc. for wide dissemination to the public.

3.85. As already mentioned above in this Chapter, the Hon'ble Supreme Court has held that 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, corporation or a private individual or body. The extent to which the broadcasting medium in the country, including Prasar Bharati and the private broadcasters, enables the ordinary citizen to exercise his freedom of speech and expression through it (rather than the extent to which these media are able to reach their own views and opinions to the common man) is one of the key yardsticks to measure the

level of realization of the freedom guaranteed under Article 19(1)(a) . The importance of enabling the citizens to access the broadcasting media, therefore, cannot be over-emphasised. Public access to the electronic media is imperative to democracy. Therefore, there is a clear need to create a mechanism which will enable civil society and community groups to access airwaves so that individual voices can still be heard and those outside the structures of privilege and opportunity are not further marginalised.

3.86.1. Public Access Television in the United States is run by public grassroots groups or individuals, private non-profits or city organizations. Users of public-access stations may participate at most levels of this structure to make content that is meaningful and reflective of their experience within their communities. Any member of a community may take advantage of public access. Users are not restricted to cable subscribers only. Many public-access channels carry primarily locally produced programs while others also carry regionally or nationally distributed programming.

(Source: http://en.wikipedia.org/wiki/Public_access_television).

3.86.2. In the United States, public access television depends on the cable medium. In the early 1970s, the Federal Communications Commission (FCC) in the USA mandated in 1972 that "beginning in 1972, new cable systems [and after 1977, all cable systems] in the 100 largest television markets be required to provide channels for government, for educational purposes, and most importantly, for public access." This mandate suggested that cable systems should make available three public access channels to be used for state and local government, education, and community public access use. "Public access" was construed to mean that the cable company should make available equipment and air time so that literally anybody could make noncommercial use of the access channel, and say and do anything they wished on a first-come, first-served basis, subject only to obscenity and libel laws. The result was an entirely different sort of programming, reflecting the interests of groups and individuals usually excluded from mainstream television. The rationale for public access television was that, as mandated by the Federal Communications Act of 1934, the airwaves belong to the people, that in a democratic society it is useful to multiply public participation in political discussion, and that mainstream television severely limited the range of views and opinion. Public access television, then, would open television to the public, it would make possible community participation, and thus would be in the public interest of strengthening democracy.

(Source: http://www.museum.tv/archives/etv/P/htmlP/publicaccess/publicaccess.htm)

3.87. The concept of public-access television or citizen media is also well known in other countries . Canada's community channels, Australia's community television and other models of media created by private citizens are examples of such citizen media. Public access television is not restricted to the United States, Australia and Canada. Today, it can be found in such counties as the United Kingdom, New Zealand, Denmark, Fiji, South Africa, Austria, etc. Users of public-access stations may make content that is

meaningful and reflective of their experience within their communities. Any member of a community may take advantage of public access.

3.88. In the Indian context, having regard to the observations of the Hon'ble Supreme Court that the airwaves/frequencies are a public property and have to be used in the best interest of the society and that 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, corporation or a private individual or body, there is need for creation of "citizen space" over the broadcasting medium so as to enable the common man to utilize the medium for expressing his views and opinions. This should also be part of the public service broadcasting obligations of all the broadcasters. **The Authority, therefore, recommends that—**

(a) the Prasar Bharati should address the issue by framing appropriate guidelines for creation of "citizen space" through its national and regional kendras.

(b) all Private broadcasters should also be obligated to do it under the downlinking and uplinking guidelines to the extent possible so as to ensure that the airways, being public property, are used for serving the larger public interest and for enabling public access to the medium, with a view to achieving greater realization of the Constitutional guarantee as contained in Article 19(1)(a) of the Constitution.

3.89. Having regard to the difficulties involved in the creation of such public access for the common man in the general broadcasting media at the national level, particularly, because of the diversity of languages, culture, and needs of the people in different parts of the country, it would be much more meaningful to create adequate 'citizen space' in the broadcasting media by the effective use of community television and radio broadcasting, thus enabling all people at the community level --

(a) to have free access to the broadcasting media,

(b) to express their views and opinions; and

(c) to create and propagate content within the communities they live in.

Having regard to the fact that India has an extensive cable network involving more than 60,000 cable operators and thousands of multi system operators, the use of the local cable television networks also for carrying the programmes meant for such "citizen space", would go a long way in addressing the common man's need for expression.

3.90. Having regard to the need for creation of public access to the broadcasting media so as to fully realise the Constitutional guarantee of freedom of speech and expression to every citizen, the Authority recommends that apart from making use of the community television stations on the terrestrial mode for giving access to the common man to the broadcasting media at the community level, the local cable systems in various regions may also be obligated to carry a specified number of "citizen space" programmes or a specified number of "citizen space" channels on their local cable networks covering the content generated by such community television stations.

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CHAPTER 4: SUMMARY OF RECOMMENDATIONS

A. AS REGARDS ENTRY OF STATE GOVERNMENTS INTO BROADCASTING ACTIVITIES.

As things stand today, the State Governments and their organs have not been permitted to enter into broadcasting activities. The Prasar Bharati, established under the Prasar Bharati (Broadcasting Corporation of India) Act, 1990, is catering to the needs of the State Governments to inform and educate the public about the Government policies, etc. through the broadcast route. It has separate satellite TV channels in almost all the national languages. These channels are being uplinked from the State capitals. Doordarshan's National Channel (DD1) is also delinked for about 3-4 hours a day for State level programming by the concerned Doordarshan Kendras situated in different States. Proceedings of Question Hours of the Lok Sabha and the Rajya Sabha are also being telecast live on the National Channel of Doordarshan. Thus, Prasar Bharati is playing an important role in meeting the requirements of Central and State Governments with regard to informing and educating the public about Government policies, etc. **In view of this, the Authority recommends that------**

(a) the aspirations of the State Governments, as regards broadcasting, can be, within the existing policy framework, adequately met by Prasar Bharati. The Prasar Bharati should, ----

(i) continue to strengthen its existing regional framework for this purpose by creating adequate facilities at the regional level;

(ii) suitably augment regional language capacities for providing increased airtime for its regional services,----

(iii) continue to ensure, at the same time, that there are no political overtones in such regional broadcast services and that there is no compromise with the basic tenets of national integration, secularism and the basic unity and integrity of the nation.

(b)The Central Government (Ministry of Information and Broadcasting) may take necessary steps for ensuring that the Prasar Bharati Corporation, through its regional kendras, continues to give all support and assistance to the State Governments in taking their policies and programmes to the inhabitants of the respective States without any political bias.

(Paragraph 3.12.1.)

Having regard to –

(a) the Constitutional provisions supported by the Constituent Assembly debates which indicate that the framers of the Constitution have intended that the Central Government must have control over broadcasting;

(b) the recommendation made by the Sarkaria Commission that if autonomous State level broadcasting corporations are also set up, a coordinated approach to many complex technical matters such as inter-regional and inter-State linkages, will become far more difficult (and that the telecommunication and space facilities which are vital for radio and television networks are also under the control of the Union) and that a devolution to the States to have their own broadcasting and control will help largely the richer States and the poorer States will not have the resources to avail of the freedom and their areas will continue to develop without an understanding of the basic unity, further strengthening centrifugal forces;

(c) the observations of the Supreme Court in the Cricket Association case that –

(i) 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, corporation or a private individual or body and that a monopoly over broadcasting, whether by Government of by anybody else, is inconsistent with the free speech right of the citizens;

(xi) State control really means governmental control, which in turn means, control of the political party or parties in power for the time being and that such control is bound to colour the views, information and opinions conveyed by the media;

(xii) The free speech right of the citizens is better served in keeping the broadcasting media under the control of public and that control by public means control by an independent public corporation or corporations, as the case may be, formed under a statute;

(d) the fact that the Prasar Bharati, established under the Prasar Bharati Act, 1990 is, under the specific provisions of the said Act, has been mandated, as its primary duty, 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 and has been further mandated with the objective of 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 and, accordingly, Prasar Bharati is already catering to the needs of the State Governments to inform and educate the public about their policies, etc. through the broadcast route through its separate satellite TV channels in almost all the national languages being uplinked from the State capitals and by delinking Doordarshan's National Channel (DD1) for about 3-4 hours a day for State level programming by the concerned Doordarshan Kendras situated in different States (as discussed in greater detail in paragraph 3.15. above); and

(e) the international practices discussed in the preceding paragraphs which generally do not support any devolution in favour of provincial governments,

the Authority is of the view that, as a matter of policy, as regards entry of State Governments and their organs into broadcasting activities, the present position as referred to in paragraphs 3.10.6 and 3.12.1 above may be allowed to continue and recommends accordingly.

(Paragraph 3.14.)

B. AS REGARDS ENTRY OF URBAN AND LOCAL BODIES, ETC. INTO BROADCASTING ACTIVITIES

Accordingly, the Authority recommends that urban and local bodies, Panchayati Raj bodies and other publicly funded bodies should not be allowed to enter into broadcasting activities.

(Paragraph 3.16.4.)

The Authority recommends that the Community Radio Stations, set up by community based organisations, including civil society and voluntary organisations, State Agriculture Universities (SAUs), ICAR institutions, Krishi Vigyan Kendras, Registered Societies and Autonomous Bodies and Public Trusts registered under Societies Act or any other such Act relevant for the purpose and educational institutions should be permitted and supported in their activities.

(Paragraph 3.16.8.)

Having regard to the international trends in the matter of community television stations and the further fact that with the recent technological advancements in the field of production of television transmission equipments, and equipments for creation and editing of content and the substantial reduction in the cost of acquisition of such equipments as a consequence, the setting up of such community television stations has become technically and financially more viable today, the case for permitting such community television stations in India has become stronger today. It can

play an important role in the social and economic development of various local communities in India, particularly in sectors like agriculture and education. However, considering the impact this visual media creates on the masses, it is important to provide adequate safeguards against its misuse. **Accordingly, the Authority reiterates its earlier recommendation, as referred to in paragraph 3.17 above, that terrestrial television broadcasting may be permitted for community television purposes. The eligibility conditions for entry into such terrestrial community television broadcasting may be broadly on similar lines as those already prescribed for community radio stations, with appropriate checks against possible misuse as may be deemed necessary by the Government of India.**

(Paragraph 3.18.)

C. AS REGARDS ENTRY OF POLITICAL BODIES INTO BROADCASTING ACTIVITIES

Having regard to the several factors discussed in the relevant paragraphs, the Authority recommends that political bodies should not be allowed to enter into broadcasting activities. Accordingly, the Authority recommends that the disqualifications as contained in item 3 of Part I of the Schedule to the Broadcasting Bill, 1997 as regards political bodies be incorporated in the proposed legislation on broadcasting.

(Paragraph 3.29.)

Having regard to the particular importance of the free flow of information to the public during the electoral process, it is necessary to mandate, by law, that broadcasting stations provide "reasonable access" to recognized political parties during the run up to elections to Parliament and to the State Legislative Assemblies. Such reasonable access to recognized political parties should continue to be provided free of cost by the public service broadcaster, namely, Prasar Bharati, as is being done now.

(Paragraph 3.30.2.)

Certain specified categories of private broadcasting channels (such as news and current affairs channels, etc.) may also be subjected to a legal obligation to provide reasonable access to recognized political parties for specified time periods during the run up to elections to Parliament and State Assemblies. The Government of India (Ministry of Information and Broadcasting) may seek the guidance of the Hon'ble Election Commission of India and may frame appropriate guidelines or yardsticks as regards the quantum of compensation payable by the

concerned political parties to such broadcasting channels for the use of airtime.

(Paragraph 3.30.3.)

There should be norms for distribution of time slots amongst various recognized political parties, both by Prasar Bharati and by other private broadcasting channels. The Government of India (Ministry of Information and Broadcasting) may seek the guidance of the Hon'ble Election Commission of India with a view to evolving suitable guidelines or other mechanism so as to provide for the earmarking of ----

(a) specified number of days during the run up to an election to Parliament or to a State Assembly;

(b) specified time periods during which such time slots are to be earmarked for each day;

(c) the distribution of such time slots amongst various political parties, etc.

(Paragraph 3.30.4.)

Fairness in electoral competition requires that every recognised political party which is fielding its candidates in an election be given reasonable access to any private broadcasting channels of its choice which it feels are likely to be most effective in carrying its policies and arguments to voters. This is possible only when every such recognized political party has fair and just opportunity to access air time offered by any private broadcaster. When a broadcaster offers airtime selectively to a particular political party, it may result in denial of such reasonable access to others. It is, therefore, necessary to ensure that private broadcasters offer airtime to all interested political parties on a non-discriminatory basis. In view of this, it is recommended that when a private broadcasting station provides airtime to a recognized political party in the run up to elections to Parliament or to a State Assembly, such broadcasting station should be mandated to provide fair and just opportunities to all other political parties which seek airtime of that broadcasting station in such elections, on a non-discriminatory basis. This may not, however, be construed to mean that a broadcasting channel is to be mandated to make airtime available to recognised political parties on the principle of "either to all or to none". The obligation on the broadcasting channel should be only to the extent that if such channel has made airtime available to one such recognised political party in the run up to an election, it shall make airtime available, on a non-discriminatory basis, to any other recognised political party which seeks it subsequently during the course of the run up to the same election. However, it is clarified that these recommendations are subject to any decision of the Ministry of

Information and Broadcasting to be taken based on guidance received from the Hon'ble Election Commission of India.

(Paragraph 3.30.5.)

It should also be provided that the broadcasting station, which provides airtime to political parties during the run up to an election shall have no power of censorship over the material broadcast by such parties. The political parties concerned should be made responsible for such material.

(Paragraph 3.30.6.)

Political parties may, in addition, be allowed to purchase all classes of air time offered by private broadcasting stations on commercial terms.

(Paragraph 3.30.7.)

The recommendations contained in paragraphs 3.30.2 to 3.30.7 would require the framing of clear guidelines or other mechanism and yardsticks by the Central Government. Accordingly, the Authority recommends that, in case the aforesaid recommendations are accepted by the Central Government, the Central Government (Ministry of Information and Broadcasting) may take up these issues with the Hon'ble Election Commision of India with a view to seeking its guidance on evolving appropriate guidelines or other mechanism and yardsticks. The aforesaid recommendations would also call for some amendments in the Programme Code and Advertising Code framed under the Cable Television Networks (Regulation) Act, 1995 [rule 6 and rule 7 of the Cable Television Networks Rules, 1994].

(Paragraph 3.30.8.)

The Authority further recommends that in case the above recommendations are accepted by the Government of India, suitable amendments to the uplinking and downlinking guidelines may be carried out with a view to implementing these recommendations in the interregnum till the proposed legislation is passed by Parliament.

(Paragraph 3.30.9.)

D. AS REGARDS ENTRY OF RELIGIOUS BODIES INTO BROADCASTING ACTIVITIES

The Authority is of the view that religious bodies may not be permitted to own their own broadcasting stations and teleports. The Authority accordingly recommends that the disqualifications as contained in Item 2 of Part I of the Schedule to the Broadcasting Bill, 1997 as regards disqualification of religious bodies (as enumerated in

paragraph 3.42.1 above) may be incorporated in the proposed new legislation on broadcasting. However, such disqualification should not be construed to mean that religious contents in the broadcasting channels should not be allowed, so long as such content is in conformity with the appropriate content code or programme code as prescribed from time to time by the Government. Broadcasting channels may be permitted to carry programmes aimed at the propagation of different religious faiths subject to strict compliance with the applicable content code or programme code, as the case may be.

(Paragraph 3.45.4.3.)

Even though the Authority does not see any reason for taking a view different than the one recommended in the preceding paragraph by the Authority, particularly because the recommendation is in consonance with the basic secular fabric of the Constitution and the need to balance the rights of religious bodies to propagate their faiths with the maintenance of public order and societal harmony, in case the Central Government deems it appropriate to review the disqualifications as contained in the Broadcasting Bill, 1997 in the proposed new legislation on broadcasting, in that event, the Authority recommends that the Central Government may appropriately consider, as a matter of public policy, the questions as to ----

(a) the eligibility requirements, if any, to be prescribed in the case of religious bodies for such entry, (such as the requirement as to registration under the Companies Act, 1956, etc.)

(b) the legal framework to be laid down for prevention of misuse or abuse of the broadcasting permission by any such body;

(c) the mechanism for ensuring strict compliance with the programme code and advertising code by such bodies,

keeping in view, *inter alia,* the availability of resources like radio frequencies in different bandwidths and their optimum utilisation in the national interest, the balancing of the requirements for the available frequencies for use in different sectors like telecommunication, defence, broadcasting, etc., and the difficulties involved in the enforcement of the programme code and advertising code, etc. in the case of religious bodies. However, the Authority, even at the cost of repetition, would reiterate the significance of recommendation made in paragraph 3.45.4.3.

(Paragraph 3.45.4.4.)

While recommending that the disqualifications as contained in the Broadcasting Bill, 1997 as regards religious bodies be incorporated in the proposed legislation on broadcasting, the Authority is also aware of the fact

that certain religious bodies have already been granted permissions by the Central Government under the down-linking and uplinking guidelines and a number of religious channels owned by such entities are already in existence. Having regard to this, **the Authority further recommends that any policy decision on this issue should not only clearly specify, as mentioned in paragraph 3.45.4.3 above, that there shall be no imposition of any restrictions on the right to broadcast religious content in the broadcasting channels subject to strict compliance with the appropriate content code or programme code as prescribed from time to time by the Government, but should also provide for an exit route for such religious bodies to whom permission may have been granted by the Government earlier. It should provide for an appropriate time limit of three to four years within which such existing entities can make necessary alternative arrangements so as to avoid being disqualified for holding broadcasting permissions/licenses upon expiry of such time limit and to provide for an exit route for such entities.**

(Paragraph 3.45.5.)

Having regard to the need to ensure that nothing should be allowed to disturb the secular fabric of the Indian democracy or the public order and internal security or the unity and integrity of the country , the Authority recommends that the present provisions in the Programme Code framed under the Cable Act need to be further strengthened. The Authority recommends that the proposed legal framework for broadcasting should, therefore, contain detailed guidelines as to the contents of religious broadcasting apart from providing a mechanism for ensuring strict compliance with such guidelines and stiff penalties for violation of such guidelines apart from suspension or cancellation of permission to uplink/downlink channels, as the case may be. Such guidelines should, *inter alia*, specifically prohibit the carrying of any religious content which, –

(a) defames religions or communities or is contemptuous of religious groups or promotes communal attitudes or is likely to incite religious strife or communal or caste violence;

(b) incites disharmony, animosity, conflict, hatred or ill-will between different religious denominations;

(c) counsels, pleads, advises, appeals or provokes any person to destroy, damage or defile any place of worship or any object held sacred by any religious groups or class of persons;

(e) appeals, advises, implores or counsels any person to change his religion or faith;

(e) promotes proselytizing any particular religion as the only or true religion or faith;

(f) attempts to create any fear of explicit or implicit adverse consequences of not being religious or not subscribing to a particular faith or belief;

(g) promotes any dangerous, retrogressive or gender discriminatory practices in the name of religion, faith or ideology;

(h) contains any audio visual presentation of any content which distorts or demeans or depicts in a derogatory manner the symbols or idols or rituals or practices or liturgy or behaviour of any religious groups or denominations or the physical attributes or social customs of any religious groups or denominations;

(i) calls into question the human rights or dignity of any religious group or denomination.

Such guidelines should also provide that when programmes which deal with or comment on the beliefs, practices, liturgy or behaviour of any religious group are carried by a broadcaster, such broadcaster shall ensure the accuracy, fairness and appropriate context of the contents of such programmes.

(Paragraph 3.45.12.)

E. AS REGARDS ENTRY INTO DISTRIBUTION PLATFORMS

Having regard to these factors, **the Authority recommends that, as a matter of policy, all telecom service providers may continue to be permitted into alternative distribution platforms like IPTV so as to ensure enough competition on these platforms which will enure to the benefit of the consumers.**

(Paragraph 3.62.)

Having regard to the fact that the cable sector covers two-thirds of the TV homes in the country and that the cable platform, to a large extent, is at present non-addressable and is predominantly in the analogue mode with attendant capacity constraints on the number of channels which can be delivered to the consumers through this mode**, it is perhaps best that the distribution of channels through the cable medium should be left to the market forces (based on demand and supply) and there should be fair competition amongst various players.**

(Paragraph 3.64.)

All the considerations that weighed with the Authority in considering the question of permitting State Governments and their instrumentalities into broadcasting activities would, in the considered view of the Authority, would apply with equal force to the question of allowing the State Governments and their instrumentalities into the cable distribution sector also. It may, therefore, perhaps, not be in the true spirit of Article 19(1)(a), i.e., the citizen's right to plurality of views to permit them to enter into the cable distribution platform. In today's scenario, the cable distribution network being highly fragmented and there being no obligation on the cable operators to carry the channels of any particular broadcaster or broadcasters (or of all broadcasters for that matter), the private cable operators are carrying channels of their choice purely on commercial considerations. If a State Government or a body owned by a State Government enters the fray, it is conceivable that such cable distribution body may selectively offer channels which reflect, in their programmes, the viewpoint of the State Government (or the viewpoint of the party in power in the State Government). The right to receive plurality of viewpoints and opinions being one of the most important aspects of the freedom of speech and expression as enshrined in Article 19(1)(a) of the Constitution, such a selective distribution of channels by any cable distribution body would be against the observations of the Hon'ble Supreme Court in their judgment in the Bengal Cricket Association case on the scope of the said Article in the context of broadcasting. **In the Authority's considered view, therefore, the State Governments should continue to remain in the enforcement domain as regards the provisions of the Cable Television Networks (Regulation) Act, 1995 and, for the same reason, it would not be in the fitness of things for the State Governments to enter into the cable distribution area as a competitive service provider.**

(Paragraph 3.66.2.)

Having regard to these factors, the Authority recommends that, in the interest of fair competition and level playing field in the cable sector and the need to ensure plurality of views over this important distribution platform and also considering the need to ensure that there is proper enforcement mechanism applicable to all the players in the field, the State Governments and their organs should stay away from distribution activities.

(Paragraph 3.67.1.)

However, having regard to the fact that the Central Government has already accorded permission to certain State Government owned entities to enter into the cable distribution platform, the Authority further recommends that any decision on this question should also provide for an appropriate exit route for such existing entities. It should provide for an appropriate time limit of three to four years within which such existing entities can make necessary alternative arrangements (such as re-organisation of equity structure, disinvestment, etc.) so as to

avoid being disqualified for holding such permission upon expiry of such time limit and to provide for an exit route for such entities.

(Paragraph 3.67.2.)

Having regard to the dictum of the Hon'ble Supreme Court on the right under 19(1)(a) being one conferred on the citizens to have access to a plurality of views and opinions and the need to ensure that such plurality is available to all citizens in an atmosphere of fair competition driven by the principles of demand and supply and above all the need to prevent restriction of content by any of the players on political or religious considerations and also the need to prevent any problems relating to enforcement measures against the service providers involved, the Authority recommends that urban and local bodies, political bodies, religious bodies and other publicly funded bodies may not be permitted into distribution activities like cable television, DTH, etc.

(Paragraph 3.69.)

For the reasons discussed above, the Authority further recommends that the definition of "person" as contained in sub-clauses (ii) and (iii) of clause (e) of section 2 of the Cable Television Networks (Regulation) Act, 1995 be suitably amended so as to clarify that---

(a) entities such as State Governments and their instrumentalities, urban and local bodies, 3-tier Panchayati Raj bodies, publicly funded bodies, political parties and religious bodies do not fall within the definition of "person" as contained in sub-clauses (ii) and (iii) of clause (e) of section 2 of the Cable Television Networks (Regulation) Act, 1995 ;

(b) the expression "citizen " shall have the meaning assigned to it in the Citizenship Act, 1955.

(Paragraph 3.70.)

F. AS REGARDS LEGISLATIVE AND OTHER MEASURES REQUIRED

Having regard to this, and the recommendations made by the Authority as regards the entry of these respective entities into broadcasting activities as contained in Parts (B) to (E) of this Chapter, the Authority recommends that suitable provisions may be incorporated in the proposed new legislation on broadcasting, -----

(a) laying down clear conditions as to disqualification of State Governments, publicly funded bodies, political bodies and religious bodies as regards entry into broadcasting activities on the lines recommended in Parts (B) to (E) of this Chapter; and

(b) providing for appropriate exit route for such entities which have been already granted permission by the Government but are likely to be hit by the proposed disqualifications.

Pending enactment of the proposed new legislation, appropriate amendments may be considered in the uplinking and downlinking guidelines issued by the Government of India and instruments of approval or permission or registration, as the case may be.

(Paragraph 3.75.)

G. AS REGARDS PUBLIC SERVICE BROADCASTING

Having regard to the need to ensure that the airwaves/frequencies, being public property, are used in the best interest of the society, i.e., as mediums of public education and information and as tools for societal upliftment and economic development, the Authority recommends that -
----

(a) public service broadcasting obligations be imposed on every broadcaster in the country;

(b) Government may, however, consider, having regard to the nature of programmes carried by certain genres of channels like sports channels, etc., whether it is necessary to provide exemption to such genres of channels, either in respect of the minimum time limits or in respect of the specific timings of the Public Service Broadcasting programmes, particularly, when such channels carry live programmes relating to sports, current affairs, general elections and other important national and international events;

(c) the preparation of content for public service broadcasting may be left in private hands including private broadcasters, NGOs, social action groups, etc., in addition to Prasar Bharati, DAVP, State Governments and their organs, etc., but all content produced for being broadcast as part of the public service broadcasting obligation should be submitted by the concerned producers to the Government of India in the Ministry of Information and Broadcasting for approval and certification;

(d) the Government of India (Ministry of Information and Broadcasting) may either set up a committee or a regular body to approve and certify programmes as fit for being broadcast as part of the public service broadcasting (PSB) obligation;

(e) the committee or body as contemplated in clause (d) above may evolve suitable guidelines for the approval and certification of programmes as fit for PSB obligation and such guidelines may also specify the specific subjects such as ---

(i) education and spread of literacy;
(ii) agriculture;
(xiii) rural development;
(xiv) environment;
(xv) health and family welfare;
(xvi) science and technology,
(xvii) welfare of the weaker sections of the society;
(xviii) protection of cultural heritage;
(xix) national integration, etc., etc.

(f) the Government of India (Ministry of Information and Broadcasting) may also evolve a suitable scheme for reimbursement, either in full or in part, of the costs of production of such programmes as may be approved and certified by it as fit for PSB obligation;

(g) the Central Government may also consider ---

(i) establishing a Fund with contribution from the Central Government as seed money, to be known as the Public Service Broadcasting Obligation Fund, on lines similar to the Universal Service Obligation (USO) Fund in the telecom sector; and

(ii) imposing an annual Public Service Broadcasting Obligation levy on the private broadcasters in the country as a percentage of their annual revenues and a pre-determined share from the percentage of gross revenue being paid by the identified stakeholders in the broadcasting sector,

and the amounts so levied from private broadcasters and credited to the said Public Service Broadcasting Obligation Fund can be utilised to meet the expenditure on the partial or full reimbursement of costs, as the case may be, of programmes approved and certified by the Government of India (Ministry of Information and Broadcasting) or such committee or regular body referred to in clause (d) above;

(h) public service broadcasting obligations of private broadcasters should specify time periods during which all such private broadcasting channels should only carry programmes which are either made available to them by the Government of India (Ministry of Information and Broadcasting) as programmes meant for public service broadcasting or programmes which are approved and certified by it as fit for public service broadcasting;

(i) the specific timings for such public service broadcasting programmes and the duration of such programmes may be decided by the Government of India (Ministry of Information and Broadcasting) having regard to the language, genre and target audience of different channels;

(j) the private broadcasters may have the option of carrying public service broadcasting programmes with or without commercial advertisements and, in case any private broadcaster opts to carry such programmes without commercial advertisements, there should be no commercial advertisement of any type during such public service broadcasting programmes except the announcements at the beginning and at the end of such programmes that such programmes are aired as public service broadcasting programmes and, in order to compensate the private broadcaster for the air time spent on the carriage of such public service broadcasting programmes and the loss of revenue due to carriage of such programmes without commercial advertisements, Government of India (Ministry of Information and Broadcasting) may evolve suitable guidelines for payment of appropriate compensation to such private broadcaster and the expenditure on such payments can also be met from the Public Service Broadcasting Obligation Fund; and

(k) as a beginning in this direction, every private broadcaster may be mandated to carry programmes approved and certified as public service broadcasting programmes at least for a total duration of thirty minutes in a week.

(Paragraph 3.80.)

The Authority accordingly recommends the incorporation of suitable provisions in the proposed new legislation on broadcasting and, pending the enactment of such new legislation, suitable amendments may be made in the uplinking and downlinking guidelines issued by the Government of India for the purpose of imposing public service broadcasting obligations on all broadcasters.

(Paragraph 3.81.)

The Authority, therefore, recommends that Prasar Bharati may produce on its own or commission the production of programmes by other entities and individuals for the purpose of not only meeting its own public service broadcasting obligations but also for the purpose of providing such programmes to the Ministry of Information and Broadcasting (or to the Committee or body set up by the said Ministry for approval and certification of PSB content) so that such programmes are made available to the private broadcasters, community based radio and television broadcasters, etc. for wider dissemination to the public.

(Paragraph 3.84.)

In the Indian context, having regard to the observations of the Hon'ble Supreme Court that the airwaves/frequencies are a public property and have to be used in the best interest of the society and that 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, corporation or a private individual or body, there is need for creation of "citizen space" over the broadcasting medium so as to enable the common man to utilize the medium for expressing his views and opinions. **The Authority, therefore, recommends that—**

(a) the Prasar Bharati should address the issue by framing appropriate guidelines for creation of "citizen space" through its national and regional kendras;

(b) all Private broadcasters should also be obligated to do it under the downlinking and uplinking guidelines to the extent possible so as to ensure that the airways, being public property, are used for serving the larger public interest and for enabling public access to the medium, with a view to achieving greater realization of the Constitutional guarantee as contained in Article 19(1)(a) of the Constitution.

(Paragraph 3.88.)

Having regard to the need for creation of public access to the broadcasting media so as to fully realise the Constitutional guarantee of freedom of speech and expression to every citizen, the Authority recommends that apart from making use of the community television stations on the terrestrial mode for giving access to the common man to the broadcasting media at the community level, the local cable systems in various regions may also be obligated to carry a specified number of "citizen space" programmes or a specified number of "citizen space" channels on their local cable networks covering the content generated by such community television stations.

(Paragraph 3.90.)

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Annexure A: Letter from Ministry of Information and Broadcasting

ASHA SWARUP
Tel : 23382639 सत्यमेव जयते)

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

D.O.No.9/32/2007-BP&L

नई दिल्ली-1, तारीख December 27, 2007
Dated New Delhi-1, the 200

Dear Shri Mathur,

The Central Government is receiving a number of requests from the State Governments to allow the State Governments or State Government Public Undertakings for entering into broadcasting activities which include in some cases starting of a Broadcast Television or Radio channel and in other cases entering into distribution platforms like Cable Services. The recent requests have come from the Chief Minister of Delhi for starting a FM Radio channel or a Community Radio Station and another request has come from the Chief Minister of Tamil Nadu for permission to work as a Multi System Operator in the city of Chennai. These requests raise a broader policy issue of whether such requests from the State Governments should be entertained. As per the provisions of Section 11(1)(a) of the Telecom Regulatory Authority of India Act, 1997, Telecom Regulatory Authority of India is requested to examine the matter and submit its recommendations especially covering the following issues:-

(i) Whether State Governments, urban and local bodies, 3-tier Panchayati Raj bodies, publicly funded bodies and political bodies should be permitted to enter into broadcasting activities which may include starting of broadcast channel or entering into distribution platform like cable services

(a) If 'Yes', what are the kind of broadcasting activities which should be permitted to such organizations and to what extent? What are the safeguards required to prevent monopoly or misuse? Whether any amendments are required in the extant Acts/Rules/Guidelines to provide for the same.

(b) If 'No', whether disqualifications proposed in Section 12 of the Broadcasting Bill, 1997 and Part I of the Schedule thereto should be considered as it is or with some modifications for incorporation in the existing Cable Act and Rules relating thereto and in the proposed Broadcasting Services Regulation Bill, 2007, and policy guidelines with respect to broadcast sector issued by the Ministry of Information & Broadcasting If so, what are the amendments/provisions required to be made in them?

(ii) Whether similar disqualifications with respect to religious bodies on the lines of Broadcasting Bill, 1997 or with some modifications be also considered for religious bodies.

(iii) It is requested that TRAI may also like to consider provisions in broadcast legislation of other countries while making its recommendations.

2. Since the Government wants to take an early decision on the pending requests of the State Governments and also desires to lay down a clear cut policy for future, it is requested that the recommendations of the Telecom Regulatory Authority of India may be sent at an early date. Copy of the Broadcasting Bill, 1997 and a brief background paper on the issue is enclosed for reference.

With regards,

Yours sincerely,

(ASHA SWARUP)

Encl: As stated.

Shri Nripendra Mishra
Chairman
Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhavan
Jawaharlal Nehru Marg(Old Minto Road)
NEW DELHI-110002.

Background Note on permitting State Governments to enter into Broadcasting Activities

The Government has been receiving requests from various State Governments, local authorities and publicly funded bodies to enter into broadcasting activities which include starting a radio or TV channel or entering into distribution platforms like cable services. While considering such requests the Government wants to take a policy decision on the entire issue of whether such requests can be or should be considered for permission to enter into broadcasting activities which may include starting a broadcast channel or entering into distribution platforms like cable services.

Provisions of Cable TV Act and Rules:

2. The Registering Authority for registration of a cable operator vide notification S.O. 718(E) dated 29th September, 1994 under Section 2(h) of the Cable Television Networks(Regulation) Act, 1995 is the Head Post Master of the Head Post Office of the area within whose territorial jurisdiction the office of the cable operator is situated. Thus the application for registration will not come to the Ministry and they may be seeking registration directly in the concerned Head Post Office. Section 2(aa) defines 'cable operator' as a person providing cable service. A 'person' has been further defined in Section 2(e) to include 'a company in which not less than fifty one per cent of the paid up share capital is held by the citizens of India'. Neither in the Cable TV Act nor in the Rules made thereunder it has been prescribed that the company cannot be a Government owned company or a State Govt. undertaking or a joint venture of the State Government and the private sector.

Cases of requests by State Governments considered in the Government earlier:

3. (1) **Request by West Bengal State Government:**

The first case is in the year 1999 was pertaining to a proposal of the Govt. of West Bengal to launch a TV channel. It was proposed to set up an autonomous body. Till such time the body could be put in position the channel was supposed to be owned, launched and operated by the West Bengal Film Development Corporation Ltd. a public sector undertaking of the State Govt. The permission of the Govt. of India was sought for starting the channel. The matter was analysed and the request of the State Government was rejected . Following factors were taken into account:-

(i) The observations of the Supreme Court in their judgment in the Union of India vs. Cricket Association of Bengal dated 9.2.1995. Relevant portions of the judgment are reproduced below:-

> "Broadcasting media should be under the control of the public as distinct from Government. 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)

"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)

(ii) It was also mentioned that keeping in view of the above judgment of the Supreme Court, the Government, local authorities and public bodies substantially funded from public fund were proposed to be disqualified in the draft Broadcast Bill, 1997. There was a special provision in the bill for public service broadcasters created under an Act of Parliament to avoid any contradiction or inconsistency.

(iii) In almost all the developed democracies, Governments are explicitly debarred under the relevant laws from holding broadcasting licence or do not do so by tradition or convention. Broadcasting system controlled or managed by the State is found to be inconsistent with the basic principles of democracy. Not only does it affect adversely the citizen's right to free speech but also acts against the principle of level playing fields among the political parties.

(iv) On practical consideration also, a State owned or managed broadcasting is not likely to survive since it would be perceived as a propaganda machinery and would lose its credibility and viewership in due course. Example of newspapers is relevant in this regard. Even though there is no restriction on the Government owning or managing a newspaper, neither the Central Government nor any State Government has ventured in this area because it is not likely to have a sustained readership.

(v) Permission to one State Government to start its channel will open up a pandora box followed by public funded bodies, political bodies etc. Such a scenario would run against the moral of broadcasting observed by the Supreme Court after the Central Government has moved away from having direct control over broadcasting by creating an autonomous body under the Prasar Bharati(Broadcasting Corporation of India) Act, 1990.

(2) **Request by Government of Punjab:** Subsequently a proposal was received from the Government of Punjab for setting up a TV Broadcasting Station in collaboration with a foreign broadcast company named Globe Satellite Communication. The reply dated 24.5.2000 conveyed refusal of the Government stating that that as per the extant policy, State Governments are not permitted to set up TV channels or

broadcasting stations. It was also mentioned that even Doordarshan and AIR which were earlier part of the Central Government has been distanced from the Central Government and brought under statutory body Prasar Bharati under the Prasar Bharati Act, 1990

(3). **Request by Government of Andhra Pradesh**: Another request was received from the Government of Andhra Pradesh for permitting distribution of Ku Band signals of Mana TV through commercial cable operators. The request was again not acceded to and reply was sent on October 20, 2005 and again on March 05, 2007 .

Community Radio Policy Provisions:

4. Recently while reviewing the policy of Community Radio Stations for allowing the NGOs/civil society organizations for setting up of Community Radio Stations, the Ministry of Panchayati Raj has requested to allow Panchayati Raj bodies permission to set up Community Radio Stations. In the comments put up by this Ministry before the Cabinet on the request of the Panchayati Raj Ministry it was mentioned that allowing them would amount to allowing this facility to the third level of instrument of Government, established through 73rd amendment to the Constitution. It is also apprehended that they shall fall back on public funds whereas the instant proposal does not envisage such a pattern of funding. The Panchayati Raj institutions has not been finally permitted by the Cabinet.

Extant Policy:

5. Thus the extant policy has been that State Governments have not been allowed to enter into broadcasting activity. However this issue has neither been specifically deliberated upon by the Cabinet nor by the Parliament at any stage, except perhaps at the time of consideration of the Broadcast Bill 1997 by the Joint Parliamentary Committee.

Constitutional Provisions:

6. It may also be mentioned that entry no.31 in the Union List of the VII Schedule to the Constitution says "Post & Telegraphs, telephones, wireless, broadcasting and other like forms of communication". That means the Central Government only as per Article 246 can legislate on it. Article 298 provides that the executive power of each State shall extend to the carrying on of any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purpose, in so far as such trade or business or such purpose is not one with respect to which the State Legislature may make laws, be subject to legislation by Parliament. This in itself does not prevent the State Government from operating broadcasting channels under the Central law enacted by Parliament.

Allocation of Business Rules and provisions of Indian Telegraph Act

7. As per the Government of India(Allocation of Business) Rules the Ministry of Information & Broadcasting is to deal with all matters relating to Radio and television Broadcasting activities within the Union. In this context, Section 4 of the Indian Telegraph Act 1885 mentions that within India the Central Government shall have

exclusive privilege of establishing, maintaining and working telegraphs provided that it may grant licence on such conditions and for consideration of such payments as it thinks fit to any person to establish, maintain or work a telegraph within any part of India. It is apparent from this Section also that the Central Government if it so wishes can authorise the State Governments also to establish, maintain and work telegraph.

Supreme Court Judgement in Union of India vs. Cricket Association of Bengal dated 9.2.1995 case:

8. In the judgment delivered by one of the Judges, Justice D.P. Jeevan Reddy has also opined in para 199 that in the interest of ensuring the plurality of opinions, views, ideas and ideologies, broadcasting media cannot be allowed to be under the monopoly of any one – be it the monopoly of Government or of an individual body or organization. In fact he has also opined in para 194 that there is a far greater likelihood of the private broadcasters indulging in misinformation, disinformation and manipulation of views and news than the Govt. controlled media which is at least subject to public and parliamentary scrutiny. What we can conclude from this judgment is that the Court wanted multiplicity of opinions, views, news and did not want any monopolisation either of the Government or the private broadcasters.

SIMCON XVI deliberations:

9. In the recently concluded SIMCON XVI, Smt. Sheila Dixit also requested for allowing the Delhi State Govt. to launch a private FM channel or a Community Radio Station. Some of the other States also requested for carrying the Legislative Assembly and Council proceedings live on the lines of the Lok Sabha and Rajya Sabha channels. MIB has also expressed a view in the Conference that the demand of the State Government needs to be looked into.

10. It appears from above that legally there is no bar in Central Government authorizing the State Governments to enter into broadcasting activitiy. We have neither barred the State Govts. nor permitted the State Govts. specifically by any law to enter into broadcasting activity. Considering the desire of more and more State Govts. to enter into not only broadcasting of channels but also cable operation service and DTH service, it is desirable that a conscientious policy decision be taken at an appropriate level to lay down the path for future.

Annexure B: Gist of the responses received on the consultation paper

1. ETV Network

    - Not in favour of entry of State Governments, Municipal bodies and Panchayats to enter into broadcasting as well as distribution activities.

2. Essel Group of Companies
   (Zee network, Dish TV, WWIL referred as Zee Network in the response)

    - Not in favour of political or state control of media in any manner, in broadcasting or in distribution sector.
    - Permitting state government in b'casting sector would introduce political bias and would also be directly contrary to the Judgment of Hon'ble Supreme Court.
    - In favour of disqualification criteria proposed in clause 12 of the B'casting Bill, 1997 except the disqualification of religious bodies.
    - Misuse of the channel or violation of broadcasting code is an issue which is identical to all channels rather than religious channel.
    - The religious bodies can either be a registered trust, society or can be a section 25 company.
    - State should not be allowed to be in distribution system. State may run channels on distribution platform not based on commercial consideration but rather political lobbyist mechanisms.
    - The permission for distribution activity to state is not within the scheme of distribution of subjects between the central and state governments as per the constitution.
    - "State" does not fall in the definition of "person" as defined in cable act.
    - In view of Constituent assembly and Sarkaria Commission report, There is no re-look required whatsoever for giving the broadcasting including distribution to state governments..
    - Permitting broadcasting or distribution to the State Governments will open a Pandora's box.
    - Not in favour to give permission to political bodies.

3. MCCS
    - Not in favour of State Government to enter into broadcasting sector.

- Permitting State Government into this sector would not be within the scheme of the distribution of the subject in the constitution.
- If state Government are permitted in broadcasting sector, they should be permitted into the following sector-
  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.
- Safeguard needed for ensuring bonafide usages of the broadcasting permission will be merely on paper as state machinery is the prime mover.
- Disqualifications in broadcasting bill are relevant as on today.
- Religious bodies should not be permitted.
- Not in favour of distribution in the hands of state government etc.
- Entities other than citizen of India should not be considered as "person" as per cable act.
- Amendment is required in the definition of "person" if State Governments etc are allowed.
- In view of recently constituted centre-state commission it is not necessary for TRAI to look into this issue.
- Permitting state governments will have impact on centre-state relations.
- Political and religious bodies should not be permitted to enter into b'casting and distribution activities.

4. Ortel
   - Union government already providing broadcasting through Prasar Bharati, as such no further requirement of government to enter into broadcasting activities.
   - In favour of the Disqualification proposed in clause 12 of broadcasting bill, 1997, as these are relevant as on today also.
   - No religious body should be permitted
   - Government should not be permitted in broadcasting sector. The objective of the government is not to do business for its own but to encourage competition among private players.
   - Government should not be allowed in distribution business.
   - Cable TV act should be amended by inclusion of non-eligible person as defined in section 12 of the broadcasting bill, 1997.
5. MSO alliance
   - Any political body or state cannot and should not enter into broadcasting and distribution segment except for Prasar Bharati.
6. Arasu cable TV corporation Limited (sent a copy of legal opinion from Mr. Amarendra Sharan, ASG)
   - There is no bar for a Government company to operate a Cable Television Network subject to conditions of the license and other regulations.

7. Government of TN

- State Government is not sending its comments as Arasu Cable TV Corporation of the state has already sent its response enclosing the legal opinion of the Additional Solicitor General of India.

8. COFI

- General approach should be to have suitable regulation to prevent political or state control of media in any manner, be it broadcasting or distribution.
- State bodies to carry out distribution business have positive effect. They can look after the employment of more than 15 lakh people involved with cable TV and broadcasting industry.
- State can have Independent Corporation to run business of broadcasting like Prasar Bharati. These ventures will be run by the professionals. Political parties will not have any control over them

9. Shri R. L. Saravanan

- State should be permitted to run TV Channels with a supervision of professionals.
- None of the local bodies should be allowed for b'casting or distribution activities.
- No separate channel for political bodies should be allowed since they are already backed up certain entertainment channels and news channels.
- No religious body will be allowed as it will enlarge mythical ideas and thoughts on the channels.

Annexure C: A gist of the comments and suggestions made by the stakeholders who participated in the open house discussions on 16.04.2008 held in New Delhi

1. ETV Network: (None present)

2. ESSEL Group of Companies (Zee Network): (Shri A. Mohan)

(a) Supreme Court's judgment in Cricket Association case are very clear. (There are other equally significant paragraphs in the judgment than the ones quoted in the Consultation paper.)

"….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 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…."

The electronic media, being a powerful media, should not be allowed to be monopolized at all.

(b) **Constitutional scheme**: Communication is in the exclusive domain of the Central Government. Item 31 uses the expression "and other like forms of communication".

Section 129 of the Government of India Act, 1935 had allowed the States to maintain their own broadcasting stations. The provisions of section 129 of the said Act were specifically referred to in the debates of the Constituent Assembly. The framers of the

Constitution took a conscious decision to keep broadcasting in the exclusive domain of the Central Government.

In contrast to this is the item No.13 in the State List (List II) which also covers 'communications'. This item covers communications like roads, bridges, ferries and other means of communications not specified in List I. This item does not cover audio-visual communications. Item 31 of List I has used the words other like forms of communication with a view to take care of technological advancements in the future. Therefore, electronic media is in the exclusive domain of the Central Government under the Constitutional scheme.

(c) The Constitution 73rd Amendment and the Constitution 74th Amendment were made for strengthening local bodies and Panchayati Raj institutions. Articles 243G and 243W contain the relevant provisions regarding the powers of these institutions. These provisions contain no reference to 'communication'. Therefore, the State Governments, local bodies and panchayati raj institutions do not have any domain in 'communication' as covered in item 31 of List I of the Seventh Schedule.

(d) The provisions of Article 19(1)(a) have been specifically referred to in the judgment of the Hon'ble Supreme Court in Cricket Association case.

"…….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.*".

Therefore, Government control should be limited to licensing and that should be the Laxman Rekha. Even this control has to be exercised by an independent Broadcasting Regulatory Authority which should be separated from the Government.

(e) Art. 25 of the Constitution deals with Freedom of Conscience and free profession, practice and propagation of religion, under which

all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion. Article 30 deals with the Right of minorities to establish and administer educational institutions. Therefore, in the context of the rights conferred by Articles 25, 29 and 30, the question would arise as to whether in the name of propagating religion, can religious bodies be allowed to have their own broadcasting set-up?

(f) International Experience: Zee Network's response to the Consultation Paper contains details of the international experience in eighteen countries. In all these countries, political parties have been disqualified from broadcasting and distribution activities. Specially, if you look at the UK, the restriction extends to shareholder participation such that political bodies can not hold more than 5% of licence-holding companies.

In the USA, the following principles have been laid down as regards broadcasting activities, namely:-

(i) "Zero Tolerance" Policy for Ownership Fraud (straight cancellation of licence in case of violation); and
(ii) "Equal Opportunity Doctrine" (Equal opportunity to all political parties at the time of elections).

In all the 18 countries cited by Zee in its response, political bodies and in some of them religious bodies have been prohibited from entering into broadcasting.

In view of this, there should be thorough scrutiny of application for broadcasting licences. There should be a proper 'see through' mechanism and the ownership of the applicants should be carefully scrutinized before giving licence.

(g) As regards Community Radio guidelines, political parties alone have been disqualified while religious bodies have not been disqualified. Government has, in its wisdom, decided not to disqualify religious bodies. Political bodies, however, have been disqualified.

(h) Germany and UK have allowed permission to religious bodies to have broadcasting channels.

(i) Religious channels in India are generally owned by companies except channels like "Amrita" and "Om Shanti Om" which are owned by religious bodies.
The Criteria adopted by Ofcom in UK can be considered in this context.

Transmission of religious channels is a mainstream activity worldwide. 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.,

they should be allowed. Stringent penalties should be imposed for violation of the Content Code. The example of Ofcom that while imposing penalty for the first time, it should also be provided that two more such violations would lead to cancellation of the licence.

(j) Under the European Charter, denial of licence to a religious channel may amount to violation of human rights. Therefore, in India also, religious bodies can be allowed licences subject to strict adherence to the Content Code. However, such bodies should not be allowed to have their own teleports. They should uplink from the teleports provided by some other body.

(k) **Distribution:**

DTH licences are relatable to the Indian Telegraph Act, 1885. As regards the registration of cable networks, the Rajasthan High Court has held that the registration of cable television networks is also relatable to the Indian Telegraph Act. [Shiv Cable System Vs. State of Rajasthan (AIR 1993 Raj 197)].

(l) As regards the definition of "person" in the Cable Act, it would need thorough deliberations. The share holdings of Government owned corporations is an important element to be considered in this context. For example, in a recently launched Government corporation, 9999 shares out of 10000 shares are with the State Government. Where the substantial shareholding is by the State, can there be an interpretation that the criteria of citizens holding 51 per cent shares has been fulfilled, is a question which needs thorough debate. State Governments, local bodies, etc. should not be allowed into the distribution activity. A clear cut provision should be made in the Cable Act, etc. and clear provisions should be made by legislation for preventing such entities from entering into the distribution activities.

(m) There can be other ways in which the State Governments may monopolise the distribution activities. The recent example of a

State Government implementing "One pole-One Cable (One service provider)" policy is an example of State supported monopoly. Allowing them (State Governments, State owned bodies, urban and local bodies) will seriously compromise competition. Therefore, they should not be allowed to enter the distribution platform.

(n) There are capacity constraints in the analogue mode. It should be kept in mind that as regards the aspect of providing public interest content by PSUs, the functions of Prasar Bharati under the Prasar Bharati Act takes care of such public interest. Prasar Bharati beams about 19-20 channels for this purpose. If State Governments are also allowed, they may force the cable operators to carry their channels which would be a wastage of public resources. The recent examples (Chhatisgarh and Punjab) highlight this problem. Therefore, the question to be asked is "Should there be competition, State Monopoly or State supported Monopoly in the distribution of television channels?".

3. MCCS: (None Present)

4. Ortel: (None Present)

5. MSO Alliance: (Shri Ashok Mansukhani)

(a) Pages 52, 53 and 54 of the Consultation Paper (background note of the Ministry of Information Broadcasting) contains certain inaccurate statements. Attention is drawn to the recent judgment of the Hon'ble Delhi High Court in a bunch of writ petitions filed by Star and another broadcaster where the Hon'ble High Court has relied on the judgment of the Hon'ble Supreme Court in the Cricket Association case. The Supreme Court judgment has been exhaustively discussed by the High Court in its judgment. Answers to all the questions in the consultation paper are contained in the said judgment. The Supreme Court judgment has become the final word on the subject.

(b) The Parliamentary Committee deliberations and the stake-holders views in those deliberations are on record.

(c) State Governments and public bodies should not be allowed to enter into broadcasting or distribution activities.

(d) There is no mention in the Consultation paper about IPTV. Attention is drawn to the fact that one Public Sector Undertaking is providing IPTV and the said PSU is carrying channels which do not have down-linking permission. In yesterday's newspapers

(Tuesday, the 15th April, 2008), there is a report about launch of IPTV services by software technology company. Therefore, there is a need for regulatory interference in the matter.

(e) The Cable Act does not recognize Multi System Operators (MSOs) nor does it recognize pay channels except for the purpose of CAS. Whether the Cable Act needs to undergo exhaustive review is a question which needs to be considered.

(f) There is no place, in terms of the Supreme Court judgment, for any State Government or body to enter into broadcasting.

(g) The disqualifications as contained in the Broadcasting Bill, 1997 are outdated and they require revisiting. The reality that MSOs operate IPTV, ISP, etc. has to be kept in mind. The disqualifications should take into account the natural convergence which is happening.

(h) Religious channels are very profitable as a matter of fact. They are not really run by religious bodies. Time-sale is what is happening. In this context, the funder of the content has to be seen.

(i) The content issue in terms of religion is a matter of concern. Local Cable Operators and MSOs are being prosecuted for content offered by the broadcasters.

(j) Stricter proof of ownership should be enforced. End owner, end investee and end beneficiary, as applicable in the telecom sector, should be seen before grant of licence/permission. The uplinking and downlinking guidelines need a new look.

(k) Channels without downlinking permission are being telecast. This necessitates the demand that let there be a broadcast media regulatory authority.

6. Arasu Cable TV Corporation Ltd.: (None present)

7. Cable Operators Federation of India (COFI): (Mrs. Roop Sharma)

(a) State Governments, political parties and religious bodies should be allowed to enter broadcasting. The feedback from Tamil Nadu appears to be good.

(b) Livelihood of cable operators will be improved if such entities are allowed to enter broadcasting and distribution sector. This will reduce monopoly of private MSOs.

(c) There should be proper regulatory regime for such entry.

(d) State Governments may assist Local Cable Opertators for digitalizing their networks.

(e) There should be no compulsion to carry State Government channels.

(f) State Government channels should not contain political content. They should be non-profitable.

(g) Religious content should be monitored and proper regulatory framework should be provided. There should be more detailed debate on this.

(h) End-invester, end-beneficiary examination is necessary for granting permission.

(i) Regulation should prevent monopoly and encourage competion.

8. R.L. Saravanan: (not present)

9. Ms. Amita (Jain TV):

Agrees with the comments of Ms. Roop Sharma (COFI).

10. Mr. Trivedi (Jain TV):

Consumer should have the freedom to watch State Channels and private channels. State Governments, religious bodies and NGOs should be permitted.

11. Vibhav Srivastava, Advocate:

Agrees with the views expressed by Mr. Mohan (Essel Group).

Under the Cable Act, the State Government is enforcing the provisions of the Cable Act. There will be no impartiality if a Government body is a competitor.

No religious channel should be allowed to promote any particular religion.

12. Amitabh Kumar (Essel Group):

The Equal Opportunity Doctrine should be followed as regards political bodies. The TRAI should extend the said policy to existing channels. The matter needs regulation.

By-passing of Zero-Tolerance Policy should be addressed. The Programme and Content Codes and the Equal Opportunity policy should be implemented for all channels.

Even the see-through doctrine may not work in certain circumstances. There should be stricter scrutiny.

Content monitoring should be done in detail.

13. Mr. Agarwal (Surya Foundation):

(a) There should be level playing field. Except that in the broadcasting sector, resources are limited, in the distribution sector, the more number of people enter the sector, the better.

(b) Centre-State ideological differences should be addressed if State Governments are to be allowed to enter into broadcasting.

(c) The quality of service offered by the cable operators need to be improved.

14. Mr. Mohan (Essel Group):

There will be conflict of interest in case State Governments and their organs enter into distribution activities. It would result in the licensor becoming the licensee .

There has to be a separate broadcasting regulator.

The observations of the Sarkaria Committee are explicit as regards the entry of State Governments into broadcasting sector.

The provisions contained in the US Stop Government Propaganda Act which bars political parties with the exception of the Equal Opportunity Doctrine can be considered. Provisions should also be made for prevention of attempts to influence news media on the lines of the said Act.

.....

Annexure D: Response from Indian Broadcasting Foundation

N. P. Nawani, IAS (Retd.)
Former Secretary, Ministry of Information & Broadcasting
Secretary General, Indian Broadcasting Foundation

I B F

23rd April, 2008

Dear Mr. Bhasin,

Sub. : Issues relating to entry of certain entities into broadcasting and distribution activities.

The meeting of the Board of Directors of IBF was held on 21st April, 2008 in Mumbai. It was decided by the Board that in addition to the responses sent by some of IBF Members direct to the Authority, the IBF may also send its views. We are accordingly enclosing herewith a Note on the subject.

With best wishes,

Yours sincerely,

(N. P. NAWANI)

Mr. V. K. Bhasin
Principal Advisor (Legal)
Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan,
Jawaharlal Nehru Marg
New Delhi - 110 002

Encl. As above

THE INDIAN BROADCASTING FOUNDATION
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NOTE ON TRAI CONSULTATION PAPER ON ISSUES RELATING TO ENTRY OF CERTAIN ENTITIES INTO BROADCASTING AND DISTRIBUTION ACTIVITIES

1. CONSTITUTIONAL PROVISIONS

(i) Under the heading Fundamental Rights, the Constitution incorporates the Right to Freedom and Article 19 (1) (a) lists certain rights to the citizens. Of these, the right to freedom of speech and expression is of tremendous significance to communications.

Article 19(1)(a) is an important constitutional guarantee. It implies the right to speak freely and to express oneself through various 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.

(ii) The impact of constitutional law on communications & Broadcasting can be divided into four broad categories:

(a) 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.

(b) 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.

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(c) 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.

(d) 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.

(iii) Under Article 246, Parliament has exclusive power to enact laws for items, such as entry 31, which are on the Union List and therefore the States are forbidden from directly regulating communications. 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.

2. BRIEF EXCERPTS FROM THE JUDGEMENTS OF THE SUPREME COURT

In the Indian Express Case, the Supreme Court had observed that ".....The freedom laid 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 vigor of those yielding the proper fruits".

The Apex Court had in Cricket Association of Bengal case observed:

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.

.....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.....

3. IMPORTANCE OF PLURALITY AND FREEDOM OF MEDIA

Plurality of information, views, and opinions is also considered the bedrock on which any democratic polity can thrive. In its absence, the polity would be held to ransom by autocratic or military rules. The media with an adequate dispersal and autonomy promotes and provides such plurality and is therefore, considered as the Fourth State. Democracies all over the world greatly value such diversity and strongly guard against the government and therefore, political parties monopolizing the media. In fact, both in the mature democracies and developing countries, the trend now is to free even the existing media organisations from state control.

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, it is also important that in order that the ownership is not hidden, Zero tolerance to ownership fraud should be introduced.

4. IBF's VIEWS

IBF therefore, reiterates 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 in the broadcasting and subserve the citizen's right of freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution of India. The state organs, which derive their funding from public exchequer can severely compromise the independence of media and would introduce political bias and would directly violate the law laid down by the Apex Court in various judgements and as briefly quoted earlier. It is specially relevant in case of the entire broadcasting media in view of its enormous reach and impact and such entry will expose citizens of India to the unbridled risk of distortion and tampering of public opinion to suit their own narrow ends which will be violative of Constitutional guarantees and law laid down by the Supreme Court of India. State owned media, broadcast stations and distribution control are a recipe for disaster.

5. CONCLUSION :

Considering the Constitutional provisions, the law laid down by the Apex Court and freedom of speech and expression guaranteed under Article 19 (1) (a) as also the potential threats to the very roots of our democratic edifice, it would not be in overall public interest to permit State governments, urban and rural bodies, public-funded bodies and political parties and their entities etc. to own and run in any broadcasting and distribution services.

5

Annexure E: Eligibility Conditions for entry into broadcasting and distribution activities

I. Eligibility conditions for TV channel broadcasting and news agencies

A. For Downlinking the Television Channels uplinked from abroad

The entity applying for permission for downlinking a channel, uplinked from abroad must satisfy, inter alia, the following eligibility conditions as specified in the downlinking guidelines, namely:-

> "**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.
>
> **1.2** The applicant company must have a commercial presence in India with its principal place of business in India.
>
> **1.3** The applicant company must either own the channel it wants downlinked for public viewing, or must enjoy, for the territory of India, exclusive marketing/ distribution rights for the same, inclusive of the rights to the advertising and subscription revenues for the channel and must submit adequate proof at the time of application.
>
> **1.4** In case the applicant company has exclusive marketing / distribution rights, it should also have the authority to conclude contracts on behalf of the channel for advertisements, subscription and programme content."

B. For Setting up of an uplinking hub/teleport in India

The applicant seeking permission to set up an uplinking hub/ teleport should be a company registered in India under the Companies Act, 1956. The foreign equity holding including NRI/OCB/PIO should not exceed 49% in the applicant company (as specified in clause 1.1.1 of the consolidated uplinking guidelines).

C. For uplinking a News and Current Affairs Television Channel

Under the Guidelines for Uplinking from India, a "News & Current Affairs TV channel" has been defined as a channel which has any element of news & current affairs in its programme content.

The entity seeking permission for uplinking a News and Current Affairs Television Channel should be a company registered in India under the Companies Act, 1956.

Clause 3.1 of the consolidated uplinking guidelines contains the following eligibility conditions, namely:-

"**3.1.1** Foreign Equity holding including FDI/FII/NRI investments should not exceed 26% of the Paid Up equity of the applicant company. However, the entity making portfolio investment in the form of FII/NRIs deposits shall not be "**persons acting in concert**" with FDI investors, as defined in Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997. The Company, permitted to uplink the channel shall certify the continued compliance of this requirement through its Company Secretary, at the end of each financial year.

3.1.2 Permission will be granted only in cases where equity held by the largest Indian shareholder is at least 51% of the total equity, excluding the equity held by Public Sector Banks and Public Financial Institutions as defined in Section 4A of the Companies Act, 1956, in the New Entity. The term largest Indian shareholder, used in this clause, will include any or a combination of the following:

(1) In the case of an individual shareholder,

(a) The individual shareholder.

(b) A relative of the shareholder within the meaning of Section 6 of the Companies Act, 1956.

(c) A company/ group of companies in which the individual shareholder/HUF to which he belongs has management and controlling interest.

(2) In the case of an Indian company,

(a) The Indian company

(b) A group of Indian companies under the same management and ownership control.

For the purpose of this Clause, "Indian company" shall be a company, which must have a resident Indian or a relative as defined under Section 6 of the Companies Act, 1956/ HUF, either singly or in combination holding at least 51% of the shares.

Provided that in case of a combination of all or any of the entities mentioned in Sub-Clause (1) and (2) above, each of the parties shall have entered into a legally binding agreement to act as a single unit in managing the matters of the applicant company.

3.1.3 While calculating foreign equity of the applicant company, the foreign holding component, if any, in the equity of the Indian shareholder companies of the applicant company will be duly reckoned on pro-rata basis, so as to arrive at the total foreign holding in the applicant company. However, the indirect FII equity in a company as on 31st March of the year would be taken for the purposes of pro-rata reckoning of foreign holdings.

3.1.4 The company shall make full disclosure, at the time of application, of Shareholders Agreements, Loan Agreements and such other Agreements that are finalized or are proposed to be entered into. Any subsequent changes in

these would be disclosed to the Ministry of Information and Broadcasting, within 15 days of any changes, having a bearing on the foregoing Agreements.

3.1.5 It will be obligatory on the part of the company to intimate the Ministry of Information & Broadcasting, the changes in Foreign Direct Investment in the company, within 15 days of such change. While effecting changes in the shareholding patterns, it shall ensure its continued compliance to Clause 3.1.1 and 3.1.2 above.

3.1.6 The applicant shall be required to intimate the names and details of all persons, not being resident Indians, who are proposed to be inducted in the Board of Directors of the company.

3.1.7 The company shall be liable to intimate the names and details of any foreigners/ NRIs to be employed/ engaged in the company either as Consultants (or in any other capacity) for more than 60 days in a year, or, as regular employees.

3.1.8 At least 3/4th of the Directors on the Board of Directors of the company and all key Executives and Editorial staff shall be resident Indians.

3.1.9 The representation on the Board of Directors of the company shall as far as possible be proportionate to the shareholding.

3.1.10 All appointments of key personnel (executive and editorial) shall be made by the applicant company without any reference on from any other company, Indian or foreign.

3.1.11 The applicant company must have complete management control, operational independence and control over its resources and assets and must have adequate financial strength for running a news and current affairs TV channel.

3.1.12 CEO of the applicant company, known by any designation, and/ or Head of the channel, shall be a resident Indian."

D. For uplinking a non- News Television Channel

Under the Guidelines for Uplinking from India, a "Non-News & Current Affairs TV channel" has been defined as a channel which does not have any element of news & current Affairs in its programme content.

The applicant seeking permission to uplink a Non-News & Current Affairs TV channel should be a company registered in India under the Companies Act, 1956.

The applicant company, irrespective of its ownership, equity structure or management control, would be eligible to seek permission (clause 2.1.1 of the consolidated uplinking guidelines).

E. Permission for uplinking by Indian News agency

The applicant seeking permission to set up uplink facility by a News Agency should be a company registered in India under the Companies Act, 1956.

Clause 4.1 of the consolidated uplinking guidelines prescribes, inter alia, the following eligibility conditions, namely:-

"4.1 Eligibility criteria.

4.1.1 The applicant company should be accredited by Press Information Bureau (PIB).

4.1.2 The applicant company should be 100% owned by Indian, with Indian Management Control."

F. Other existing permissions

Lok Sabha Secretariat has been granted permission by the Government of India to launch their own television broadcasting channel, namely, Lok Sabha television channel. Similarly, the Indira Gandhi National Open University (IGNOU) has been granted permission earlier by the Government of India to broadcast its own television channels.

G. Private Terrestrial Television

Terrestrial television has not been opened up for the private sector yet by the Government of India. The Authority has made its recommendations on "Issues Relating to Private Terrestrial TV Broadcast Service" on August 29, 2005. In these recommendations, the Authority has given the following recommendations on the question of eligibility conditions and on the issue of foreign ownership for private terrestrial television, namely :-

" 6.3.2 Eligibility

No detailed eligibility conditions need be laid for the present. However, the general disqualifications which have been adopted for Private FM Radio may be used for private terrestrial television broadcasting also. This would mean that the following would be disqualified from holding a licence :

- General disqualifications
    - o Companies not incorporated in India;
    - o Any company controlled by a person convicted of an offence involving turpitude or declared as insolvent or applied for being declared insolvent;
    - o Subsidiary company of any applicant in the same centre;
    - o Companies with the same management within a centre;
    - o More than one inter-connected undertaking at the same centre.
    - o Religious bodies
    - o Political bodies

o Advertising agencies

o Trusts, Societies, Non profit Organisations controlled/associated companies.

6.3.3 Foreign Ownership As has been recommended earlier by the Authority in the context of Private FM Radio, the rules regarding foreign investment need to be reviewed to bring about a greater consistency in the rules of various segments of the media sector. Given the interest of the telecom sector in this area, this review would also need to take note of the likely convergence in future between telecommunications and broadcasting."

II. Eligibility conditions for Radio Operations

A. Frequency Modulation (FM) Radio

Apart from AIR (Prasar Bharati), FM Radio operations have been opened up for private agencies. The basic eligibility condition for private FM operators is that the applicant should be a company registered in India under the Companies Act, 1956.

Other eligibility conditions as prescribed in the invitation for Pre-Qualification Bids for expansion of FM Radio Broadcasting Services through Private Agencies (Vacant channels of Phase – II), as published by the Government of India in the Ministry of Information and Broadcasting, provide, inter alia, as under:-

"2.1 **Foreign Investment**:

2.1.1 In the applicant company, total foreign investment, including FDI by Overseas Corporate Bodies/Non-Resident Indians/Persons of Indian Origin etc., portfolio investments by Foreign Institutional Investors(FII), within limits prescribed by RBI, and borrowings, if these carry conversion options, shall not exceed 20% of the paid up equity in the entity, subject to the following conditions:-

i. One Indian individual or company owns more than 50% of the paid up equity in the applicant entity excluding the equity held by banks and other lending institutions.

ii. The majority shareholder exercises management control over the applicant entity.

iii. The applicant entity has only resident Indians as directors on the board.

iv. All key executive officers of the applicant entity are resident Indians."

The invitation for Pre-Qualification Bids for expansion of FM Radio Broadcasting Services through Private Agencies (Vacant channels of Phase – II), as referred to in the preceding paragraph also contains the following clause related to disqualifications, namely:-

"3. DISQUALIFICATIONS:

a) Companies not incorporated in India.

b) Any company controlled by a person convicted of an offence involving moral turpitude or declared as insolvent or applied for being declared insolvent;

c) A company which is an associate of or controlled by a Trust, Society or Non Profit Organization;

d) A company controlled by or associated with a religious body;

e) A company controlled by or associated with a political body;

f) Any company which is functioning as an advertising agency or is an associate of an advertising agency or is controlled by an advertising agency or person associated with an advertising agency;

g) Subsidiary company of any applicant in the same City;

h) Holding company of any applicant in the same City;

i) Companies with the Same Management within a City;

j) More than one Inter-Connected Undertaking at the same City;

k) A company that has been debarred from taking part in the bidding process by virtue of default in Phase- I/phase-II or its associate company with the same management.

l) The defaulters of conditions under Phase-I & Phase II who have contested the revocation of their Letters of Intent/License Agreements, thereby continue to be debarred from participating in any future bidding process as per Phase-I policy

Provided that the following shall not be disqualified:

i. A company on default of terms and conditions under Phase-I/Phase –II whose Letter of Intent/License Agreement has been revoked and who has accepted such revocation and has exercised its option to participate in Phase-II.

ii. A company on default of terms and conditions under Phase-II, whose Letter of Intent/License Agreement has been revoked and who has accepted such revocation.

iii. A Company already operating FM radio stations (except for cities where it is already operating under Phase I & II).

Note 1: For the purpose of sub clause (d) above 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

Note 2: For the purpose of sub clause (e) above 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.

Note 3: For the purposes of clause (f) an "Advertising Agency" shall mean an individual or a body corporate who carries on business as an advertising agent (whether alone or in partnership) or has control over any body corporate which carries on business as an advertising agent and any reference to an advertising agency includes a reference to an individual who

i. is a director or officer of any body corporate which carries on such a business, or

ii. is employed by any person who carries on such a business.

Note 4: For the purposes of clause(g), (h) & (i) the terms "Same Management", 'Subsidiary Company' and 'Holding Company' shall have the same meaning as assigned to them under Section 4 of the Companies Act, 1956;

Note 5: For the purposes of clause (j) the term "Inter Connected Undertakings" shall have the same meaning as assigned to it in the Monopolies and Restrictive Trade Practices Act, 1969;

Note 6: If the applicant and the subsidiary company/holding/company with the same management/Inter-Connected Undertaking submit more than one bid for the same City, only the highest valid bid shall be taken into account for evaluation."

B. Community Radio

The policy guidelines for community radio stipulates the eligibility criteria for the applicants as under:-

"1. Basic Principles

An organisation desirous of operating a Community Radio Station (CRS) must be able to satisfy and adhere to the following principles:

a) It should be explicitly constituted as a 'non-profit' organisation and should have a proven record of at least three years of service to the local community.

b) The CRS to be operated by it should be designed to serve a specific well-defined local community.

c) It should have an ownership and management structure that is reflective of the community that the CRS seeks to serve.

d) Programmes for broadcast should be relevant to the educational, developmental, social and cultural needs of the community.

e) It must be a Legal Entity i.e. it should be registered (under the registration of Societies Act or any other such act relevant to the purpose).

2. Eligibility Criteria (i) The following types of organisations shall be eligible to apply for Community Radio licences:

a) Community based organisations, which satisfy the basic principles listed at para 1 above. These would include civil society and voluntary organisations, State Agriculture Universities (SAUs), ICAR institutions, Krishi Vigyan Kendras, Registered Societies and Autonomous Bodies and Public Trusts registered under Societies Act or any other such act relevant for the purpose. Registration at the time of application should at least be three years old.

b) Educational institutions

(ii) The following shall not be eligible to run a CRS:

a) Individuals;

b) Political Parties and their affiliate organisations; [including students, women's, trade unions and such other wings affiliated to these parties.]

c) Organisations operating with a motive to earn profit;

d) Organisations expressly banned by the Union and State Governments."

III. Eligibility conditions for distribution platforms for TV channels

A. Cable TV Operation

The cable TV operations are governed by the Cable Television Networks (Regulation) Act, 1995 (hereinafter referred to as the Cable Act) and the Cable Television Networks Rules, 1994 (hereinafter referred to as the Cable Rules). Under sub-section (1) of section 4 of the Cable Act, any person who is operating or is desirous of operating a cable television network requires registration as a cable operator with the registering authority (as notified by the Central Government under the Act, being Head Post Masters of local Head Post Offices). For the purpose of the Cable Act, "person" has been defined as under :-

"(e) '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;"

In the distribution chain in Cable TV, there are entities functioning as Multi System Operators (MSOs) which mainly aggregate the contents from different broadcasters and then provide the signals for the same to last mile cable operators. The present legal system is that these MSOs also have to register themselves as a cable operator and the same eligibility conditions apply to MSOs also. In addition to registration as a cable operator, an MSO operating in CAS notified areas is also required to take necessary permission from the Ministry of Information and Broadcasting as per sub-rule (2) of rule 11 of the Cable Television Networks Rules, 1994.

B. Direct to Home (DTH) Operations

The eligibility criteria for entities wishing to start DTH operations (according to the guidelines for obtaining licence for providing Direct-to-Home (DTH) broadcasting service in India) are as under:-

(i) Applicant Company to be an Indian Company registered under Indian Company's Act, 1956.

(ii) Total foreign equity holding including FDI/NRI/OCB/FII in the applicant company not to exceed 49%.

(iii) Within the foreign equity, the FDI component not to exceed 20%.

(iv) The quantum represented by that proportion of the paid up equity share capital to the total issued equity capital of the Indian promoter Company, held or controlled by the foreign investors through FDI/NRI/OCB investments, shall form part of the above said FDI limit of 20%.

(v) The applicant company must have Indian Management Control with majority representatives on the board as well as the Chief Executive of the company being a resident Indian.

(vi) Broadcasting companies and/or cable network companies shall not be eligible to collectively own more than 20% of the total equity of the applicant company at any time during the license period. Similarly, the applicant company shall not have more than 20% equity share in a broadcasting and/or cable network company.

C. Mobile TV

The Authority has forwarded its recommendations on the Issues Relating to Mobile Television Service on January 23, 2008 to the Government of India. The Authority has recommended the following general disqualifications for mobile television service,namely :-

"(a) Companies not incorporated in India;
(b) Any company controlled by a person convicted of an offence involving moral turpitude or declared as insolvent or applied for being declared insolvent;

(c) A company which is an associate of or controlled by a Trust, Society or Non Profit Organization;
(d) A company controlled by or associated with a religious body;
(e) A company controlled by or associated with a political body;
(f) Any company which is functioning as an advertising agency or is an associate of an advertising agency or is controlled by an advertising agency or person associated with an advertising agency;
(g) Subsidiary company of any applicant in the same license area;
(h) Holding company of any applicant in the same license area;
(i) Companies with the Same Management within a license area;
(j) More than one Inter-Connected Undertaking at the same license area;
(k) A company that has been debarred from taking part in the bidding process or its associate company with the same management.**"**

D. Headend in the Sky (HITS) service

The Authority has forwarded its recommendations on Headend-In-The-Sky (HITS) on October 17, 2007 to the Government of India. The Authority has made, inter alia, the following recommendations in regard to foreign investment, cross holding restrictions, networth, etc., namely :-

" 3.5 The total foreign investment including FDI for HITS should be 74% as in case of telecom sector in view of convergence of technologies.

.....

3.9 Further, in order to ensure proper monitoring, it should be compulsory that only an Indian company should be granted the license for HITS operations. .....

.....

3.13 A minimum networth requirement of Rs. 40 crores at the close of the immediately preceding financial year should be made a qualifying condition for applying for a HITS license.

3.14 HITS operator shall not allow Broadcasting Company(ies) and/or DTH licensee company(ies) to collectively hold or own more than 20% of the total paid up equity in its company at any time during the License period. Simultaneously, the HITS Licensee should not hold or own more than 20% equity share in a broadcasting company and/or DTH licensee company. Further, any entity or person holding more than 20% equity in a HITS license shall not hold more than 20% equity in any other Broadcasting Company(ies) and/or DTH licensee and vice-versa. This restriction, however, will not apply to financial institutional investors. However, there would not be any restriction on equity holdings between a HITS licensee and a MSO/cable operator company. **"**

E. Internet Protocol Television (IPTV)

Some of the telecom service providers have started IPTV service on experimental basis. The Authority has submitted its recommendations on provision

of IPTV services to the Government of India on January 4, 2008. In para 4.1 of the said recommendations, the Authority has recommended as follows :-

> " (i) Telecom service providers (UASL, CMTS) having license to provide triple play services and ISPs with net worth more than Rs. 100 Crores and having permission from the licensor to provide IPTV can provide IPTV service under their licenses without requiring any further registration. DoT can permit any other telecom licensee to provide IPTV services as licensor. Similarly cable TV operators registered under Cable Television Network (Regulation) Act 1995 can provide IPTV services without requiring any further license."

Thus, essentially, the eligibility condition for grant of telecom licences under the Indian Telegraph Act, 1885 or for registration as a cable operator under the Cable Act, as the case may be, would be applicable for providing IPTV services on acceptance of the recommendations of TRAI by the Central Government.

.....

Annexure F: Section 12 of the Broadcasting Bill, 1997

12. (1) No person specified in part I of the Schedule shall be eligible for the grant of a licence under this Act.

(2) No person shall be given the number of licenses for a category of service more than the number prescribed for the category of service.

Explanation – For the purpose of this sub-section, the category of service shall be the same as referred to in section 9.

(3) No person shall be granted licence for more than one category of services specified in Part II of the Schedule.

(4) There shall be such restrictions on cross media ownership between the newspaper and broadcasting service as specified in Part III of the Schedule.

(5) The Central Government may, by notification in the Official Gazette, modify any limit on interest or equity holding in the body corporate or companies referred to in the Schedule.

(6) For the purposes of this section "person" includes connected persons referred to in paragraph 3 of Part IV of the Schedule.

Annexure G: Part I of the Schedule to the Broadcasting Bill, 1997

THE SCHEDULE

(*See* section 12)

RESTRICTIONS ON THE HOLDING OF LICENCES

PART 1

Disqualification for Holding of Licences

The following persons shall be disqualified for the purposes of grant of licence under this Act.

1. General disqualification.

(a) An individual who is not an Indian national;

(b) A partnership firm all whose partners are not citizens of India;

(c) Companies not incorporated in India;

(d) Companies incorporated in India but with

(i) foreign equity in case of terrestrial broadcast service;

(ii) foreign equity exceeding 49% in case of other services not mentioned in (i) above and management control not with the Indian shareholders.

(e) Governments and local authorities;

(f) Any person convicted of an offence under this Act or convicted of the offences referred to in section 8 of the Representation of the People Act, 1951 (43 of 1951) or declared as insolvent.

(g) A body, which is controlled by a person, referred to in any of clauses (a) to (e) above.

(h) A body corporate, in which a body referred to in clause (g) above, is a participant with more than a 5 per cent interest.

Explanation– "Foreign equity" for the purpose of this Part, shall be notified by the Central Government, from time to time.

2. Disqualification of religious bodies.

(a) A body whose objectives are wholly or mainly of a religious nature;

(b) A body which is controlled by a body referred to in clause (a) or by two or more such bodies taken together.

(c) A body which controls a body referred to in clause (a);

(d) A body corporate which is associate of a body corporate referred to in clause (a), (b) or (c);

(e) A body corporate in which a body referred to in any of clauses (a) to (d) is a participant which more than five per cent. interest;

(f) An individual who is an officer of a body referred to in clause (a); and

(g) A body which is controlled by an individual referred to in clause (f) or by two or more such individuals taken together.

3. Disqualification of political bodies.

(a) A body whose objects are wholly or mainly of a political nature;

(b) A body affiliated to a body, referred to in clause (a);

(c) An individual who is an officer of a body, referred to in clause (a) or (b);

(d) A body corporate, which is an associate of a body corporate referred to in clause (a) or (b);

(e) A body corporate, in which a body referred to in any of clauses (a) and (b) is a participant with more than a five per cent. interest;

(f) A body which is controlled by a person referred to in any of clauses (a) to (d) or by two or more persons, taken together;

(g) A body corporate, in which a body referred to in clause (f), other than one which is controlled by a person, referred to in clause (c) or by two or more such persons, taken together, is a participant with more than a five per cent. interest.

4. Disqualification of publicly funded bodies.

(a) A body (other than a local authority) which has in its last financial year received more than half its income from public funds;

(b) A body which is controlled by a body referred to in clause (a) or by two or more such bodies taken together; and

(c) A body corporate in which a body referred to in clause (a) or (b) is participant with more than a five per cent. interest.

5. Disqualification of advertising agencies.

(a) An advertising agency;

(b) An associate of an advertising agency;

(c) Any body which is controlled by a person referred to in sub-clause (a) or by two or more such persons taken together;

(c) Any body corporate in which a person referred to in any of sub-clauses (a) to (c) is a participant with more than a five per cent. interest.

PART II

RESTRICTIONS TO PREVENT ACCUMULATION OF INTEREST IN LICENSED SERVICES

1. A person shall be allowed to hold licences in only one of the following category of services:-

(a) Terrestrial radio broadcasting;

(b) Terrestrial television broadcasting;

(c) Satellite television or radio broadcasting;

(d) Direct-to-Home broadcasting;

(e) Local delivery services;

(f) Any other category or categories of service(s) which may be notified by the Central Government for the purpose.

2. Any restriction on participation imposed as above on the holder of a licence shall apply to him as if he and every person connected with him were one person.

PART III

RESTRICTIONS ON CONTROLLING INTEREST IN BOTH NEWSPAPERS AND LICENSED SERVICES

1.1 No proprietor of a newspaper shall either be a participant with more than twenty per cent. interest in or control a body corporate which is the holder of a licence to provide a licensed service under this Act.

1.2 No proprietor of a newspaper, who is a participant with more than five but less than twenty per cent. interest, in a body corporate and not controlling such a body corporate holding a licence shall be a participant with more than a five per cent. interest in any other such body corporate.

1.3 No person who is the holder of a licence to provide licensed service under this Act shall be either a participant with more than twenty per cent. interest in or control a body corporate which controls a newspaper.

1.4 No person who is the holder of a licence and is a participant with more than five but less than twenty per cent. interest in a body corporate and not controlling such a body corporate which runs a national newspaper, shall be a participant with more than five per cent. interest in any other such body corporate.

2. For the Purposes of this Part, a person controls a newspaper if-

(a) He is the proprietor of such a newspaper; or
(b) He controls a body which is the proprietor of such a newspaper.

3. Any restriction on participation imposed as above on the proprietor of any newspaper or on the holder of licence shall apply to him as if he and every person connected with him were one person.

PART IV

1. (1) For the purposes of this Schedule,-

"Advertising Agency" means an individual or a body corporate who carries on business as an advertising agent (whether alone or in partnership) or has control over any body corporate which carries on business as an, advertising agent, and any reference to an advertising agency includes a reference to an individual who-

(a) is a director or officer of any body corporate which carries on such a business, or
(b) is employed by any person who carries on such a business;

"Associate" -

(a) In relation to a body corporate, means a director of that body corporate or a body corporate interconnected with that body corporate;

(b) In relation to the partner of a firm, means a relative of such partner and includes any other partner of such firm;

(c) In relation to the trustee of a trust, means any other trustee of such trust; and

(d) In relation to an individual, shall be construed in accordance with sub-clause (3);

(e) Where a person or a body corporate is an associate of another person or body corporate, the latter shall also be deemed to be an associate of the former.

"Control" –

(a) In relation to a body corporate, shall be construed in accordance with sub-clause (3), and

(b) In relation to any body other than a body corporate, means the power of a person to secure, by virtue of the rules regulating that or any other body that the affairs of the first-mentioned body are conducted in accordance with the wishes of that person,

and would include control as a result of, or by means of, trusts, agreements, arrangements, understandings and practices, whether or not having legal or equitable force and whether or not based on legal or equitable rights.

"Newspaper" means as defined under the Press and Registration of Books Act, 1867 (25 of 1867).

(2) For the purpose of determining the persons who are an individual's associates for the purposes of this Schedule, the following persons shall be regarded as associates of each other, namely:

(a) Any individual and that individual's husband or wife and any relative, or husband or wife of a relative, of that individual or of that individual's husband or wife;

(b) Any individual and any body corporate of which that individual is a director;

(c) Any person in his capacity as trustee of a settlement and the settlor or grantor and any person associated with the settlor or grantor;

(d) Persons carrying on business in partnership and the husband or wife and relatives of any of them;

(e) any two or more persons acting together to secure or exercise control of a body corporate or other association or to secure control of any enterprise or assets;

and in this sub-paragraph "relative" means as defined under the Companies Act, 1956.

(3) A person controls a body corporate if-

(a) He has a controlling interest in the body, or

(b) (although 'not having such an interest in the body) he is able, by virtue of the holding of shares or the possession of voting power in or in relation to the body or any other body corporate, to secure that the affairs of the body are conducted in accordance with his wishes, or

(c) He has the power, by virtue of any powers conferred by the articles of association or other document regulating the body or any other body corporate, to secure that the affairs of the' body are so conducted,

and for this purpose, in the absence of proof to the contrary, a person has a controlling interest in a body corporate if he holds, or is beneficially entitled to, more than twenty per cent. of the equity share capital in that body, or possesses more than twenty per cent. of the voting power in it.

(4) It is hereby declared that a person may be regarded as controlling a body corporate by virtue of clause (b) of sub-clause (3) despite the fact that-

(a) He does not have a controlling interest in any such other body corporate as is mentioned in that paragraph, or

(b) Any such other body corporate does not have a controlling interest in the 'body in question, or

(c) He and any such other body corporate together do not have a controlling interest in that body.

(5) For the purposes of any provision of this Schedule which refers to a body controlled by two or more persons or bodies of any description taken together, the persons or bodies, in question shall not be regarded as controlling the body by virtue of paragraph (b) of sub-paragraph (3) unless they are acting together in concert.

(6) In this Schedule any reference to a participant with more than a five per cent. or, as the case may be, twenty per cent. interest in a body corporate is a reference to a person who-

(a) Holds or is beneficially entitled to more than five or, as the case may be, twenty per cent. of the shares, in that body, or

(b) Possesses more than five or, as the case may be, twenty per cent. of the voting power in that body,

and, where any such reference has been amended by an order under this Schedule varying the percentage in question, this sub-paragraph shall have effect in relation to it subject to the necessary modifications.

2. (1) Any reference in paragraph 1 to a person-

(a) Holding or being entitled to shares, or any amount of the shares or equity share capital, in a body corporate, or

(b) Possessing voting power, or any amount of the voting power, in a body corporate,

is a reference to his doing so, or being so entitled, whether alone or jointly with one or more other persons and whether directly or through one or more nominees.

(2) "Inter connected Undertakings or Corporate Bodies" shall have the same meaning as assigned in, the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969).

3. For the purposes of this Schedule, the following persons are connected with each other in relation to a particular licence, namely:-

(a) The licence holder;

(b) A person who controls the licence holder;

(c) An associate of the licence holder or of a person referred to in clause (b); and

(d) A body which is controlled by the licence holder or by an associate of the licence holder.

Annexure H: Extracts of Debates of the Constituent Assembly of India

Tuesday, the 26th August 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

TAKING OF THE PLEDGE

The following member took the pledge:

Mr. S. K. Patil.

Mr. President: We shall now take up the consideration of the item of List I.

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ITEM No. 32

Mr. President: We take item 32. There is an amendment by Sir V. T. Krishnamachari.

Sir V. T. Krishnamachari (Jaipur State): I do not move it.

Shri K. Santhanam: Sir, I beg to move-

"That in paragraph (b) of item 32, the word 'broadcasting' be deleted and the following be added at the end:

'Federal' broadcasting and law and regulation of broadcasting."

I was expecting that amendment No. 32 will be moved and if it was moved I was going to support it. The item as it stands gives not only law but also actual owning and regulation for telephones, wireless, broadcasting and other forms of communications whether owned by the Federation or not, to the control of the Centre. So far as law or regulation of these communications are concerned, there is no doubt that it should be a central power but whether the unit should possess these forms of communications as supplementary to the central lines of communication is a point which requires careful consideration; in such a big country as this, with all kinds of difficulties and many languages, it is essential that the lineshould not be drawn too tightly. I think at least so far as broadcasting is concerned, it is essential that every linguistic unit should be allowed to have its own broadcasting arrangements, subject of course to the regulation of the Centre for law and other matters which require to be regulated. I wish that the other matters also--telephones moved, I am moving my amendment so that at least the broadcasting is brought in. Sir, I move the amendment.

Mr. A.

P. Pattani: (Western India States Group 4) : Mr. President, the amendment which I wish to submit reads as follows:-

"That for paragraph (b) of item 32 the following be substituted:

"Telephones, wireless, broadcasting and other like forms of communications owned by the Federation; and regulation of similar forms of communications owned by provinces or States'."

The States, Sir, have agreed to federate-to Join the Union on the three subjects of Defence, Communications and Foreign Affairs. If I am correct in my interpretation, they are wholeheartedly prepared to co-operate with the Union in these subjects.

They do not wish to make more reservations than are necessary. Defence and Communications are interdependent subjects. Defence will be possible only if there are proper communications. My amendment, therefore, Sir, does not wish to restrict the powers of the Union. All I wish to suggest is that there should be a distinction between Federal telephones, wireless, broadcasting, etc. and similar forms of communications owned by Provinces and States. The latter should be regulated only by the Federation. I only want to make a distinction between the two ownerships and nothing more. So I submit the amendment.

Mr. N. Madhava Rao: Mr. President, Sir, these are amendments which I have tabled more with a view to elicit information than to make any positive contribution to the proper drafting of this item. I shall explain my object.

In the first sub-item, Posts and Telegraphs, it has been stated

"Provided that the rights existing in favour of any individual State Unit at the commencement of this Constitution shall be Prescribed to the Unit until they are modified or extinguished." etc.'

Now, with regard to posts and telegraphs, there are certain rights more or less of a contractual character which subsist in favour of certain States. I am not aware that there are any with regard to telegraphs. With regard to telephones there is an understanding that the States are at liberty to erect and operate systems which are internal to the State. The Indian States are entitled to set up and maintain telephone systems, open them to the public and work them for gain or grant licences to private companies and persons for the same provided the lines do not go beyond the limits of the State into British India or into another State.

Now, I would like to know how this assurance that has been given in the past is likely Io be affected by the adoption of this item of the Federal Legislative List.

Then again, Sir, with regard to Savings Bank, this is not really an item under communications at all. Merely because the Savings Bank is operated by the Postal Department this item is mentioned here. This question of Savings Bank was raised before the Davidson Committee. The Government of India, who were consulted by the committee, expressed their opinion as follows :-

"These operations which take the form of savings bank account and the sale of cash certificates represent a form of commercial exchange from which each party concerned derives some benefit which is fairly balanced by the consideration given..... We admit, however, that it would be a new and unjustifiable principle of political practice to hold that the Paramount Power is entitled to carry on these transact-ions in the States against the wishes of the Rulers and, in some cases, in competition with the Durbar's own local arrangements. We are prepared therefore to arrange for their complete cessation in the territory of any State that definitely asks for it. '

Now, some States I know of are thinking of establishing their own savings banks and it is, quite likely that for their proper working it would be necessary to ask the Postal Department to withdraw its own savings bank system. Now, whether the assurance conveyed in the passage which I have now read out is still valid or is to be regarded as a matter of ephemeral policy which may be altered at any time is a matter on which I should be very grateful for elucidation.

Thirdly, with regard to wireless and broadcasting, there is a provision in section 129 of the Government of India Act. I wish to know whether anything corresponding to this would be. reproduced in the new Constitution. It is for the sake of ascertaining these particulars that I am moving these three amendments, viz.,

"That in paragraph (a) of item 32, after the words 'Posts and Telegraphs' the words ,telephones; post-office Savings Bank be inserted."

"That in paragraph (b) of item 32, the word 'telephones' be deleted, and the following be added at the end: 'subject to the provision of the Constitution corresponding to Section 129 of the Government of India Act, 1935."

"That paragraph (c) of item 32 be deleted."

Mr. Naziruddin Ahmad: I beg to move-That in item 32, the following new para. be added after para. (b) :-

"That in item 32, the following new para. be added after para. (b): '(bb) other like forms of communications'."

This is practically an amendment of a drafting nature because it only seeks to make the enumeration complete. There are in clause (a) the Posts and Telegraphs owned and managed by the Government. In clause (b), telephones, wireless and broadcasting are mentioned. The subparagraph which I wish to add is to include within this list "Other like forms of communications". There may be private postal undertakings by private individuals. The Government of India have the monopoly for carrying on postal communications. So, in order to guard against any loophole enabling private persons to undertake a parallel postal service I have suggested that this sub-clause may be added. It is only a suggestion to the Drafting Committee to take note of and to do the needful that I have made in this amendment.

With regard to Mr. Madhava Rao's amendment in the matter or posal savings bank I think that though it is connected historically with the Postal Department, it. does not form part of the "Communications" to which the States have acceded. I should therefore think that before dealing with the law relating to Postal Savings Banks, some consultation with the States' authorities may be undertaken. That is all I have to submit in this respect.

Mr. Himmat Singh K. Maheshwari: Mr. President, Sir, I beg to move. that in para (a) of item 32 the words "or are acquired by the Federation" be deleted and at the end of para (c) of item 32 the words "in a Province" be inserted.

Sir, in connection with other amendments which I had the temerity to move earlier this morning I have been accused of being sensitive and also of being undly apprehensive. I plead guilty to these accusations and I must say that my apprehensions regarding the acquisitive tendency of the Centre are not removed by the wording of item. 32 or by any sub-item of this item. I have moved amendments only in respect of sub-items (a) and (c),but I am in full agreement with the amendment moved also in respect of clause (b) of item 32.

In this connection, Sir, I would like to draw the attention of the House to item 4, sub-clause (a) of clause C of the Report submitted to this House in April 1947. At that time, Sir, there was no intention on the part of the authors of the Report to acquire the rights of the States in regard to Posts and Telegraphs. This intention to acquire those rights seems therefore to be a later development.

With regard to clause (b) item 4 of clause (c). of the April Report may again be referred to. It was then intended to deal with Union Telephones, Union Broadcasting, Union Wireless and not with telephones. wireless and broadcasting owned or controlled by States. The intention evidently was only to regulate wireless and broadcasting and other such means of communications owned by the States but not control them. The present item on the other hand seeks to control an telephones, all wireless stations, all broadcasting stations and other like forms of communication whether owned by the Federation or not. To principle that was in mind my mind this is clearly an extension of the when the earlier April Report was drafted.

Then again, Sir, with reference to clause (c) it has been pointed out Savings Bank does not form is already by other speakers that the Post Office part of the subject of communications which is one of the three subjects in respect of which the States have acceded Federation in future. In practice, Sir, the business conducted by the Post Office does mean a certain amount of profit to the Post Office and it is only legitimate that Indian States which have established banks of their own should be permitted to deal with the savings bank business and that the Post Office should cease to do this work in future in Indian States.

Prof. Shibbanlal Saksena (United Provinces : General) : Mr. President, Sir, my amendment is as follows"That for para. (b) of item 32 the following be substituted:

(b) Telephones, wireless, broadcasting and other like forms of communication. Acquirement when such systems of communication are not owned by the Federation at present'."

Sir, there are three subjects on which the States have acceded and they are Defence, Communications and Foreign Affairs. In regard to Foreign Affairs, Sir, the list of Federal subjects will show that the entire jurisdiction is with the Federal Government. As for Defence, there, too the entire control is with the Federal Government. In fact there is provision in item 5 allowing the States to keep their armies though the strength Organisation and control of these will be by the' Federation. But I wish that this provision were not there, and no separate armies were allowed to be kept by any unit. Similarly in regard to Communications, I think that no defence system can work unless the communications are completely owned by the Federation. We had the experience of the last war and we know how the Fifth. Columenists used to employ wireless transmitters and other things for purposes of espionage. We can conceive of another war. In that case, until the Federation has full control over the system of communications, it cannot adequately discharge its responsibilities for defence. So, think, that. so far as communications are concerned, the Federation must have complete ownership. Of course, I visualise that our Federation will trust its units and will in normal times delegate its powers to them and grant full autonomy by federal laws, but it must have the power in times of emergency to take away all control and be

fully prepared to meet emergencies. For if we have no power of ownership of these means of communication, we cannot own them.

This is only possible by providing in this Federal list. complete ownership of all the means of communication by the Federation and the power of acquirement by the Federation of all systems which are not owned by it at present. I therefore think that all members from the States will see that by accepting this amendment they will not in any way be losing their right to have their systems of 'broadcasting in their own States in their own languages. Only they will be giving the Federation the right in times of war to take complete control of all systems of broadcasting. Therefore, I have suggested that "Acquirement when such systems of communication are not owned by the Federation at present", be added to the present clause after the deletion of the words "whether owned by the Federation or not" at the end of the present clause. Because there are some States which have got their own systems of communication I want the Federation should have the right to acquire them at least during the time of emergency and to that I think, nobody should object.

Shri M. Ananthasayanam Ayyangar: Sir, I support Mr. Santhanam's amendment. We are all agreed that the Central Government must have control over broadcasting. Even the amendments that have been suggested by the States Ministers-did not try to take away the control in the last resort of the Federal Government. All that I am able to read from their amendments is that they should be permitted to establish their own broadcasting stations and to some extent exercise control over them. I am sure that in the body of the Act a provision

similar to the existing provision in section 129 of the Government of India Act will be enacted. There, reference is made to treaties and obligations between the Central or Federal Government and the States or Rulers of States regarding the manner in which the powers should be exercised and also in cases of emergency the Governor-General should have power to take charge of the entire broadcasting system in the whole country, whether the broadcasting station is within the ambit of a State or in a province. A similar provision clothing,the Central Government with power to take charge in case of emergency will also, I am sure, be made. This provision is adequately made in the amendment of Mr. Santhanam who recognises that both the provinces and the States-may be allowed to have their own broadcasting stations subject to laws and regulations to be made by the Centre.

Then I find Mr. Maheshwari takes objection to one thing in clause (a) of item 32, that. is acquisition of broadcasting stations, and posts and telegraphs within the ambit of a State. It is true that it is not there in Entry No. 7 in List I in the Government of India Act. For the sake of uniformity, Sir, if a State is prepared to sell away the posts and telegraphs communications there, it must be open to the Federation to acquire them. Acquisition means not only voluntary acquisition or agreement between the parties, but compulsory acquisition also. The only thing to which they are taking exception is compulsory acquisition.-

So far as the railways are concerned, there has been an attempt to centralise all the railway systems for the benefit of the entire State. I am not talking of the States who are not acceding. Those States who are acceding, originally even under the Cabinet Mission Plan, it was intended, should concede the three subjects Defence, External Affairs and Communications

Communications are practically the arteries of defence and in referring to defence, we think in terms of emergency. Therefore, Communications must be a federal subject and there ought to be no deflection from that. The States ought not to stand on respect or prestige in this matter. They must concede the power to the Central Government to acquire the posts and telegraphs within the ambit of a State whether voluntarily or by agreement or even by compulsion.

I support the amendment moved by my honourable friend Mr. Santhanam and oppose the other amendments.

Mr. S. V. Krishnamoorthy Rao (Mysore State) : Sir, I do not think clause 32 excludes the right of a Unit to own broadcasting, wireless, telephones, because it says in clause (b), telephones, Wireless, broadcasting and other forms of communication, whether owned by the Federation or not. So, all that this clause does is to empower the Federal legislature to legislate, whether these forms of communication are owned by the Federation. or not. Especially, in a country like India, in times of war and emergency, communications are closely allied with defence and so the power to regulate and legislate for these communications should rest with the Centre and the Centre alone.

I also oppose the amendment to exclude the Savings Bank from the Post offices, because these Savings Banks are a normal function of the post offices. No State so far as I know can afford the service that these Post office Savings Banks are doing, especially in the rural areas. Almost every State has got its own Savings Bank in the Treasuries and also the Banks financed or partially run by the State. But these post offices are situated in rural areas in small villages and I do not think any State or province can afford to start savings banks in rural areas. This work can be done and it is being done very usefully by these post offices, even branch post offices and therefore I oppose the amendment to exclude the savings banks from the purview of the post office.

I oppose all the amendments and support the original clause as it is.

Shri Gopikrishna Vijayavargiya (Gwalior State): [Mr. President, I am of the opinion that "broadcasting" should be included in "Communications." Broadcasting is also one of the means of communicating one's ideas and therefore this should also be a federal subject. The objections raised against it are not sound. The amendment of Mr. Santhanam in this connection is appropriate and broadcasting should be a federal subject. Many States today are presssing the view that this right should remain with them. In this connection, what I have to say is that when we are all jointly making the Federation, it is not proper to say that this right belongs to the States and that the Federal Centre should not interfere with it. I think that this is not in good spirit. We are framing the Federation in cooperation with the Princes and their representatives and therefore whatever few rights are being ceded in a few subjects must be surrendered without reservations. This includes Posts and Telegraphs. We must give them to the Federation.

It is my' experience that in the small States where there are only State Past-offices, the States place a number of restrictions on people's liberties. Very often, in cooperation with post-offices, C.I.D., and many similar methods the States suppress the news that is sent out, and people's confidential letters are detained, intercepted and utilised against them in litigation. Therefore, the post-offices, etc., should be a little more independent, and the States should be given minimum rights over them, so' that the service that can be rendered

to the people through the Post offices, should be properly done. These (Post-offices) can escape intrigues and mismanagement of States only by recognition as a Federal subject. Therefore this whole subject should be treated as suggested in the amendment of Mr. Santhanam.**]** [3]

Chaudhri Nihal Singh Takshak (Jind State): [Mr. President, I rise to oppose one half of the amendment of Mr. Maheshwari. As an inhabitant of an Indian state, I have some experience of those States which have their own postal arrangements, particularly the smaller States. The State-subjects have a number of difficulties there. Post offices are ,considered a source of state-revenue and therefore the States try to have as many post-offices and as few postmen as possible, Whereas, in the provinces (of India) the mail is distributed in a village twice a week, in Indian States it is distributed hardly twice a month, not even once a week. The reason is the shortage of postmen.

One other particular difficulty is that the money-orders that are sent there are "exchanged" and the "exehange" takes place in the post-offices in British India. This takes a lot of lime. Many a time it happens that due to shortage of money in State-treasuries, money-orders are delivered after many days and delayed even for months.

The third special difficulty is that in such States as have their own postal arrangements, when the pensions are paid from Indian Provinces the recipients have to go very long distances. Very often, I have seen how much inconvenience widows have to undergo when they go (to post offices) to receive pensions.

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[3] English translation of the Hindustani speech.

The other thing is that post office is included in the "item" but the Savings-Banks clause cannot be separated from it. In the States where there are local post-offices, Savings bank facilities are not given. Therefore, the words "or acquired by the Federation" should not be deleted. I would request this Assembly that as soon as the Constitution comes into operation, right from the very beginning the post offices must be a Federal-subject, so that the difficulties of State subjects may be removed.**]** [4]

Mr. A. P. Pattani: Mr. President, Sir, last honourable member's remarks about the States who wish to cooperate in every possible way, as I said as a member from the States, are something that I do not understand. What is the intrigue of the States he talks about ? We are asking you to take the communications that are necessary for the Union. We are requesting that communications that are necessary for the Union. are re-questing that communications which are owned by the provinces or States should only be regulated by the Centre. Where is the intrigue in this ? I do not understand, Sir, and T wish the honourable member will explain.

Shri Gopikrishna Vijayavargiya: The thing is this. The intrigue I was mentioning was not regarding the present affairs. But in some post offices, some letter,,; were intercepted and other things done by the States. That was what I was referring to and not the present state (if affairs.

Mr. N. Gopalaswami Ayyangar: Sir, the first amendment that was moved to this particular item was that of Mr. Santhanam. I take it that lie moved it because the previous amendment on the list had not been moved. I may say at once that, though that particular amendment was not moved by Sir V. T. Krishnamachari, an amendment in substance more or less the same as that amendment has been moved by Mr. Pattani; and, if the House will permit me, I propose to accept the substance of Mr. Pattani's amendment but in the language of Sir V. T. Krishnamachari's amendment which was not moved. The only verbal change that I would make in Sir V. T. Krishnamachari's draft is that T Would substitute "Federal" for "Union". It will read: "Federal telephones. wireless, broadcasting and other like forms of communication". That, 'I think, disposes of Mr. Santhanam's amendment. I will not accept it.

Shri K. Santhanam: I withdraw it.

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[4] English translation of the Hindustani speech.

Mr. N. Gopalaswami Ayyangar: Then, Sir, I have to deal with the remarks of Mr. Madhva Rao in regard to certain points connected with the wording of this item. I may mention for his information that there is a. State where there were agreements about telegraphs between the Paramount Power and the State. I

refer to Kashmir. In addition to the Indian telegraph system which works in Kashmir, that State has also a State telegraph system, and the correlation and coordination of these two systems have been provided for by an agreement between the State and the Government of India. He referred also, Sir, to certain assurances and statements of policy made by the Crown Representative in respect of post offices, of telephones, of post office savings banks, and about wireless. Now I do not wish to go into all the statements of policy by the Paramount Power which is defunct today. But I would only say that any assurances of that sort were not supposed to be eternal. It is quite possible, even if the Paramount Power had continued in this country, for these arrangements being revised by agreement between the State and the Paramount Power. That procedure will still be available. The short answer to Mr. Madhava Rao as regards these matters is this. I would refer him to the terms of the Instrument of Accession which has been recently signed by all States which have acceded to the Dominion, and one of the items under Communications in respect of which they have agreed that the Federal Legislature should have power to make laws is worded as follows:-

"Posts and Telegraphs, including telephones, wireless, broadcasting, and other like forms of communication."

There is no limitation at all here. In actual fact this broadly worded item is limited by other arrangements. Now I was referring to agreements as regards these matters. We find in the standard Standstill Agreement which has been entered into between the States and the Government of India the clause that will apply to agreements is worded as follows

"Until new agreements in this behalf are made all agreements and administrative arrangements as to matters of common concern now existing between the Crown and any Indian State shall, in. so far as may be appropriate, continue as between the Dominion of India or as the case may be the part thereof and the State."

So that, whatever assurances or agreements already exist will be continued until new arrangements are made. And such agreements, according to the schedule to that Standstill Agreement, could relate to Posts, Telegraphs and Telephones. There can be no quarrel then as regards the wording of the item in the Federal list in the Union Powers Committee Report. It really puts into the new constitution limitations on the power of the Federal Legislature which you do not find in the Instrument of Accession that you have already signed. And it preserves the right which exist in favour of any individual State at the commencement of this constitution. Those rights will be preserved until they are modified or extinguished by agreement between the Federation and the unit concerned. That, I hope, supplies the clarification which Mr. Madhava Rao sought.

There is one part of this item, clause (a) of item 32,to which some exception was taken in an amendment moved by my friend Mr. Himmat Singh. He thought that his apprehensions as regards the Centre were only fortified by the words which you find in this clause "or are acquired by the 'Federation". Now. I wish to put to the House this one point: Posts and Telegraphs are, according to the distribution of powers between the Centre and the Units, an item which should normally be under the exclusive control of the Federation. We recognize the fact that any arrangement that may exist with the States

which accede should be continued until other arrangements are made. Now, take the case of the Federation deciding at some time in the future that, in the interests of the country as a whole it is necessary that the standard of postal administration of a particular State should be pulled up, that there was no hope of the State itself doing it, that therefore it is necessary for the Federation to take over the administration of Posts and Telegraphs in that particular State. I think, Sir, in the larger interests of India the Federation should have the power to acquire any rights that that particular State might have. When we say "or are acquired by the Federation' it means that for any rights in what is essentially a Federal subject-any vested interest-which an individual State may have, due compensation will be paid to that State on acquisition. No body who really appreciates a scheme of federation can object to the lodgement of such a power in the Centre.

Then, Sir, I would refer to the other amendment which was moved by Mr. Himmat Singh. He wants to restrict Post Office Savings Banks to Provinces. Apart from the merits of it, I think, if we do that, it will mean a tremendous unsettlement of the existing state of thungs. There are hundreds of States and thousands of Post Offices in such States which are now doing this work, Is it suggested that the Federation should not have anything to do with this sort of thing in any Indian State ? The only thing we need provide for is that, in case any particular State makes out a case for running Savings Banks of its own, unconnected with the Post Office, then it will be a matter for negotiation between it and the Government of India as to whether the Post Offices in' the State might be instructed from the administrative standpoint not to have any more Savings Bank work. That is quite possible and if a State makes out a case, I dare say the future Government of the Dominion will consider it. But to remove Post Office Savings Banks in all Indian States from the purview of the Federation will be an economic upsetting of conditions in Indian States which I for one will not recommend to the House.

Then, Sir. we have Mr. Shibbanlal Saksena's amendment which runs as follows :

"That for para. (b) of item 32 the following be substituted:

'(b) Telephones, wireless, broadcasting and other like forms; of communication. Acquirement when such systems of communication are. not owned by the Federation at present."

I think, Sir, the amended form in which this item will appear as a result of what I have said already will cover the substance of what Mr. Shibbanlal Saksena wants.

The only other amendment I need refer to is that of Mr. Naziruddin Ahmad. He very rightly points out that the words "other like forms of communication" which now occur in clause (b) will only refer to forms of communication of the same type as telephones, wireless and broadcasting. He wanted that the Centre should have power also to regulate forms of communication such as Post Offices and Telegraphs. The only thing that I need say on this point is this: Posts and Telegraphs, in item (a), are a Federal subject. You will notice that even in the case of any postal or telegraph systems, which under the exceptional arrangements which exist with certain Indian States are continued, the Centre will have the power-the Federal Parliament will have the power-to make laws for their regulation and control.

In areas which are not covered by any such special arrangements the Federal Parliament will have exclusive power to prohibit any other kind of postal communication between individual and individual or groups of individuals and groups of individuals. As a matter of fact, I believe, there is in the existing Post Office Act a section which makes it an offence to circumvent the regular post by making any arrangement privately for the dispatch of letters between one area and another. That is an offence under the Post Office Act. I am sure that provision will be continued. Nobody can send a telegram except through the Government Telegraph Office at present. In view of this, I do not think he need press the addition of the item he wanted. Sir, I have nothing more to say. The result is that I accept Mr. Pattani's amendment in Sir, V.T.Krishnamachari's language, and oppose all the other amendments.

Mr. President: I will now put the amendments to vote, and I think the best course would be to take the item by paragraphs.

There is first the amendment of Mr. Madhava Rao.

"That in paragraph (a) of item 32, after the words Posts and Telegraphs' the word "telephones; post-office, Savings Bank;' be inserted."

(The amendment was negatived.)

Mr. President: Then there is the amendment of Mr. Himmat Singh,

"That in para. (a) of item 32, the words 'or are acquired by the Federation' be deleted."

(The amendment was negatived.)

Mr. President: Then I take up the amendments to clause (b).

Shri K. Santhanam: In clause (a) I have an amendment about the words "State Unit". These words are likely to cause confusion.

Mr. N. Gopalaswami Ayyangar: Sir, he might leave the refining of the phrase to the draftsmen. Shri K. Santhanam: The intention is the States ?

Mr. N. Gopalaswami Ayyangar: Yes.

Mr. President: To Item No. 32 (b) Vie first amendment is that of Mr. Pattani, in the language of Sir V. T. Krisnamachari.

The amendment was adopted.

Mr. President: Then I take it that Mr. Santhanam withdraws his amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: I do not think it is necessary to put Mr. Shibbanlal Saksena's amendment now separately.

The amendment was by leave of the Assembly, withdrawn.

Mr. President: Then we take Mr. Madhava Rao's amendment.

Mr. N. Madhava Rao: That is a consequential one and it drops, as also my amendment to 32(c).

Mr. President: Then we come to Mr. Himmat Singh's amendment.

"That at the end of para. (c) of Item 32, the words 'in a province' be inserted."

(The amendment was negatived.)

Mr. President:. There is, I think, only one other amendment, that is the one by Mr. Naziruddin Ahmad.

"That in item 32, the following new para be added after para (b) (bb) other like forms of communications'.

Mr. Naziruddin Ahmad: Sir, I withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : Then I put the item, as amended, to the vote of the Assembly

Item No. 32, as amended, was adopted.

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Mr. President: It is one O'clock now. The House will now adjourn till ten O'clock tomorrow.

The Assembly then adjourned till ten of the Clock on Wednesday, 27th August 1947.

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