



सत्यमेव जयते

सुधीर गुप्ता

SUDHIR GUPTA

सचिव/Secretary

भारतीय दूरसंचार विनियामक प्राधिकरण

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D.O No 23-4/2014-B&CS

Dated: 22.01.2015

Dear Sh. Julka,

Please refer to the letter of the Ministry of Information and Broadcasting (MIB) vide D.O. No. 3/1/2014-BP&L dated 31st October, 2014 seeking recommendations of the Authority (TRAI) under Section 11(1)(a)(i) and (ii) of the TRAI Act, 1997 on the use of DTH by Central and State Governments and guidelines thereon.

2. The Authority had given its recommendations to the Government on the issues relating to entry of certain entities into broadcasting and distribution activities on 12th November, 2008 and subsequently on 28th December, 2012 in response to the references received from MIB. The original recommendations and the clarifications provided later clearly opposed the entry of Central and State Governments in the broadcasting and distribution activities. These recommendations of the Authority were arrived at taking into consideration the relevant Constitutional provisions, Constituent Assembly debates, judicial pronouncement (of the Hon'ble Supreme Court), Report of the Sarkaria Commission on Centre State Relations, international practices and the views of stakeholders.

3. The present reference is about the use of a specific technology for a specific application by the Central/State Governments. In essence, it boils down to enabling broadcasting/distribution by the Central and State

Governments. This aspect has already been dealt with at length in the above mentioned Recommendations and the subsequent clarifications of the Authority. Accordingly, the issue regarding the use of DTH, for educational purposes on a non-commercial basis, by Central and State Governments has been examined and clarifications are provided in Annexure A. The Authority's recommendations in this particular matter have been made in the light of the earlier recommendations of the Authority.

4. As per the practice, a copy of this letter, along with enclosures, is being placed on the website of TRAI - www.trai.gov.in.

With Regards,

Yours sincerely


(Sudhir Gupta)

Shri Bimal Julka,
Secretary,
Ministry of Information and Broadcasting,
'A' Wing, Shastri Bhawan,
New Delhi - 11 00 01.

**Recommendations/Clarifications regarding the use of DTH
by Central/State Governments**

Introduction

1. In December 2007 the Ministry of Information and Broadcasting (MIB) had sought the recommendations of TRAI under the provisions of section 11 (1) (a) of the TRAI Act, 1997, *inter alia*, on 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 a 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? ”

2. Following an exhaustive consultation, the Authority forwarded its recommendations on the issues raised by MIB on 12th November 2008. Amongst others, the Authority recommended against the entry of Central

and State Governments in the broadcasting and distribution activities. These recommendations of the Authority were arrived at taking into consideration the relevant Constitutional provisions, Constituent Assembly debates, judicial pronouncement (of the Hon'ble Supreme Court), Report of the Commission on Centre State Relations headed by Justice Sarkaria (Generally referred to as the Sarkaria Commission), international practices and the views of stakeholders.

3. Subsequently, on 30th November 2012, the Government sought clarifications on the said recommendations with respect on the issues of permitting entry to (i) Central Government Ministries and Departments / Central Government owned companies / Central Government undertakings / Joint venture of the Central Government and the private sector / Central Government funded entities (ii) State Government Departments / State Government owned companies / State Government Undertakings / Joint venture of the State Government and the private sector / State Government funded entities, into the business of broadcasting and or distribution of TV channels. In the clarifications dated 28th December 2012, the Authority recommended that the said entities should not be allowed to enter into the business of broadcasting and/or distribution of TV channels.

4. In the present reference vide D.O. No. 3/1/2014-BP&L dated 31st October, 2014, MIB has sought recommendations of the Authority (TRAI) under Section 11(1)(a)(i) and (ii) of the TRAI Act, 1997 on the use of DTH by Central and State Governments and guidelines thereon. According to the said reference, several State Governments are operating educational DTH channels as part of the EDUSAT Programme under the Satellite Communication Policy framework of the Department of Space (DoS). It has been further stated that delivery of educational content by DTH has the potential to revolutionise educational delivery across the length and breadth of the country.

5. During discussions with MIB, it emerged that the said reference has emanated from a meeting held on October 17, 2014 in the Prime Minister's Office chaired by the Principal Secretary to PM on the issue of broadcasting education programme on DTH for non-commercial purposes. The minutes of the said meeting, amongst others, state as under:

“In view of the rapid growth and interest for use of satellite communications for education services on non-commercial basis, a reference may be made to the Telecom Regulatory Authority of India (TRAI) for guidelines and recommendations on use of DTH for non-commercial education purposes by the Central and State Governments”

6. Thus, the issue at hand is regarding use of a specific technology for a specific application by the Central/State Governments to meet the “felt” broadcasting/distribution requirements of Central and State Governments.

7. The subsequent paragraphs examine the issues raised in the present reference of MIB and conclude in the recommendations/clarifications of the Authority.

Issues dealt

8. The issues being dealt with are as under:

- a) Use of DTH by the Central/State Governments for educational purposes on a non-commercial basis;
- b) Whether EDUSAT Programme falls under Broadcasting;
- c) Allocation of resources to Central/State Governments for use of DTH, on non-commercial basis, for educational purposes

A. Use of DTH by the Central/State Governments for educational purposes on non-commercial basis:

9. The Authority had, after following an elaborate consultation process, given its Recommendations to the Government on “Issues relating to entry of

certain entities into Broadcasting and Distribution activities” on 12th November, 2008. These Recommendations were given by the Authority in response to an MIB reference dated 27th December 2007. Subsequently, on 28th December 2012, clarifications, on certain details sought by the Government vide DO No. 9/29/2007 dated 30th November 2012, were given.

10. In these Recommendations, the Authority had taken up the issue pertaining to the entry of Central and State Governments, or any organ thereof, in the broadcasting and distribution activities. The Authority recommended as under:

“

- 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.”

11. These Recommendations were arrived at taking into consideration the following factors:

- It had been decided by the framers of the Constitution, after considerable deliberations, that broadcasting [part of the Seventh Schedule (Union List)] should be the responsibility of Central Government;
- The Commission on Centre State Relations (the Sarkaria Commission) had also recommended against allowing State Governments to have their own broadcasting stations or broadcasting corporations;
- The Hon'ble Supreme Court had, in the case of Cricket Association of Bengal (1995 AIR(SC) 1236 :: 1995 (2) SCC 161), observed that:

“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.”

In the said judgment it has also been observed that:

“Government control, which 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.”;

- In almost all developed democratic countries, Governments are explicitly debarred under the relevant laws from holding a broadcasting licence or do not do so by tradition or by conviction. A

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 citizens' right to free speech but also acts against the principle of level-playing field among the political parties;

- The Prasar Bharati (Broadcasting Corporation of India) Act, 1990 came into effect and 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.
.....”;*

- The fact that Prasar Bharati, established under the Prasar Bharati Act, 1990 is mandated, under the specific provisions of the said Act, 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
- Prasar Bharati is catering to the needs of 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 official languages of India. These channels are being uplinked from the State capitals. 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. Thus, Prasar Bharati has a national outreach and is ensuring access as envisaged in the Hon ble Supreme Court's judgment. It may be noted that the relevant provisions of the Prasar Bharati Act enshrine the principles laid down by the Apex Court in its Judgment in the case of Cricket Association of Bengal (1995 AIR(SC) 1236 :: 1995 (2) SCC 161).

12. The Authority, therefore, reiterates that broadcasting needs and/or aspirations of the Central and State Governments should be met through Prasar Bharati. Further, as recommended earlier, the arm's length relationship between Prasar Bharati and the Government needs to be further strengthened. The Authority had also recommended that such measures should ensure functional independence and autonomy of Prasar Bharati, as it is clearly the spirit of the Hon'ble Supreme Court's judgment referred to above.

13. The "Functions and Powers of Corporation" as prescribed in the Prasar Bharati Act, 1990, explicitly mentions the following:

"...
(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;*
..."

14. Therefore, the requirements of Central/State Governments regarding dissemination of educational content on a non-commercial basis in the form of television channels through the DTH medium should rightly be met through the Prasar Bharati route. There is no need whatsoever for the Central/State Governments to directly enter the field of broadcasting. The Central/State Governments or its agencies desirous of running such channels should enter into suitable agreement with Prasar Bharati and the channels should be run under the aegis of Prasar Bharati.

15. Prasar Bharati should ensure that as far as the content being disseminated on such channels is concerned it should comply with the Code and Conduct of Broadcasting established in India, including the AIR Code, in letter and spirit. In other words, the content of such channels has to be such that it qualifies to be disseminated on any normal Prasar Bharati channel. This shall ensure that the concerns of the various commissions, observations of the Hon'ble Supreme Court and the Authority regarding the susceptibility of the content being coloured with political, religious or regional bias is suitably addressed.

16. It is understood that for running channels under the National Mission on Education through Information and Communications Technology (NMEICT) project, an SPV has been established between the Ministry of Human Resource Development (MHRD) and Prasar Bharati, regarding transmission of MHRD educational DTH channels and an MOU has also been signed in this regard. This mechanism can be carried forward incorporating the above mentioned conditions.

B. Whether EDUSAT Programme falls under Broadcasting:

17. The said reference, pointedly refers to the TRAI's Recommendations of 28th December 2012, and states that the said Recommendations are silent on the existing State Governments' EDUSAT Programme and there is no clarity as to whether the EDUSAT Programme falls under broadcasting in a strict sense.

18. 'Broadcasting' and 'Broadcasting Services' have been defined in various Acts. These have also been clearly specified in statutory Regulations issued by TRAI. These definitions may be seen in the Appendix. A perusal of these definitions makes it amply clear that content dissemination through the EDUSAT Programme falls under broadcasting.

C. Allocation of resources to Central/State Governments for use of DTH, on non-commercial basis, for educational purposes:

19. It may be noted that under the EDUSAT Programme a satellite (EDUSAT) was launched exclusively for the said programme. The CAG Audit Report (Report No. 22 of 2013-Union Government (Scientific and Environmental Ministries/ Departments), states as under:

“.....57% of the Satellite capacity of EDUSAT was idling during the fifth year of its operation, which stopped working in its sixth year of operation. Thus during the entire life of the Satellite, the scarce and valuable satellite capacity was idling and could not be put to use for the purpose of reaching quality education to the poor rural masses.....”

20. The said report also mentions that due to deficiency in planning replacement satellite for EDUSAT, on decommissioning of EDUSAT, the services that were operational were migrated to other satellites such as INSAT-4CR, INSAT-3A, INSAT-3C, GSAT-8 and GSAT-12. INSAT-4CR satellite was launched to provide DTH and telecom services in the country. The said report further states that inadequate replacement strategy to EDUSAT had, therefore, impacted services planned under INSAT-4CR also.

21. It is of utmost importance that, whenever such projects are launched a judicious decision has to be made regarding the infrastructure being developed for the same so that such valuable and scarce resources such as transponder capacity are utilised effectively and efficiently. A situation should not arise where transponder capacity is kept idling on the one hand when, on the other hand, service providers, are kept waiting for the same thereby adversely impacting the expansion and improvement of quality of their services.

Recommendations/Clarifications

22. The recommendations/clarifications on these issues discussed above are as follows:

- i. The non-commercial use of DTH, by the Central and State Governments, for educational purposes should be done through the Prasar Bharati route, through suitable agreements between Prasar Bharati and the concerned Central/ State Governments.**

- ii. Prasar Bharati shall ensure that content dissemination through such non-commercial educational channels comply with the code and conduct of broadcasting established in India such as Programme code, AIR code etc. and the content disseminated through such channels should be such that it can form part of any regular Prasar Bharati channel.**

- iii. As the transponder capacity is a scarce resource as on date, the allocation of transponder capacity to Central/State Governments for running DTH educational channels on a non-commercial basis should be done in a very careful and judicious manner. It should not lead to a situation where transponder capacity is kept idling on one hand when, on the other hand, Service Providers are kept waiting for the same, thereby adversely impacting the expansion and improvement of quality of their services.**

23. **The Authority reiterates its earlier recommendations regarding (a) further strengthening the maintenance of an arm's length relationship between Prasar Bharati and the Government and (b) ensuring functional independence and autonomy of Prasar Bharati.**

Definition of 'Broadcasting' and 'Broadcasting Services' in

Statutes/Broadcasting Bill 2007

The Prasar Bharati (Broadcasting Corporation of India) Act, 1990

"broadcasting" means the dissemination of any form of communication like signs, signals, writing, pictures, images and sounds of all kinds by transmission of electro-magnetic waves through space or through cables intended to be received by the general public either directly or indirectly through the medium of relay stations and all its grammatical variations and cognate expressions shall be construed accordingly;

The Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Act, 2007

"broadcasting" means assembling and programming any form of communication content, like signs, signals, writing, pictures, images and sounds, and either placing it in the electronic form on electro-magnetic waves on specified frequencies and transmitting it through space or cables to make it continuously available on the carrier waves, or continuously streaming it in digital data form on the computer networks, so as to be accessible to single or multiple users through receiving devices either directly or indirectly; and all its grammatical variations and cognate expressions;

"broadcasting service" means assembling, programming and placing communication content in electronic form on the electro-magnetic waves on specified frequencies and transmitting it continuously through broadcasting network or networks so as to enable all or any of the

multiple users to access it by connecting their receiver devices to their respective broadcasting networks and includes the content broadcasting services and the broadcasting network services;

The Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004, notified by TRAI

“broadcasting services” means the dissemination of any form of communication like signs, signals, writing, pictures, images and sounds of all kinds by transmission of electro-magnetic waves through space or through cables intended to be received by the general public either directly or indirectly and all its grammatical variations and cognate expressions shall be construed accordingly;

Broadcasting Bill 2007

“Broadcasting” means assembling and programming any form of communication content like signs, signals, writing, pictures, images and sounds, and either placing it in electronic form on electro-magnetic waves on specified frequencies and transmitting it through space or cables to make it continuously available on the carrier waves so as to be accessible to single or multiple users through receiving devices either directly or indirectly; and all its grammatical variations and cognate expressions;

“Broadcasting Service” means assembling, programming and placing communication content in electronic form on the electro-magnetic waves on specified frequencies and transmitting it continuously through broadcasting network or networks so as to enable all or any of the multiple users to access it by connecting their receiver devices to their

respective broadcasting networks, and includes all the content broadcasting services and the broadcasting network services;