Consultation Paper on the proposed draft of Broadcasting Services Regulation Bill

The Ministry of Information & Broadcasting has been examining the issue of introducing a legislation to regulate the operation of broadcasting services consequent upon the judgment of the Supreme Court in the Cricket Association of Bengal case delivered in 1995 that airwaves are public property and have to be controlled and regulated by public authority in the interests of the public.

The Broadcasting Bill of 1997 was introduced in the Parliament but lapsed. The Communication Convergence Bill 2001 was introduced but even this lapsed due to the dissolution of the 13th Lok Sabha. In 1995 the Cable Television Networks Act was brought in to regulate the cable business and their operations. Most of the other required regulations in the sector were being accomplished by issuing guidelines such as those for Uplinking TV channels, DTH, FM Radio, Community Radio and Downlinking etc.

The proposed Broadcasting Services Regulation Bill seeks to achieve the following:-

(i) To provide legislative sanction retroactively to Government guidelines on various regulatory aspects such as television channels’ Uplinking/Downlinking, private FM Radio and Community Radio, DTH, Teleport, etc.

(ii) To set up a new Broadcasting Regulatory Authority of India and delegate the regulatory functions presently being performed by the Ministry of I&B to this new authority.

(iii) To incorporate the provisions of the existing Cable Television Networks Regulation Act in the new legislation through appropriate repeal and savings clauses and provide for licensing of cable operators.

(iv) To make enabling provisions on the following:-

(a) Cross media ownership and restrictions on accumulation of interests to provide for competition and plurality of views.

(b) Minimum domestically sourced content in foreign channels to promote indigenous media/entertainment industry, particularly in the field of animation and gaming etc.

(c) Minimum obligations on all channels for public service broadcasting in their programme and advertising content.

The Ministry of Information & Broadcasting proposes to consult the media and the broadcasting industry organizations to obtain their response to some of the major issues proposed to be covered in the Broadcasting Services Regulation Bill. Accordingly, the draft of the proposed legislation, indicating the current thinking in the Ministry of Information & Broadcasting is put on the Ministry’s web-site. It is to be appreciated that these are not the final views of the Ministry or the Central Government. These will be further refined after the process of consultation with the media and the broadcasting industry as well as concerned
Ministries is over and thereafter the Cabinet will consider the final contours of the proposed legislation. Some of the important features are presented below:

1. **Definitions:** The definition of broadcasting is wide enough to cover not only traditional broadcasting but also internet broadcasting as well as mobile broadcasting. However, the broadcasting services listed in the Bill are traditionally under the administrative and regulatory control of the Ministry of I & B. Depending on the final decision of the Central Government on the issue of ‘convergence’, flexibility has been provided to list new services. Further, since many of the provisions of guidelines differentiate channels on the basis of news and current affairs content, it is proposed to define a ‘news and current affairs channel’.

2. **Legislative validation:** While stipulating that, in future, it shall be unlawful for any person to provide broadcasting services without a proper license from the competent authority, it is also proposed to provide legislative backing for all the past guidelines issued by the Central Government from time to time, and validate all consequential actions by taken by all concerned. This has become necessary because of challenge to some of the guidelines. While the Central Government is firmly of the view that all its past decisions/actions are completely legal and valid and drew their support from other relevant statutes and judicial pronouncements, it is proposed to set the record beyond the scope of interpretation by specifically providing for retroactive validation under the proposed Bill.

3. **Content:** Presently content in cable services is regulated by the Program Code and Advertising Code under rules 6 & 7 respectively of the Cable Rules 1994. These codes are made applicable to broadcasters/DTH operators under the relevant Guidelines mentioned above and through specific provisions in the license/permission agreements. Similarly the AIR code is made applicable on the private radio companies. The Central Government is directly responsible for ensuring compliance with these codes. The Government desires to involve the media and the broadcasting industry in self regulation of content in the first place, failing which the proposed Broadcast Regulatory Authority of India would step in (instead of the Central Government) to take suitable action. The Ministry of I&B has already appointed a committee under the chairmanship of Secretary I&B with representatives from the media/industry, civil society and regulatory Ministries to design a more detailed and specific ‘Content Code’ that can be easily understood and used as a guide by the public as well as the broadcasters to self regulate content in their respective programs. This committee will also suggest suitable institutional mechanism for self regulation by the media/industry. In order to facilitate the implementation of the above course of action, it is proposed to have enabling provisions in the proposed BSR Bill.

4. **Broadcast Regulatory Authority of India (BRAI):** Presently, the regulatory functions are being performed by the Ministry of Information & Broadcasting in respect of the broadcasters under several guidelines issued from time to time. On the other hand, the cable operators only need to register themselves with the local post office. The authorized officers perform some of the regulatory functions in respect of cable operators. It is proposed to set up BRAI on the lines of Telecom Regulatory Authority of India (TRAI). In order to function in a coordinated manner with clear roles and responsibilities, it is proposed to specify respective powers and functions of the Central Government, the BRAI, the licensing authorities and the authorized officers.

5. **Digital Addressable Systems:** The Central Government introduced CAS in 2003 and had to withdraw the scheme in the face of certain deficiencies. The scheme is attempted to be
introduced again with certain modifications as per Delhi High Court directive. In the proposed legislation, it is provided to introduce digital addressable systems in a time bound manner, but with adequate safeguards to ensure that all stakeholders are fully prepared and the scheme actually delivers value to the subscribers and is in their interest.

6. **Public Service Broadcasting Obligations:** It is considered desirable to provide a minimum level of public service oriented content in all private channels and networks in addition to public broadcasters so as to reach the maximum number of viewers in the country. Also it is considered desirable to lay down certain obligations of foreign channels to encourage domestic entertainment and media related industry e.g. animation, gaming and visual effects industry and provide certain minimum domestic content. While the detailed policy guidelines and their implementation procedures may be developed in close consultation with the media and the broadcasting industry, it is proposed to provide enabling provisions in the proposed legislation for the time being.

7. **Intellectual Property Rights:** In order to ensure that the name and logo of the channel is not misused to convey undesirable content or mislead the public or get unfair commercial advantage, certain provisions for registration of channels are proposed in the draft Bill. Another aspect of the IPR regime is the denial of legitimate use of content for broadcasting purposes even after the content has been published/reproduced or performed in public. The present Copyright law provides for compulsory licensing for only one complainant while the problem is being faced by most of the broadcasters. It is, therefore, proposed to provide for compulsory licensing for more than one complainant.

8. **Accumulation of interest:** There are three types of restrictions on accumulation of interest in the media. These are restrictions on: (a) Cross media ownership among different segments of media such as print/television/radio. (b) Consolidation including ‘vertical integration’ within a media segment such as television or radio. (c) Market share in the city/state/country within each media segment. It is proposed to incorporate enabling provisions in the BSR Bill:

9. **Offences and penalties:** A clear-cut differentiation is proposed to be maintained between civil and criminal offences. Unlicensed broadcasting or breach of national security or integrity etc. are treated as criminal offences and proposed to be made punishable by the courts of criminal jurisdiction under the normal laws of the land for which prosecution will be filed by the ‘authorized officers i.e. District and Sub-Divisional Magistrates or Commissioners of Police. The Authorized Officers have been given the power to inspect search and seize equipment etc. under proposed section 24. However this power is limited to only against those who commit a criminal offence under the proposed Bill i.e. run an unlicensed broadcasting service or telecast an unregistered channel or violate directions under section 5 above. Even in these cases, the authorized officers will file cases before regular courts with criminal jurisdiction. On the other hand, violations of the policy guidelines or regulations or license conditions are treated as civil offences and proposed to be made punishable by the Licensing Authorities and BRAI for which appeals will lie before TDSAT or FCAT.

10. **Repeal of Cable Act 1995:** Since all the provisions of the Cable Television Networks (Regulation) Act 1995 are being subsumed in the proposed legislation, including the introduction of licensing of cable operators, it is proposed to repeal the said Act and provide
for continued validation of all actions done under it through the following ‘repeal and saving’
section.

11. **Relationship with other laws:** While the proposed legislation will prevail over other
existing laws, specific exemption has been provided for the Indian Telegraph Act 1885 and
Indian Wireless Telegraphy Act 1933.

12. **Key Issues:** The above narration highlights the key areas covered by the proposed
legislation. **However, the draft of the proposed legislation is also attached herewith, and also**
placed on the Ministry’s web-site to elicit focused response from the stakeholders. However,
it is once again re-iterated that the above proposals represent current thinking in the Ministry
of Information & Broadcasting and are subject to modification in the light of comments
received from the media and the industry as well as various concerned Ministries. Each
subject area discussed above may raise several key issues that need to be addressed before
final views can be formulated. The stakeholders are, therefore, requested to submit their
views on key issues in respect of the areas covered above as also any other related areas that
they consider important enough. Anyone desirous of submitting his comments and views is
requested to do so by within a period of one month from the date of putting this consultation
paper on the web-site of the Ministry of Information & Broadcasting. The comments may be
accompanied by relevant documentary evidence, if any, and addressed to the following:

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