

## The Indian broadcasting sector: A giant leap for media-kind

### Introduction

One of the key sectors in India that has been experiencing a double digit growth rate is media. With an overall increase in per capita income, the demand for leisure and entertainment through different mediums has only increased. According to a recent report of the Confederation of Indian Industries,<sup>1</sup> India has more than 600 television channels, 100 million pay-television households, 70,000 newspapers and the film industry produces more than 1,000 films annually. The scope of the media sector has also expanded over time to not only include the conventional forms of media (*such as print and broadcast*), but also social and digital media.

Digitization of media is an important contributor for the growth of this sector. Digital broadcasting has not only facilitated a better penetration of services in India, it has also assisted in generating better revenues, curbing piracy<sup>2</sup> and reducing costs. Big corporations have been looking to take advantage of such digitization and have made large investments in media houses and broadcasting companies.<sup>3</sup> The present newsletter analyzes such consolidation in the television broadcasting sector with a specific focus on the amendments brought forth in The Cable Television Networks (Regulation) Act, 1995 (“**Act**”) by the Cable Television Networks (Regulation) Amendment Bill, 2011 (“**Bill**”). This Bill was introduced as an ordinance by the President of India on October 25, 2011 and finally passed by the Indian Parliament on December 19, 2011. This Bill is awaiting assent of the President which is expected soon.

### 1.0 Scope of the Bill

The Act was enacted to regulate the operations of cable television networks and operators across India. The purpose of the Act was threefold; namely, (i) to bring uniformity and consistency in the operations of cable television; (ii) enable optimum exploitation of broadcasting and transmission technology; and (iii) to regulate content. Even though the Act was successful in implementing and executing a cable television regime, the business model adopted by the broadcasting industry posed some concerns. For instance, transmission and distribution of channels by cable operators continued to be in analog form. This resulted in under declaration<sup>4</sup> of subscriber base by the cable operators which, then, impacted the revenue of the Multi System Operators (“**MSOs**”), content providers as well as the original broadcasters. Further, analog transmission also resulted in instances of illegal transmission or

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<sup>1</sup>See The Big Picture, Newsletter from the CII Media & Entertainment Division for January 2012 at [http://www.cii.in/webcms/Upload/Jan\\_2012\\_CII%20Newsletter.pdf](http://www.cii.in/webcms/Upload/Jan_2012_CII%20Newsletter.pdf).

<sup>2</sup>Since the data will be encrypted, it will prevent transmission theft and piracy.

<sup>3</sup>Reliance Industries intends to invest nearly US\$ 350 million in TV18. See, [http://articles.economicstimes.indiatimes.com/2012-01-03/news/30584752\\_1\\_ril-subsiary-rights-issues-network18](http://articles.economicstimes.indiatimes.com/2012-01-03/news/30584752_1_ril-subsiary-rights-issues-network18) visited on January 16, 2012.

<sup>4</sup>Since the revenue sharing model between the cable operators, Multi System Operator and the broadcaster is based on the subscriber base of the cable operator, it was often in the interest of the cable operator to under declare its subscriber base and transmit the available analog signals.

re-transmission of unregistered channels due to the availability of signals of foreign television channels via satellite.

The Bill attempts to fix the operational lacunas created by the Act and aimed to digitize all content transmitted by cable operators. Such digitization will take place through a digital addressable system (“**DAS**”) that will be installed at the premises of the cable operators. The Ministry of Information & Broadcasting (“**MIB**”) released a notification<sup>5</sup> that stated the roadmap of the implementation of the Bill. According to this notification, the cities of Delhi, Chennai, Mumbai and Kolkata will get digitized by June 30, 2012 and the rest of India by December 31, 2014.

The Bill also aims to ensure a flexible but mandatory mechanism of registration of cable operators, provides for a subscriber management system to create a transparent business model to avoid any under declaration of subscriber base by cable operators, empowers the Telecom Regulatory Authority of India (“**TRAI**”) to determine the basic service tier<sup>6</sup> and its tariff, etc. All the amendments brought forth under the Bill have the potential to positively influence the broadcasting sector and make it more profitable and content-friendly. Some of the key changes are discussed below in detail.

### **1.1 What is Digitization and its outcome?**

As per the Bill, every cable operator will have to attach a DAS attached to its receiver. This DAS will essentially be an electronic device (*including hardware and related software*) that will digitally transmit cable television signals in an encrypted form. Such encrypted signals will then be decrypted using a Conditional Access System (“**CAS**”) <sup>7</sup> at the premises of the subscriber. In fact, to ensure digital encrypted transmission, the Bill makes it mandatory for all cable operators to transmit and re-transmit channels in an encrypted form using DAS. Once made mandatory, cable operators, who originally transmitted analog signals, will be in a position to compete directly with DTH operators and will be able to transmit more channels to a larger subscriber base.

Digitization will also have a cascading effect on the overall revenue generation of broadcasters. As stated above, under declaration of subscriber base for analog transmission is a problem faced by broadcasters across the sector. With the use of DAS, a more transparent business cycle will be put into place as digital transmission can be recorded in a more efficient way.

Additionally, the Bill also requires the cable operators to set up a subscriber management system. This system will be used to store subscriber records, such as name, address, package of channels subscribed, price of such channels paid to the cable operator, activation/deactivation dates of the channels, invoices raised, etc. The government has retained to the right to access these subscriber management systems and inspect them, thereby ensuring

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<sup>5</sup>Notification number S.0 2534(E) dated November 11, 2011.

<sup>6</sup>Basic service tier refers to a package of free-to-air channels that are to be offered by a cable operator to a subscriber with an option to subscribe.

<sup>7</sup>CAS is a digital mode of transmitting television channels through a set-top box. The transmission signals are encrypted and viewers need to buy a set-top box to receive and decrypt the signal.

maintenance of full record of subscriber base as well as all related fiscal details. These changes will enable the broadcasters to generate a higher revenue from subscription of channels, which was not possible under the analog distribution system due to the under declaration of subscriber base as most cable operators fall under the unorganized sector. The direct impact of an additional revenue source will be that lesser reliance will be placed on advertising revenue, thereby allowing broadcasters to invest in better program content.

## 1.2 Identifying misuse and imposing sanctions

In addition to ensuring penetration of cable networks across India, the Bill also aims to keep a check on the functioning of cable operators so that the aforementioned concern do not re-emerge. The Bill requires government to set up a registering authority which shall receive applications for registrations or renewals, as the case may be, from persons operating or interested in operating a cable television network. The registering authority will only grant registration/renewal once it is satisfied that the cable operator has fulfilled the “prescribed”<sup>8</sup> eligibility criteria. The registering authority shall possess and exercise discretion so that if it deems that the applicant operator does not fulfil the prescribed conditions, it can refuse the registration/renewal. Unlike the Act, the Bill allows the cable operator to appeal to the MIB against the decision of the registering authority.

Further, the government has also retained the right to suspend or revoke the registration of a cable operator in case it violates one of more terms of registration. This mechanism ensures check on the operation of cable operators, who, at present, are not subject to stringent compliance. In fact, the Bill replaces section 11 of the Act which now states that if any authorized officer<sup>9</sup> has reason to believe that the cable operator has contravened any provision pertaining to registration, transmission, programme and advertising code, etc, such officer has the authority to seize the equipment being used by such cable operator. Under the pre-amendment Act, the equipment could be seized for ten working days. However, this time period of ten days has been removed in the amendment and there is no limitation on the period of seizure. Therefore, it is extremely critical for the cable operators to comply with the terms of their registration as well as the provisions of the amended Act.

The Bill has introduced yet another mechanism of checking the functioning of cable operators. A new section 10A has been inserted in the Act which allows the government or its authorized officers to inspect the cable operator’s network and services without seeking any prior permission. While the amendment states that ordinarily the inspection will be carried out after giving a reasonable notice, it also states that where issuance of notice will defeat the purpose of the inspection, the government can inspect the network and services without giving any notice to the cable operator. Therefore, section 10A read with section 11 essentially allows the government to conduct raids and seize goods. This was not possible prior to the amendment.

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<sup>8</sup> These guidelines have not yet been formulated.

<sup>9</sup> As per section 2(a) of the Act, an authorized officer includes a district magistrate or a sub-divisional magistrate or a commissioner of police operating in his local jurisdiction.

### 1.3 Other amendments

In addition to the above, the Bill has also proposed other amendments wherein the cable operators can lay and establish cables and erect posts (*pole, tower, cabinet, strut, pillar, etc or any other structure for carrying or supporting any network infrastructure facility*) in or upon any immovable property under the control of any Indian public authority. However, the authorities have authorized such public authorities to impose any reasonable conditions while allowing the cable operator to lay the facility. Further, the amendment also allows the government to direct the TRAI to specify the free-to-air channels that ought to be included in the basic service tier as well as fix tariffs. In order to do this, the TRAI has also released a consultation paper dated December 22, 2011 on “*Issues related to Implementation of Digital Addressable Cable TV Systems*” and invited comments from stakeholders.

It is also important to note that in addition to the amendments brought forth by the Bill, the provisions of The Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004 pertaining to the overall arrangement among service providers for interconnection and revenue sharing, as well as the uplinking and downlinking guidelines released by the TRAI, shall continue to apply.

### 2.0 Business needs to adapt to the amendments

The Bill provides cable operators a period of six months to install the requisite equipment for digital transmission of paid and free-to-air channels in an encrypted format. The MSOs have also raised concerns that in order to effectively implement DAS transmission as per the roadmap released by the MIB through its November 11, 2011 notification, heavy investments will have to be made to set up network facilities. It is expected that in order to effectively implement digitization and CAS throughout India as well as adhere to the amendments introduced by the Bill, the government will liberalize the investment regime in the broadcasting sector. Presently, 49% foreign direct investment (“**FDI**”) is permitted under the approval route for setting up cable networks. For better cable network facilities and capital infusion in the broadcasting sector, the FDI limit should be increased to 74%. This will promote overall consolidation within the cable transmission sector and improve the quality of transmission. In fact, as per media reports, the MIB has made a written request to the Department of Industrial Planning and Policy to consider an increase in FDI in the cable industry, as well as written to the Ministry of Finance to provide financial incentives like tax holidays, custom concessions (*since most set-top boxes are imported*), etc.<sup>10</sup>

In addition, prices of set-top boxes will also have to be regulated in order to achieve total digitization. This will be challenging and cable operators will have to adopt creative business models (*such as payment by instalment, rental schemes, etc*) to ensure affordability and maximum outreach.

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<sup>10</sup> See, [http://www.cable-quest.in/news\\_view.asp?cate=Cable%20News](http://www.cable-quest.in/news_view.asp?cate=Cable%20News) viewed on January 16, 2012

## Conclusion

To conclude, the Indian television broadcasting industry is extremely large and still expanding. With the growth of broadband and rolling of IPTV<sup>11</sup> and mobile TV services, digitization is a key step forward. Properly implemented, the provisions of the Bill will ensure a win-win regime for broadcasters, cable operators as well as the ultimate subscribers. The stringent clauses will ensure that broadcasters get the advantage of subscription revenue. From the perspective of cable operators, DAS and mandatory use of CAS gives them a level playing opportunity as DTH operators. For the ultimate subscribers, digitization will imply more and better quality of channels, option to pick and choose channels, better content and competitive prices. Of course, the “real” impact of the Bill will only be seen with time. However, the regulators, the industry and the public have high expectations from it.

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<sup>11</sup> Internet Protocol Television