Regulatory Framework for Broadcasting in India

System of Regulations in India

- As per the Constitution, legislative & executive power over 'Posts and telegraphs; telephones, wireless, broadcasting, and other like forms of communication' vests with the Union.
- Indian Telegraph Act. 1885- Principal pillar of the regulatory framework for communications.
- The Statute's legal rules and regulatory provisions are organized around the concept of 'telegraph'. This term is broadly defined and broad enough to include the most modern communication devices, irrespective of their underlying technology, including broadcasting services, satellite radio and the Internet.
- Section 4(1) of the Telegraph Act states that the Central Govt. has exclusive privilege of establishing, maintaining and working telegraphs within India.
- However, a proviso to Section 4(1) authorizes the Govt. to part with its privilege by granting a license to operate a telegraph.
- This proviso is the legal basis for the government to grant telegraph licenses to private entities and person to offer various communication services including Broadcasting.
- Wireless Telegraphy Act, 1933- License for Wireless Communication.

Ministry of Information & Broadcasting

- Policy, Licensing of broadcasting sector, Content regulations.

Ministry of Information Technology and Communications

- Registration of Cable Operators in Post Offices, Spectrum allocation, Telecom services.

Uplink/ Downlink Policy

Highlights of the New Policy

S.No.	Type of Channel	Channel	Networth Old Policy(crore)	Networth New Policy(crore)
1.	**Networth** Non-news and current Affairs channels	• 1st Channel • Additional Channel	₹1.5 ₹1.0	₹5.0 ₹2.5
2.	**Networth** News and Current affairs Channels	• 1st Channel • Additional Channel	₹3.0 ₹2.0	₹20.0 ₹5.0
3.	**Networth** Downlinking of Foreign channels	• 1st Channel • Additional Channel	₹1.5 ₹1.0	₹5.0 ₹2.5
4.	Operating a Teleport	• 1st Teleport • Additional Teleport	₹1.0 —	₹3.0 ₹1.0
5.	Performance Bank Guarantee •Non-News & Current affairs channels • News and current affairs channels		Nil Nil	₹1.crore ₹2 crore
6.	Permission fee for Down-linking a) Foreign Channels Uplinked from Abroad b) All Channel Uplinked from India			₹15 lakh/annum ₹ 5 lakh
7.	Permission fee for uplinking a) Uplink of TV Channel b) Teleport			₹5 lakh per ch/yr ₹2 lakh per ch/yr
8.	License of a TV Channels revoked after five violations of the Programme and Advertisement codes.			
9.	All TV Channels to operationalise within	1year		
10.	All Permissions valid for	10years.		
11.	Minimum experience for top Management	3 years.		

TDSAT

- Dispute settlement (original jurisdiction).
- Appeals.

Telecom Regulatory Authority of India (TRAI)

- Created by an Act of Parliament, Telecom Regulatory Authority of India Act, 1997,
- Broadcasting sector came under purview of TRAI in 2004.
- Carriage regulation including Tariff, Interconnection and Quality of Service is done by the Telecom Regulatory Authority of India. Content regulation is still done by the Ministry of Information & Broadcasting.

The Broadcasting Sector in India

- Total Cable & Satellite Households -142 Million
- Cable TV Subscribers – 96 Million with 6 million Digital Subscribers.
- Registered Private Satellite TV channels- 800+
- Number of Multi System Operators- 7000, Number of Cable Operators- 60,000 +.
- 2 HITS permission holders.

- Conditional Access System for cable services mandated in specified areas of four Metros of Delhi, Mumbai, Kolkata and Chennai. Chennai is the only city in India covered completely with CAS.
- Terrestrial Television Broadcasting by Doordarshan through its 1500 transmitters and 66 Studio centers across the country serving 30 Million Households in analog technology.
- 6 Private DTH Operators operational having 40 million digital subscribers.
- 248 private FM radio stations apart from All India Radio.
- 106 million Cable TV subscribers with million digital subscribers.
- DD Direct + public sector FTA DTH service with more than 10 million subscribers.
- 95 community Radio Licensees.
- One Satellite radio Operator.

Major Laws and Regulations

- Cable Television Networks (Regulation) Act, 1995 as amended.
- Cable Television Networks Rule 1994 as amended.
- Telecom Regulatory Authority of India Act. 1997 as amended.
- Prasar Bharti (Broadcasting Corporation of India) Act 1990 as amended.
- Sports Broadcasting Signal (mandatory Sharing with Prasar Bharti) Act. 2007.
- Policy Guidelines for uplinking from India as amended in 2011.
- Policy Guidelines for downlinking of Television Channels as amended in 2011
- Guidelines for obtaining DTH license.
- The Telegraph Act. 1885.
- 2nd Amendment to Cable Television Networks(Regulation) Act 1995, mandating total digitalization in all Cable Networks by Dec 2014.

Quality of Service for Cable Services in non-CAS Areas

- Issuance of monthly bill and proper receipt.
- Bill should contain number of FTA and Pay channels.
- Provide information regarding change of channels in cable service to the customers.
- Taking the channels off air-notice is must by an advertisement in 2 local newspapers, and also may inform by running a scroll in the relevant channel.

Regulations on Quality of Service for CAS areas

- Connection-within two working days of the completion of the formalities.
- Disconnection-written notice of at least 15 days.

	• Shifting- five working days from the date of request . • Complaints. • At least 90% of “No Signal” calls received shall be corrected within 24 hours. • At least 90% of all other types of complaints shall be corrected within 48 hours. • Billing related complaints- To be addressed within 7 days of notice. • STB related complaints-repair or replacement, within 24 hours of receipt of the complaint. • Change in positioning of channels-3 days advance notice to subscribers. • Public Awareness Campaign- MSOs were required to carry out a public awareness campaign about the salient features of the provisions contained in the QoS regulation for CAS areas. • Taking the channel off air-3 weeks notice is must either by an advertisement in 2 local newspapers, or by running a scroll in the relevant channel.
Plans and Billing related	
	• The subscription package offered to a subscriber will not be changed for 6 months. However, the subscriber can opt out of a particular package for any other package at any time. • Post paid subscribers, if any, will be issued bills containing details such as charges for subscription package, value added services, customer premises equipments, taxes etc. • Provision of itemized usage charges to pre-paid subscribers on demand on a reasonable cost.
Customer premises equipments (CPEs) related	
	• Scheme to offer CPEs to its subscribers on outright purchase basis, hire-purchase basis and rental basis. Scheme for refund in case of hire-purchase. • Set-Top-Box (STB) not to be disabled if the subscriber has opted out of his service, and there are no dues. Anti Piracy measures.
Taking the channel off air	
	• DTH operator has to give notice for discontinuing a channel.
Interconnection	
	• Broadcasters “must provide” content on non discriminatory terms. • Broadcasters to provide all channels on a-la-carte basis to cable and DTH platforms.

	• Limits prescribed for relationship between a-la-carte and bouquet prices by broadcasters. • Broadcasters directed to provide channels to DTH through RIO at reasonable rates.
Steps taken by TRAI on the digitalization	
	• Facilitated successful roll out of addressable digital cable services (CAS) in the notified areas of Delhi, Mumbai & Kolkata by laying down appropriate regulatory framework. • An expert group was formed by TRAI on digitalization and introduction of voluntary CAS for extension of CAS to 55 more cities in a well defined time frame. The report of the group was forwarded to the Government for further action. No action was taken by the government. • Recommended opening up of Terrestrial TV transmission for Private Sector and to allow both analogue and digital transmission. • Recommended a national plan for digitalization of cable television, by March 2010, on a voluntary basis. • Recommendations of cable TV sector, which mandates compulsory digitalization within five years. **Restrictions on retransmission of foreign channels/ advertising ?** • Since 2005, government permission required; some channels excluded. • Heavier restrictions on news channels.
License fee	
	• Nominal for Cable - ` 500/ yr • DTH – ` 100 million plus 10% of gross revenues. • IPTV annual fee ranges from 6 - 10%, depending on license.
Retail rate regulation	
	• Retail rates frozen since 2004 in most (non-CAS) areas. (Small rate increments have been allowed). • No indication when freeze might be lifted. • Since 2006, in CAS areas (1.6m homes), a single price (5.35 rps per mo.) has been set for each channel, with no market logic. • Retail tariff order for Cable in Non-CAS areas issued but not applied as matter in the courts.

Wholesale rate regulation

- Wholesale rates frozen. (Small increments allowed).
- No indication when freeze might be lifted.
- Since 2006, in CAS areas, wholesale prices set by government.
- Government has fixed prices for DTH and IPTV systems at 50% of the rate charged to non-CAS cable operators. However recently, Supreme Court fixed the rate at 42% of the rate in Non-CAS areas.

Must Provide

- Highly restrictive "Must Provide" regulations in force. Apply to all platforms Cable, DTH and IPTV.
- Some digital platforms using "VOD"
- No exclusive content on any platform.

Must Carry

- Cable and DTH must carry 2 national Doordarshan channels and two Parliament channels.
- Cable must also carry a regional Doorshan channels.
- IPTV obliged to carry four additional Doordarshan channels.

FDI

Overview Of FDI Regime In India

- FDI in an Indian company is regulated by the Reserve Bank of India under the Foreign Exchange Management Act, 1999 ("FEMA") read with the FDI Policy issued by the Departmental of Industrial Policy and Promotion, Ministry of Commerce, Government of India ("DIPP").
- FDI is permitted in an Indian Company under two routes, namely (i)the Approval Route, where prior approval of the Foreign Investment Promotion Board, Ministry of Finance, Government of India ("FIPB") is required; and (ii) the Automatic Route, where no such prior approval of the FIPB is required.
- Broadly, an investment may fall into one of four categories, i.e., (i)100% FDI under the Automatic or Approval Route; (ii) Cap on FDI under the Automatic Route; (iii) Cap on FDI under the Approval Route; and (iv) FDI prohibited.

FDI In The Broadcasting Sector

- Foreign investment in this sector is restricted, since it is a sensitive sector which affects the dissemination of information to the public.

• Broadly, this sector can be split into two categories: Carriage (of Broadcasting Signals) and Content (of what is broadcasted).

• While both these categories have caps on foreign investment, carriage permits higher foreign investment as it deals mostly with the infrastructural aspects of broadcasting.

• The cap on content is lower as it is more sensitive and therefore sought to be regulated more closely

Distribution Platforms

• Terrestrial Broadcasting

• Oldest mode of broadcasting and not open for private operators.

• Monopoly is with Prasar Bharti, a Government of India company. It broadcasts a number of channels under the umbrella brand of 'Doordarshan', the only terrestrial broadcaster.

Cable Network

• This mode of distribution consists of multi system operators (MSOs) and local cable operators (LCOs). The MSO gathers content from various broadcasters, and the LCO takes the feed from the MSO and further distribute.

• There are National level MSO who are present in many cities all across the country; State level MSOs who operate in particular state and Independent MSOs who operate in a city or an area of a city.

• Independent Cable Operators also exist in many parts of the country reaching direct to the subscribers. Some of the carry only FTA signals.

• To operate a cable television network, registration is required as cable operator, with the Head Post Master of the local post office.

• Regulated by the Cable Television Network (Regulation) Act, 1995 and the rules made thereunder.

• In a few major cities such as Chennai, Delhi, Mumbai and Kolkata, Conditional Access System (CAS), which uses a set top-box through an addressable system, to transmit TV channels in digital mode, has been implemented. In these cases, a cable operator would also need to procure permission from the MIB.

FDI limits for pay TV Distribution Platforms

• 49% in DTH (20% direct and 29% “Institutional.”)

• 49% in Cable.

• 74% in Telecom, who could operate IPTV and mobile.

	• A uniform FDI of 74% on all distribution platforms recommended, awaits Cabinet Approval.
FDI limits on wholesale provision of pay TV programming	
	• 100% for downlinked foreign channels. • 100% for uplinked Indian channels (non-news). • 26% for Indian news channels.