The present detailed note by Mr.Vikki Choudhry is in response to certain concerted efforts being made by a foreign media conglomerate by lobbying hard with the Indian Government to remove/relax the extant FDI restrictions on electronic news and current affairs segment and Cross Media holding restrictions/regulations. This is being done so as to acquire an "end-to-end" control over entire media segment i.e. from creation of content (broadcasting – both news and non-news) & distribution (mainly DTH and Cable) and create monopoly. The effort has been to somehow completely own an existing DTH platform in which it holds at present around 30% stake (which in itself is a violation of existing DTH guidelines as a broadcaster cannot hold more than 20% in a DTH platform). Similar efforts are being made to acquire Digital Cable Television network so as to have complete control over content distribution platforms. This media house/entity already has cricket telecast rights of all the matches conducted by BCCI, ICC as well as that of IPL which is the most popular sport in India. This has wide ramifications not only from competition point of view but also has grave national security implications. It is pertinent to note that apart from potential distortion of the market and thereby eliminating the competition, it would also have an adverse impact on the consumers' and public interest. If these relaxations are done in media sector then a situation will come, when in India only two or three big players'viz., Star, Zee, Times Group and Sun TV group will remain in the media sector and which will be totally against interest of the public at large and the nation. In fact this will lead to the situation where in these media houses will dictate the Government in all the issues.

(A) FDI RELATED ISSUES IN NEWS AND CURRENT AFFAIRS SEGMENT

1. Sensitivity of the Media Sector

1.1 Media Sector is a very sensitive sector in so far as the national identity, security and culture is concerned. Most countries worldwide have been very circumspect in respect to allowing FDI beyond certain limits in the media sector especially in News and Current Affairs segment. Recognizing this trend, India has so far not allowed even licensed FM channels to carry news and has stipulated uplinking/downlinking permissions for Television channels wherein the credentials of the broadcaster are duly verified.

1.2 The media whether print or electronic, is one of the most important tools for influencing political, cultural & social environment all over the world. It may be appreciated that impact of Electronic Media (viz. Television) on the society is more immense. It tends to influence the minds and opinions of people in a big way across all sections of society. Whereas a newspaper can influence only educated persons i.e. those who can read and write, Electronic Media on the other hands can carry information, news and entertainment etc. to masses and even to those who are illiterate.

1.3 It may be pointed out that television news and current affairs content have a direct and long lasting impact in minds of the people especially on the younger generation. Realizing and recognizing its utmost importance, in most of the countries, the Electronic Media is heavily regulated so far as the foreign investment in the sector is concerned in the interest of Nation's security and other allied matters. It is for these reasons that the FDI in the News and Current Affairs segment in Electronic Media as well as in FM Radio has been restricted to 49%. However, certain foreign media companies are demanding the removal of 49% of FDI cap in the News and Current Affairs segment as well and are aggressively lobbying for the same after making a back door entry in News and Current Affairs channels such as Republic TV and now rechristened; ABP News. While also disseminating without any restrictions **FoxNews, FoxBusiness and SkyNews** non permitted channels on an illegal, non-permitted OTT IPTV Distribution Platform "HotStar"

1.4 As stated herein above, the underlying rationale for restricting FDI in News and Current Affairs segment media sector is to prevent the foreigners from gaining management control of the media entities. It is a well-known fact that media plays a very crucial role in shaping public opinions. Through skillful presentation of news & views in a particular manner, the electronic media can manipulate viewers mind. A country like India, which has lot of diversity and socio-economic disparities, is always vulnerable to negative influences. **Giving controlling stake in a media business to the foreigners may lead to the danger of gradual manipulation of the public views and ultimately can destroy the delicate fabric of composite culture, value system and secular nature of the country.**

1.5 In regard to further relaxing FDI, in comparison to other countries, India has already been very liberal in allowing 100% FDI in certain sectors such as General Entertainment Channels DTH and HITS etc. In other sectors, such as Telecom, which also deliver TV channels via Internet Protocol, OTT IPTV 100% FDI is already permitted.

1.6 Many countries viz., US, UK etc., are demanding further liberalization of FDI in the media sector in India, without offering reciprocal benefits to Indian companies in their own countries. To cite an example, USA, which has been at the forefront of seeking relaxation of FDI in Media in India especially in News and Current Affairs sector, is most regressive and has completely closed markets in their own country. India has been seeking relaxations, along with many other countries, such as Japan and others, but have not met with any success.

1.7 As compared to the United States, India follows a very liberal policy in regard to allocation of Spectrum Licenses as well as Licenses for Telecom and Broadcasting services. Foreign companies can directly bid for Spectrum auctions as against USA, where any such bidding is restricted by provisions of Section 10 of the Telecommunications Act which prohibits any foreign nationals or companies to directly hold any broadcast or telecom spectrum.

2. Issues pertaining to Reciprocal commitments, Trade barriers, WTO

2.1 In this context it is pertinent to mention that FDI to be permitted in India cannot be viewed in isolation as it is intrinsically linked with the investments permitted on a reciprocal basis to Indian companies overseas. Developing a strong multinational presence for an Indian company is dependent on what investment climate it faces in India as against what kind of investment opportunities are offered to Indian Companies for providing and undertaking similar services in other countries and acquiring similar assets overseas.

2.2 The following issues are quite relevant in this context:

(i) What are the commitments of India as well as other countries in the fields relating to media ownership, Spectrum, Telecommunications and broadcasting in Fora such as the WTO, GATT and others?

(ii) What are the offers given by major countries such as USA, Canada, Australia, China and the EU in respect of opening up of their markets in each of the fields i.e. media ownership, Spectrum, Telecommunications and broadcasting in International trade fora?

(iii) How do the regulations in various other countries permit foreign investment as compared to the FDI in different sectors opened up in India?

(iv) What bilateral provisions are required by Indian companies such as Indian broadcasters in each of the fields of media ownership, Spectrum, Telecommunications, broadcasting and content delivery platforms like DTH, Cable, IPTV, Mobile TV etc. in foreign countries to operate without discrimination, before granting such concessions to these companies in India?

(v) What is the approach taken by foreign regulators such as FCC, Ofcom etc, in each of the individual fields of media ownership, Spectrum, Telecommunications, broadcasting , content delivery platforms like DTH, Cable, IPTV, Mobile TV etc and correspondingly what should be the approach of the Indian regulator?

3. **Foreign Investments Permitted in other countries**

USA

3.1 In US any ownership of Telecommunications Assets is governed by Section 310 of the US Telecommunication Act.

As per Section 310 of the US Telecommunications Act, no Broadcast or Common carrier or Radio license will be granted to be held by:

(i) Any alien.

(ii) Any Corporation organized under the laws of any foreign government.

(iii) Any US corporation where more than 20% of the Stock is held by any alien or any foreign entity

Effectively the sections 310 (b) (1) to 310 (b) (3) prohibit any foreigner or a foreign company from obtaining any license or even holding more than 20% share in any corporation in the US which has a broadcasting or a common carrier license. Section 310(b) (4) sets a benchmark of 25% holding by foreign individuals or entities in companies in the US which control radio licenses. The above restrictions imply that the Indian broadcasters have to solely depend on a US company for broadcasting of content. However the said approach is not easy owing to the monopolistic holdings in the US markets. This section was partially modified in September 2016. The effect of modified section is described in subsequent paragraphs.

The situation in regard to the bidding for spectrum is the same as no foreign citizen or company can bid for spectrum in the US spectrum auctions.

3.2 USA has been most regressive in regard to permitting FDI in media. FDI in Television stations, for example was restricted to only 25% till 2016. While there has been one instance where an Australian couple, who have been residents in the USA since 2006 were granted the ownership of Television stations which they were already running for over 10 years, there has been no other single incident where any license was granted.

3.3 The Section 310 of the US Telecommunications Act has been modified vide FCC 16-128 dated 30th Sept 2016,which specifies restrictions on foreign holdings by classifying them under "those in control of facilities" and "those not in control" the act effectively prohibits outright acquisition of any Broadcast facility or business.

Even in the sole exception case where the ownership of station was granted to foreign nationals, there were court appeals as this was not in conformity with the Section 310 of the US Telecommunication Act.

3.4 Further all licenses and permissions are subject to CFIUS approvals, which effectively becomes the licensing body.

Under the Trump administration, the position has become more hawkish with specific intent to promote American companies and American employees as detailed below.

The effect of the section 310 of the US Telecommunications Act as amended on Sept 30, 2016 is as follows:

> *Section 310 of the Act requires the Commission to review foreign investment in radio station licensees. This section imposes specific restrictions on who may hold certain types of radio licenses. The provisions of Section 310 apply to applications for initial radio licenses, applications for assignments and transfers of control of radio licenses, and spectrum leasing arrangements under the Commission's secondary market rules. Section 310(b)(3) prohibits foreign individuals, governments, and corporations from owning more than 20 percent of the capital stock of a broadcast, common carrier, or aeronautical radio station licensee.11 Section 310(b)(4) establishes a 25 percent benchmark for investment by foreign individuals, governments, and corporations in U.S.-organized entities that directly or indirectly control a U.S. broadcast, common carrier, or aeronautical radio licensee. A foreign individual, government, or entity may own, directly or indirectly, more than 25 percent (and up to 100 percent) of the stock of a U.S.-organized entity that holds a controlling interest in a broadcast, common carrier, or aeronautical radio licensee,* ***unless the Commission finds that the public interest will be served by refusing to permit such foreign ownership.***

3.5 **Committee on Foreign Investment in the United States (CFIUS)**

All approvals in the US for foreign investment are subject to approvals of the CFIUS.

Determination on the basis of "No harm to American Interests" and "Necessity":

First of all, the statute overriding and any proposals need to be made on a case by case basis, which are considered individually in regard to ownership. Secondly they are examined on the basis and in particular whether they harm the interests of any American company. Moreover pursuant to sections 214(a) and 310(d) of the Communications Act, the Commission "must" determine whether the applicants involved with each proposed transaction have demonstrated that the respective proposed assignments and transfers of control of licenses and authorizations would serve the public interest, convenience, and necessity.

Hence the decisions of the commission are not based on any commercial considerations or business goals of the foreign company. Any foreign proposal must demonstrate "Public interest" and "necessity". What can be the necessity of providing a broadcast service in the USA? How can an entity prove that it will not harm the interests of any US company? The fact is that any major initiate by an Indian broadcaster in the US involving IPTV or triple play services will challenge the comfortable monopoly or oligopoly situations being permitted to be carried on by the FCC and will challenge established American companies engaged in the business of broadcasting, IPTV or common carrier services such as voice or data. Hence the American companies' interests will be directly challenged. FCC has, accordingly absolutely no leeway by virtue of provisions of sections 214(a) and 310(d) of the Communications Act to grant any concessions to any foreign company.

In recent times, a number of deals ranging from semiconductors to Chemicals, Aluminum etc. have been blocked on security grounds. In Dec 2016, Committee on Foreign Investment in the United States blocked a Chinese investment fund to buy stake in Chipmaker Aixtron.

The CFIUS intervention in the US is beyond judicial review. Hence if an applicant's request for acquisition or license is rejected, there is no recourse to law. Decisions of CFIUS and ultimately the President are driven by political and foreign policy considerations, in addition to national security ones. Ultimately, successful navigation of the process may be dependent on a significant lobbying campaign involving the highest levels of the U.S. government, that of the buyer's home country, and even the U.S. Congress.

3.6 **Change in CFIUS working under Trump administration**

President Donald Trump has made foreign trade and foreign competition main areas of focus early in his presidency. The new administration's appointments reinforce expectations of a multipronged approach to foreign investment and specifically to reviews by the Committee on Foreign Investment in the United States (CFIUS).

As widely reported, in April 2017, the Trump administration and the Japanese government were in discussions to ensure that the bankruptcy of Toshiba Corp's

(6502.T) U.S. unit Westinghouse Electric Co does not lead to U.S. technology secrets and infrastructure falling into Chinese hands.

Since late 2016, China has had to scrap $23.5 Billion worth of potential deals in various sectors due to the highly protectionist stance of the US under CFIUS.

4. **European Union**

4.1 The European Union regulations for broadcasting have been liberalized since the “Television Without Frontiers” directive (TVWF Directive). The TVFW directive seeks to create a European Common Market in Broadcasting. However while regulations on broadcasting are country specific, in regard to content there are common elements which place certain restrictions on foreign content (Non-EU content).

As per the “**Television Without Frontiers Directives”** all states of the EU must permit reception of content broadcast by other signatories to the EU (45 signatories). However the directive seeks to promote the local production of television programs specifying that a majority should be made in Europe.

4.2 The **“Important Events” directive** requires that stipulates that each Member State may take measures to ensure that broadcasters do not broadcast on an exclusive basis events which are regarded as being of major importance for society in such a way as to deprive a substantial proportion of the public of the possibility of following such events on free television. Member States may draw up a list of events that must be broadcast unencrypted (not scrambled) even if pay-TV stations have bought exclusive rights. These events may be national, or international, such as the Olympic Games, the European Football Championship or the World Cup. This impacts the rights holders and Pay TV operators who have exclusive rights to certain content.

4.3 The “**European Content Directive**” requires that a majority of the programs broadcast should be of European origin, rather than imports. Article 4 of the EU Directive and Article 10 of the Council's Convention both require that Member States shall “ensure where practicable and by appropriate means, that broadcasters reserve for European works a majority proportion of their transmission time” In France, 60% of television programs must be European, including at least 40% made in France. Switzerland, a member of the Council of Europe but not of the EU, requires satellite broadcasters serving Switzerland to broadcast at least an hour of Swiss programming a week, and to contribute to a fund used to subsidize Swiss film production. The average of European works broadcast by the major channels varied from about 53% to 82% in the EU.

The above directives create an Open EU market in broadcasting, but one, which is closed to outside content providers including the USA. Jack Valenti, chairman of the Motion Picture Association of America, told Congress:

> *"The Directive will stifle growth in existing TV markets, and impose severe limits on emerging markets, including private TV and satellite broadcasters. The real impact may not be felt so much in existing markets as in markets just beginning to develop." The House of Representatives unanimously passed a resolution denouncing the Directive and deploring the damage that could be inflicted on the U.S. broadcasting and film industries. Congressmen argued that the local content rules are not, as Europeans claim, a matter of cultural sovereignty, but instead an attempt to protect European industries from foreign competition, particularly from the United States. The impact on developing countries is even more severe.* In comparison, the Indian market provides no such restrictions on content and its source of production.

5. **Canada**

5.1 The Canadian Radio and Television Commission (CRTC) is responsible for the regulations of the broadcasting Sector in Canada. The regulations laid down by the CRTC for media ownership and broadcasting are very stringent. The Legislative Act of 1993 and the Broadcasting Act of 1991 form the policy framework of the Canadian broadcasting field. Canadian Broadcasting Corporation (CBC) is the country's National public service Radio and TV Broadcaster. Customers can get local cable, Starchoice and ExpressvU are the DTH Platforms.

5.2 In the area of **DTH, only Canadian companies are allowed to operate DTH platforms** using Canadian Satellites. The cross-border availability of DBS platforms form USA is a big problem and the dishes remain illegal. In fact the CRTC is heavily biased towards allowing content which is of Canadian origin.

5.3 **In regard to the ownership of broadcast systems the ownership should be held by Canadians and CRTC has been given this mandate to implement along with licensing predominantly Canadian content to be shown in Canada.**

The above factors provide a very difficult operating environment for Indian Broadcasters in Canada and any new channels need to start with a Canadian company and ownership.

6. China

6.1 Regulatory Framework and Principal Regulators

The media, cultural services and entertainment sectors are amongst the most closely guarded areas for foreign investments, as evidenced by the latest revisions to the *PRC Foreign Investment Industry Guidance Catalogue* (Guidance Catalogue), published in early 2015. Indeed, the online publication of digital content has been expressly added to the *Guidance Catalogue*'s "prohibited" category for the first time, whereas most of the pre-existing restrictions and prohibitions relating to these sectors have been kept intact.

The extensiveness of the investment barriers is best illustrated in the "negative list" entry requirement system for foreign investment that was subsequently published in April 2015. This pilot scheme applies only in the four free-trade zones of Tianjin, Shanghai, Fujian, and Guangdong, and it streamlines the "encouraged," "restricted," and "prohibited" categories under the *Guidance Catalogue* by a single list of businesses subject to foreign investment restrictions and qualification requirements. Out of the 119 restricted businesses listed, more than 20 are in the media, cultural services and entertainment sectors, including:

- Internet publication of digital content;
- Broadcasting, transmission, production, and operation of radio/TV programs;
- News publication, radio/motion pictures/TV programs, and financial information;
- Production, distribution, and screening of motion pictures; and
- Culture and entertainment.

Within this framework, there are myriad regulations and rules that deal with specific areas and often impose additional requirements. For instance, the suspension of the iBooks, iTunes Movies, and DisneyLife services in China is, according to media reports, a direct result of the *Internet Publication Services Administrative Regulations* that came into effect on March 10, 2016. They impose pervasive control measures ranging from operator licensing to content requirements, personnel qualifications, and server location. Most importantly, they toughen up the former legislation's prohibition of foreign direct investment by requiring any project cooperation between a licensed operator and foreign-invested entities in China or foreign entities/individuals to obtain approval from the central government body.

7. **Concluding Comments**

7.1 The News segment in India is very well established and is growing continuously using latest technology and infrastructure. The statistics reveal that even the existing 49% FDI limit is not fully exploited. There is absolutely no evidence to suggest that there is lack of availability of required funding which has affected the sustainability and growth of this segment. On the contrary, the growing number of News channels clearly suggests that the necessary capital and technology required for establishing a News channel is easily available in India.

7.2 News and Current Affairs segment is a sensitive sector and has political and strategic implications as well for the country. It may be mentioned that whenever the foreign investors bring money in the form of FDI, they demand the control by way of participation in the management and ask for inclusion of their representatives in the Board of Directors. This leads to the dilution of Indian control which may ultimately impact the editorial policies as well. The justification which may be advanced for the need to increase FDI in various other sectors does not apply to the news segment as apart from the issues relating to perceived influence and manipulations of views etc, there are security concerns as well.

Thus there is absolutely no rationale in the demand raised by certain foreign countries/entities to relax the FDI limit from the present level of 49% in TV News and Current Affairs segment as well as in FM Radio. Considering the sensitivity of the sector as detailed above and the security concerns such suggestions deserve outright rejection.

7.3 Further in respect of the General Entertainment Channels (content) and also in the carriage and distribution segment such as DTH, HITS, Cable etc. where 100% FDI has been allowed by India, the similar treatment and reciprocal FDI & regulatory benefits should be granted to Indian companies who wish to set up their Broadcasting & Distribution business abroad and invest in various foreign countries.

(B) CROSS MEDIA OWNERSHIP RESTRICTIONS IN DTH & HITS

8. The extant DTH policy guidelines and HITS policy guidelines contain certain cross-media ownership restrictions. The relevant provisions/clauses of these guidelines are read as under:

DTH Guidelines

(i) Eligibility Criteria

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

The same is also reflected in Clause 1.5 of the DTH license agreement which reads as under:

1.5. The Licensee company not to hold or own more than 20% equity share in a broadcasting and/or Cable Network Company. The Licensee shall submit the details of investment made by the Licensee Company every year once within one month of start of that financial year. The Government will also be able to call for details of investment made by the Licensee Company in the equity of other companies at such times as considered necessary.

HITS Guidelines

1.6 *Broadcasting Company(ies) and /or DTH licensee company(ies) will not be allowed to collectively hold or own more than 20% of the total paid up equity in the company at any time during the permission period. Simultaneously, the HITS permission holder should not old 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 HITSs permission holder company shall not hold more than 20% equity in any other Broadcasting Company(ies) and/or DTH licensee and vice-verse. This restriction, however will not apply to financial institutional investors. However, there would not be any restriction on equity holdings between a HITS permission holder company and a MSO/cable operator company.*

8.1 There have been demands from certain section of foreign media for removal/relaxation of above mentioned cross-media ownership restrictions. In this context it may be noted that the content distribution sector i.e. the DTH service and HITS service are part and parcel of media establishment. Accordingly treating them as indistinguishable & integral part of media, well deliberated & carefully thought out cross-media ownership restrictions have been stipulated in this sector by the Govt., keeping in view the overall policy and interest of the country. The existing restrictions of cross-media ownership in DTH & HITS segment which both are pan India distribution platforms, through stipulation of licensing conditions has been a well-considered & carefully thought out decision on the part of the Govt. which is consistent with the policy of Government of India to prevent monopolies & distortion of market and to ensure healthy competition in this sector.

8.2 In this context it is pertinent to point out that if the cross-media holding restrictions are removed as sought to be suggested by certain quarters, it is fraught with danger inasmuch as a vertically integrated DTH operator would have potential to prevent entry or drive out channels of a competing broadcaster and thus has the potential to distort the market to further its own interest. It may also result in blocking of selective content in its own interest thereby compromising and limiting the competition and severely affecting the plurality. The vertically integrated entities not only have potential to create entry barriers for new players and foreclose competitions by denying the content to competing service provider(s) on frivolous grounds but also it affects the consumer choices.

8.3 In this context it is also relevant to point out that in other jurisdictions also in order to prevent the monopoly and to check the potential abuse thereof, the regulators have been examining the impact of creation of such kind of vertical monopolies and taking suitable steps to prevent potential abuse of the market and promote diversity and plurality of views.

The attention in this regard is invited to the following news item appearing in Economic Times dated 30.06.2017 which reads as under:

<u>FOX Bid for Sky Risks Giving Murdoch Too Much Power: Britain</u>

LONDON (Reuters) *- Britain intends to subject Rupert Murdoch's takeover of European pay-TV group Sky to a lengthy in-depth investigation after finding the $14.8 billion deal risks giving the media mogul too much power over the news agenda.Media Secretary Karen Bradley said she was persuaded that Twenty-First Century Fox's bid could give the Murdoch family too much influence over the media, after regulator Ofcom assessed the impact of the deal.*

"The proposed entity would have the third largest total reach of any news provider - lower only than the BBC and ITN - and would, uniquely, span news coverage on television, radio, in newspapers and online," Bradley said.

Murdoch, 86, and his family have long coveted full control of Sky, despite the damaging failure of a previous attempt in 2011 when their British newspaper business became embroiled in a phone-hacking scandal which forced them to abandon that bid.

A public inquiry into the affair revealed deep ties between Murdoch and the political establishment, making the renewed bid potentially toxic for Prime Minister Theresa May's government which is fighting for survival after losing its majority.

Bradley had asked regulators to examine whether Fox would have too much control of the media, and whether it would be committed to upholding broadcasting standards if it was allowed to buy the satellite company. Fox said it was disappointed by the government rejection of its plans to maintain editorial independence of Sky News, and said a full investigation could push the deal's completion date back to next June. ***Reuters***

9. Concluding Comments

The existing restrictions as incorporated in DTH and HITS licenses have been introduced to take care of any apprehension of anti-competitive practices in the Sector arising out of any ownership structure. These restrictions were extensively debated/discussed at the time of formulation of DTH Policy guidelines and were stipulated as licensing condition after due deliberations in order to check any potential abuse/monopoly etc. and have stood the test of time. Therefore there is absolutely no need to remove/relax the existing cross-media ownership restrictions as stipulated in DTH and HITS licenses.

10.**Other National Security implications**

10.1 It may be mentioned that as pointed out hereinabove, the these moves are fraught with danger as besides the fact that media is a sensitive sector and DTH, Cable TV, IPTV, OTT IPTV streaming, HITS etc. being the media content carriers are an integral part of media establishment, there are grave security concerns which arise out of these moves. It is because of these security considerations, the restrictions on FDI in news and current affairs sector and cross-media holding regulations/restrictions have been stipulated in content distribution platforms so as to prevent the foreigners from gaining management control of these entities.

10.2 The Set-Top-Boxes (STBs) which are used in DTH and in digital transmissions are capable of receiving “Select Messages” transmitted through service providers without getting intercepted by the national security agency. In this context, it is pertinent to point out that the select messages are inserted in the data packet of 500 – 700 mega bytes by the uplink station of DTH operator and can be received by an individual in the form of TV signals. It has been checked and confirmed from DIB office/experts that at present no interception capability has been developed in India to intercept and detect the “select messages”. In such a scenario, the potential misuse of this facility by terrorist(s) and any other anti-national outfit (s) cannot be ruled out.

10.3 It may be pointed out that such interception capability is not available even in developed countries like USA & UK and this precisely is the specific reason because of which these developed nations do not allow the aliens / foreign entities to participate in broadcasting functions and other activities relating thereto such as distribution/retransmission of broadcasting content through digital STBs ether by way of DTH or through digital cable.

10.4 There is a capability with DTH & digital cable TV operators that their subscribers can send select messages to the millions subscribers of the same network. The system works as:

(i) A subscriber may send SMS mentioning the ID of the other subscribers.

(ii) This SMS comes to the DTH operator and is taken into the SMS server without any human intervention and is immediately sent on to the other STB riding on the encryption system.

(iii) The message thus is delivered to a individual or multiple subscribers without being seen or intercepted.

(iv) Security agencies don’t have the technology to intercept text messages that a DTH provider can aim at individual subscribers. Once Pakistan has DTH platforms, terrorists can use this loophole and receive instructions and alerts over SMS

(v) There is also a likelihood of violation of programme codes by DTH services run by a foreign entity whereby the subscribers of the said service would be able to access pornographic/adult content which is banned in India without any detection & monitoring by the concerned authorities. This has recently happened in the OTT IPTV platform "HotStar" being run by such an entity and authorities have expressed their helplessness in controlling the same.

10.5 **It is for these reasons strict restrictions and other conditions have been prescribed in the DTH license to take care of National security concern.**

The attention is invited to the following licensing conditions in this regard:-

Clause 1.6: The applicant company shall always have Indian management control with majority representatives on the Board, as well as the Chief Executive of the company being a resident Indian citizen

Article 9: National Security and Other conditions

9.2The licensee shall not use any equipment, which are identified as unlawful and /or render network security vulnerable.

9.3All foreign personnel likely to be deployed by way of appointment, contract, consultancy, etc. by the Licensee for installation, maintenance and operation of the Licensee's services shall be required to obtain security clearance from the Government of India prior to their deployment.

10.6 It is pertinent to point out that allowing foreign entities to control and manage DTH operations would mean compromise with the mandatory licensing condition of Indian management control and would expose the platform to a grave security risk. This can cause a huge national security threat as there is a possibility of proliferation of these boxes from India to abroad (within the foot print of the satellite) or to anti-national elements who can communicate very easily from one point to another point without having any fear of being intercepted.

10.7 Thus security consideration and the monitoring of the platform are important issues which are required to be considered while permitting increased FDI in content delivery platforms specially in DTH which if not handled carefully, may result in misuse thereof, thus compromising the vital aspect of security & sensitivity.

11. Concluding comments:

Accordingly, it is earnestly urged that the Government should straightaway reject any proposal mooted by certain foreign entities/countries to effect increase in FDI in news & current affairs sector as well as any proposal to relax/remove the extant cross-holding restrictions/regulations, being totally inconsistent with the established media policy of the country, as any such move has potential of undermining the independence, sovereignty and security of the country.

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