

6

**STANDING COMMITTEE ON
INFORMATION TECHNOLOGY
(2004-2005)**

FOURTEENTH LOK SABHA

**MINISTRY OF INFORMATION
AND BROADCASTING**

*[Action taken by the Government on the Recommendations/Observations of the
Committee contained in their fortieth Report (Thirteenth Lok Sabha) on
'Direct To Home (DTH) Telecast']*

SIXTH REPORT



**LOK SABHA SECRETARIAT
NEW DELHI**

December, 2004/Agrahayana, 1926 (Saka)

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Presented to Lok Sabha on 14.12.2004

Laid in Rajya Sabha on 14.12.2004



LOK SABHA SECRETARIAT
NEW DELHI

December, 2004/Agrahayana, 1926 (Saka)

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COMPOSITION OF THE STANDING COMMITTEE ON
INFORMATION TECHNOLOGY (2004-2005)

Shri M.M. Pallam Raju — *Chairman*

MEMBERS

Lok Sabha

2. Shri Nikhil Chaudhary
3. Shri Mani Cherenam
4. Shri Sanjay Dhotre
5. Kunwar Jitin Prasad
6. Shri Kailash Joshi
7. Shri P. Karunakaran
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12. Smt. P. Jayaprada Nahata
13. Col. G. Nizamuddin
14. Shri Sohan Potai
15. Shri Ashok Kumar Rawat
16. Shri Chander Shekhar Sahu
17. Shri Vishnu Sai
18. Shri Tathagat Satpathy
19. Shri K.V. Thangka Balu
20. Shri P.C. Thomas
21. Shri Ram Kripal Yadav

Rajya Sabha

22. Shri Vijay J. Darda
23. Shri Ashwani Kumar
24. Dr. Akhilesh Das
25. Shri Balbir K. Punj

*Nominated w.e.f. 20.8.2004.

(iv)

26. Shri Dara Singh
27. Smt. Sarla Maheshwari
28. Shri N.R. Govindraj
29. Shri K. Rama Mohana Rao
30. Shri Motiur Rahman
31. Shri Sanjay Nirupam

SECRETARIAT

- | | | |
|----------------------------|---|-----------------------------|
| 1. Shri P.D.T. Achary | — | <i>Additional Secretary</i> |
| 2. Shri Raj Shekhar Sharma | — | <i>Deputy Secretary</i> |
| 3. Shri K.L. Arora | — | <i>Under Secretary</i> |
| 4. Shri D.R. Shekhar | — | <i>Assistant Director</i> |
| 5. Shri M.C. Suresh | — | <i>Executive Officer</i> |

INTRODUCTION

I, the Chairman Standing Committee on Information Technology (2004-05) having been authorised by the Committee to submit the Report on their behalf, present this Sixth Report on Action Taken by the Government on the Recommendations/Observations of the Committee contained in their Fortieth Report (Thirteenth Lok Sabha) on "Direct to Home (DTH) Telecast" relating to the Ministry of Information and Broadcasting.

2. The Fortieth Report was presented to Lok Sabha on 28 November 2002 and was laid in Rajya Sabha the same day. The Department furnished Action Taken Notes on the recommendations contained in the Report on 21 February 2003.

3. The Report was considered and adopted by the Committee at their sitting held on 25.11.2004.

4. For facility of reference and convenience, the observations and recommendations of the Committee have been printed in bold letters in the body of the Report.

5. An analysis of Action Taken by Government on the recommendations/observations contained in the Fortieth Report (Thirteenth Lok Sabha) of the Committee is given at Appendix-II.

NEW DELHI;
7 December, 2004

16 Agrahayana, 1926 (Saka)

M.M. PALLAM RAJU,
*Chairman,
Standing Committee on
Information Technology.*

CHAPTER I

REPORT

This Report of the Standing Committee on Information Technology deals with the action taken by the Government on the Recommendations/Observations of the Committee contained in their Fortieth Report (Thirteenth Lok Sabha) on "Direct to Home (DTH) Telecast" relating to the Ministry of Information & Broadcasting.

2. The Fortieth Report was presented to Lok Sabha on 28 November 2002 and was laid on the Table of Rajya Sabha on the same day. It contained nine Recommendations/Observations.

3. Action Taken Notes in respect of all the Recommendations/Observations contained in the Report have been received and categorised as under:

- (i) Recommendations/Observations which have been accepted by the Government:

Paragraph Nos. 50, 53

Total: 2
Chapter-II

- (ii) Recommendations/Observations which the Committee do not desire to pursue in view of the reply of the Government:

Paragraph Nos. 49, 52

Total: 2
Chapter-III

- (iii) Recommendations/Observations in respect of which replies of the Government have not been accepted by the Committee and which require reiteration:

Paragraph Nos. 45, 46, 47, 48, 51

Total: 5
Chapter-IV

- (iv) Recommendations/Observations in respect of which replies are interim in nature:

Paragraph Nos. Nil.

Total: Nil
Chapter-V

4. The Committee trust that utmost importance would be given to the implementation of the recommendations accepted by the Government. In cases, where it is not possible for the Department to implement the recommendations in their letter and spirit for any reason the matter should be reported to the Committee with reasons for non-implementation. The Committee further desire that Action Taken Notes on the Recommendations/Observations contained in Chapter-I of this Report should be furnished at an early date.

5. The Committee will now deal with action taken by the Government on some of its recommendations.

A. Need for Comprehensive Legislation

(Recommendation Para No. 45)

6. In its Fortieth Report, the Committee were deeply concerned to note that the Government allowed telecast of Direct to Home services all of a sudden without any indepth study though DTH was considered to be a very powerful media. Further, it was allowed for private telecasters much before formulating a regulatory framework even though on an earlier occasion Government had not allowed it, for want of comprehensive regulatory framework. Propriety demanded providing opportunity to Parliament to discuss such an important issue. Even the decision to allow DTH was announced outside the Parliament. The Committee deprecated the unseemly and unnecessary hurry shown in the matter without getting any study done about the viewership, cost, subscription rates etc., particularly when there was only one contender for the license. Even though the matter was under consideration for three years, no spadework worth the name was done. The Committee further noted that the detailed guidelines as formulated by the Government for DTH telecast, incorporated stringent provisions against violation of an terms and conditions of the licence, which included monetary penalties and even cancellation of license. The guidelines also provided for taking over of the entire network of DTH service in case of emergency and national security. The Committee was at a loss to understand how Government could take over a service when no law or procedure had been laid down for the same. The guidelines were thus ambiguous and required to be made enforceable through adequate legal framework, which has been absent. The Committee felt that when operations of DTH telecast start, there would be unrestricted availability of TV channels in the country. However, it

was difficult to visualize at that stage what long term “benefits” or impact it would accrue to or have on the people.

7. The Ministry, in their Action Taken Notes, have submitted the following reply:

“The Government took the decision to start DTH service in the country in November 2000 after the group of Ministers (GoM) had deliberated and considered all the issues connected thereto. Detailed guidelines for starting DTH service were issued in 2001 after inter-Ministerial consultations. Two applications have been received, seeking permission to start DTH service, and are under active consideration.

In 1996, when some foreign satellite broadcasters started planning for introduction of DTH service in KU band in India, it was felt that reception and distribution of the signals in KU band should be restricted. The Committee of Secretaries had noted the adverse impact of foreign TV programmes. The Ministry of I & B had initiated the process of formulating a comprehensive law on broadcasting with a view to effectively regulate foreign satellite channels. However, this would have taken time and there was a possibility of foreign channels starting DTH services. Apart from resulting in a loss of revenue, these channels would not have been subject to any regulatory mechanism, particularly relating to the content of the programmes. In view of the experience with the haphazard and unregulated growth of cable networks all over the country, it was felt necessary to take measures to prevent a similar situation developing in DTH services. Though the proposed Broadcasting Law was also covering the DTH services, there was a felt need in the interim period, before the regulation came into force, of barring entry in the KU band. Hence, operation in KU band was banned in 1997.

The matter was discussed by the GoM in March, 2000 when it was observed that with changes in the information technology and in the broadcasting and communication scenario, the reasons for which DTH had not been allowed in 1997, were no longer relevant. Moreover, DTH as a superior technology offered an alternative for reception and distribution of television of programmes, both to the programme providers as well as to the consumers. The GoM considered the issues in its meetings between

March and October, 2000 and concluded that DTH should be permitted in India, with suitable safeguards. It also weighed the advantages of DTH technology in convergence and in providing various IT enabled services. The GoM, therefore, unanimously recommended that DTH television services should be permitted in India, so as to take advantage of the latest technology, while ensuring that the concerns relating to national security, morality and monopoly were duly taken care of by providing conditions.

It has been worldwide documented experience that DTH system generally targets niche audiences and encourages spread of information technology. It is expected that in the initial stages, persons with higher disposable income will opt for DTH and only when the prices fall with demand, will DTH have widespread acceptance. It is also expected that DTH operators will subsidise the cost of the hardware to increase viewership and accessibility.

As regards enforceability of the provisions of the guidelines, especially relating to penalties and of taking over of the service, these provisions are contained under Articles 6, 8, 9, 15 etc. of the Schedule to Form B *i.e.* the License Agreement to be signed between the Licensor (Government of India) and Licensee.

DTH has the advantage of offering a wide choice to the viewers, along with quality and convenience. Specific advantages of DTH include:

- Need for a small receive dish antenna, which is convenient to install and maintain.
- Easier to regulate as compared to cable services.
- More choice to consumers.
- Better quality of reception, as it is based on digital technology.
- Ideally suited for sparsely populated areas (rural areas and small towns) since it is not dependent on terrestrial infrastructure."

8. The Committee note that in 1997 the operation of KU Band was banned because of the adverse impact of foreign TV programmes and the absence of a comprehensive law on broadcasting. In 2000 a

GOM felt that these reasons were no longer relevant and since DTH is considered to be a superior technology and useful in convergence and in providing IT enabled services and in order to take advantages of the changes in the information technology and in the broadcasting and communication scenario, the Government gave their permission to start DTH services in India subject to observance of some guidelines.

9. The Committee fail to understand how in the year 2000, the social impact of foreign TV programmes on Indian citizens was no longer relevant and the GoM decided in favour of superior technology. Further, what were the reasons before the GoM that made to address sensitive issues pertaining to morality, security and monopoly to be regulated through guidelines rather than through a comprehensive legislation.

10. While acknowledging the need to take advantages of the changes in the information technology and communication scenario, the Committee strongly feel that the social cause of the effect of foreign TV channels on Indian citizen is of paramount importance and cannot be sacrificed. The Committee are also of the considered view that the guidelines cannot be a substitute for a comprehensive legal framework.

11. The Committee, therefore, reiterate their earlier recommendation and urge the Government to enact the relevant law to regulate the entry/growth of DTH services encompassing all the aspects in view of the changed scenario without further delay. The Committee would also like to be kept informed about the steps taken in this regard.

B. Areas of concern

(Recommendation Para No. 46)

12. The Committee were not able to accept the Government's contention that the matter had not been brought before Parliament/ Parliamentary Committee as the Parliament was not in session when decision was taken to allow DTH. There were sessions of Parliament between the periods of submitting report by GoM and its acceptancy by the Cabinet. The Committee was of the opinion that if the Government was really interested in having the opinion of Parliament

on the vital issue, it could have sought the views at least of this Committee which consisted of representatives of different section of Parliament. The Committee felt that the Government could have even introduced a bill on DTH in either House, as the issue was very sensitive and agitating. The Committee felt that validity period of ten years for License was an unusually long period. The Committee also did not appreciate regulation of such a highly sensitive and powerful media merely through administrative orders and not by legislation. Such ambiguities and lacunae could be overcome easily if Government had decided to place the matter before Parliament, specially as there was no emergency and significantly, no licence had been issued till date and there had been only one applicant so far. The Committee urged the government to take Parliament into confidence over such an important matter and consider bringing about a comprehensive legislation covering all aspects of DTH.

13. The Ministry, in its Action Taken Notes, has stated as under:

“All issues connected with opening up of KU band and for introduction of DTH broadcasting were examined by a Group of Ministers (GoM) constituted on 31.01.2000.

The GoM considered the issues in its entirety at meetings held between March and October, 2000 and concluded that DTH should be permitted in India with suitable safeguards to take care of concerns relating to security, morality and vertical monopoly in distribution and broadcasting of television services. GoM also considered the advantages of DTH technology, not only in distribution of television channels but also for its role in convergence and providing various IT enabled services. DTH services were allowed, subject to terms and conditions incorporated in the Guidelines issued on 15.03.2001.

DTH is a mode of broadcasting in which the broadcaster collects all the channels to be carried on the DTH platform and uplinks them for reception directly by the authorized subscriber. The COS, in December, 1996, had also recommended that there was an unequivocal need to restrict the unregulated entry/growth of DTH services. In case there were no restrictions on the reception of signals in the KU Band, foreign companies could have started DTH services and subsequently claim exemption/indemnity from the related provisions of the Broadcasting Law on the grounds

that no restrictions could be placed retrospectively. The COS advised that the proposed Broadcasting Law be approved at the earliest. The regulatory framework for the entire broadcasting sector was sought to be established under the Broadcasting Bill, 1997, which was introduced in Parliament in May 1997. The Bill, *inter alia*, provided for licensing and regulating of DTH service and was referred to the Select Committee of Parliament for examination. The Select Committee held several meetings, but before it could finalize its recommendations the Parliament was dissolved. The Broadcasting Bill, 1997 lapsed. The provisions of 1997 Bill were re-examined in light of the technological developments and the Broadcasting Regulatory Bill, 2000 was drafted and circulated to concerned Ministries.

The Group on Telecom and IT Convergence, at its meeting on 14th February, 2000, decided that Ministry of Law will consider the possibility of drafting a comprehensive statute covering both carriage and content of transmitted information and thereby integrate the relevant laws. The Sub-Group of the main Group proposed a draft Communication Convergence Bill, which was considered by the Group and finally approved by the Cabinet. The Communication Convergence Bill 2001 was introduced in Lok Sabha on 31st August, 2001 and was referred to the Standing Committee on IT for examination and recommendation. The Committee has submitted its report to Parliament on 20.11.2002".

14. The Committee would like to point out that the Parliament was in session during February-May, 2000, July-August, 2000, November to December, 2000, February-April, 2001 etc. There could have been no reason before the Ministry not to bring the vital issue before Parliament or before the Committee.

15. It appears to the Committee that the Ministry has not only failed to appreciate the thrust of this recommendation but has also not taken its recommendation seriously. The concern of the Committee is that the Government gave its permission on 15.03.2001 to DTH services in India and thereafter introduced the Communication Convergence Bill on 31 August, 2001. The Bill is still under consideration of the august House. The Committee feel that the Government should have framed a legislative framework on DTH services before granting permission to start it. Had the Government introduced a Bill on DTH in either of the House, it

would have not only paved the way for a wider and meaningful discussion on a wide spectrum of complex issues involved in regulation of DTH services, but would have also helped in removing the ambiguities and lacunae present in the guidelines framed by the Government.

16. The Committee deplore the inexplicable haste shown by the Government in introducing DTH services without a comprehensive law and also the manner in which the DTH services are sought to be regulated through administrative orders rather than through an effective legislation. The Committee, therefore, would like to stress the paramount importance of taking the Parliament into confidence and for enacting a law on DTH services so as to allay the apprehensions concerning the sensitive issues of morality, security and monopoly.

C. Communications Convergence Bill

(Recommendation Para No. 47)

17. The Committee found it significant to note that certain provisions in the guidelines will take effect only on the enactment of the proposed Communication Convergence Bill. Therefore, the Committee felt that before allowing DTH telecast, the Government should have not only framed the requisite law as admitted by the Secretary, I&B during evidence but also waited till the enactment of the Communication Convergence Bill (on which the Committee has submitted its Report on 20 November, 2002 in Lok Sabha and on 21 November, 2002 in Rajya Sabha).

18. The Ministry, in its Action Taken Notes, has furnished the following reply:

“It is accepted that there is a need for a comprehensive broadcast law in the country, to address all issues relating to broadcasting. The DTH guidelines contain provisions that future regulatory laws on broadcasting would be applicable to the licensee, as and when they come into force. DTH is only a mode of broadcasting, in which the broadcaster collects all the channels at one platform and then uplinks them for reception directly by the authorized subscriber. The GoM considered the advantages of DTH not only in distribution of television channels but also for its role in convergence and providing various IT enabled services”.

19. The Ministry's reply is not convincing to the Committee. Though the Ministry had accepted the need for a comprehensive broadcast law in the country, yet they have not clearly outlined the steps taken by them to introduce such a law to regulate DTH services in the country. Further, the Ministry has not stated in their reply about the initiatives taken by them to get the Communication Convergence Bill passed, even though this Committee had submitted its report on the said Bill in 2002 itself. The Committee, therefore, would like to impress upon the Government the urgency of framing a requisite law to regulate the DTH services without further loss of time to address the issues relating to broadcasting. The Committee desire to be informed about the steps taken in this regard.

D. Classification of Penalties

(Recommendation Para No. 48)

20. The Committee noted with concern that the terms and conditions provided under various Articles which were of minor nature and violation thereof empowered the Government to take severe action, viz., cancellation, revocation, suspension of a licence or taking over service etc. The Committee apprehended that in the absence of detailed regulations the Licensor can impose arbitrarily any penalty even for minor omissions. Therefore, the Committee recommended that irregularities should be classified under heads major and minor with appropriate legal consequences.

21. The Ministry in response has submitted the following reply:

"The terms and conditions contained in Schedule to Form B form part of the licence agreement and the parties to the Agreement would be bound by these. Breach of the terms and conditions is thus a breach of contract, which has to be settled in terms of the provisions of the Agreement. It would be difficult to classify the violations as major or minor but the principles of natural justice and fairness would apply, while deciding the penalty".

22. The Committee are unable to accept the reasons forwarded by the Government that it is difficult to classify the violations as major or minor. In the absence of clear-cut classification of the violations as major or minor, there is always a possibility that the minor violation may be construed as a major one an *vice versa* and

arbitrary action could be taken against the licensee. This might entail a protracted legal battle between two parties unnecessarily. Hence, for the dispensation of justice in fairness, the Committee reiterate that the Government must classify the irregularities as minor and major and also classify the nature of violation, *viz.*, security, economic/financial or content violation and frame appropriate legal consequences without further delay. The Committee would like to be apprised about the steps taken by the Government in this regard.

E. Areas of Monitoring

(Recommendation Para no. 51)

23. The Committee noted that the Government was empowered under the Cable Television Networks Act to take prompt corrective measures in the interest to security, sovereignty and integrity of India, public order, decency, morality through designated District Magistrate/SDM/Commissioner of Police as the authorized officers for taking action against the erring cable operators. The Committee felt that the DTH telecast would be more powerful and sensitive compared to Cable TV and this might need stronger measures to be taken, but the Government instead of extending the areas of monitoring had restricted it only to the issue of security, morality and vertical monopoly. Therefore, the Government owned an explanation in that regard.

24. The Ministry, in its Action Taken Notes, has responded as follows:

“The areas of monitoring include issues of security, morality and vertical monopoly. The terms and conditions of licence broadly encompass the following areas of activities of the licensee *viz.*,

- (i) adherence to the programme and advertisement codes, as laid down by the Ministry of Information and Broadcasting from time to time; (Article 5)
- (ii) non-carriage of any channels prohibited by the Ministry of I&B and ensuring that its facilities are not used for transmission of any objectionable or obscene content, messages or communication inconsistent with the laws of India. Save with the approval of the licensor, the licensee is prohibited from assigning or transferring, either directly or indirectly, its right in any manner whatsoever under the

Agreement to any other party or enter into any agreement for sub-licence and/or partnership relating to any subject matter of the licence to any third party either in whole or in part; (Article 6)

- (iii) compliance with the specifications of the open architecture (non-proprietary) set top box as laid down by the Government from time to time and provision of access to various content providers/channels on a non-discriminatory basis. All content provided by the DTH platform to the subscribers, irrespective of its source, shall pass through the encryption and conditional access system, located within the Earth station, situated on the Indian soil; (Article 7)
- (iv) Adherence to any guidelines/regulations which may be laid down by the Licensor in the interests of consumer such as pricing of bouquet(s) or tier(s) of channels, etc. and carriage of channels of Prasar Bharati on the most favourable financial terms offered to any other channel; (Article 7)
- (v) Provision of access to the licensing authority or its duly authorized representative all its facilities including equipment, record systems etc. and the requirement of the Licensee to furnish periodical information concerning channels or contents being transmitted or provided under the services, technical parameters, etc. in the format as may be prescribed for the purpose; (Article 8); and
- (vi) Prohibition of DTH facility to be used for other modes of communication, including voice, fax, data, communication, internet, etc. unless specific licence for these value-added services has been obtained from the competent authority; (Article 10)

Violation of any of these, as well as other terms and conditions, would amount to breach of the terms of licence and notwithstanding any other recourse under the terms and conditions of the Licence or any other law, would invite action in terms of the different provisions such as Article 4.2, Article 15 etc., which may include revocation of licence, or imposition of a penalty upto Rs. 50 crore by the Licensor on the Licensee”.

25. The Committee perceive that under Cable TV Network Act, the authorized officers have been empowered to take corrective measures against the erring Cable TV Operators for acts which are prejudicial to the sovereignty and integrity of India, public order, decency, morality etc. But such provisions are conspicuous by their absence in the guidelines framed by the Government to regulate DTH services. On the contrary, the Government has incorporated a penalty clause in the guidelines to be imposed on the licensee for violation of terms and conditions of the licence. The Committee feel that stringent penalty clause alone will not be deterrent enough to curb the undesirable and nefarious activities, if any, carried out by the licensee. As such, a suitable regulatory mechanism should be put in place to protect the interests of sovereignty and integrity of India, public order, decency etc. The Committee may be kept informed of the initiatives taken in this regard.

CHAPTER II

RECOMMENDATIONS/OBSERVATIONS WHICH HAVE BEEN ACCEPTED BY THE GOVERNMENT

Recommendation (Para No. 50)

The Committee notes that under the draft licence agreement which has been vetted by the Ministry of Home Affairs, it has been provided that the licensee is required to maintain recording of the programmes and advertisements for a period of 90 days so that it could be examined subsequently. The Committee observes that thus only after the happening of an incident or a telecast it would be possible to take any action against the licensee. It is also a matter of serious concern that the Ministry which would take necessary action against the licensee for violations of the licence agreement does not have a regular monitoring facility as such and has been maintaining an old facility for monitoring foreign broadcasting. The Committee does not share the optimism of Ministry of Home Affairs and Ministry of Information and Broadcasting that with the current monitoring mechanism they would be able to effectively monitor DTH telecast in the country. The Committee, therefore, urges the Ministry to modernise and update their monitoring mechanism commensurate with the technological sophistication of DTH.

Action Taken

One of the advantages of DTH would be that since there would be a limited number of service providers, as is the experience worldwide, the service would lend itself to better monitoring. Government has initiated efforts for modernisation & upgradation of the Central Monitoring Service at Aya Nagar.

[Ref: Ministry of I&B's O.M. No. 16/6/2000-BP&L (Vol II)
Dated 21.02.2003]

Recommendation (Para No. 53)

The Committee appreciates the efforts of Prasar Bharati in exploring the possibilities to employ KU-Band DTH technology to provide broadcasting in remote and hitherto uncovered areas. During a recent

tour to the North-East, the Committee observed that the current means of broadcasting were neither providing quality reception nor were available in shadow areas. The Committee notes that as per Prasar Bharati's own estimate, an investment of Rs. 700 crore was required to set up a viable DTH platform, therefore, the Committee feels that a provision of Rs. 10 crore in the 10th Plan for carrying out experimental studies on DTH will be illusory. The Committee recommends that the Government should provide all out support to Prasar Bharati in its efforts to provide DTH Services in remote areas of the country.

Action Taken

With the objective of making new technologies available to the people in remote areas and improving the quality of transmission, Doordarshan has made a pilot proposal for setting up 1000 Cable Head-Ends, where each Head-end proposes to cover a population of 100 households, for distributing 20 channels in free-to-air mode. The proposal envisages setting up of a KU-Band up-linking facility & hiring of transponders for transmission of all channels of Doordarshan in free-to-air mode as well as setting up the distribution infrastructure for receiving the signals of Doordarshan. The proposed capital cost of this pilot project is Rs. 93.00 crores. The scheme would be extended to a larger target group, based on the success/efficacy of the pilot scheme. During the 10th Five Year Plan, a provision of Rs. 500 crores has been made by DD for KU Band transmission project. Further, for expanding Doordarshan coverage in the North-Eastern Region, a Special Package for the NE region has been approved with an estimated cost of Rs. 334.28 crores for, *inter-alia*, upgradation of transmitters, augmentation of outdoor broadcasting and post production facilities in N-E region, DSNG system for NE and setting up of cable headends in NE region. After implementation of this package, Doordarshan's coverage in the NE region is expected to go up to 94.8% by population and the quality of signals in the coverage zone will improve significantly.

[Ref: Ministry of I&B's O.M. No. 16/6/2000-BP&L (Vol II)
Dated 21.02.2003]

CHAPTER III

RECOMMENDATIONS/OBSERVATIONS WHICH THE COMMITTEE DOES NOT DESIRE TO PURSUE IN VIEW OF THE REPLIES OF THE GOVERNMENT

Recommendation (Para No. 49)

The Committee share the apprehensions of the Government on security and morality related issues emanating from DTH telecast. The country still remains under constant threat from cross border terrorism, hostile foreign intelligence agencies and there is a possibility to remotely control things so as to cause a chain reaction leading to undesirable activities against national interest.

Action Taken

Appreciating the concerns on security and morality, provisions have been kept in the Guidelines for checking activities that may be against national interest or security and integrity of the country. The security related concerns arising out of the decision to introduce DTH service in India are sought to be safeguarded through provisions detailed hereunder:

Eligibility Criteria [Clause (i) of the guidelines read with Article 1 of the terms and conditions]

- (i) The Applicant-Company should be an Indian Company registered under Indian Companies Act, 1956.
- (ii) The total foreign equity holding including FDI/NRI/OCB/FII in the applicant company should not exceed 49%.
- (iii) Within the foreign equity, the FDI component should not exceed 20%. The quantum represented by that proportion of the paid up equity share capital to the total issued equity capital of the Indian promoter Company, held or controlled by the foreign investors through FDI/NRI/OCB investments, shall form part of the above said FDI limit of 20%.
- (iv) The Applicant Company must have Indian Management Control with majority representatives on the Board as well as the Chief Executive of the company being resident Indian.

Security Safeguards include

- (v) the application will be subjected to security clearance in consultation with the Ministry of Home Affairs and for clearance of satellite use with the Department of Space (Satellite Communications Programmes Office).
- (vi) The Licensee shall not carry any channels prohibited by the Ministry of Information & Broadcasting.
- (vii) The use of the facility of service for anti-national activities would be construed as an offence punishable under the India Penal Code as well as other relevant laws that may be applicable and will entail immediate termination of the Licence.
- (viii) The Licensor reserves the right to prohibit the transmission or reception of programmes in the interest of national security or in the event of emergency/war of similar type of situation. Notwithstanding any agreement between the Licensee and the content providers, the Licensee shall stop forthwith, transmission of TV channels or any content, as and when directed to do so by the Licensor or any other designated lawful authority.
- (ix) Except with prior approval of the Licensor, the Licensee shall not directly or indirectly assign or transfer its right in any manner whatsoever under the agreement to any other party or enter into any agreement for sub-licence and/or partnership relating to any subject matter of the Licence to any third party either in whole or in part. Any violation of the terms shall be construed as breach of the Licence Agreement and the Licence shall be terminated immediately.
- (x) The Licensee will, if required by the Licensor or its authorized representative, provide necessary facilities for continuous monitoring for any particular aspect of the Licensee's activities and operations.
- (xi) The Licensor reserves the right to take over the entire services and networks of the Licensee or revoke/cancel/suspend the License in the interest of national security or in the event of an emergency/war or low intensity conflict or similar type of situations. Further, the Licensor reserves

the right to direct the Licensee to close down the service if implications of security so requires. Any specific order or direction from the Government issued in this regard shall be strictly complied with by the Licensee.

- (xii) The Licensee shall not use any equipment which are identified as unlawful and/or render network security vulnerable.
- (xiii) All 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.
- (xiv) The Licensee shall ensure adherence to the programme and advertisement codes as laid down by the Ministry of I&B from time to time.

[Ref: Ministry of I&B's O.M. No. 16/6/2000-BP&L (Vol II)
Dated 21.02.2003]

Recommendation (Para No. 52)

The Committee notes that while recommending DTH in the country, the Group of Ministers considered the benefits, which DTH could provide to the population all over the country. However, the Committee notes that DTH would remain beyond the reach of the common people on account of expensive subscription rates, which have been left to the market forces and to the whims of the service providers. The Committee feels that Art. 7.7 of the guidelines empowered the licensor to lay down guidelines/regulation in the interest of the consumer such as pricing of bouquet(s) or tier(s) of channels etc. but the Government seems to have no materials to decide as there is no reliable estimate about the revenues and the cost involved to the DTH operator as well as the number of prospective subscribers. So the Government has completely left this service to the discretion of a service provider and market forces. The Committee observes that the private service provider being driven by profit motive only will not be under any obligation/compulsion to expand their infrastructure expeditiously to less profitable areas. They will operate in those areas only where they can maximise their profits. The Committee, therefore, feels DTH would be available only to niche segment of viewers having higher disposable income

and this segment as per the submission of the Ministry would constitute only one tenth of the cable TV subscribers. The Committee is of the view that the aim of any new media technology should be an egalitarian diffusion of information and entertainment. The Committee, therefore, calls upon the Government to ensure that the benefits of DTH telecast are available all over the country especially in rural and hilly areas and also that the service remains within the reach of the common man.

Action Taken

Worldwide experience has been that DTH system generally targets niche audience, at least in its initial stages of growth. The system usually operates in Ku band transmission and has the potential for being used for the spread of Information Technology. It is expected that in the initial stages persons having higher levels of disposable income will go for DTH in preference to cable television. With falling prices, DTH may gain wider acceptance. In line with the experience of other countries, to exploit the full potential of DTH services, it is expected that the DTH operators will subsidise the cost of the hardware to the consumers, in order to increase viewership and accessibility.

In order to use the DTH mode for egalitarian diffusion of information and entertainment, a sum of Rs. 500 crore has been earmarked by Prasar Bharati in the 10th plan for coverage of uncovered areas & sparsely populated areas through satellite distribution in Ku band. To increase the coverage of Doordarshan in the North-eastern States, including Sikkim, a pilot project was sanctioned in the Annual Plan 2002-03, for setting up cable headend equipment, for down linking the satellite signals of Doordarshan and their distribution to individual households in 160 villages. The project is under implementation, and after evaluation, the scheme will be extended to other areas having thick clusters of population.

For sparsely populated uncovered areas, Doordarshan proposes to take up, on experimental basis, the transmission of its channels in Ku band. All the channels of Doordarshan so transmitted will be available to the viewers on free-to-air basis. It will be a less expensive option for increasing Doordarshan's reach in sparsely populated uncovered areas. The platform proposed to be set up by DDn will not only cater to the cultural needs of a multi-lingual society, but could also be used by institutions like the Indira Gandhi National Open University (IGNOU) for its free-to-air Distance Learning Programme.

[Ref: Ministry of I&B's O.M. No. 16/6/2000-BP&L (Vol. II)
Dated 21.02.2003]

CHAPTER IV

RECOMMENDATIONS/OBSERVATIONS IN RESPECT OF WHICH REPLIES OF THE GOVERNMENT HAVE NOT BEEN ACCEPTED BY THE COMMITTEE AND WHICH REQUIRE REITERATION

Recommendation (Para No. 45)

The Committee is deeply concerned to note that the Government allowed telecast of Direct to Home services all of a sudden without any indepth study though DTH is considered to be a very powerful media. Further, it was allowed for private telecasters much before formulating a regulatory framework even though on an earlier occasion Government had not allowed it, for want of comprehensive regulatory framework. Propriety demanded providing opportunity to Parliament to discuss such an important issue. Even the decision to allow DTH was announced outside the Parliament. The Committee deprecates the unseemly and unnecessary hurry shown in the matter without getting any study done about the viewership, cost, subscription rates etc., particularly when there was only one contender for the licence. Even though the matter was under consideration for three years, no spade work worth the name was done. The Committee further notes that the detailed guidelines as formulated by the Government for DTH telecast, incorporate stringent provisions against violation of any terms and conditions of the licence, which include monetary penalties and even cancellation of license. The guidelines also provide for taking over of the entire network of DTH service in case of emergency and national security. The Committee is at loss to understand how Government can take over a service when no law or procedure has been laid down for the same. The guidelines are thus ambiguous and require to be made enforceable through adequate legal framework, which is absent now. The Committee feels that when operations of DTH telecast start, there will be unrestricted availability of TV channels in the country. However, it is difficult to visualise at this stage what long term “benefits” or impact it will accrue to or have on the people.

Action Taken

The Government took the decision to start DTH service in the country in November 2000 after the Group of Ministers (GoM) had

deliberated and considered all the issues connected thereto. Detailed guidelines for starting DTH service were issued in March 2001 after inter-Ministerial consultations. Two applications have been received, seeking permission to start DTH service, and are under active consideration.

In 1996, when some foreign satellite broadcasters started planning for introduction of DTH service in KU band in India, it was felt that reception and distribution of the signals in KU band should be restricted. The Committee of Secretaries had noted the adverse impact of foreign TV programmes. The Ministry of I&B had initiated the process of formulating a comprehensive law on broadcasting with a view to effectively regulate foreign satellite channels. However, this would have taken time and there was the possibility of foreign channels starting DTH services. Apart from resulting in a loss of revenue, these channels would not have been subject to any regulatory mechanism, particularly relating to the content of the programmes. In view of the experience with the haphazard and unregulated growth of cable networks all over the country, it was felt necessary to take measures to prevent a similar situation developing in DTH services. Though the proposed Broadcasting Law was also covering the DTH services, there was a felt need in the interim period, before the regulation came into force, of barring entry in the KU band. Hence operation in KU band was banned in 1997.

The matter was discussed by the GoM in March, 2000 when it was observed that with changes in the information technology and in the broadcasting and communication scenario, the reasons for which DTH had not been allowed in 1997, were no longer relevant. Moreover, DTH as a superior technology offered an alternative for reception and distribution of television of programmes, both to the programme providers as well as to the consumers. The GoM considered the issues in its meetings between March and October, 2000 and concluded that DTH should be permitted in India, with suitable safeguards. It also weighed the advantages of DTH technology in convergence and in providing various IT enabled services. The GoM, therefore, unanimously recommended that DTH television services should be permitted in India, so as to take advantage of the latest technology, while ensuring that the concerns relating to national security, morality and monopoly were duly taken care of by providing conditions.

It has been worldwide documented experience that DTH system generally targets niche audiences and encourages spread of information

technology. It is expected that in the initial stages, persons with higher disposable income will opt for DTH and only when the prices fall with demand, will DTH have widespread acceptance. It is also expected that DTH operators will subsidise the cost of the hardware to increase viewership and accessibility.

As regards enforceability of the provisions of the guidelines, especially relating to penalties and of taking over of the service, these provisions are contained under Articles 6, 8, 9, 15 etc. of the Schedule to Form B i.e. the License Agreement to be signed between the Licensor (Government of India) and Licensee.

DTH has the advantage of offering a wide choice to the viewers, along with quality and convenience. Specific advantages of DTH include:

- Need for a small receive dish antenna, which is convenient to install and maintain.
- Easier to regulate as compared to cable services.
- More choice to consumers.
- Better quality of reception, as it is based on digital technology.
- Ideally suited for sparsely populated areas (rural areas and small towns) since it is not dependent on terrestrial infrastructure.

[Ref: Ministry of I&B's O.M. No. 16/6/2000-BP&L (Vol. II)
Dated 21.02.2003]

Comments of the Committee

(Please refer Para Nos. 8 to 11 of Chapter I of the Report)

Recommendation (Para No. 46)

The Committee is not able to accept the Government's contention that the matter was not brought before Parliament/Parliamentary Committee as the Parliament was not in session when decision was taken to allow DTH. There were sessions of Parliament between the periods of submitting report by GoM and its acceptance by the Cabinet. The Committee is of the opinion that if the Government was really

interested in having the opinion of Parliament on the vital issue, it could have sought the views at least of this Committee which consists of representatives of different section of Parliament. The Committee feels that the Government could have even introduced a bill on DTH in either House, as the issue is very sensitive and agitating. The Committee feels that validity period of ten years for Licence is an unusually long period. The Committee also does not appreciate regulation of such a highly sensitive and powerful media merely through administrative orders and not by legislation. Such ambiguities and lacunae could be overcome easily if Government had decided to place the matter before Parliament, specially as there was no emergency and significantly, no licence has been issued till date and there has been only one applicant so far. The Committee urges the Government to take Parliament into confidence over such an important matter and consider bringing about a comprehensive legislation covering all aspects of DTH.

Action Taken

All issues connected with opening up of KU band and for introduction of DTH broadcasting were examined by a Group of Ministers (GoM) constituted on 31/1/2000.

The GoM considered the issues in its entirety at meetings held between March and October, 2000 and concluded that DTH should be permitted in India with suitable safeguards to take care of concerns relating to security, morality and vertical monopoly in distribution and broadcasting of television services. GoM also considered the advantages of DTH technology, not only in distribution of television channels but also for its role in convergence and providing various IT enabled services. DTH services were allowed, subject to terms and conditions incorporated in the Guidelines issued on 15/3/2001.

DTH is a mode of broadcasting in which the broadcaster collects all the channels to be carried on the DTH platform and uplinks them for reception directly by the authorized subscriber. The COS, in December 1996, had also recommended that there was an unequivocal need to restrict the unregulated entry/growth of DTH services. In case there were no restrictions on the reception of signals in the KU Band, foreign companies could have started DTH services and subsequently claim exemption/indemnity from the related provisions of the Broadcasting Law on the grounds that no restrictions could be placed retrospectively. The COS advised that the proposed Broadcasting

Law be approved at the earliest. The regulatory framework for the entire broadcasting sector was sought to be established under the Broadcasting Bill, 1997, which was introduced in Parliament in May 1997. The Bill, inter-alia, provided for licensing and regulating of DTH service and was referred to the Select Committee of Parliament for examination. The Select Committee held several meetings, but before it could finalize its recommendations the Parliament was dissolved. The Broadcasting Bill 1997 lapsed. The provisions of 1997 Bill were re-examined in light of the technological developments and the Broadcasting Regulatory Authority Bill, 2000 was drafted and circulated to concerned Ministries.

The Group of Telecom and IT Convergence, at its meeting on 14th February, 2000, decided that Ministry of Law will consider the possibility of drafting a comprehensive statute covering both carriage and content of transmitted information and thereby integrate the relevant laws. The Sub-Group of the main Group proposed a draft Communication Convergence Bill, which was considered by the Group and finally approved by the Cabinet. The Communication Convergence Bill 2001 was introduced in Lok Sabha on 31st August 2001 and was referred to the Standing Committee on IT for examination and recommendation. The Committee has submitted its Report to Parliament on 20/11/2002.

[Ref: Ministry of I&B's O.M. No. 16/6/2000-BP&L (Vol. II)
Dated 21.02.2003]

Comments of the Committee

(Please refer Para Nos. 14 to 16 of Chapter I of the Report)

Recommendation (Para No. 47)

The Committee finds it is significant to note that certain provisions in the guidelines will take effect only on the enactment of the proposed Communication Convergence Bill. Therefore, the Committee feels that before allowing DTH telecast, the Government should have not only framed the requisite law as admitted by the Secretary, I&B during evidence but also waited till the enactment of the Communication Convergence Bill (on which the Committee has submitted its Report on 20 November, 2002 in Lok Sabha and on 21 November, 2002 in Rajya Sabha)

Action Taken

It is accepted that there is a need for a comprehensive broadcast law in the country, to address all issues relating to broadcasting. The DTH guidelines contain provisions that future regulatory laws on broadcasting would be applicable to the licensee, as and when they come into force. DTH is only a mode of broadcasting, in which the broadcaster collects all the channels at one platform and then uplinks them for reception directly by the authorized subscriber. The GoM considered the advantages of DTH not only in distribution of television channels but also for its role in convergence and providing various IT enabled services.

[Ref: Ministry of I&B's O.M. No. 16/6/2000-BP&L (Vol. II)
Dated 21.02.2003]

Comments of the Committee

(Please refer Para No. 19 of Chapter I of the Report)

Recommendation (Para No. 48)

The Committee notes with concern that the terms and conditions provided under various Articles which are of minor nature and violation thereof empowers the Government to take severe action, *viz.*, cancellation, revocation, suspension of a licence or taking over service etc. The Committee apprehends that in the absence of detailed regulations the Licensor can impose arbitrarily any penalty even for minor omissions. Therefore, the Committee recommends that irregularities should be classified under heads major and minor with appropriate legal consequences.

Action Taken

The Terms and Conditions contained in Schedule to Form B form part of the licence agreement and the parties to the Agreement would be bound by these. Breach of the terms and conditions is thus a breach of contract, which has to be settled in terms of the provisions of the Agreement. It would be difficult to classify the violations as major or minor but the principles of natural justice and fairness would apply, while deciding the penalty.

[Ref: Ministry of I&B's O.M. No. 16/6/2000-BP&L (Vol. II)
Dated 21.02.2003]

Comments of the Committee

Please refer Para No. 22 of Chapter 2 of the Report.

Recommendation (Para No. 51)

The Committee notes that the Government is empowered under the Cable Television Networks Act to take prompt corrective measures in the interest of security, sovereignty and integrity of India, public order, decency, morality through designated District Magistrate/SDM/Commissioner of Police as the authorised officers for taking action against the erring cable operators. The Committee feels that the DTH telecast will be more powerful and sensitive compared to Cable TV and this may need stronger measures to be taken, but the Government instead of extending the areas of monitoring has restricted it only to the issue of security, morality and vertical monopoly. Therefore, the Government owes an explanation in this regard.

Action Taken

The areas of monitoring include issues of security, morality and vertical monopoly. The terms and conditions of licence broadly encompass the following areas of activities of the licensee *viz.*,

- (i) adherence to the programme and advertisement codes, as laid down by the Ministry of Information and Broadcasting from time-to-time; (Article 5)
- (ii) non-carriage of any channels prohibited by the Ministry of I&B and ensuring that its facilities are not used for transmission of any objectionable or obscene content, messages or communication inconsistent with the laws of India. Save with the approval of the licensor, the licensee is prohibited from assigning or transferring, either directly or indirectly, its right in any manner whatsoever under the Agreement to any other party or enter into any agreement for sub-licence and/or partnership relating to any subject matter of the licence to any third party either in whole or in part; (Article 6)
- (iii) compliance with the specifications of the open architecture (non-proprietary) set top box as laid down by the Government from time-to-time and provision of access to various content providers/channels on a non-discriminatory basis. All content provided by the DTH platform to the subscribers, irrespective of its source, shall pass through the encryption and conditional access system, located within the Earth station, situated on the Indian soil. (Article 7)

- (iv) Adherence to any guidelines/regulations which may be laid down by the Licensor in the interests of consumer such as pricing of bouquet(s) or tier(s) of channels, etc. and carriage of channels of Prasar Bharati on the most favourable financial terms offered to any other channel; (Article 7)
- (v) provision of access to the licensing authority or its duly authorized representative all its facilities including equipment, record systems etc. and the requirement of the Licensee to furnish periodical information concerning channels or contents being transmitted or provided under the services, technical parameters, etc. in the format as may be prescribed for the purpose; (Article 8); and
- (vi) Prohibition of DTH facility to be used for other modes of communication, including voice, fax, data, communication, internet, etc. unless specific licence for these value-added services has been obtained from the competent authority; (Article 10)

Violation of any of these, as well as other terms and conditions, would amount to breach of the terms of licence and notwithstanding any other recourse under the terms and conditions of the Licence or any other law, would invite action in terms of the different provisions such as Article 4.2, Article 15 etc., which may include revocation of licence, or imposition of a penalty upto Rs. 50 crore by the Licensor on the Licensee

[Ref: Ministry of I&B's, O.M. No. 16/6/2000-BP&L (Vol. II)
Dated 21.02.2003]

Comments of the Committee

(Please refer Para No. 25 of Chapter I of the Report)

CHAPTER V

RECOMMENDATIONS/OBSERVATIONS IN RESPECT OF WHICH REPLIES ARE OF INTERIM IN NATURE

-Nil-

NEW DELHI;
7 December, 2004

16 Agrahayana, 1926 (Saka)

M.M. PALLAM RAJU,
Chairman,
Standing Committee on
Information Technology.

APPENDIX I

MINUTES OF THE FOURTEENTH SITTING OF THE STANDING COMMITTEE ON INFORMATION TECHNOLOGY (2004-2005)

The Committee sat on Thursday, 25 November, 2004 from 1100 hours to 1330 hours in Committee Room No. 'G-074, K-Block, Parliament Library Building, New Delhi.

PRESENT

Shri M.M. Pallam Raju—*Chairman*

MEMBERS

Lok Sabha

2. Shri Nikhil Chaudhary
3. Shri Mani Cherenameti
4. Shri Sanjay Dhotre
5. Dr. P.P. Koya
6. Shri P.S. Gadhavi
7. Col. G. Nizamuddin
8. Shri Sohan Potai
9. Shri Chander Shekhar Sahu
10. Shri Ram Kripal Yadav

Rajya Sabha

11. Smt. Sarla Maheshwari
12. Shri N.R. Govindarajar
13. Shri K. Rama Mohana Rao
14. Shri Motiur Rahman

SECRETARIAT

- | | | |
|----------------------------|---|---------------------------|
| 1. Shri Raj Shekhar Sharma | — | <i>Deputy Secretary</i> |
| 2. Shri K.L. Arora | — | <i>Under Secretary</i> |
| 3. Shri D.R. Shekhar | — | <i>Assistant Director</i> |

2. At the outset, the Chairman welcomed the Members to the sitting of the Committee. The Committee then took up for consideration the following Draft Reports and adopted the same with certain amendments/modifications:

- | | | | |
|-------|---|-----|-----|
| (i) | *** | *** | *** |
| (ii) | Draft Report on Action Taken by Government on the Recommendations/Observations of the Committee contained in their Fortieth Report on "Direct to Home (DTH)" relating Ministry of Information & Broadcasting. | | |
| (iii) | *** | *** | *** |
| (iv) | *** | *** | *** |
| (v) | *** | *** | *** |
| (vi) | *** | *** | *** |
| 3. | *** | *** | *** |

4. The Committee, then, authorised the Chairman to finalise and present the above mentioned Reports to the House.

The Committee then adjourned.

APPENDIX II

[Vide Paragraph No. 5 of Introduction]

ANALYSIS OF ACTION TAKEN BY GOVERNMENT ON THE FORTIETH REPORT (THIRTEENTH LOK SABHA)

- | | | |
|-------|--|--------------------|
| (i) | Recommendations/Observations which have been accepted by the Government:
Paragraph Nos.: 50, 53 | Total: 2 |
| | | Percentage: 22.22% |
| (ii) | Recommendations/Observations which the Committee do not desire to pursue in view of the replies of the Government:
Paragraph Nos.: 49, 52 | Total: 2 |
| | | Percentage: 22.22% |
| (iii) | Recommendations/Observations in respect of which replies of the Government have not been accepted by the Committee and which require reiteration:
Paragraph Nos.: 45, 46, 47, 48 & 51 | Total: 5 |
| | | Percentage: 55.56% |
| (iv) | Recommendations/Observations in respect of which replies are of interim in nature:
Paragraph Nos.: Nil | Total Nil |
| | | Percentage: Nil |