

Government of India
Ministry of Communications & I.T.
Department of Telecommunications
1115, LR Cell, Sanchar Bhawan
20, Ashoka Road, New Delhi - 110001.

No. 815-66/98-LR(Vol-II)(C)

Dated:29.05.2006

To

Captive VSAT Operators (under NTP-99 & migrated to NTP-99)

Sub : Amendment in Captive VSAT license for incorporating Foreign Direct Investment (FDI) Guidelines in Telecom Sector.

Ref : (i) Captive VSAT license no._____ dated_____

The license no._____ dated_____. has been amended to insert clause 1.7, 1.8 & 1.9 of Section-IV Part-II Condition 1 "Obligation of the Licensee". The inserted clauses to be read as follows: -

1.7 OWNERSHIP OF THE LICENSEE COMPANY

The Licensee shall ensure that the total foreign equity in the LICENSEE Company does not, at any time during the entire LICENSE PERIOD, exceed prescribed cap for FDI of the total paid up equity.

- (i) The details of the equity holdings in the LICENSEE Company as disclosed by the LICENSEE company, are as follows:

Sl. No.	Name of Promoter/Partner	Indian/ Foreign	Equity %	Net Worth
1.				
2.				
3.				

- (ii) Details of equity holding of the Promoter/Partner Indian Companies of the LICENSEE Company, as disclosed by the LICENSEE company, are as follows:

Sl. No.	Name of Promoter/Partner	Indian/ Foreign	Equity %	Net Worth
1.				
2.				
3.				

- 1.7(a) The applicant must be an Indian company, registered under the Indian Companies Act'1956.
- 1.7(a)A The total composite foreign holding including but not limited to investments by Foreign Institutional Investors (FIIs), Non-resident Indians (NRIs), Foreign Currency Convertible Bonds (FCCBs), American Depository Receipts (ADRs), Global Depository Receipts (GDRs), convertible preference shares, proportionate foreign investment in Indian promoters/investment companies including their holding companies, etc., herein after referred as FDI, will not exceed 74 per cent. The 74 per cent foreign investment can be made directly or indirectly in the operating company or through a holding company and the remaining 26 per cent will be owned by resident Indian citizens or an Indian Company (i.e. foreign direct investment does not exceed 49 percent and the management is with the Indian owners). It is clarified that proportionate foreign component of such an Indian Company will also be counted towards the ceiling of 74%. However, foreign component in the total holding of Indian public sector banks and Indian public sector financial institutions will be treated as 'Indian' holding. The licensee will be required to disclose the status of such foreign holding and certify that the foreign investment is within the ceiling of 74% on a half yearly basis.
- 1.7(a)B The majority Directors on the Board including Chairman, Managing Director and Chief Executive Officer (CEO) shall be resident Indian citizens. The appointment to these positions from among resident Indian citizens shall be made in consultation with serious Indian investors. Serious investor has been defined below in para 1.7(a)G(ii).
- 1.7(a)C The Share Holder Agreements (SHA) shall specifically incorporate the condition that majority directors on the Board including Chairman, Managing Director and Chief Executive Officer (CEO) shall be resident Indian citizens and shall also envisage the conditions of adherence to License Agreement.
- 1.7(a)D FDI upto 49 per cent will continue to be on automatic route. Foreign Investment Promotion Board (FIPB) approval shall be required for FDI in the licensee company/Indian promoters/investment companies including their holding companies if it has a bearing on the overall ceiling of 74 per cent. While approving the investment proposals, FIPB shall take note that investment is not coming from unfriendly countries.
- 1.7(a)E The investment approval by FIPB shall envisage the conditionality that Company would adhere to license Agreement.
- 1.7(a)F FDI shall be subject to laws of India and not the laws of the foreign country/countries.
- 1.7(a)G (i) There shall be a non-obstante clause in the license which confers powers upon the licensor to cancel the license under certain defined circumstances.
(ii) In order to ensure that at least one serious resident Indian promoter subscribes reasonable amount of the resident Indian shareholding, such resident Indian promoter shall hold at least 10 per cent equity of the licensee company.

- (iii) The Company shall acknowledge compliance with the license agreement as a part of Memorandum of Association of the Company. Any violation of the license agreement shall automatically lead to the company being unable to carry on its business in this regard. The duty to comply with the license agreement shall also be made a part of Articles of Association.
- (iv) Chief Technical Officer (CTO)/Chief Finance Officer (CFO) shall be resident Indian citizens. The Licensor can also further notify key positions to be held by resident Indian citizens.
- (v) The Company shall not transfer the following to any person/ place outside India:-
- any accounting information relating to subscriber (except for billing) (Note: it does not restrict a statutorily required disclosure of financial nature) ;
 - user information; and
 - details of their infrastructure/network diagram except to telecom equipment suppliers/manufacturers who undertake the installation, commissioning etc. of the infrastructure of the licensee Company on signing of non-disclosure agreement.
- (vi) The Company must provide traceable identity of their subscribers.
- (vii) No traffic (mobile and landline) from subscribers within India to subscribers within India shall be hauled to any place outside India. For this purpose, the location of satellites serving for domestic traffic shall not be treated as outside India.
- (viii) No Remote Access (RA) shall be provided to any equipment manufacturer or any other agency out side the country for any maintenance/repairs by the licensee. However, RA may be allowed for catastrophic software failure (such as failure to boot up etc.) which would lead to major part of the network becoming non-functional for a prolonged period, subject to meeting the following conditions:-
- An identified Government agency (Intelligence Bureau) will be notified, when RA is to be provided.
 - Remote Access password is to be enabled for a definite period only and only for access from pre-approved locations of the Original Equipment Manufacturer (OEM) Vendors and only for the equipments specifically under repair/maintenance.
 - The control of Remote Access i.e. activation, transfer of data, termination etc. shall be within the country and not at a Remote location, abroad.
 - The Government agency will be given all support to record the transactions for on-line monitoring.
 - Any equipment or software that forms part of the overall monitoring shall not be permitted to have remote access under any circumstances.
 - The terms catastrophic software failure, major part of the network, and prolonged period used under this clause shall be defined by Licensor from time to time.
- (ix) It shall be open to the Licensor to restrict the Licensee Company from operating in any sensitive area from the National Security angle.

- (x) In order to maintain the privacy of voice and data, monitoring shall only be upon authorization by the Union Home Secretary or Home Secretaries of the States/Union Territories.
- (xi) For monitoring traffic, the licensee company shall provide blind access of their network and other facilities as well as to books of accounts to the security agencies.
- (xii) In case of not adhering to License conditions envisaged in para 1.7(a)G, the license (s) granted to the company shall be deemed as cancelled and the licensor shall have the right to encash the performance/financial bank guarantee(s) and the licensor shall not be liable for loss of any kind.

1.7(a)H The conditions at paras 1.7(a)A to 1.7(a)G above shall also be applicable to the existing companies operating telecom service(s), which had the FDI cap of 49%.

1.7(b) There shall be no change in the Indian and Foreign promoter(s) or their equity participation unless permitted by the LICENSOR. The licensee company may, with prior written consent of the LICENSOR replace a promoter(s) by another promoter(s) of equal or higher standing as stipulated below :

- an existing foreign promoter may be substituted by another foreign promoter of similar standing.
- The existing Indian Promoter(s) may also be allowed to acquire the foreign promoter's shareholding; and
- Transfer of equity inter-se between existing Indian promoters may be permitted, provided the majority Indian promoter continues to hold at least the present shareholding for a period of five years from the effective date of LICENSE AGREEMENT. The merger of Indian companies may be permitted as long as competition is not compromised.

1.8 The LICENSEE shall also ensure that :

- (i) Any change in share holding shall be subject to all necessary statutory requirements.
- (ii) Management control of the LICENSEE company shall at all times remain in Indian hands.

1.9 Change in the name of the LICENSEE company shall be permitted in accordance with the provisions under the Indian Companies Act, 1956.

You are requested to submit unconditional compliance to the aforesaid conditions before 02.07.2006. Along with this, please also provide the information required in the para 1.7 (i) & (ii).

**(Navendra Singh)
ADG(SAT-IV)**

Copy to :-

Secretary, Telecom. Regulatory Authority of India.