

Telecom Hotline

November 17, 2009

UP TO 74% FDI ALLOWED FOR HEADEND IN THE SKY

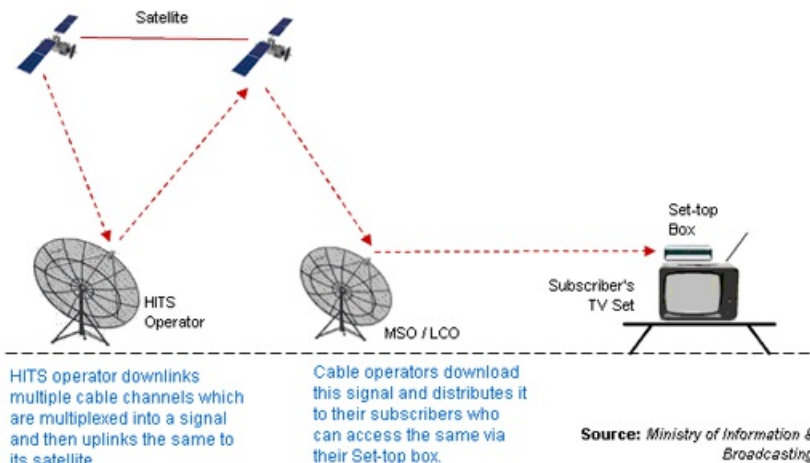
Since the beginning of the liberalization policy, India has been witnessing a transformation of its telecom and media regime. In keeping abreast of global trends and technologies, the Indian authorities and regulators have tried to formulate policies and guidelines which create a level playing field among industry players without undue government interference and at the same time adequately protect the interests of the end customer.

On 17 October 2007, acting upon a request by the Ministry of Information and Broadcasting ("I&B"), Telecom Regulatory Authority of India ("TRAI"), India's independent telecom regulator, released its policy formulation recommendations on Headend-In-The-Sky ("HITS"), a multiplexing technology that enables satellite transmission of multiple, digital broadcasting channels¹. On 12 November 2009, the Cabinet, hoping to increase cable television penetration into rural India, finally gave its nod to the HITS policy guidelines ("HITS Policy").

HITS: A PRIMER

Originally developed by its namesake company HITS (currently owned by Comcast), HITS is a digital content transmission technology where multiple cable channels are multiplexed into a signal and uplinked by the HITS operator to its satellite. This signal is then downlinked to many Multi System Operators ("MSOs") and Local Cable Operators ("LCOs") who in turn forward the channels to the end customers or subscribers of their networks for viewing cable TV.

How HITS Technology Works



SALIENT FEATURES OF THE HITS POLICY²

- Total direct and indirect foreign investment including foreign direct investment or FDI is allowed up to 74%. However, prior approval of the Foreign Investment Promotion Board or FIPB is required for FDI beyond 49%.
- Cross media holding restriction of 20% of total paid-up equity is prescribed for various segment of broadcasting services so as to avoid vertical integration and prevent discriminatory practices among various players in the distribution chain and to promote competition.
- HITS services are allowed in both 'C-Band' and 'Ku-Band' (which was until now reserved only for direct-to-home or DTH).
- HITS operators can uplink signal only from India and will have to install short messaging service or SMS and encryption system.
- HITS Policy provides for complete regulatory procedure for obtaining permissions to offer the HITS services.
- HITS operators will have to set up a monitoring facility as prescribed by the Government and can carry only those channels registered with I&B.
- HITS operators are not permitted to provide signals directly to the end consumers or cable subscribers. However, if a HITS operator is also an MSO or LCO, it can do so through its distribution network.
- One-time, non-refundable entry fee of INR 100 million is required to become a HITS operator.

Research Papers

From Capital to Impact: Role of Blended Finance

June 15, 2024

Opportunities in GIFT City

June 14, 2024

Start-up Governance Essentials

May 30, 2024

Research Articles

Private Client Insights - Sustainable Success: How Family Constitutions can Shape Corporate Governance, Business Succession and Familial Legacy

January 25, 2024

Private Equity and M&A in India: What to Expect in 2024?

January 23, 2024

Emerging Legal Issues with use of Generative AI

October 27, 2023

Audio

Why is the ad industry unhappy with MIB's self-declaration mandate?

June 18, 2024

Incorporation of arbitral clause by reference: Position in India and other Asian Jurisdictions

June 12, 2024

Third-Party Funding: India & the World

April 27, 2024

NDA Connect

Connect with us at events, conferences and seminars.

NDA Hotline

Click here to view Hotline archives.

Video

Future of India-Mauritius tax treaty – Impact of new Protocol on M&A deals and Private Equity structures

April 23, 2024

- No additional annual charges are required to be paid by HITS operators except the spectrum fee.
- The HITS operator license is valid for 10 years.
- There is no restriction on the number of permissions that may be given to operate as a HITS operator. All those found to be eligible and fulfill the terms and conditions can apply for the license.
- Existing permission holders of HITS will have to comply and migrate to the new policy regime within 3 months; failing to which their permission shall be cancelled.
- Sufficient provisions exist under the guidelines for the monitoring of content, inspection and national security related issues.

It is to be noted that the HITS Policy does not mandate MSOs and LCOs to obtain signals only from a HITS network and they can continue to operate with their existing systems.

ANALYSIS AND CONCLUSION

In framing the guidelines for the policy framework on HITS, TRAI was guided by the basic objective of the digitalization of cable TV network in India while keeping Indian consumer’s interests at the front. India’s cable television market is spread among regional MSOs and LCOs and more recently DTH players. HITS allows for the emergence of a national operator, which can transmit a number of channels from different broadcasters through a satellite to MSOs and LCOs; and MSOs and LCOs can take the signal forward through cables to masses. Thus, HITS offers a viable, national-level alternative to the fast emerging DTH services. From the technology perspective, the DTH and HITS platforms are similar, but from the business model perspective, they are different: HITS is a direct-to-operator model, while DTH is a direct-to-consumer model.

Presently, two policy frameworks exist for the distribution of TV channels through satellites: (i) DTH; and (ii) the uplinking/downlinking guidelines. DTH, being direct-to-customer cannot be used for transmitting signals to MSOs and LCOs. Whereas, uplinking/downlinking guidelines are used by individual broadcasters to provide their channels to MSOs and LCOs. There is no sharing of revenue by the DTH operators with any other intermediary. On the other hand, an MSO has to share subscription revenue with the last mile cable operator or LCO (apart from sharing it with the broadcaster). Neither of the two existing policy frameworks covers the distribution of channels of multiple broadcasters by a single source in one stream through satellite to cable operators. The HITS Policy is aimed at fixing this. To keep non-serious players at bay in order to protect the interests of consumers, the provision of a high entry fee in the HITS Policy is mandated.

HITS can be a great tool for narrowing the digital gap between urban and rural areas. Rolling out HITS services in rural and remote areas (as well as in non-CAS areas) of India will not only increase the penetration and reach of cable TV services, but will also help in further reduction of prices of set-top boxes and consolidation of the cable marketplace.

The HITS Policy is sure to provide an impetus to digitization, create a level playing field amongst various players and thereby promote competition, help in the expansion of digital content services industry, offer consumers better digital quality and wide choice of digital channels at a cheaper price. The increased competition between DTH and cable operators facilitated by HITS services will ultimately benefit the end consumer, while ensuring rural India’s entry into the world of digital TV. HITS creates a win-win situation for various stakeholders; media companies, cable operators, HITS operators and the end consumer.

The formation of this well-thought out HITS policy is certainly a progressive step towards digital TV content distribution in India.

– Prerak Hora & Vivek Kathpalia
You can direct your queries or comments to the authors

¹ <http://www.traigov.in/traifupload/Recommendations/77/rec17oct07.pdf>. Last accessed: November 15, 2009
² Head-end In The Sky cleared with 74% FDI – DNA India http://www.dnaindia.com/money/report_head-end-in-the-sky-cleared-with-74pct-fdi_1310888 and Cabinet Press release dated November 12, 2009<http://www.pib.nic.in/release/release.asp?relid=54034&kwid=>

DISCLAIMER

The contents of this hotline should not be construed as legal opinion. View detailed disclaimer.

This Hotline provides general information existing at the time of preparation. The Hotline is intended as a news update and Nishith Desai Associates neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this Hotline. It is recommended that professional advice be taken based on the specific facts and circumstances. This Hotline does not substitute the need to refer to the original pronouncements.

This is not a Spam mail. You have received this mail because you have either requested for it or someone must have suggested your name. Since India has no anti-spamming law, we refer to the US directive, which states that a mail cannot be considered Spam if it contains the sender’s contact information, which this mail does. In case this mail doesn’t concern you, please unsubscribe from mailing list.