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CABLE TV: WHAT DO THE  
NEW PROCEDURES OFFER?

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**Even after China joins the WTO, foreign investors will not be able to make equity investments in cable television. The new procedures from the State Administration of Radio, Film and Television strengthen the administrative framework but do not lift the prohibition on using cable networks for value-added telecommunications purposes.**

On November 12, 1999, the State Administration of Radio, Film and Television (SARFT) promulgated the *Administration of Examination and Approval of the Establishment of Cable Broadcast Television Channels Procedures* (the Cable Channel Procedures). The purpose of the Cable Channel Procedures is to implement the *Strengthening the Administration of the Construction of Broadcast Television Cable Networks Opinion* (the Cable Network Opinion) jointly issued by the Ministry of Information Industry (MII) and SARFT on November 8, 1999.

This article briefly reviews the regulatory framework governing the cable industry in China and analyzes the specific provisions of the Cable Channel Provisions and their impact on foreign investors.

## **Overview**

Cable television in China was originally developed to provide access to programs of China Central Television Corporation (CCTV) to viewers in locations in which reception of broadcast signals was poor. By the mid-1980s, Chinese cities began establishing their own cable networks and broadcasting their own programming. Gradually cable television became less a means of retransmitting programming from CCTV and other terrestrial stations and more a means of providing viewers with alternative programming.

Today, cable stations are mostly owned by municipal governments and regulated by SARFT or its local administrative bureaus. There are approximately 756 cable stations in China, with 77 million subscribers, the largest cable audience in the world. Cable television stations still retransmit CCTV programming, if for no other reason than that they are subject to must-carry requirements. However, the variety of programming on cable television stations has increased greatly.

In addition, many cable stations are planning to provide internet and other telecommunications services via their cable facilities. Many would-be foreign investors in the PRC cable sector are convinced that the best way to hook-up Chinese consumers to the internet is not through personal computers (which are owned by only a small percentage of the population) but through television sets attached to a cable network.

Thus, their hopes for investment hinge both on the opening up of the cable sector to foreign investment and the lifting of prohibitions on convergent use of cable facilities.

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## **Restructuring**

The most comprehensive rules regulating the cable television sector are the *PRC, Administration of Broadcasting and Television Regulations* (the Broadcast and TV Regulations) promulgated by the State Council on August 11, 1997, which went into effect on September 1, 1997. The Broadcast and TV Regulations apply to both terrestrial and cable stations.

In addition, the predecessor of SARFT, the Ministry of Radio, Film and Television (MRFT), promulgated the *Cable Television Administrative Provisions* (the 1994 Cable Provisions) on February 3, 1994, which deal specifically with cable television stations.<sup>1</sup>

To the extent that the Broadcast and TV Regulations conflict with the 1994 Cable Provisions, the provisions of the Broadcast and TV Regulations prevail. The general tendency has been to shift from regulating cable television primarily as a mere means for retransmitting terrestrial programs to integrate and unify the regulation of terrestrial and cable television. This shift in focus is specifically stated in Article 3 of the 1994 Cable Provisions and is reflected in the structure of the Broadcast and TV Regulations.

For many years, MRFT was the principal planning, supervisory and regulatory authority for the civilian radio, film and television industries. As a part of a plan to restructure the Chinese government in March 1998, MRFT was split and many of its functions were taken over by MII, a newly created super ministry. However, the assets of MRFT have been placed under the control of SARFT, and many of the departments formerly under MRFT remain under the administration of the SARFT.

Nevertheless, the division of labour and authority between SARFT and MII was (and remains) not sufficiently clear-cut. There is a continued tug-of-war between MII and SARFT over the management of the national cable network even though MII has clearly been charged with the overall development of regulatory and strategic policies over the cable network.

## **The Cable Network Opinion**

The intention of the Cable Network Opinion is to clarify the confusion and repetitive construction that grew from the unclear relationship between SARFT and MII. They emphasize the separation of responsibility between the telecommunications and television departments.

As a result, MII is now responsible for the technical systems and standards of television and broadcasting networks, and is in charge of overall planning and industry administration. The regulation of the content of the broadcasts is left to SARFT, as is the establishment of cable television channels and the installation of head-ends for network broadcasting.

However, the Cable Network Opinion does not discuss the issue of restructuring national-level fibre-optic trunk line assets already constructed by SARFT.

### **The Cable Channel Procedures**

As suggested by its title, the Cable Channel Procedures focus on approval procedures for establishing cable television channels in China.<sup>2</sup> Pursuant to Article 2 of the Cable Channel Procedures, SARFT is in charge of the planning and management of national cable television channels. The SARFT's radio and television departments (each an RTD) at the provincial level are in charge of implementing and managing the SARFT planning within their respective territories.

#### *Self-Run Channels*

The Cable Channel Procedures explicitly divide cable television channels into self-run channels and retransmitting channels, all of which are government resources. Self-run channels are channel; with programming that is produced, edited, broadcast and transmitted to subscribers by cable, optical cable or microwave bands.

Only radio and television broadcasting institutions that are established legally, for example television stations, are qualified to establish self-run channels.<sup>3</sup> The Broadcast and TV Regulations provide that only local RTDs (or local education departments in the case of education television stations) may establish radio or television stations.

No other entities, individual or foreign investors may own equity interests in television stations.<sup>4</sup> Although the Cable Network Opinion discusses the reform of the television industry in terms of corporatization (not privatization) of government-run stations, no existing regulations allow for or even discuss actual liberalization of this industry.<sup>5</sup>

The Cable Channel Procedures provide basic qualifications for an entity applying to establish a self-run cable channel and the required application procedures. The procedures are basically similar to those provided in the Broadcast and TV Regulations and 1994 Cable Provisions. However, formal broadcasting approval is not issued by SARFT until a cable channel has passed a three-month trial broadcasting period.

#### *Operating and Terminating Cable Channels*

The Objective of SARFT is to develop progressively specialized and target-oriented cable channels, with specialized programs comprising more than 60% of their total broadcast time. If a local terrestrial station already operates a comprehensive channel, no comprehensive cable channels will be approved.<sup>6</sup> Since most terrestrial stations operate comprehensive channels, this rule, if strictly enforced, may make it impossible for comprehensive cable channels to be established in the future.

Self-run channels should produce, edit and broadcast programs in accordance with the scope of programs approved by SARFT or its authorized RTD. Any change of the scope of programs requires the approval of the original approval authority.<sup>7</sup>

The lease or transfer of *cable channels*, be they self-run or retransmitting channels, to third parties in any form is strictly prohibited.<sup>8</sup> According to officials we have consulted at SARFT this prohibition is no different from the prohibition on leasing or selling airtime under the Broadcast and TV Regulations.<sup>9</sup>

### *Retransmitting Channels*

The establishment of cable television retransmitting channels must be approved and managed by RTDs at the provincial level and reported to SARFT for the record. The establishment of a retransmitting channel that retransmits programs other than the government, must-carry programs is subject to examination by the relevant local RTD, reporting to higher authorities successively and approval from the relevant RTD at the provincial level. Only RTDs at the provincial level may designate the retransmitting channels that retransmit government, must-carry programs.<sup>10</sup>

The Cable Channel Provisions make clear that the broadcasts of retransmitting channels may not be encrypted or interfere with the transmissions of other users of frequency.<sup>11</sup>

### **Impact on Foreign Investment**

The Cable Channel Procedures do not say anything about foreign investment in the cable television sector. The *Foreign Investment Industrial Guidance Catalogue* (the Foreign Investment Catalogue) promulgated in 1995 specifically states that foreign investment in cable stations is prohibited, but the *Foreign Investment Industrial Guidance Catalogue* (Revised) issued in 1997 bans investment in television stations in general, without specifically mentioning cable stations.

However, officials at the State Development Planning Commission, SARFT and the Ministry of Foreign Trade and Economic Co-operation have confirmed that the change in wording between the two versions of the Foreign Investment Catalogue is not intended to indicate a change in policy. In addition, the 1994 Cable Regulations and the Broadcast and TV Regulations clearly state that foreign investment in cable television is banned.<sup>12</sup>

The US-China Bilateral WTO Agreement does not include cable television as a sector that China agreed to open to foreign investors. However, it has been reported that a high-ranking official at SARFT suggested that SARFT is considering permitting foreign investors to hold equity interests in cable television networks of up to 32%.<sup>13</sup>

According to this official, the proposal with respect to the opening was submitted to the State Council and is pending approval. However, it is generally understood

that the opening of cable television sector to foreign investment will not occur earlier than the restructuring of this sector, which is still under discussion.

Another issue that is of great interest to foreigners considering investing in the cable industry in China is the regulation of the convergent utilization of both telecommunication and cable network resources. The Cable Network Opinion prohibits any such utilization, except in Shanghai, in which combined telephone, internet and cable networks are being developed on an experimental basis.

The trial of the convergent networks may spread to other cities after Shanghai's experiment is deemed successful. Unfortunately, the Cable Channel Procedures do not provide for any liberalization in this area.

### **Unresolved Issues**

Clearly the Cable Channel Procedures represent a positive step forward. They provide a legal basis for the establishment of cable channels and further clarify the division of labour and authority between MII and SARFT. However, the issue of restructuring national-level fibre optic line assets already constructed by SARFT has still not been resolved.

In addition, they represent a disappointment to foreign investors, as they still do not address the issue of foreign equity investment in cable channels, nor do they relax the prohibition on use of cable networks for telecommunications purposes. Until these issues are resolved to the satisfaction of foreign investors, the cable industry in China is likely to be plagued by difficulties in raising funding and difficulties in attracting high-quality, strategic partners.

### **Endnotes**

<sup>1</sup> MRFT had previously issued the *Administration of Cable Television Tentative Provisions* on November 16 1990 and the *Administration of Cable Television Implementing Rules Tentative Provisions* on April 20, 1991, both of which are still in effect to the extent that they do not conflict with more recent regulations. The *Cable Television Channels, Stations and Television Programs Tentative Provisions*, issued by MRFT on February 19, 1992, however, are no longer in effect.

<sup>2</sup> Note that the scope of the Cable Channel Procedures is somewhat broader than the scope of the 1994 Cable Provisions as the latter only dealt with cable stations but the former deals with cable channels, whether established by cable stations or not.

<sup>3</sup> See Article 4, the Cable Channel Procedures.

<sup>4</sup> See Article 10, the Broadcast and TV Regulations.

<sup>5</sup> See Article 3(1), the Cable Network Opinion.

<sup>6</sup> See Article 8, the Cable Channel Procedures.

<sup>7</sup> See Article 9, the Cable Channel Procedures.

- 8 See Article 13, the Cable Channel Procedures.
- 9 See Article 14(2), the Broadcast and TV Regulations. Note that Article 10 of the 1994 Cable Provisions prohibits both, the leasing of channels and airtime to third parties.
- 10 See Article 11, the Cable Channels Procedures.
- 11 See Article 12, the Cable Channels Procedures.
- 12 See Article 10, the 1994 Cable Provisions; Article 10, the Broadcast and TV Provisions.
- 13 See 'Foreign Holding Equity Interest in Cable Network Could Not Be Exceed 32%,' Wen Wei Po, April 29, 2000.

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