

Chapter 3 – Allocation of satellite capacity

Allocation of satellite capacity for DTH service was to be done in accordance with the provisions of the SATCOM policy. According to Article 2.5.2 of the policy, ICC was to earmark at least a certain percentage of capacity in INSAT system for use by the non-governmental users who had been authorised by law to provide various telecommunication services including broadcasting. Article 2.5.3 of the policy stipulated that ICC was to evolve the procedures from time to time taking into account the capacity available and prevailing situation in the satellite communications market. Article 2.6.2 of the policy further stated that once capacity was earmarked by ICC, DOS was to provide the satellite capacity following its own procedures. In case the demand exceeded available capacity, DOS was to evolve suitable transparent procedures for allocation of capacity, which could be any equitable method such as auction, good faith, negotiation or first come first served basis.

As of 31 July 2013, five Indian satellites were identified for DTH service in India, as shown in Table 6:

Table 6: Indian satellites earmarked for DTH service

Sl. No.	Satellite	Date of launch	Mission life (Years)	Number of Ku Band transponders		DTH service provider to whom capacity was allocated
				Total	Allocated for DTH Service	
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	INSAT 4A	22 December 2005	12	12	12	Tata Sky
2	INSAT 4B	12 January 2007	12	7*	7	DD, Sun DTH
3	INSAT 4CR	2 September 2007	12	12	0**	Not allocated
4	GSAT 8	21 May 2011	12	24	0***	Not allocated
5	GSAT 10	29 September 2012	15	12	0	Not allocated
TOTAL				67	19	

*The satellite had 12 Ku band transponders, of which 7 were working as of July 2013.

**From July 2008 to July 2012, transponders ranging from 4.5 to 7 units were allocated to Airtel, thereafter, due to utilisation of the capacity for the erstwhile GSAT-2 users and EDUSAT networks, Airtel was shifted to foreign satellite.

***Excluding three transponders allocated to government users for non-commercial applications.

This chapter highlights issues observed by audit in earmarking and allocation of satellite capacity.

3.1 Satellite capacity not earmarked by ICC

Audit observed that ICC, which was the authority responsible for earmarking satellite capacity for non-Government users, was not convened after June 2004 and was re-constituted by the Government of India only in May 2011, after lapse of nearly seven years. In the meantime, three satellites were launched, in which capacity was allocated to DTH service providers directly by DOS, which was not as per SATCOM policy.

While confirming the facts, DOS stated (December 2012) that members were informed about the transponder allotments to DTH services in the Technical Advisory Group (TAG) meetings. The reply is not acceptable as TAG was only a technical subcommittee of ICC and its mandate was not to earmark satellite capacity in INSAT system.

3.2 Role of Ministry of Information and Broadcasting in the allocation of satellite capacity

According to The Allocation of Business Rules, 1961²⁹ Ministry of Information and Broadcasting (MIB) was responsible for matters relating to broadcasting in India and DOS is responsible for all activities connected with space.

DTH service being a broadcasting service comes under purview of MIB. Accordingly, guidelines for DTH service were prescribed (March 2001) by MIB with approval of Union Cabinet. Allocation of satellite capacity to DTH service providers is an important decision making process under DTH service. ICC, in which MIB is a member, is mandated to plan and earmark satellite capacity to users including DTH service providers. By not convening ICC, MIB was not involved in the satellite capacity allocation decision making process.

Another case on allocation of transponder to private service provider in the absence of ICC was also raised earlier in Paragraph 2.3 of Comptroller and Auditor General's (Union Government), Report No. 4 of 2012-13 'Report on hybrid satellite digital multimedia broadcasting service agreement with Devas'.

MIB also agreed (May 2014) that ICC being the apex body for all matters relating to allocation of transponders, it should be mandatory that all allocations be made by DOS with the approval of ICC.

²⁹ The rules allocate business of the Government of India and specify subjects that are to be dealt with by the Ministries/Departments.

DOS stated (March 2014) that ICC is meeting regularly after its reconstitution in May 2011.

3.3 Satellite capacity allocation procedure not developed by ICC and DOS

Audit observed that though the Norms, Guidelines and Procedures (NGP) of SATCOM Policy was approved by Union Cabinet in January 2000, the procedure for allocation of satellite capacity was not framed by ICC as envisaged in Article 2.5.2 of SATCOM policy until February 2013. The transponder allocation policy of ICC was pending approval of Union Cabinet (March 2014). Audit further observed that in the absence of an ICC approved transponder allocation policy, there was no prescribed procedure within DOS for allocation of satellite capacity for DTH service providers. Though DOS stated (March 2011) that after the announcement of SATCOM policy, generally bandwidths were allotted on 'first come-first served' basis by maintaining a waiting list of customers, documents relating to formulation of first come first served policy, rules of precedence, operational guidelines/manual, etc., duly approved by the competent authority were, however, not found on record. In the absence of records, audit could not ascertain whether the 'first come first served policy' and rules of precedence adopted by DOS were approved by the Space Commission. Audit also observed that the order of precedence was also not available with DOS. Audit, however, observed that a precedence list from the year 2009 onwards was maintained by Antrix, which was irregular, as it was only the marketing arm of DOS and should not have any role in the allocation of satellite capacity created out of Government funds.

Thus, since the initiation of DTH service in India, DOS committed satellite capacity to various DTH service providers without an ICC approved procedure. A similar issue of violation of above procedure was also reported in para 2.4 of Comptroller and Auditor General's (Union Government), Report No. 4 of 2012-13 'Report on hybrid satellite digital multimedia broadcasting service agreement with Devas'.

DOS stated (March 2014) that evolving suitable transparent procedure for allocation required under Article 2.6.2 arises only when demand exceeds available capacity. DOS further stated that the rules of precedence were not relevant since the capacities were available. DOS added that approval of Space Commission was not necessary, as there was no policy making involved. The reply is not acceptable, as SATCOM policy stipulated that procedure for allocation of satellite capacity was to be evolved by ICC. Further, during the period from 2004 to 2011 when ICC was not in place, the demand for satellite capacity exceeded supply in all years, as detailed in Table-5. The reply also confirmed the fact that neither method of allotment nor procedure for allocation was framed by DOS and satellite capacity was committed to various DTH service providers without an ICC approved procedure.

3.4 Irregularities in the ‘first come-first served’ policy adopted by DOS

Since introduction of DTH service in India, DOS allotted satellite capacity to DTH service providers as detailed in Table 7.

Table-7: Allocation of satellite capacity for DTH service as on 31 July 2013

Order of Precedence	DTH service providers	Date of agreement	Indian Satellite				Foreign satellite		
			Name	Date of launch	Orbital location	No. of transponders	Name	Orbital location	No. of transponders
1	DD	18.03.04	INSAT 4B	12.01.07	93.5° E	6	-	-	-
2	Dish TV	27.05.04	-	-	-	-	NSS-6 Asiasat-5	95° E 100.5°E	12 6
3	Sun DTH	19.02.05	INSAT 4B	12.01.07	93.5° E	1	Measat-3	91.5° E	4
4	Reliance	28.06.05	-	-	-	-	Measat-3	91.5° E	9
5	Tata Sky	12.11.05	INSAT 4A	22.12.05	83° E	12			
6	Airtel	26.12.06	-	-	-	-	SES 7	108.2° E	11
7	Videocon	27.02.07	-	-	-	-	ST	88° E	15
TOTAL						19			57

Audit observed irregularities in the allocation of satellite capacity to Tata Sky by DOS, which are discussed in the following paragraphs.

3.4.1 Allocation of satellite capacity out of turn

It can be seen from the above table that Tata Sky was fifth in the order of preference for allocation of satellite capacity. However, Audit observed that Tata Sky was granted precedence over DD and allocated capacity on INSAT 4A satellite which was launched earlier in December 2005. DD, which was first in the precedence list, was allocated capacity on INSAT 4B which was launched in January 2007.

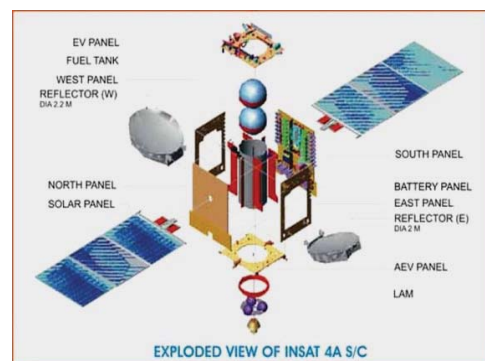


Figure 6: INSAT 4A

DOS stated (March 2014) that DD was allocated capacity on a foreign satellite (NSS-6) before allocation of capacity to Tata Sky on INSAT 4A. As DD had already started their DTH service from the foreign satellite, the services were migrated to INSAT 4B after the end of their contract period. DOS however, did not state

whether capacity on INSAT 4A at the prime slot of 83° east was offered to DD and turned down by the latter, which is significant in the context that DOS granted exclusive rights over this prime slot to Tata Sky as discussed in the next paragraph.

3.4.2 Grant of exclusive rights over prime orbital slot

According to SATCOM policy, satellites could be allocated to private parties in only two circumstances;

- ICC would earmark certain percentage of the capacity of Indian Satellites (INSAT) owned by Government of India for the use of Indian private users (Article 2.5).
- WPC would register 'Indian satellite systems' for private parties after following certain well defined and transparent norms. To establish an 'Indian Satellite System', the private parties had to incur expenditure towards application and its processing, operating licence and towards establishing ground segments and Satellite Control Centre (Article 3.1).

The principle of allocation of satellite capacity to the private users on a non exclusive basis was prescribed by the INSAT Coordination Committee.

Audit, however, observed that in the agreement signed with Tata Sky (November 2005), DOS committed the exclusive first right of refusal to Tata Sky for using Ku band transponders (for DTH service) at 83° east orbital slot, whereas this was not done in transponder lease agreements³⁰ entered with other DTH service providers. The prime slot of 83° east was advantageous to Tata Sky, since the communication satellites occupying this slot could uniformly access the length and breadth of the country.

The issue of preferential allocation of 83° orbital slot to Tata Sky was first pointed out by Audit in September 2012. Acknowledging the audit point, DOS held (July 2013) a meeting with Tata Sky during which it agreed to relinquish the first right of refusal on the orbital slot. However, no formal amendment was effected in this regard as of March 2014.

In the meantime, DOS launched GSAT 10 (September 2012) and placed it in the orbital slot 83° east (same as INSAT 4A). As INSAT 4A was functioning on reduced power, DOS offered to swap 12 transponders of INSAT 4A with GSAT 10. Though Tata Sky initially agreed with the arrangement, it later backed out stating that it was looking for additional satellite capacity with a foreign satellite as a long term engagement. Fearing litigation from Tata Sky,

³⁰ Dish TV, Reliance, Airtel, Sun DTH and Videocon.

DOS did not allocate 12 transponders of the Ku band satellite capacity of GSAT 10 to any other user.

Thus, DOS not only allocated satellite capacity to Tata Sky out of turn, but also accorded exclusive rights to the private party, in violation of the principle of non-exclusiveness of ICC.

Since Ku band transponders located in this slot could be allocated only to Tata Sky unless they refuse, grant of exclusive first right of refusal to Tata Sky created a difficult situation for DOS in allocating its Ku band transponders in the slot.

DOS stated (December 2012) that the satellite capacity was allocated to Tata Sky to improve acceptability of INSAT/GSAT system without compromising government interest. DOS added (March 2014) that first right of refusal was given as a technical requirement as further expansion of capacity for DTH service was possible only at the same orbital location. The fact, however, remained that DOS did not give exclusive right of first refusal to any other DTH service provider, indicating that DOS gave a preferential treatment to Tata Sky over other DTH service providers.