

SRI LANKA BROADCAST MEDIA REPORT

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An Investigation into the Closure of CBNSat and Implications for Sri Lankan Broadcast Media

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TABLE OF CONTENTS

Political & Media Context.....3

Background in Sri Lankan Broadcast Law.....7

The CBNSat Case – Stake-holders and Issues.....16

Timeline.....32

Analysis.....43

Ways Forward.....48

Bibliography.....52

Political & Media Context

The state of the broadcast media in Sri Lanka in the past few months has concerned many, not only those in media-monitoring and democracy-building capacities, but the general public as well.

To begin with, CBNSat and LBN, the two largest private television broadcasters in Sri Lanka, were shut down in early June 2006 by the Criminal Investigations Department (CID) on vague allegations of improper licences, the broadcasting of Fashion TV, and LTTE connections.

Next, the Finance Minister, President Rajapaksa, decided to impose a levy on all foreign programming and advertising, in the form of the Finance Act No. 11 of 2006. This Act, which was gazetted on 29 June this year, was brought into effect on the same day, to the shock and disappointment of the television and advertising industries.

The main opposition party in Parliament, the UNP, came out strongly against this act, saying the government was reintroducing censorship “through the back door using the Finance Act.” The party said that imposing crippling taxes on all foreign content and even higher taxes on dubbed foreign programmes would not effectively encourage the local film and TV industries, as the government had not yet even set up a proper fund through which to channel these taxes. The ad hoc decision to impose such taxes would instead increase the gap between the urban and rural masses as the large rural population who have no other way to learn English than through watching dubbed programmes on TV would be deprived of this opportunity.¹

The heads of all channels operating within Sri Lanka jointly sent a letter to the Media Minister urging the government to reconsider the decision, saying that the country’s TV industry would crumble under this act. The Accredited Advertising Agencies Association of Sri Lanka (4As) similarly admonished the government for passing such an act with no prior conference with the affected industries, saying it “adversely affects the economic progress of the country,” and is “causing grave anxiety, both to the industry professionals and the public at large.”²

The only group to come out strongly for this act was the National Chamber of Exporters

¹ “Govt. censorship through the backdoor, claims UNP.” Daily Mirror, July 18, 2006.

² “Exporters and ad industry split on TV taxes.” Daily Mirror Financial Times, July 19, 2006: 1.

(NCE), who welcomed the government's taxes, saying "as it is not possible to impose duties on these items at the customs entry point, the method of taxing at an alternative point is very appropriate as it will not only generate revenue to the government but will also give a boost to local firms engaged in this field."²

The third back-door assault on the media also came in mid-June, when the Power and Energy Minister, W D J Seneviratne, announced that the government had plans to force all TV channels to end broadcasting by 10 pm in a bid to conserve energy amidst rising fuel prices. Imposing a penalty of Rs 1 million on those stations that failed to comply with this law would be, according to the minister, "a short-term policy in an aggressive bid to face the escalating fuel price and high demand for electricity consumption." He said this was part of a government project to reduce power consumption by 20 percent.

Again, immense public and private outrage followed this intended infringement of the rights of individuals and businesses, the UNP calling it a return to the 1971-1977 era of state repression. Assistant UNP General Secretary Tissa Attanayake said "Watching television at the time of one's choosing is a basic fundamental right and people cannot be dictated to in this manner."³

Such interference in the country's private broadcast media has had a destabilizing effect, not only on the assurance of the Sri Lankan citizenry in one of the most basic provisions of a developing nation, but also on the confidence of both local and foreign private businesses in the government's commitment to abiding by a set of contracts and laws in a consistent manner across all industries and fields.

Broadcast media has, like the print media, repeatedly come under restrictions and control by the government for political, security and private interests in Sri Lanka. Television was first brought to Sri Lanka in 1979 by a private, not state, venture, but the country's first television station, the Independent Television Network (ITN), was co-opted by the government within a few months of its creation. Shan Wickremesinghe, the nephew of then President J. R. Jayawardene, had supposedly received the blessings of the ruling party, the United National Party (UNP), thanks in part to his political connections, to launch his station in 1979. Despite his connections, Wickremesinghe's station was taken over, probably because the government had realised the potency of this new medium and wished not to risk a weakening of state

³ "Country moving towards 1971-1977 era – UNP." The Island, Saturday June 24, 2006: p.4.
Sri Lanka Broadcast Media Report

control over information (Brady).

Subsequent to this acquisition, the government created its second television station, the Rupavahini Corporation, in 1982, through the Sri Lanka Rupavahini Corporation Act No. 6 of 1982. While the Act is mostly dedicated to dictating the rules and regulations by which this particular corporation must be run, its last part, Sections 17-32, contains regulations for all other private broadcasters, thereby rendering this Act the ‘Broadcasting Act’ of Sri Lanka. These regulations also include rules on licensing for private broadcasters

While Article 14 of the 1978 Constitution of Sri Lanka guarantees the right to freedom of speech and expression of its citizens, these freedoms are often restricted by Article 15, which lists so many exceptions to this rule that it renders Article 14 mostly useless in its protections. These qualifications include the restriction of rights granted by Article 14 if they conflict with the interests of racial and religious harmony or the national economy, or in relation to parliamentary privilege, or in cases of contempt of court, defamation or incitement to an offence, to name a few. All of these exceptions leave plenty of discretionary room for the government to quash any media outfit if it so deems, thereby creating a tendency towards self-censorship by smaller local content producers or, at the other extreme, a general move towards partisan and heavily biased content production by larger players, the slant depending on which state or private interests fund the broadcasters⁴

Most private TV and radio stations are affiliated with politically influential private groups, and their ability to obtain licences from the government sometimes relies more on this influence and the discretion of the Media Minister than their potential to produce better quality programming:

“The Sri Lanka Broadcasting Corporation Act states quite simply that the Minister in charge of Media is empowered to issue licences for the establishment of ‘private stations’. The discretionary broadcast licensing system has completely lacked transparency, accountability and consistency. As a consequence of this, some editorial positioning risks to become dictated by the business and political priorities of media owners and editors”⁵

⁴ For more information on the history of television broadcasting in Sri Lanka, see: Grunnet, Henrik, Lebbe Yakoob, Umar & Weiss LaRs “Assessment of the need for a Radio and TV journalist Training Unit in Sri Lanka,” The Sri Lanka Press Institute (SLPI) April 2005; Brady, Linda. “Colonials, bourgeoisies and media dynasties: A case study of Sri Lankan media.” ejournalist 2005 <<http://www.ejournalism.au.com/ejournalist/brady2521.pdf>>.

⁵ Grunnet, Henrik, Lebbe Yakoob, Umar & Weiss LaRs “Assessment of the need for a Radio and TV journalist Training Unit in Sri Lanka,” The Sri Lanka Press Institute (SLPI) April 2005.

Despite the history of a strong presence of governmental influence in local media, the relatively recent explosion onto the media scene by cable and satellite television broadcasters has resulted in a flood of foreign content into Sri Lanka in the form of channels such as the BBC, HBO, The History Channel, MTV (Music Television), Fashion Television, and The Discovery Channel.

This was encouraged by and coupled with, to some extent, liberalization in government control over the media with the transfer of governance to Dingiri Banda Wijetunge after the assassination of President Premadasa in 1993. President Wijetunge appointed a new Director General of the Rupavahini Corporation (Sunil Sarath Perera) who opened up state broadcast channels to the telecasting of content not wholly for the government, including meetings and rallies of opposition parties, as well as programmes featuring popular discussions and radical artists and poets.⁶

While Wijetunge's actions furthered the liberalization of Sri Lankan media, many of these steps forward were countered by his successors, both President Chandrika Kumaratunga, who, according to Brady, was quoted on more than one occasion as saying the press could not be given the "freedom of the wild ass,"⁷ and now President Mahinda Rajapaksa, whose administration's recent restrictions on broadcast media seem to augur an unravelling of the democratic progress of the country.

The competition from satellite- and cable-broadcasted foreign channels by companies such as CBNSat has encouraged both state and private local television networks to improve and diversify their own programming content – an important step in providing Sri Lankan viewers with more choice and greater exposure. The attempted suppression of such broadcasting by the government, detailed below, could therefore have a devastating effect on the Sri Lankan broadcasting media in its entirety.

⁶ Brady, Linda. *Colonials, bourgeoisies and media dynasties: A case study of Sri Lankan media*; p.14.

Sri Lankan Broadcast Law

Sri Lankan broadcast law has, by and large, focussed since its inception on the government's ability to control and monitor the broadcast media, rather than on protection of the media from undue governmental interference.

The Constitution

Since the Sri Lankan Constitution dictates what may and may not be passed as broadcast law, we begin with a look at the Constitutional bases for media laws. As mentioned in the section above, the 1978 Constitution guarantees citizens the right to freedom of speech and expression in Article 14, which states:

“Every citizen is entitled to -

(a) *the freedom of speech and expression including publication; ...*

(c) the freedom of association; ...

(f) the freedom by himself or in association with others to enjoy and promote his own culture and to use his own language;

(g) *the freedom to engage by himself or in association with others in any lawful occupation, profession, trade, business or enterprise...*⁷ [emphases added].

Article 15 qualifies these freedoms, however with the language:

“...(2) The exercise and operation of the fundamental right declared and recognized by Article 14(1) (a) shall be subject to such restrictions as may be prescribed by law in the interests of racial and religious harmony or in relation to parliamentary privilege, contempt of court, defamation or incitement to an offence....

(4) The exercise and operation of the fundamental right declared and recognized by Article 14(1) (c) shall be subject to such restrictions as may be prescribed by law in the interests, of racial and religious harmony or national economy.

(5) The exercise and operation of the fundamental right declared and recognized by Article 14 (1) (g) shall be subject to such restrictions as may be prescribed by law in the interests, of national economy or in relation to -

(a) the professional, technical, academic, financial and other qualifications necessary for practicing any profession or carrying on any occupation, trade, business or enterprise, and the licensing and disciplinary control of the person entitled to such fundamental right, and

(b) the carrying on by the State, a State agency or a public corporation of any

⁷ “The Official Website of the Government of Sri Lanka: The Constitution.” 15 June, 2006
<http://www.priu.gov.lk/Cons/1978Constitution/Chapter_03_Amd.htm>.

trade, business, industry, service or enterprise whether to the exclusion, complete or partial, of citizens or otherwise...

(7) The exercise and operation of all the fundamental rights declared and recognized by Articles 12, 13(1), 13(2) and 14 shall be subject to such restrictions as may be prescribed by law *in the interests of national security*, public order and the protection of public health *or morality*, or for the purpose of securing due recognition and respect for the rights and freedoms of others, or of meeting the just requirements of the general welfare of a democratic society. For the purposes of this paragraph "law " includes regulations made under the law for the time being relating to public security.

(8) The exercise and operation of the fundamental rights declared and recognized by Articles 12 (1), 13 and 14 shall, in their application to the members of the Armed Forces, Police Force and other Forces charged with the maintenance of public order, be subject to such restrictions as may be prescribed by law in the interests of the proper discharge of their duties and the maintenance of discipline among them"⁷ [emphases added].

These restrictions on the freedoms granted by Article 14 of the Constitution constitute a clear licence to curtail media freedom if such freedom is thought to conflict with the national interest. The power to decide who threatens the national interest and to penalize those who are deemed threats may, however, be too great a power when there is a lack of other political structures to ensure that the innocent are not victimized for private political or economic interests.

Sri Lanka Rupavahini Corporation Act of 1982

The SLRC Act, or Rupavahini Act, of 1982 created the Sri Lanka Rupavahini Corporation TV service, a state-run television service whose board of directors is appointed by the President.

The parliamentary Act, while dedicated mostly to the description and regulation of the Rupavahini station, also contains rules regarding the licensing and regulation of all other public and private television broadcast stations.

This Act, in concert with the Telecommunications Act of 1996 (see below), provides the procedural laws governing the granting of licences to all television (and other broadcast) stations in Sri Lanka, and yet there is very little specific reference in either to the different broadcast technologies and the specifications for which licences each kind of broadcaster must obtain in order to create and run a station in abidance with the law.

Part V – the ‘General’ part of the Rupavahini Act, deals with television broadcast law in the

⁷Ibid.

following ways⁸:

Section 17 states,

- (1) No person shall on or after the appointed date, engage in the production and marketing of television programme material for broadcasting unless he has registered himself with the Corporation as hereinafter provided:

Provided, however, that any such person who has engaged in such production and marketing prior to the appointed date, may, without being so registered, engage in such production and marketing for a period not exceeding six months from the appointed date.

- (2) Every application for registration shall be in the prescribed form and shall be accompanied by such documents and such fee as may be prescribed.
- (3) The Corporation may refuse to register the applicant on application made under subsection (2) or may cancel an existing registration if the applicant or the registered person, as the case may be, is unable to maintain the requisite standards that would be required in the public interest.
- (4) Where any person has been registered under this Act the Corporation shall issue to such person a certificate of registration in the prescribed form. Every such certificate shall contain the conditions that may be prescribed for ensuring the standards referred to in subsection (3).
- (5) Where any person to whom a certificate is issued under this Act, acts in violation of any conditions set out therein the Corporation may make order canceling his certificate.
- (6) Any person aggrieved by an order made under sub section (5) may appeal against the order to the Secretary to the Ministry of the Minister (hereinafter referred to as the “Secretary”) within thirty days of the making of the order. The decision of the Secretary on any such appeal shall be final.”

We are told in Section 17 that all corporations seeking to establish broadcasting stations must register with the Rupavahini Corporation and receive a certificate stating as such. This certificate states the conditions that corporations must abide by to ensure public interest standards (which are only vaguely addressed in the Act as “maintaining a proper local, regional and international balance and a balance in their subject-matter and a high general standard of quality”⁹).

Section 28 states:

- (1) No person other than the Corporation established under this Act shall maintain a television broadcasting station unless such person has obtained a licence from the Minister.

⁸ “Sri Lanka Rupavahini Corporation Act No 6 of 1982.” [e-Law Sri Lanka](#).

⁹ Ibid; Section 7, subsection (2) (b).

- (2) The Minister may in consultation with the Corporation issue to any person a licence for the establishment and maintenance of a private television broadcasting station.
- (3) No licence shall be issued by the Minister unless he is satisfied that the person applying for a licence has such technical, financial and professional qualifications as may reasonably be required for the purpose of establishing and maintaining a private broadcasting station.

Section 30 continues:

- (1) Any person who
- (2) knowingly makes any false or incorrect statement in any return or other document made or furnished under or for the purposes of this Act or of any regulation made thereunder; or
- (3) fails or refuses to furnish any information or return required by this Act, or any regulation made thereunder, to be furnished by him; or
- (4) willfully resists or obstructs any officer in the exercise, discharge or performance of any power, function or duty conferred or imposed upon that person by order under this Act, or any regulation made thereunder; or
- (5) contravenes or fails to comply with any provision of this Act or regulation made under this Act,

shall be guilty of an offence and shall, on conviction *after trial before a magistrate*, be liable to a fine *not exceeding five hundred rupees* (emphases added).

And **Section 32** concludes the act with the “Interpretations” clause that defines “private television broadcasting station” as meaning “a television station established or operated by any person other than the [Rupavahini] Corporation,” and “television broadcasting” as including “cable television but exclud[ing] the broadcasting of radio programmes. Lastly, “television programme” is defined as “includ[ing] any signal, announcement, item, communication, picture or other matter broadcast or intended to be broadcast from a television broadcasting station for reception by the public.”

Under these provisions of the Rupavahini Act, it can be, and has been, argued by CBNSat and other satellite broadcasters in Sri Lanka, that since satellite broadcasting is not included in the language of the Rupavahini Act at all, and that their processes of up-linking and down-linking data, but never actually *creating* “television programmes,” do not constitute broadcasting at all.

The Telecommunications Act (1996)

The Sri Lanka Telecommunications Act of 1996 is equally vague on the issue of licensing satellite broadcasters, and only includes satellite broadcasters in catch-all phrases referring to

“telecommunication services” that convey “messages” using any signal or combination of signals “for the broadcasting of music, conversations, speeches, lectures, stage performances, writing, facsimiles, images, pictures,” or for “actuation or control of machinery or apparatus...”¹⁰

Section 17 states that “no person shall operate a telecommunication system in Sri Lanka except under the authority of a licence granted by the [Media] Minister” and section 19 states that it is an offence to operate a telecommunications system without a licence issued under Section 17 of the Act:

Section 17

- (1) Subject to the provision of section 20, no person shall operate a telecommunication system in Sri Lanka except under the authority of a licence granted by the Minister in accordance with subsection (2).
- (2) The Minister may grant the licence referred to in subsection (1) on the recommendation of the Commission, provided he shall have the power to reject such recommendations for reasons assigned and grant a licence in his own discretion.
- (3) a) Where the Commission consider it in the public interest to do so the Commission may give public notice in such manner as it deems appropriate of its intention to recommend to the Minister the grant of a licence.
b) The notice referred to in paragraph (a) shall –
 - i. state that the Commission proposes to recommend the grant of a licence to a particular person;
 - ii. specify the time (not being less than twenty eight days from the date of publication of the notice) within which representations or objections with respect to the grant of the proposed licence may be made.
- c) A representation or objection duly made in response to such notice shall be considered by the Commission.
- (4) Every application for a licence shall be in writing and shall be made to the Commission in such manner as may be required by the Commission.
- (5) Before recommending the grant of a licence, the Commission shall satisfy itself that the applicant is capable of operating the telecommunication system for which licence is being applied for.
- (6) A licence under subsection (2) of this section –
 - a) shall be issued on payment by the applicant of the licence fee;
 - b) shall be in writing and unless previously revoked in accordance with any terms in that behalf contained in the licence, continue in force for such period as may be specified therein;

¹⁰ “Acts of Sri Lanka – Sri Lanka Telecommunications Act No 25 of 1991.” [e-Law Sri Lanka](#).

- c) shall set out the terms and conditions subject to which the licence is being granted;
- d) shall require the provision of such telecommunication services as are specified in the licence by means of such telecommunication system;
- e) may authorise the connection to any telecommunication system to which the licence relates of-
 - i) any other telecommunication system specified in the licence; and
 - ii) any apparatus so specified in the licence; and
- f) may authorise the provision by means of any telecommunication system to which the licence relates of any such telecommunication services as are specified in the licence... [and so on in a similar vein]

Section 19

- (1) A person who operates a telecommunication system in Sri Lanka without obtaining a licence under section 17 shall be guilty of an offence under this Act.
- (2) An operator shall be guilty of an offence under this Act if-
 - a) there is connected to the telecommunication system in respect of which the licence is issued-
 - i) any other telecommunication system which is not authorised by the licence to be so connected; or
 - ii) any telecommunication apparatus which is not authorised by the licence to be so connected; or
 - b) there are provided by means of the system any telecommunication services which are not authorised by the licence to be so provided.

Until CBNSat's closure for an alleged failure to obtain the proper licences, all broadcast stations obtained a licence from the Telecommunications Commission to operate, but *which* licence each operator was supposed to obtain according its particular field and technologies remained unclear and markedly absent from the legislature governing the process.

India, for example, under a similar influx of cable and satellite operators into the Indian television scene in the mid-1990's, moved quickly to formulate a Cable Television Act (1994) that specifically dealt with Cable Networks in India and their licensing, content and potential offences.

Then, a few years later, the Indian government promulgated the Broadcasting Act of 1997, which named and discussed Satellite and Cable broadcasting technologies, and prescribed rules for these technologies. An excerpt from the Act dealing with satellite technologies is given below:

LICENCES

No person is entitled to provide broadcasting services without obtaining a licence, after commencement of this act. The authority can grant licences for the following broadcasting services, namely: -

1. Terrestrial Radio Broadcasting
2. Terrestrial Television Broadcasting
3. Satellite Radio Broadcasting
4. Satellite Television Broadcasting
5. Direct to Home Broadcasting
6. Local Delivery Services
7. Such other services as may be prescribed...

Grant of licence for satellite broadcasting services.

1. Any person desirous of obtaining a satellite broadcasting licence will have to apply to the Authority.
2. If the Authority is satisfied that the applicant --- a) has acquired transponder on an Indian satellite system or on a foreign satellite system. b) Has obtained technical clearance for transponders from the wireless adviser. c) Has fulfilled all other condition laid down in the Act ;The Authority may grant a licence to such person on payment of fees ; If the Authority refuses to grant a licence it will have to give the applicant an opportunity to be heard. Provide further that such a person providing his broadcasting services immediately before the commencement of the Act may continue to do so without a licence for a period of one month from such commencement.

Grant of licence for Direct - To - Home Service.

The Authority will invite bids for grant of licence and it will be granted to the highest bidder if he fulfils all the conditions for the grant of such licence. The Authority grants such no of licences (not less than two) as may be prescribed.

Special Provisions for Satellite broadcasting and Direct-To-Home services.

The wireless Adviser will give technical clearance for licensing (the clearance can be refused on technical or security reasons. In cases where operations of the services are permitted with foreign satellite system, while giving technical clearance for relicensing or renewal of such services; give priority for their operation with Indian Satellite system.

The licensee shall carry out the up linking of satellite broadcasting services or direct - to - home services from India only up linking of coverage of live events taking place outside India can be permitted as determined by the regulations. The Authority can permit continuance of up linking of satellite broadcasting services from outside India till such time as it is reasonably required for shifting or creating the necessary up linking facility in India...¹¹

Although India’s broadcasting acts may still reflect a governmental desire to control rather than protect media freedoms, it is clear that the government attempted this control through legitimate channels, that is, in the creation of laws and regulations that these operators could take heed of and follow. In Sri Lanka’s case, the government did not create these regulations first, but arbitrarily penalized those it found threatening, and then moved to create regulation for long-term control.

¹¹ “Legal Resources – The Broadcasting Bill of 1997.” [Indian Television.com](http://www.indiantelevision.com/indianbroadcast/legalreso/legalresources.htm#>)
<<http://www.indiantelevision.com/indianbroadcast/legalreso/legalresources.htm#>>.

To expect no interference in the media by governments is an unrealistic ideal, but, as Toby Mendel of the freedom of expression non-profit, *Article 19* explains, these restrictions must abide by certain international norms on governmental behaviour:

(...) Every system of international and domestic rights recognises carefully drawn and limited restrictions on freedom of expression to take into account the values of individual dignity and democracy. Under international human rights law, national laws which restrict freedom of expression must comply with the provisions of Article 19(3) of the ICCPR:

The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

Restrictions must meet a strict three-part test.¹³ First, *the restriction must be provided by law. The law must be accessible and “formulated with sufficient precision to enable the citizen to regulate his conduct.”*¹⁴ Second, the restriction must pursue one of the legitimate aims listed in Article 19(3); this list is exhaustive. Third, the restriction must be necessary to secure that aim, in the sense that it does not go beyond what is necessary to secure the aim, that the reasons given to justify it are relevant and sufficient, and that it is proportionate to the aim.¹⁵ International jurisprudence makes it clear that this is a strict test, presenting a high standard which any interference must overcome” (emphases added).¹²

Since the closure of CBNSat, LBN and, temporarily, SatNet Technologies (see timeline below), the Telecommunications Regulatory Commission (TRC) which is headed by the Media Minister and charged by the Telecommunications act with authority to issue these licences, has undertaken to review its licensing regulations and create new ones to govern the emerging technology of satellite broadcasting. While the External Gateway Operator (EGO) licence was the only one available to those researching the procedures of obtaining a licence, online, the TRC’s website has expanded its licensing section significantly to include instructions on obtaining the right licence, online forms for the various licences, and guidelines on the application process, none of which were available prior to the shut-down of CBNSat for its use of a supposedly invalid licence.¹³

The details of accusations against CBNSat and the other satellite companies by the TRC

¹² Mendel, Toby. “Written comments submitted on *Leader Publications (Pvt) Limited Vs. Ariya Rubasinghe, Director of Information and the Competent Authority, et al.*” *Article 19* <<http://www.article19.org/pdfs/cases/sri-lanka-leader-publications-v.-rubasinghe.pdf>>.

¹³ “Telecommunications Regulatory Commission of Sri Lanka – Licences.” 15 June, 2006 <<http://www.trc.gov.lk/licences.htm>>.

regarding licensing will be explored below, but the issue at large seems to be an unlawful termination of these companies' operations without warning them of their lack of an appropriate licence or that they might be at risk of closure. The reasons given for their closure – that they did not have valid licences – seem absurd given that all these companies had been operational for at least a year under the supervision of the Rupavahini Corporation and the TRC before this sudden closure, and none were notified according to the rules set forth by the law, that they had not obtained the proper licences to operate.

This kind of unlawful interference has not been tolerated in the past, and should not be allowed today. In 1997, a broadcasting authority bill was created by four committees appointed by the Peoples Alliance government to make recommendations on areas of the media that needed reform. The bill sought, in part, to establish a regulatory authority for broadcast media and to implement a number of content restrictions on broadcast media. Upon review by the Supreme Court in the case, *Athukorale vs. Attorney-General*¹⁴, the court decided that the bill was unconstitutional because, if enacted, it would (in allowing the government to influence the appointment of the board of directors of the Broadcasting Authority), infringe upon “the independence required of a body entrusted with the regulation of the electronic media which, it is acknowledged on all hands, is the most potent means of influencing thought.” The Supreme Court also found that parts of the bill that granted the Minister regulatory power to limit the content of broadcasts and required annual licence renewals, restricted media freedom in ways that were inconsistent with the constitution.¹⁵ The maintenance of such separation of powers is vital to any democracy and any legislature, existing or in the making, must protect itself against abuse or manipulation by the administration in order to preserve the stability and legitimacy of the system.

¹⁴In Re The Broadcasting Authority Bill, S.D. No 1/97. 15/97, delivered on 5 May, 1997.

¹⁵ Grunnet, Henrik, Lebbe Yakoob, Umar & Weiss LaRs ”Assessment of the need for a Radio and TV journalist Training Unit in Sri Lanka,” The Sri Lanka Press Institute (SLPI) April 2005.

The CBNSat Case – Stakeholders & Issues

This report investigates the closure of CBNSat and its sister company, SonicNet Technologies from 6 June 2006 until 23 August of the same year. The case, as of the latter date, is still continuing, but, regardless of the final outcome, it is important to explore the violations of media, individual and industry rights to freedom from arbitrary government interference.

The closure of two private broadcasting stations by the Sri Lankan government – CBNSat and LBN Cable – came at a highly inopportune time for customers. The FIFA World Cup soccer tournament was just about to start and would have been broadcast to these 30,000 patrons. In the more than two months that these companies remained shut down, these customers were left without any foreign television channels, relying only on their terrestrial antennas, if they had them installed before they began subscribing to satellite television, to receive the few free local channels (MTV, TNL, Art TV, Rupavahini, ITN and EYE, for example). Of the stations available by antenna, many are state-owned and run, and of those few that are private, several are owned by the same company (Maharaja organisation or the EAP group), thereby leaving viewers with little choice or quality of content.

While missing the soccer world cup, the tennis French Open and the Sri Lanka, South Africa and India cricket tri-series as well – three of the most popular sporting events in Sri Lanka – would have upset many, perhaps a more pertinent loss in democratic terms, was the loss of an impartial source of both world and local news. The only international news that these Sri Lankans could receive, if they were able to access the local channels, was CNN, broadcast at certain times during the day on Art TV. With the crisis in the Middle East between Israel and Lebanon in full swing during these few months, the censorship of any news about Sri Lanka's burgeoning conflict from this channel was easier to conceal.

State-run channels unsurprisingly rely only on press releases issued by the government on issues such as the conflict with the LTTE. No sources besides the government's ministries are used. Local private channels are also, however, increasingly coming under pressure to toe the government's line regarding the conflict, as its escalation can be used by the authorities to justify reinstating persecution of the media under the ruse of state security. In the past, the Prevention of Terrorism Act No 48 of 1979 (PTA), was a tool of outright prosecution of those whose reportage did not wholeheartedly support the government. This act was rendered

inoperative by the ceasefire agreement of 2002, an agreement which no longer holds much legitimacy or power under the present circumstances of almost full-scale conflict.

In 1996, this act was used to charge the news director of TNL (one of the private channels) with broadcasting reports that undermined the government, when the station reported that the LTTE had attacked security forces in the east, resulting in these forces fleeing. The domestic and international press and human rights communities created such an uproar over the incident that the case was later withdrawn (CPA 2005)¹⁶.

In this context of heightening tension between the government and independence of private media, the arbitrary closure of first CBNSat on 6 June this year and the subsequent sealing of LBN cable and, temporarily, SatNet, dealt a huge blow to national confidence in the new government's democratic values and fairness.

On the night of 6 June, three CID inspectors, Chief Inspector U K Mahindadasa, SP A R Vaidyalankara and SI L Tilak Bandara, raided the offices of CBNSat and SonicNet Technologies, the two companies who jointly run a satellite company that delivers foreign satellite channels to about 20,000 subscribers in Sri Lanka, with a warrant stating that CBNSat was operating a broadcasting company without a valid licence.

The issue seems to have arisen in July 2005, when B A C Abeywardana, a managing partner at Television & Radio Networks (TRN), and a partner of Electroteks Limited, which owns and runs TV Lanka (a Sri Lankan broadcaster) had written a letter to the Media Minister accusing CBNSat of "operating an illegal private broadcasting station." The letter, sent also to the Ministry of Defence, the Ministry of Law & Order & Internal Security, the Ministry of Posts & Telecommunications, the Board of Investment (BOI), and the TRC, claimed that CBN was broadcasting and retransmitting satellite channels without a licence to broadcast from the Media Minister. The letter further claimed that a Memorandum of Understanding between CBN and Mr Abeywardana's company, TRN, that allowed CBN the use of their Rupavahini broadcast licence, was forged.

Later, a rumour, whose source is unclear, emerged that CBN was broadcasting pro-LTTE content on its channels late at night. This issue was taken up by the Media Minister and TRC in their bid to shut down the company, but was never openly used in court against CBN, as there was never any proof to substantiate the claim. Along with these two allegations came a

¹⁶ CPA and IMS report 2005.

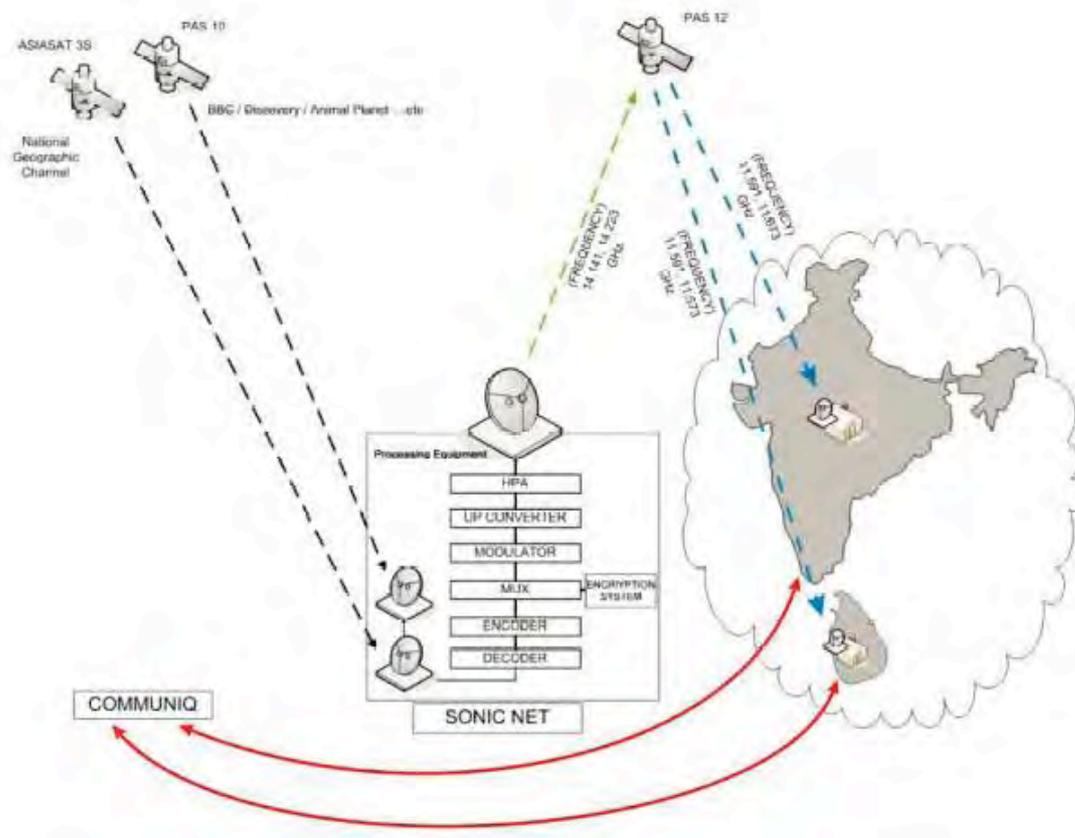
third vague accusation that CBN was broadcasting Fashion TV, considered by some to be unsavoury and inappropriate for Sri Lankan viewers. Since most other broadcasters and local channels air similar content and were not shut down, however, this argument was quite quickly put aside.

The LTTE-based accusation stemmed from a discovery that CBNSat uses the same satellite, PanAmSat 12, to downlink its channels to customers, as the LTTE use to broadcast their own channel, Eelam Sat NTT.

CBN, which operates together with SatNet to downlink channels such as the BBC and National Geographic from different satellites in space (see diagram below), re-scrambles them and uplinks to PanAmSat 12. Their customers then receive these encrypted signals from PanAmSat 12. This satellite is one of a fleet run by an international satellite provider that runs one out of every four channels broadcast throughout the world. PanAmSat 12 itself has a footprint that covers Europe, the Middle East, Southern Africa, India, and South East Asia, and can handle hundreds of channels – to anyone willing to pay.¹⁷ The argument that, because CBNSat uses the same satellite as the rebel organisation, it must have affiliations with that organisation, is therefore a weak one to say the least.

¹⁷ “PanAmSat: PAS 12.” July 20, 2006 <http://www.PanAmSat.com/global_network/pas_12.asp>.

Technical Overview of CBNSat's operations¹⁸



It is the accusation of LTTE ties that seems to have become the main reason for the current administration's targeting of CBNSat – especially since, after two months of court hearings and very little concrete information on exactly which laws the company broke and how they should be punished, the latest excuse for the delay in finalizing the case is that the President has directed that any new applications for licences issued under the Sri Lanka Rupavahini Act for broadcasting (including CBNSat's) must now be pre-approved by the Defence Ministry.

Under current conditions of escalating conflict between the government and the Tamil Tigers, such interference in the issuance of broadcasting licences by the Defence Ministry can only be seen as a direct attempt to control and censor the content of broadcast media. CBNSat and LBN Cable seem to just be unfortunate victims of a government and Media Ministry that do not understand the technology of satellite broadcasting, have no straightforward, transparent licence issuing process for these new technologies (something the Media Minister has

¹⁸ CBNSat: The Digital World: Shutdown." July 2006
http://www.cbnsat.com/inpages/popup/story_so_far.pdf.
 Sri Lanka Broadcast Media Report

admitted to¹⁹) and are inherently suspicious of private media and ready to strike out at anything they deem in conflict with the administration's interests.

In response to the closure of CBN's and SonicNet's offices, SonicNet took its case to the Magistrate's court, citing the CID officers as defendants, asking for compensation of Rs 100 million in compensation and an interim order directing the CID to remove its seal of the company's equipment and to allow them to re-start their transmissions. The details of the case that followed are outlined in the 'Timeline' section below.

An interesting and encouraging response to the interruption in transmission of CBN's Satellite service is the blog activism that began almost immediately after their closure. Three main blog websites were set up to share information specifically on the closure of CBNSat [<http://cbnsat.blogspot.com/>], the closure of LBN [<http://lbncable.blogspot.com/>] and on the general state of the broadcast media in Sri Lanka, [<http://tvradiosrilanka.blogspot.com/>]. While the CBN and LBN blog were created in June of this year – when these companies were shut down – the TV & Radio Sri Lanka blog has been in existence since April 2006. All three appear to have been created by the same person or group of people, but the responses and comments posted by dozens of other people on these websites – updating each other on the status of court cases, the media coverage and the details of the closures – has provided the customers of these companies with an independent voice box, and a source of information and clarity when there were few other sources of information for them to consult. The blog administrators also constantly encouraged customers to write to those responsible for the closure (officials at the TRC, Rupavahini Corporation, and the Media Minister) to lodge their grievances and ask that their services be reinstated, thereby providing a legitimate channel for their frustrations.

The users of these blogs decided, after months of deprivation of services that they had

¹⁹ "Satellite TV Providers under spotlight." *Daily Mirror*, June 23, 2006. The article reports that amidst the confusion over the withdrawal of satellite and cable TV facilities: "the Media Minister, Anura Priyadarshana Yapa said the commission would proceed to set out rules to regulate the services provided by satellite service providers, monitor their operations and usage of satellite communication facilities provided to the customers. The Minister said the decision was taken as it has been found that none of the satellite TV providers had registered themselves in accordance with the act."

legitimately paid for, to create an online petition to the Sri Lankan government.²⁰ The petition stated,

“We, the subscribers of CBNSat have invested in a legitimate product endorsed by the government authorities such as BOI and TRC and by shutting them down almost after a year of operation, without any justifiable reason we believe that our rights as consumers have been grossly violated...

The ultimate objective of TRC is to protect the consumer and regulate the telecommunication industry. Under the TRC act if CBNSat have violated any law they should be summoned and given a chance to comply with the regulations, and issue a proper licence to carry-out their services without putting its’ subscribers into inconvenience. We read from newspapers that the Attorney General have ordered to issue a temporary licence to CBNSat till the new regulations be drafted. We urge the relevant authorities to speed up this process and at least let CBNSat operate to the existing subscriber base till the new regulations and licensing scheme becomes active.”

There are currently 182 signatures on this petition, and the numbers continue to grow each day that these satellite providers remain shut down.

CBNSat & SonicNet Technologies



In a special edition newsletter to its customers in July 2006 (about a month after the closure of its operations), CBNSat explained in great detail the incorporation of SonicNet Technologies in February 2003, and the subsequent incorporation of CBNSat in May 2005, the process of obtaining licences (with scanned images of documents to support its explanation) and the way in which the two companies operate together to deliver satellite television to their customers. Excerpts from this newsletter follow:

“On 28th February 2003, the then Minister of Mass Communication, Hon. Imthiaz Bakeer Markar, granted SonicNet Technologies (Pvt) Ltd. a licence to operate an external gateway for international telecommunications under section 17 of the Sri Lanka Telecommunication Act No. 25 of 1991 as amended by Act No. 27 of 1996. The licence came into force on 28th February 2003 and is valid for a period of ten years from that date. SonicNet Technologies (Pvt) Ltd. was granted the licence to provide international services utilizing any technology as

²⁰ The full text of this petition can be accessed at: “Protect the Rights of the CBNSat SubscribeRs”
<<http://www.petitiononline.com/cbnsat/petition.html>>.

per Clause 1.1 of the licence.

Voice calls is
only one part
of
this licence

PART 1: INTERNATIONAL SERVICES, THE LICENSED SYSTEM AND AUTHORITY TO CONNECT

CLAUSE 1: INTERNATIONAL SERVICES

1.1

1.1 The EGO Operator may provide in Sri Lanka, by means of the Licensed System and any Connectable System, **International Services** utilising any technology, including to originate Voice Calls on any Local PSTN by means of Equal Access.

1.2 Notwithstanding clause 1.1, this licence does not authorise the provision of the following services:

- (a) communications to or between aircraft;
- (b) communications between satellite mobile handsets in Sri Lanka and satellites; and
- (c) communications between:
 - (i) satellites and any very small aperture satellite Earth station (VSAT); or
 - (ii) satellites and any other earth station,

to which customers are directly connected, other than by means of a telecommunications network operated by a Local Operator.

CLAUSE 2: THE LICENSED SYSTEM

2.1 For the purposes of the EGO Operator providing International Services, the EGO Operator is authorised to install, own, operate and maintain, on a non-exclusive basis:

- (a) international capacity, using any kind of network and any form of transmission technology, between places outside Sri Lanka and the relevant cable landing station or radio communications facility in Sri Lanka;
- (b) cable landing stations;
- (c) subject to clause 1.2(c), satellite Earth stations.

- (a) between members of a closed group of customers, some members of which are situated within Sri Lanka and others of which are situated outside Sri Lanka, which group comprises individuals, businesses or companies engaged in a common business or activity and which was formed for the specific purpose of furthering such common business or activity; and
- (b) related to the common business or activity of the group.

“international Services Business” means the wholesale and/or retail business or businesses of the EGO Operator supplying International Services under this licence or any other Sri Lanka licence or authority.

“International Service” means a service for:

- (a) the carriage of Messages between a place within Sri Lanka and a place outside Sri Lanka; or
- (b) the provision of bandwidth or facilities between an External Gateway Facility, cable station or satellite earth station in Sri Lanka and a place outside Sri Lanka (including a transponder on a satellite).

“Linked Sale” means a transaction by which the EGO Operator agrees to:

- (a) provide any Telecommunication service by means of or in relation to the Licensed System;
- (b) provide any Telecommunication Apparatus for connection to the Licensed System; or
- (c) connect any other system or apparatus to the Licensed System.

on condition that the person to whom such Telecommunication service, Telecommunication Apparatus or connection is to be provided shall:

- (d) acquire from the EGO Operator or from any other person specified or described by the EGO Operator any Telecommunication service other than the Telecommunication service requested, save where the first-mentioned service cannot be provided without the provision of that other service; or
- (e) acquire any Telecommunication Apparatus not incorporated in the Licensed System, save where the Telecommunications service requested cannot otherwise be provided or the Telecommunication Apparatus requested cannot otherwise be used.

...Communiq Broadband Network (Pvt) Ltd. known as “CBNSat” to our customers was incorporated with the approval of the BOI [Board of Investment] and registered with them under Section 17 on 23rd December 2004...

The BOI was given clear explanations that the nature of the business undertaken included the transmission of content and media, **including pay and non-pay** television. Communiq Broadband Network (Pvt) Ltd, operating under the brand name “CBNSat” was officially launched to the public, over a year ago on 27th May 2005...

In April 2005, Communiq Broadband Network (Pvt) Ltd. entered into an agreement with SonicNet Technologies (Pvt) Ltd.

SonicNet Technologies (Pvt) Ltd. receives digital data streams from international channel providers from satellites located in space. This data is received in encrypted form and is then decrypted (decoded) by SonicNet Technologies (Pvt) Ltd. It is then once again encoded, compressed, re-encrypted and transmitted to transponders on a satellite known by PANAMSAT, called PAS12 located 38,000 miles in space above the Earth, which satellite is owned by PanAmSat. The digital data streams are then beamed down from the PAS12 satellite to the South Asian region. Communiq Broadband Network (Pvt) Ltd. provides decryption keys on smart cards to its customers. The customers are also provided with a receiving dish and a decoder by an associated company by the name of CBNSat (Pvt) Ltd. The smart card is then inserted into the decoder which enables the customer to access and decode the data transmitted by the PAS12 satellite, thereby viewing the images on their television screen.”

*Services and Channels*²¹

Television

- CH01 [BBC World](#)
- CH02 [CNN](#)
- CH03 [Discovery Channel](#)
- CH04 [Animal Planet](#)
- CH05 Discovery Travel and Living
- CH06 Zoom (Lifestyle and Glamour)
- CH07 [HBO](#)
- CH08 [MTV](#)
- CH09 [VH1](#)
- CH10 [Nickelodeon](#)
- CH11 [HBO Signature](#)
- CH12 Star Sports
- CH13 [Cinemax](#)
- CH14 [ESPN](#)
- CH15 Pogo
- CH16 [National Geographic Channel](#)
- CH17 Adventure 1
- CH18 [The History Channel](#)
- CH20 Reality TV
- CH21 GoalTV 1
- CH22 GoalTV 2
- CH23 Fashion TV
- CH24 SET (Sony Entertainment Television)
- CH25 [Animax](#)
- CH26 [Cartoon Network](#)
- CH27 [AXN](#)
- CH28 Derana **(Local)**
- CH29 TNL **(Local)**
- CH30 [ITN, Sri Lanka](#) **(Local)**
- CH31 [Rupavahini](#) **(Local)**

²¹ “CBNSat.” [Wikipedia](http://en.wikipedia.org/wiki/CBNSat) 21 Sept. 2006 <<http://en.wikipedia.org/wiki/CBNSat>>.

- CH32 [Channel Eye](#) (Local)
- CH33 [Swarnavahini](#) (Local)
- CH34 Raj TV
- CH35 Raj Plus

Radio

TNL FM , Light FM, Asura FM, Sun FM, Gold FM, Hiru FM, Sha FM & Suriyan FM

From CBNSat website²²:

“The learned Magistrate has ... requested us to obtain an additional licence to maintain a “private television broadcasting station” under section 28 of the Sri Lanka Rupavahini Corporation Act No. 6 of 1982. Although we are not a television broadcasting station, solely in the interests of our valued customers, we have submitted an application for the aforesaid licence under protest and strictly without prejudice to our rights in Court.”

LBN²³



Lanka Broadband Networks (LBN) is the longest-running cable television provider operating for approximately six years before its closure and had a Rupavahini licence through the same third party that CBNSat received its Rupavahini licence from.

Launched on the 15th of July, 2000, LBN down-linked programming by satellite and then run cables to its customers. It, like CBNSat, claims that it is not a broadcaster itself but provides its services to this third party company, Television and Radio Networks (TRN), which has the proper SLRC licence.

LBN did not possess a TRC licence according to Section 17 of the TRC Act, and therefore had a weaker case in court in terms of licensing than CBNSat did. LBN did not come under the same ‘national security threat’ accusations as CBNSat did, however.

²² “CBNSat: The Digital World.” <www.cbnsat.com>.

²³ “LBN Cable TV forum.” 21 Sept. 2006 <www.lbncable.blogspot.com>.

As the company's petition to the Court of Appeal states in its defense, amongst its shareholders are LTL Projects (Pvt) Limited, a company that is 70% owned by the Ceylon Electricity Board and Lanka Electricity Company (Pvt) Limited, which is 100% government owned, which renders LBN approximately 15% government-owned. How the government could not have been aware of such a company's operations for six years without the proper licences and failed to correct the error is therefore an interesting question.

As of the 25th of August, 2006, LBN's application for a licence to the TRC has been forwarded to the Defence Ministry for review and they expect to receive a licence by the 15th of September 2006.

TRC²⁴

The Telecommunications Regulatory Commission of Sri Lanka was established under the Sri Lanka Telecommunication (Amendment) Act No. 27 of 1996.

According to the TRC, its goals and responsibilities are as follows,

Objectives of TRCSL:

- To ensure the provision of a reliable and efficient, national and international telecommunication services in Sri Lanka.
- To protect and promote the interests of consumers, purchasers and other users and the public interest with respect to charges for and the quality and variety of telecommunication services provided and apparatus supplied.
- To maintain and promote effective competition between persons engaged in commercial activities.
- To promote rapid and sustained development of domestic and international telecommunication facilities.
- To promote research in to and development and use of new techniques in telecommunications and related fields.

(more fully described in Section 4 of the Act).

²⁴ "Telecommunications Regulatory Commission of Sri Lanka: About Us." 2002
<<http://www.trc.gov.lk/aboutus.htm>>.

Media Minister²⁵

Hon. Anura Priyadarshana Yapa, MP is the current Minister of Mass Media and is among other responsibilities, responsible for issuing licences to broadcasters according to Section 17 of the TRC Act 25 of 1991.

The Media Minister is granted the power to revoke licences under Section 11 of the act, following an inquiry, giving of notice to the broadcaster stating that he proposes to make an order requiring compliance with the conditions of the licence and “stating the relevant conditions of the licence and the acts or omissions’ of the broadcaster. The broadcaster must then be given 28 days within which to object or respond to this notice before any further action is taken.

Rupavahini Corporation²⁶

The Sri Lanka Rupavahini Corporation (SLRC) is the publicly funded national television network of Sri Lanka. Gifted by the people of Japan to the people of Sri Lanka, it is mainly for the provision of education and useful information.

The Corporation was established by Parliament under Act No. 6 of 1982 for the provision of a national television service, and produces and broadcasts programmes in three languages.

There are two television channels Rupavahini and Channel Eye. Both Rupavahini and Channel Eye are only available via conventional analogue transmission.

It is an autonomous corporation run by a board of directors appointed by the president. Management of the corporation is in the hands of a Director-General appointed by the president. Its programming and broadcasts are funded by television advertising and government grants.

TV Lanka, TRN & B A C Abeywardana

B A C Abeywardana, a managing partner at Electroteks Global Network Limited, which owns Television and Radio Network, is, according to the Sunday Leader, the Chairman of the Tea

²⁵ “The Official Website of the Government of Sri Lanka: Ministry of Mass Media and Information.” 13 July, 2006 <http://www.priu.gov.lk/Ministries/Min_Mass_Media_Information.html>.

²⁶ “Rupavahini.” Wikipedia 21st Sept. 2006 <<http://en.wikipedia.org/wiki/Rupavahini>>.

Board and has close ties with the President, Mahinda Rajapaksa.

The first accusatory letter concerning CBNSat's licensing was sent by Mr Abeywardana to the Media Ministry in his capacity of Managing Partner at Television & Radio Networks. In the letter, Mr Abeywardana claimed that "A company called CBNSat has commenced operation of a Private Broadcasting station broadcasting and retransmitting satellite channels." He also claimed that a Memorandum of Agreement between partners at Electroteks Limited and CBNSat that laid out the terms of sharing Electrotek's Rupavahini broadcasting licence with CBNSat was forged and requested "a police entry too for [TRN's] safety and for an inquiry."

PanAmSat 12 and the LTTE link

PanAmSat is an international satellite company run out of the United States, whose main service is the distribution of television programming for broadcasters around the world. PanAmSat was recently merged with Intel Sat, to create the largest provider of fixed satellite services (FSS) worldwide to each of the media, network services/telecom and government customer sectors

According to the company's website²⁷:

Using optimized capacity on a combined fleet of 51 satellites and a large, complementary terrestrial infrastructure including eight owned teleports, fiber connectivity and over 50 points of presence in almost 40 cities, the new Intelsat:

- Carries one out of every four television channels transmitted over fixed satellites;
- Supports 27 Direct-To-Home platforms worldwide;
- Operates 16 satellites that are part of video neighborhoods around the world;
- Is the number one provider of transponders for video programming worldwide;
- Carries more high definition (HD) programming than any other FSS carrier;
- Is the largest provider of commercial satellite services to the government sector;

²⁷ "Intelsat completes Acquisition of PanAmSat: News Release." 3 July, 2006. <http://www.intelsat.com/pdf/press_releases/2006/20060703.pdf>.

CBNSat and SonicNet use the services of PanAmSat to downlink program content such as the BBC News and National Geographic channels (from PanAmSat 10), decode this content, and then re-encrypt and uplink to PanAmSat 12, from which CBNSat's programming is beamed to customers' personal receiver dishes. CBNSat has bought capacity on PanAmSat 12 for the 34 channels that they uplink from Sri Lanka. Each customer is also provided with a decoder that can decode only CBNSat's own encrypted content.

An article published on June 2nd in the *Sunday Leader* reports,

“The LTTE channel known as Eelam Sat NTT is also accommodated on the satellite (PanAmSat 12) that could handle some 1000 channels, according to technical experts. Experts also say that accessing capacity on the same satellite by different networks is possible, as the space would be provided to anyone who is willing to pay.

They also insist that channels managed by CBN and LBN are secure unlike free to air channels, but do not completely rule out the possibility of the latest concern about national security.

They say that in this information age it would be difficult to restrict the free flow of information and it would also seem wrong.”²⁸

Comet

*Excerpts from Comet Cable's website*²⁹:

Cable System

Comet Cable uses state of the art MMDS (Multipoint Multi-channel Distribution System) pay television system, which is widely used in over 35 million households throughout the world.

Coverage

Comet Cable distributes its services to a radius of approximately 50 Km from the HILTON JAIC TOWER. The main distribution area is considered to be the Greater Colombo Region. This system requires line-of-sight transmission from the antenna at customer site to the transmitting tower.

Comet has a licence under the Rupavahini Act. But, as far as the lawyers of CBNSat are aware, does not have a licence under Section 17 of the Sri Lanka Telecommunications Act. It should therefore also have been shut down with CBNSat and LBN. There is no apparent

²⁸ “The Cable TV Fiasco.” *Sunday Leader*, July 2nd 2006

²⁹ “Comet Cable: Pioneer Cable TV Company in Sri Lanka.” 25 Sept., 2006 <<http://www.cometcable.com/>>.

reason for the discriminatory prosecution of these two companies and not the other television broadcasters in Sri Lanka, namely SatNet (Pvt) Ltd, MultiVision (Comet) (Pvt) Ltd and Electroteks Ltd, besides the alleged LTTE link. It has been suggested by some; including media such as the *Sunday Leader* that each of these other companies has some government connection and, therefore, protection.

According to CBNSat's counsel, Riad Ameen, for example, 10% of Comet is owned by the Southern Development Authority.

SatNet³⁰

SATNET (formerly STAR TV Lanka Pvt. Ltd) claims to be the first Direct-To-Home pay television company in Sri Lanka, although many other sources have it that CBNSat was the first company to bring this feature to Sri Lanka.³¹ SatNet was one of the companies to be initially closed down after the closure of CBNSat and LBN, but was then re-opened for reasons which remain unclear. SATNET's court case has also received less media attention than the other two and the conclusion of its case is unknown to this researcher.

Mr Lakshman Hullugalle - Chairman / Managing Director

Founder of the company; Vice Chairman - Ceylon Fisheries Corporation; Sr. Advisor on Foreign relations and Investment Promotions - Southern Development Authority of Sri Lanka.

Mr Gamini Rajanayake – Director

An accountant by profession, widely experienced in local and international business. Director of Television and Radio Network.

Ms. Dilrukshi Hullugalle – Director

Secretary to State Minister of Construction and Building Materials 1989 / 94.

SATNET's customer base:

At present, the company claims a subscriber base of over a 2500-3000 homes, offices and hotels around the country. SATNET also has an island wide dealer network for marketing, distribution and after sales services.

³⁰“SATNet: Sri Lanka's First Digital Stereo Satellite Broadcaster.” 2006 <<http://www.satnet.lk/>>.

³¹ See “CBNSat: The Digital World: What's New.”

<http://www.cbnsat.com/inpages/whatsnew/cbnsat_events.aspx>; Kangaraarachchi, Ramani. “CBNSat TV Network Launched.” *Daily News*, May 31st 2005 <<http://www.dailynews.lk/2005/05/31/bus02.htm>>.

The company's website claims,

“... Unlike other operators, SATNET is able to offer [Direct-to-home, or DTH] service, to any part of the country *because they are the only licenced operator possessing this technology.*”

According to *Lankanewspapers.com*, June 22, 2006, the Colombo Additional Magistrate ordered the CID to close down SatNet's operations on the 21st of June and “take appropriate action against the station for violating the laws of the land by not obtaining the permission to run the station from the relevant authority.” Hullugalle was ordered to appear before the court, and his attorney argued that SatNet had indeed obtained the licence it needed to import TV equipment and sell it to customers, and its broadcasting was done from India, and therefore outside the purview of the TRC and the Rupavahini Act. The magistrate nevertheless ordered the CID to “take the same steps as against the other two stations under investigation as their failing to do so would be unfair.”

Timeline

- **28 February 2003**

SonicNet received its TRC licence from the Media Minister Mr Mangala Samaraweera (also head of TRC). The minister issued an External Gateway Operator Licence (EGO Licence) to SonicNet, whose sister company is CBNSat, to operate until January 31, 2013 on the recommendation of the Telecommunications Regulatory Commission in the manner stipulated in Section 17(2) of the TRC Act. *July 2006 Special 'Transparency edition' Issue of CBNSat newsletter, 'Digital World'*

- **27 May 2005**

CBNSat was launched today. Media Minister Mr Mangala Samaraweera endorsed the operations at the launch. CBNSat was the first Direct-to-home (DTH) operator in Sri Lanka to use Digital Video Broadcast Satellite technology. *Daily Mirror 28th May 2005*

- **27 July 2005**

Mr B A C Abeywardana wrote a letter to the Media Minister complaining that CBNSat was operating illegally and without a licence, claiming that MOU signed by a member of Abeywardana's company, Television and Radio Networks (TRN), allowing CBNSat and LBN to use its broadcast licence was forged.

Abeywardana is also the owner of a local television broadcast company called TV Lanka, and the Chairman of the Tea Board, a government position. It has been claimed (by the *Sunday Leader* and a source from CBNSat) that Abeywardana has close ties with President Rajapaksa and was the one who instigated the suspicions of LTTE ties on CBNSat's part. *Sunday Leader, 2 July 2006*

- **11 October 2005**

CBNSat received its Vendor's Licence from the TRC for to "import, sell, offer for sale, deal in, demonstrate, install, establish, [and] maintain & repair telecommunications apparatus and satellite television receiving equipment," according to Section 21 of the Telecommunications Act No. 25 of 1991. *July 2006 Special 'Transparency edition' Issue of CBNSat newsletter, 'Digital World'*

- **20-22 March 2006**

CID officers visited CBNSat's offices and questioned their directors on the licence issue. *The Island, 14 June 2006*

- **6 June**

The countrywide operations of the satellite television station CBN came to a standstill when a group of Criminal Investigations Department (CID) detectives ordered that

transmissions be stopped immediately.

The detectives reportedly produced a search warrant from the magistrate's courts to support searching the offices, but their actions, which included the seizing of some equipment for purposes of examination and the sealing of CBN and SatNet's offices, were not called for in the warrant.

They also seized the equipment of both CBNSat and its sister company SonicNet, although CBNSat is the company cited in the warrant to have violated the TRC by allegedly not having the correct licence, not SonicNet.

- **7 June**

The first Magistrate's Court hearing. SonicNet Technologies filed its petition against the CID officers that closed down its offices, and the Attorney General (representing the government). *July 2006 Special 'Transparency edition' Issue of CBNSat newsletter, 'Digital World'*

- **8 June**

The second Magistrate's Court hearing. Colombo Additional Magistrate Gihan Pilapitiya called the Criminal Investigation Department (CID) and the Telecommunications Regulatory Commission to appear in court today to show cause for raiding the office of CBNSat and suspending its satellite transmission. *ColomboPage News Desk, 8 June 2006*

- **10 June**

The CEO of Communiq Broadband Network (Pvt) Ltd, Muhundan Canegy, held a news conference today and criticized the CID for the way in which it had conducted its investigations.

"If there's an illegal operation as alleged, we should be informed first in writing by the Telecommunications Regulatory Commission.

Then we should be given a hearing for accusations made against us and so on. It is a long process under the telecommunication regulatory act. The CID can't just seal the operations without adhering to this process which had caused an immense loss to us and our valued customers," Mr Canegy was reported by the *Daily Mirror* to have said.

The *Mirror* described Mr Canegy as having been "armed with a series of documents, licences and approving papers related to the TRC," in order to "debunk allegations that the CBNSat, which operates through a parent company called SonicNet Technologies, does not have the necessary licence."

Mr Canegy said SonicNet Technologies (Pvt) Ltd had a licence granted by the Ministry of Mass Media and Communication in 2003, while the company had obtained all necessary approvals for all the equipment it uses from the TRC.

"We have a customer base of 20,000 who have been affected because of the sealing

especially during a period in which an important foreign transmission like FIFA World Cup was being inaugurated yesterday,” he said. *Daily Mirror, 10 June 2006*

▪ 12 June

The first High Court hearing. *July 2006 Special ‘Transparency edition’ Issue of CBNSat newsletter, ‘Digital World’*

The third Magistrates Court hearing. The petition filed by CBNSat against a CID move to seal its offices was heard by the Colombo Additional Magistrate today.

The organisation argued that the CID acted out of warrant in moving to seal the premises of the two companies comprising CBNSat. At the preliminary hearing last week which was adjourned until today, Colombo Additional Magistrate Gihan Pilapitiya called on the CID and the TRC to appear in court to show cause for their actions in raiding the offices of CBNSat and suspending its satellite transmission.

SonicNet technologies – the sister company of the service provider – also appealed to the Telecommunications Regulatory Commission to inquire into the matter.

CBNSat’s counsel told the Magistrate’s Court that the CID had grossly violated the law in shutting down the CBNSat cable television network without prior warning or any regard to the due process of law. The CID had obtained a warrant from the Magistrate under Section 65(1) of the TRC act to search the company’s offices, but had seized equipment and shut down operations instead.

Section 65(1) of the TRC Act states, “If a Magistrate is satisfied by information on oath that there is reasonable ground for believing that, in contravention of the provisions of this Act... any telecommunication apparatus has been installed, or established, or is maintained or worked, or that any telecommunication apparatus has been imported, sold or offered for sale... within his jurisdiction, such Magistrate may grant a search warrant to any police officer authorizing that officer to enter and inspect the place... and to seize any apparatus which appears to that officer to be used or intended to be used for any telecommunication and which appears to him to have been imported, sold or offered for sale for the aforesaid purposes.”³²

The Senior State Counsel (SSC) appearing for the CID said that engineers from the Rupavahini Corporation and the TRC had conducted investigations into CBNSat’s equipment and confirmed in their reports that television and telecommunication receptions had been used by the Respondents in operating their network. They asked the Court to allow them get the opinion of an engineer from the SLBC for further investigations.

Counsel then asked the court to issue a search warrant to search LBN Network (Pvt) Ltd. He also informed the Court that to function as a TV station one should obtain a licence from the Rupavahini Corporation, which the Directors of CBNSat, Mohandas Chandrasuriyan and Murugan Chandrasuriyan had not, thereby violating the law.

³² Sri Lanka Telecommunications Act No 25 of 1991; Section 65(1).

The Defence Counsel informed Court that the penalty for default to obtain a licence, was a fine of Rs 500, not seizure of equipment and closure of operations, and that the channels SatNet formerly Star TV Lanka, MultiVision (HBO Comet) and Electroteks were operating without a licence from Rupavahini Corporation. Search warrants should therefore be issued against those networks too. The Magistrate agreed to issue search warrants against those networks as well. *Daily Mirror 13 June 2006*

CBNSat's counsel also said that the Rupavahini Corporation procured CBNSat's services to link up with the Palali Air Base for three months without any charge unconditionally and the said facility was subsequently discontinued since the said Corporation had installed its own Satellite Up-link Station. The Rupavahini Corporation had acknowledged this by letter – testimony to the fact that the authorities were well aware of CBNSat's role in broadcasting and used its facilities in the broadcast of their own state channel. *Daily Mirror 4 August 2006*

▪ **14 June**

Colombo Additional Magistrate Gihan Pilapitiya ordered the Rupavahini Corporation to submit an investigation report to the Court within two days.

Senior State Counsel Gihan Kulatunge appearing for the CID informed the Court that inquiries on LBN Network (Pvt) Ltd, SatNet (Pvt) Ltd, MultiVision (Comet) (Pvt) Ltd and Electroteks were underway and the findings would be reported to the Court once investigations were complete.

State Counsel also agreed to allow CBNSat to resume its functions if the Media Ministry could consider issuing a licence to CBNSat.

Senior Counsel M.L.M. Ameen PC appearing for CBNSat asked the Court to make an interim order to open the network, thereby alleviating the severe difficulties being faced by both the company's employees, and the 100,000 customers that CBNSat served.

He said reopening the channel would not affect CID investigations.

Mr Ameen also brought to the notice of the Magistrate that while CBNSat had been kept shut, the other TV channels into which the court had ordered investigations were functioning unobstructed, calling this a great injustice.

He further states that the CBN network was operating on broadband and therefore it was not necessary to obtain a licence from the Rupavahini Corporation. He says that the network had obtained the necessary licence from the TRC.

"Counsel for the Rupavahini Corporation, Hemantha Warnakulasuriya PC complained that though the Court ordered the CID to get the place checked by an engineer from the Rupavahini Corporation some days ago, the CID acted on the order only yesterday creating hardships to the Rupavahini Corporation. The counsel sought five days to make their observations on CBNSat and report to Court.

“The Magistrate allowed the Rupavahini Corporation two days to complete their findings.

The case was postponed to 19 June.”

Additional Magistrate Gihan Pilapitiya issued search warrants on LBN, SatNet (Pvt) Ltd, MultiVision and Electroteks and ordered the CID to report the findings to court on June 19. *Daily Mirror, 15 June 2006*

▪ **15 June**

LBN is shut down and search and seizure takes place (by the CID) as with CBN, on the basis that they have no proper licence to operate. *The Island, 16 June 2006*

▪ **16 June**

LBN files a *writ of certiorari* (an order given by a higher court to quash the decision of a lower court or other (quasi-governmental organization) application in the court of appeals to quash the decision of the TRC to dispute LBN’s licence and close down the network, calling the decision “arbitrary, unreasonable and mala-fole” *The Island, 16 June 2006*

The Power and Energy Minister, W D J. Seneviratne was reported by *The Island* on the same day to have disclosed plans of imposing a penalty a Rs 1 million on all TV channels which operate after 10 pm, in “an aggressive bid to face the escalating fuel price and high demand for electricity consumption.” *The Island, 16 June 2006*

▪ **17 June**

The Island reports that the CID also raided the offices of SatNet at Narahenpita to check its operations were legal, and verified this was so. The CID was to ‘raid’ the offices of Multivision and Electroteks this week as well. *The Island, 17 June 2006*

▪ **19 June**

The Colombo Magistrates Court has ordered the Ministry of Mass Media and Information to hand in a report assessing whether CBNSat can resume its satellite broadcasting next Wednesday. *Daily Mirror, 19 June 2006*

The complainant, SonicNet Technologies, the affiliated company of CBNSat, is suing the CID officers who seized their equipment personally, and asked for an enjoining order restraining the CID from preventing the plaintiff from entering the company’s premises. SonicNet Technologies also demanded Rs 50 million from the defendants as damages. *Daily Mirror, 20 June 2006*

LBN supports a writ application in the court of appeal against the operations of the CID, which included investigations following a search and seizure of their property on 15 June 2006. The company’s counsel said that the Colombo Crime Division (CCD) had acted unlawfully and out of their sphere of power (“ultra vires”), by raiding their offices and seizing property. Also, the warrant that was used was also not given to LBN, as is required by the law. *The Island, 20 June 2006*

- **20 June**

LBN agreed today to apply for licences ‘in terms of the law’ while its writ appeal proceeds, to speed up the process of reopening operations, but the TRC objected saying that “the issue of any interim relief at this stage will curtail the inquiry before the Magistrate and the ongoing investigation by the CID.” *The Island, 21 June 2006*

Having denied any involvement in the closure of CBNSat and LBN, Mr B A C Abeywardana, who is known to have written the letter to the Media Minister that first brought the government’s attention to CBNSat and its licences to operate, is reported by the *Sunday Leader* to have “nevertheless written the most eye-opening letter on June 20 to the authorities offering to operate both the closed networks under his licence and under his management.”

According to the *Leader*, “Days after the closure of the two networks, Abeywardana on June 20 had written to the Secretary to the President, Secretaries of the Ministries of Defence, Information and Media and Chairman of the TRC. He has also copied the letter to lawyers of both CBNSat and LBN.”

Calling his company the “the only operator in Sri Lanka with authority and the obligations to provide pay TV and cable TV under a licence issued by the Ministry of Media and also with a telecom operator licence,” he has offered to take over cable provision to CBN’s and LBN’s customers: “Therefore to ease the public inconvenience, we offer our services to operate both networks totally under our licence and under our management and control in providing the public a service.” *Sunday Leader, 9 July 2006*

- **21 June**

Colombo Additional Magistrate Gehan Pilapitiya orders the CID to close down SatNet TV Broadcasting station owned by Lakshman Hullugalle for not obtaining permission to run the station from the relevant authority, violating Section 45 B of the TRC Act. *Lankanewspapers.com, 22 June 2006*

- **22 June**

President Mahinda Rajapaksa directed the TRC to register all satellite service providers

He also directed the commission to implement other measures in accordance with section 66 (1) of the Sri Lanka Telecommunication Act No. 25 of 1992 (which states that a “Minister may issue from time to time to the Authority, general or special directions in writing”³³), in other words, granting the Minister the permission to guide the commission’s reform of its telecommunications legislation.

The report said that the TRC will also register all apparatus required for satellite communications including transmission and reception.

The UNP said it would come out strongly if the decision of the government to ban

³³ Ibid; Section 66 (1).

telecasting after 10 pm or impose a Rs 1 million penalty on any channel doing so, as reported in the media, is implemented, stating that it was a violation of the people's right to information.

UNP MP Hemakumara Nanayakkara told a press briefing that this decision of the government would jeopardize media freedom which has been safeguarded with the greatest difficulty. He warned that this is an indication of the government's intention to move towards a dictatorship. *Daily Mirror, 24 June 2006*

- **24 June**

Assistant UNP General Secretary Tissa Attanayake, addressing the media states that the government's plans to impose a restriction of TV-watching after 10 pm to conserve electricity (enforced by a fine of 1 million rupees for violation) is a move backwards to the 1971-1977 era. *The Island, 25 June 2006*

- **29 June**

The Finance Ministry gazetted the Finance Act, No. 11 of 2006 today, bringing a controversially high levy on foreign programming and advertising into effect. *The Island, 15 July 2006*

- **6 July**

Magistrate Gihan Pilapitiya ordered CBNSat and LBN to keep their services closed until August 15 after three separate cases filed by the CID against CBNSat, LBN and SatNet were taken together for inquiry.

The case against SatNet, according to the *Daily Mirror*, has been dropped under the current charges on the technicality that the TRC Act only applied to transmissions decoded within Sri Lanka, and since SatNet decodes its transmission in India, it cannot be charged for violating this law. Instead, SatNet is to be charged for selling equipment [decoders for customers] without a valid permit.

Senior State Counsel Gihan Kulatunga appearing with the CID informed court that the investigations would be completed by the next week and thereafter they would file charges against the cable channel networks. He also stated that CID would not object to reopening the networks with the consent of the minister.

The *Daily Mirror* also reported, "Counsel for the Media Ministry Hemantha Warnakulasuriy PC making his submissions stated that from the inception of Cable channel network in Sri Lanka irregularities had taken place in the process of granting approval to function. The Media Ministry was now seriously concerned about it. The Ministry was taking necessary measures to regularize the faults, which would take a fairly long time. Therefore a long date could be fixed for the next inquiry." *Daily Mirror, 7 July 2006*

- **11 July**

The *Sunday Leader* reports that the Attorney General had directed the Media Ministry to issue temporary licences to both CBNSat and LBN. He also stated that if there are any security concerns, he has directed the Media Ministry to enter into an agreement with the operators. When contacted by the *Leader*, the Minister said that he would comply with the Attorney General. *CBNSat blog*; <http://cbnsat.blogspot.com/>

▪ 18 July

The Supreme Court directed today that the Media Minister and the TRC (Telecommunication Regulatory Commission) should be heard before proceeding with the fundamental rights violation case filed by SonicNet Technologies (Pvt) Ltd, and set the next hearing for 1 August.

According to the *Daily Mirror*, Additional Solicitor General Sathiya Hettige, appearing on behalf of the police officers charged by SonicNet for wrongful search and seizure, submitted that the EGO Licence that was issued permitted the petitioner only to operate international telecommunication services by using the satellite. He said that the police officers obtained a search warrant from the Magistrate of Colombo and executed the search warrant appropriately. He also claimed that as the order by the Magistrate did not constitute an administrative or executive action, it was a judicial act which therefore did not attract the provisions of Article 126 of the constitution. *Daily Mirror, 19 July 2006*

Under Article 126 of the Sri Lankan constitution, “The Supreme Court shall have sole and exclusive jurisdiction to hear and determine any question relating to the infringement or imminent infringement by executive or administrative action of any fundamental right or language right declared and recognized...[within the constitution].”³⁴ Since the CID come under the executive branch, however, the argument of their counsel reported above is invalid.

The TRC issued a public notice extending deadline for applications of new licences. *CBNSat Forum*; www.cbnsat.blogspot.com

▪ 27 July

SonicNet filed a writ application today, asking the Court of Appeals to issue a Writ of Mandamus directing the Minister, the SLRC and the TRC to issue it all necessary licences so that it may restart the operations. *Daily Mirror, 28 July 2006*

▪ 1 August

The Supreme Court heard CBNSat, the TRC and the Media Minister’s counsels today on the issue of a violation of CBNSat’s fundamental rights by the TRC and the Minister. The counsel for the TRC stated that they had filed their intervention on 27 July, but none of the three justices, S Tilakawardane, C N Jayasinghe and S Mansoof, who sat today, had received this intervention. The case has therefore been postponed till 3 August. This

³⁴ “The Constitution of the Democratic Socialist Republic of Sri Lanka: Chapter 16 – The Superior Courts.” 19 Nov. 2003 <http://www.priu.gov.lk/Cons/1978Constitution/Chapter_16_Amd.html>.

forgetfulness on the part of the TRC's counsel to submit more than one copy of their intervention appears to be yet another delaying tactic.

▪ **2 August**

Divaina and Dinamina, two state-run Sinhalese newspapers, publish articles stating that the Media Minister issued a statement that they cannot monitor the transmissions of CBNSat under the provisions of the present act and pointing out that since the LTTE channel also broadcasts on the same satellite, CBNSat should not be allowed to reopen.

The Minister of Media and Mass Communication filed an intervenient petition, relating to the fundamental rights violation application filed in the Supreme Court by SonicNet Technologies Private Limited of Colombo 13.

The petition had said that the general television broadcasting SonicNet Technologies sought to carry out using Direct to Home (DTH) Technology, from satellite, cannot be monitored by the Sri Lanka Rupavahini Corporation or the local television broadcasting station with due authority, in terms of the Rupavahini Act.

According to CBNSat's lawyers, however, the TRC has already stated that, after an investigation into the allegation of LTTE ties, there is no proof to support these allegations. *The Island, 3 August 2006*

▪ **3 August**

CBNSat attends two court hearings - a Supreme Court hearing (before the Chief Justice) and an Appeals Court hearing.

Chief Justice Sarath Nanda Silva, presided over the CBNSat case today and ordered the authorities to remove the seals on CBN's operations to allow servicing and test transmissions today. He also ordered them to allow CBNSat to operate within 2 weeks time, maximum.

Licensing issues will be finalized by 23 August. *CBNSat blog, 3 August 2006;* www.cbnsat.blogspot.com

▪ **9 August**

The Director General of the SLRC, Palitha Gallage, submitted a report to the Colombo Magistrate stating that after technical evaluation of the equipment used by CBNSat, it could be concluded that the satellite equipment used by the company had not been used for broadcasting purposes by either the LTTE or similar channels compromising national security.

Gallage further stated that the LTTE has regularly transmitted news using a PAS 12 satellite during the period when CBNSat was temporarily closed. The PAS 12 satellite has been used for the transmission of National TV of Tamil Eelam which is a free to air transmission. *The Morning Leader, 9 Aug 2006*

▪ **16 August**

At another appeals court hearing today, the counsel for the Media Ministry told the Additional Magistrate that “licence to run TV stations would be issued freely to anybody once the draft regulations come into operation.

He said that once the regulations were drafted, Cable TV operators would have to adhere to the regulations. The drafting of regulations would take about another month and the court was requested to keep the cases pending until such time.

The counsel for SatNet, Anujaya Premaratne, said that to enforce rules and regulations in retrospect was bad and those who have already obtained licences should be allowed to continue with their licences without making new applications.

Counsel for LBN said that the Supreme Court had allowed CBNSat to run test transmissions and to operate their equipment without telecasting the programmes. On those grounds, they too made an application to the magistrate to operate test transmissions. Their application was granted and they will start test transmissions on Thursday.

State Counsel Gihan Kultunga appearing for the CID moved a date to file charges against the TV networks. Counsel for CBNSat M L M Ameen PC said they have obtained permission from the Supreme Court to run test transmissions. On the last date of hearings of their case in the Supreme Court there was a proposal for a settlement and the CID need not file action against them as the matter would be settled.

He also said that as the Supreme Court inquiry was fixed for August 23, the case could be called on August 24 to ascertain the progress. The case was put off for August 24.”
Daily Mirror 16 August 2006

▪ 23 August

CBNSat was supposed to receive its SLRC licence and recommence full-time transmission, according to the Supreme Court ruling of 3 August. *The Island, "Financial Review" 4 August 2006*

A new development in the case was revealed today when the TRC’s counsel told the Supreme Court today that Defence Ministry clearance and approval is needed for a satellite transmission licence under the SLRC Act.

According to *The Island*, the TRC’s counsel, Mr Kumarasinghe said that “the applications for licences were closed about a month back and the President had directed that thereafter, licences, issued under the SLRC Act should be granted only with Defence Ministry approval.

Counsel said that a committee comprising military personnel will study the issue and a report will be submitted to court, shortly. Any confidential documents will be submitted in a sealed envelope by counsel, for the perusal of Court.”

The earlier decision by the Supreme Court to allow CBNSat, SonicNet and LBN to resume servicing and test transmission with their equipment was still being abided by,

but the status quo, which was supposed to be a temporary compromise until today's hearing, will continue at least till mid-September, according to reports of the Supreme Court's decision today.

President's Counsel, Romesh De Silva, who appeared for SonicNet Technologies, said that his client had been operating for one year and both the SLTC and the TRC had made use of the company's service. There had been no allegations against his client prior to the sealing of its operations on 6 June this year.

The Island reported also that the TRC, the Minister of Media & Mass Communication and the CID will file further papers on the issue of granting a satellite licence to SonicNet Technologies and a few other similar companies.

The petition will be called before the Court again on 18 September, 2006. *The Island*, 24 August 2006

Regarding the submission by President's Counsel Palitha Kumarasinghe for the TRC that SonicNet Technologies should get the clearance and the approval of the Defence Ministry to operate, the Supreme Court noted that the petitioner company might as well go through these formalities due to the security situation.

President's Counsel Romesh de Silva, representing SonicNet in the case, submitted that the company was suffering heavy losses due to the closure, saying that around 20 new competitors were seeking licences and the company was therefore at a risk of losing its viewers *Daily News*, 24 August 2006

Analysis

In analyzing the government's actions against CBNSat, the company's fault in the situation, and the arguments made in court following its closure, there are several major perplexing issues that emerge.

First, why would a broadcasting company (SonicNet and Communiq together operating as CBNSat) go to the trouble of obtaining an External Gateway (EGO) Licence from the TRC on 28 February, 2003, and then on 7 December, 2005, obtaining a Satellite Service Licence from the TRC, following which its sister company, CBNSat acquired a Vendor's Licence on the 11th of December 2005 from the TRC, if none of these licences would suffice for the functions it aimed to carry out? Assuming that these licences all cost the company time and money to obtain, would it not have made sure, through explaining to the TRC its functions and enquiring as to the proper licences, that it paid for the right ones?

Secondly, why would the government grant these two companies the licences discussed above³⁵ and, following that, engage their services between January and June 2006 for the Rupavahini Corporation's transmission to Palali in Jaffna, if CBNSat was operating without a licence? This would mean that the government (the TRC, Media Minister and the SLRC) either did not know that CBNSat was operating with inappropriate licences for the technology they were now clearly known by the SLRC to be using, or that they did not mind this fact at that time. The alternative would be that, as far as all parties involved were concerned, CBNSat was operating legally.

Thirdly, why was the company's headquarters raided without any prior warning from the TRC, SLRC or the Media Minister? We are aware from news reports (*The Island, 14 June 2006*) that CID officers visited CBNSat's offices and questioned their directors on the licence issue in March this year, but such questioning by the CID does not constitute the proper channels of enquiry as laid out in the TRC Act for investigating violations of the licensing requirements. According to Section 11 of the TRC Act³⁶,

³⁵ There are other licences SonicNet and CBNSat obtained for the broadcast of specific events that have not been discussed here, but are available for further reference at: CBNSat: The Digital World: Shutdown." July 2006 <http://www.cbnsat.com/inpages/popup/story_so_far.pdf>.

³⁶ "Telecommunications Regulatory Commission of Sri Lanka: Legislation." 2002 <<http://www.trc.gov.lk/act2.htm>>

- (1) Where the Commission is satisfied that a person who is authorized by a licence under section 17 to operate a telecommunication system is contravening or has contravened any of the conditions of his licence, the Commission may, subject to subsection (2), make an order for the purpose of securing compliance with that condition or may subject to subsection (3), revoke any such order.
- (2) Before making an order under subsection (1) the Commission shall give notice –
 - a) stating that it proposes to make the order and setting out its effect;
 - b) stating the relevant condition of the licence and the acts or omissions which, in its opinion, constitute or would constitute contraventions of it; and
 - c) specifying the time (not being less than twenty eight days from the date of publication of the notice) within which representations or objections to the proposed order may be made,
- (3) Before revoking an order made under subsection (1), the Commission shall give notice –
 - a) stating that it proposes to revoke the order and setting out its effect; and
 - b) specifying the time (not being less than twenty eight days from the date of publication of the notice) within which representations or objections to the proposed revocation may be made by any person interested in such revocation,

and shall consider any representations or objections which are duly made and not withdrawn.
- (4) A notice under subsection (2) or subsection (3) shall be given by publication in such manner as the Commission considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by such notice and by sending a copy of the notice to the operator affected by it.
- (5) As soon as practicable after an order is made under subsection (1) or subsection (3), the Commission shall –
 - a) publish the order in such manner as it considers appropriate for the purpose of bringing the order to the attention of persons likely to be affected by it; and
 - b) serve a copy of the order on the operator affected by it.

We find the answer to this question at least, in Section 65(1) of the TRC Act, which grants the authority to bypass all the procedure of forewarning the operator by written statements, indicating which part of the law they have violated, and asking that they take steps to comply with the law, not to the TRC or the Media Minister, but to the magistrate, “in certain cases.”

Section 65(1) states³⁷:

“If a Magistrate is satisfied by information on oath that there is reasonable ground for believing that, in contravention of the provisions of this Act, or any regulation or rule made thereunder, any telecommunication apparatus has been installed, or established, or is maintained or worked, or that any telecommunication apparatus has been imported, sold or offered for sale in any place or in any vehicle or on board any ship or aircraft within his jurisdiction such Magistrate may grant a search warrant to any police officer authorising that officer to enter and inspect the place, vehicle, ship or

³⁷ Ibid, Part V2 <http://www.trc.gov.lk/act_part_v2.htm>

aircraft, and to seize any apparatus which appears to that officer to be used or intended to be used for any telecommunication and which appears to him to have been imported, sold or offered for sale for the aforesaid purposes.

According to CBNSat's lawyer, Mr Riad Ameen, the warrant issued by the magistrate to the officers who raided CBNSat, called for a search of the premises, but not for the seizure of equipment, and certainly not for the closure of their offices, which is what took place that night.

The warrant had also been obtained under Section 65(1) of the TRC Act, which gives the magistrate power to authorize any police officer to enter and inspect any broadcaster's offices and to seize any apparatus which appears to that officer to be used in contravention of the TRC Act. According to Mr Ameen, both CBNSat and its sister company, SonicNet Technologies, had the appropriate licences from the TRC for buying and selling telecommunications apparatus (satellite receiver dishes and decoders for customers) as well as for maintaining and working telecommunications equipment.

While SonicNet maintained the equipment that receives signals from satellites broadcasting various channels, decoded it, re-scrambled it and up-linked to a new satellite, PanAmSat 12, CBNSat was responsible for selling customers with the decoding equipment and satellite dishes to receive these channels from PanAmSat 12. As described above, CBNSat and SonicNet had obtained several licences from the TRC for the operation of their services and were in line with the law as far as the TRC, the SLRC, the Media Minister and the companies themselves were aware.

When speaking to the *Sunday Leader* about the CBNSat case, a TRC official said that a satellite company should apply for a licence to rebroadcast programmes, but had obtained an External Gateway Operator that, according to him, was not applicable to their operations: "SonicNet, a subsidiary of CBNSat had obtained the licence for a totally different purpose. It had not got the licence for programmed transmission," he said, adding that it was an external gateway licence for telephone calls. "It's for IDD calls and not for rebroadcast," the official explained.³⁸

³⁸ "The Cable TV Fiasco." *Sunday Leader*, July 2nd 2006
Sri Lanka Broadcast Media Report

An External Gateway Operator Licence (EGO), according to text of the licence itself, allows the provision of, “by any Connectable System, International Services utilizing any technology, *including* to originate Voice Calls...” According to the EGO Licence’s interpretation section, ‘International service,’ is defined as:

“(a) the carriage of Messages between a place within Sri Lanka and a place outside Sri Lanka;
or
(b) the provision of bandwidth or facilities between an External Gateway Facility, cable station or satellite earth station in Sri Lanka and a place outside Sri Lanka (including a transponder on a satellite)...”

The messages referred to here are said to constitute “music, conversations, speeches, lectures, stage performances, writing, facsimiles, images or pictures and the like.” The services that the licence does not authorize the provision of are:

- a) communications to or between aircraft;
- b) communications between satellite mobile handsets in Sri Lanka and satellites;
and
- c) communications between:
 - i) satellites and very small aperture satellite Earth station (VSAT); or
 - ii) satellites and any other earth station,
to which customers are directly connected, other than by means of a telecommunications network operated by a Local Operator.

“Telecommunications,” as defined by the EGO interpretations section, is the “making of any transmission, emission or reception of signs, signals, writing, images, sound or intelligence of any nature by optical means or by wire or radio waves or any other electromagnetic system.”³⁹

It therefore seems that CBNSat’s operations do fall under these definitions laid out by the TRC and that the EGO licence is certainly concerned with more than just the voice telephony the TRC official that was interviewed had claimed.

Under section 28 (1), an operator violates the TRC Act if it operates a TV broadcasting station without a proper licence, and if so, certain steps detailed above can be taken. CBN’s position is that they are not operating a TV broadcasting station, but if the Media Minister

³⁹ “Telecommunications Regulatory Commission of Sri Lanka: External Gateway Operator Licences.” 2002
<<http://www.trc.gov.lk/pdf/egol.pdf>>

insists that they are, they should be issued a licence and allowed to reopen. The government cannot have it both ways – they insist that CBNSat is a broadcast station, but have not given them a licence despite their application for both new TRC licences and a Rupavahini licence to broadcast after the shutdown on 6 June.

The most likely explanation for this order from the Magistrate is therefore that the letter from B A C Abeywardana accusing CBNSat of not possessing a proper Private Broadcasting Licence had such influence with the TRC and the Media Minister (taken in consideration with the alleged LTTE content broadcasting) that it was considered justification enough to shut down the company without prior warning.

Ways Forward

Sri Lanka's broadcasting authorities must keep pace in their regulations with the advances in technology by researching and involving themselves with these technologies. As an example of this forward-thinking legislative process, India's public broadcast authority, the Prasar Bharati (Broadcasting Corporation of India) has listed these new technologies as essential to its future:

- Direct-to-home (DTH) systems. These have been operational for some years in Europe, North America, Japan, etc. DTH makes it possible to deliver, direct to households, about 200 TV channels. DTH will provide many more opportunities and options, and these should be quickly seized.
- Digitalisation and digital compression technology will enable the delivery of as many as 6 channels within the same bandwidth as is being presently used for one channel. Importantly, digitalisation will also facilitate the simultaneous carriage of multiple audio channels along with the same video. This will be most useful in a country like India which has several regional languages.
- Digital Audio Broadcasting and satellite delivered radio which will enable the delivery of hundreds of CD quality audio channels to portable and fixed location radio receivers
- Digital Terrestrial Television: this will make it possible to broadcast multiple channels within limited bandwidths, so that homes can receive numerous high-quality digital channels directly from their local TV. However this would require the receiver to have special equipment ('set top box').
- New technologies in programme production and especially in the "post-production" stage, involving use of computers, new digital equipment and techniques.
- New developments which make it possible to have smaller, more portable and less expensive terminals for up-linking TV/radio programmes to satellites.
- Internet and the whole area of broad-band multi-media. Streaming audio and video is already here, and some countries have already created capacities for broad-band Internet.
- Interactive TV, combining features of traditional broadcast technology with those of the Net.

The broadcaster adds,

Taking note of these and other related technological developments, we recommend that...Prasar Bharati must be at the forefront of adopting and utilising these new technologies for furthering the objectives of public-service broadcasting in a proactive and vigorous manner. To provide focus and thrust to this should be the responsibility of the Head of Technology, assisted by a small team, dedicated to exploring new technological opportunities on an on-going basis. In order to quickly add and efficiently exploit the potential of new technologies, we recommend that Prasar Bharati implement projects in these areas by pro actively pursuing partnerships and strategic tie ups, preferably in a corporate structure. This approach will have the

additional advantage in receiving know how from the partner(s) and ensuring that investments in new areas are based on a realistic business plan and financial viability.⁴⁰

The Indian Ministry of Information & Broadcasting is also in the process of creating a new broadcasting bill that encompasses these emerging technologies and, in a consultation paper on the bill, says it is

... examining the issue of introducing a legislation to regulate the operation of broadcasting services consequent upon the judgment of the Supreme Court in the Cricket Association of Bengal case delivered in 1995 that airwaves are public property and have to be controlled and regulated by public authority in the interests of the public.

...In 1995 the Cable Television Networks Act was brought in to regulate the cable business and their operations. Most of the other required regulations in the sector were being accomplished by issuing guidelines such as those for Up-linking TV channels, DTH, FM Radio, Community Radio and Down-linking etc.

The proposed Broadcasting Services Regulation Bill seeks to achieve the following:-

- (i) To provide legislative sanction retroactively to Government guidelines on various regulatory aspects such as television channels' Up-linking/Down linking, private FM Radio and Community Radio, DTH, Teleport, etc.
- (ii) To set up a new Broadcasting Regulatory Authority of India and delegate the regulatory functions presently being performed by the Ministry of I & B to this new authority.
- (iii) To incorporate the provisions of the existing Cable Television Networks Regulation Act in the new legislation through appropriate repeal and savings clauses and provide for licensing of cable operators
- (iv) To make enabling provisions on the following:-
 - (a) Cross media ownership and restrictions on accumulation of interests to provide for competition and plurality of views.
 - (b) Minimum domestically sourced content in foreign channels to promote indigenous media/entertainment industry, particularly in the field of animation and gaming etc.
 - (c) Minimum obligations on all channels for public service broadcasting in their programme and advertising content.

The Ministry of Information & Broadcasting proposes to consult the media and the broadcasting industry organizations to obtain their response to some of the major issues proposed to be covered in the Broadcasting Services Regulation Bill. Accordingly, the draft of the proposed legislation, indicating the current thinking in the Ministry of Information & Broadcasting is put on the Ministry's web-site. It is to be ap-

⁴⁰ "Prasar Bharati (Broadcasting Corporation of India): Review Committee Report on Prasar Bharati: Exploiting New Technologies." 25 Sept. 2006 <<http://mib.nic.in/informationb/AUTONOMUS/nicpart/pbexnewtech.htm>>

preciated that these are not the final views of the Ministry or the Central Government. These will be further refined after the process of consultation with the media and the broadcasting industry as well as concerned Ministries is over and thereafter the Cabinet will consider the final contours of the proposed legislation...⁴¹

In addition to accommodating for advances in technology in a constructive manner as exemplified by the Indian broadcast authorities, it is also important to consider moving towards an independent broadcasting authority whose interests will remain solely with the citizens of Sri Lanka and not overwhelmingly with the government or with private interests.

There are ways through which a government can keep its media in line, and ensure that national security and welfare are not trumped by private interests. These do not, however, include the adoption of improper channels of procedure in order to shut down CBNSat and LBN cable that we have seen in this case. If the government had indeed discovered reason that these two companies, and not other private broadcasters, must be shut down, it should have followed the regulations set out in the very Acts it used in its accusations of non-compliance with the law (TRC Act and the Rupavahini Act). Both of these Acts set out specific procedural delays (e.g. informing the operator in writing and allowing a certain timeframe for response and remediation before punitive action is taken) that aim to avoid such undue interference in the operation of the media.

According to Article 19's Toby Mendel,

Every country imposes restrictions on freedom of expression to safeguard national security and public order. However, such restrictions are only legitimate if they are clearly and narrowly drawn, if they are applied by bodies which are independent of governmental or political influence, and if there is a sufficient nexus between the proscribed expression and the risk of harm to national security or public order. In addition, the guarantee of freedom of expression means that sanctions for breach of these restrictions may not be disproportionate to the harm caused.⁴²

It appears that under the current regime of governmental control over the broadcast licensing and regulatory functions of Sri Lanka, this careful balancing of media freedom with national security is lost.

Perhaps the existence of an independent broadcasting authority, one that both encompasses broadcasting regulations currently prescribed by the Rupavahini Act and distributes licences, might have avoided the confusion that followed the arbitrary closures of two private broadcasters 'in the meanwhile' as new laws were being created to sufficiently and clearly

⁴¹ "Ministry of Information & Broadcasting, India: Consultation Paper on the proposed draft of Broadcasting Services Regulation Bill." 2006
<<http://mib.nic.in/informationb/POLICY/ConsultationPapeRegulation%20Bill.htm>>

⁴² Mendel, Toby. "Written comments submitted on *Leader Publications (Pvt) Limited Vs. Ariya Rubasinghe, Director of Information and the Competent Authority, et al.*" Article 19 <<http://www.article19.org/pdfs/cases/sri-lanka-leader-publications-v.-rubasinghe.pdf>>.

address the new technologies of satellite and cable broadcasting.

In its decision to turn down the Public Broadcasting Authority bill, the Supreme Court said,

[t]he ultimate guarantor that the limited airwaves/frequencies shall be utilized for the benefit of the public is the state. This does not mean that the regulation and control of airwaves/frequencies should be placed in the hands of the government in office for the time being. The airwaves/frequencies, as we have seen, are universally regarded as public property. In this area, a government is a trustee for the public; its right and duty is to provide an independent statutory authority to safeguard the interests of the People in the exercise of their fundamental rights: No more, no less. Otherwise the freedoms of thought and speech, including the right to information, will be placed in jeopardy.⁴³

From this case study of CBNSat's closure, we see that the benefit of the public has not been served, and the government has not acted in the interests of the public, but has, rather, turned a deaf ear to their pleas for a restoration of cable and satellite services. The ways forward discussed here are only a brief overview of what *might* be done in response to such infringement of the media and public's fundamental rights, and there are many institutions working towards these two goals in Sri Lanka already, with the aim of engendering more transparent and public-focussed broadcast media regulation and support.

⁴³ In Re The Broadcasting Authority Bill, S.D. No 1/97. 15/97, delivered on 5 May, 1997
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