

Telecom Regulatory Authority of India

Interim Recommendation on Private FM Radio Broadcasting

The Government of India had decided during the 9th Plan Period to permit private FM radio stations on a license fee basis. In May 2000, 108 frequencies in the FM spectrum were auctioned through an Open Auction Bidding process. The decision to open up the frequencies to private participation was taken by the Government with the following objectives:

- (a) To open up FM broadcasting for entertainment, education and information dissemination by commercial broadcasters;
- (b) To make available quality programmes with a localized flavour in terms of content and relevance; to encourage new talent and generate employment opportunities directly and indirectly; and
- (c) To supplement the services of AIR and promote rapid expansion of the broadcast network in the country for the benefit of the Indian populace.

2. A total of 37 licenses were issued out of which 24 are operational (of which 2 have been granted deemed operational status, pending commencement of actual broadcast).

3. The Government subsequently constituted a Committee on 24.7.2003 to make recommendations for radio broadcasting for phase – II. The Committee was headed by Dr. Amit Mitra, Secretary General, FICCI. The terms of reference, inter alia, included the following:

“Study the desirability and legal implications of making modifications in licensing regime of phase-I licensees should a different licensing regime be proposed for phase-II”.

The Committee has recommended that the license fee structure needs to be revised and migration of the license terms from fixed license fee basis to a one-time entry fee with an annual revenue sharing arrangement is the most suitable option. The entry fee should be determined by a competitive bid process that will reflect the true market value of the frequency. In addition there should be an annual revenue share, which has been recommended at 4% of the gross revenue.

4. The Committee has also found that the broadcast industry appears to be unviable under phase-I licensing regime. The Committee has, therefore, recommended that there is a need for re-structuring of the FM broadcast industry and the phase-I licenses. Migration of the phase-I licenses to phase-II license terms and conditions would ensure uniform implementation of the proposed policy of the Government. The Committee has made detailed recommendations, which includes that the liabilities for the original license fees should be restricted to July 24, 2003, which was the date of the appointment of the Committee.

References to TRAI

5. The Government had notified broadcasting to be a telecommunication service under Section 2 (i) (k) of TRAI Act on 19th January, 2004. Subsequently the Ministry of Information and Broadcasting, Government of India had on February 12, 2004 sent the report of the Committee headed by Dr. Amit Mitra to TRAI for making appropriate recommendations.

6. On 11th February, 2004, five private FM broadcasters had met the Deputy Prime Minister and submitted a representation requesting for deferment of the Annual FM License fee, till the Government takes a decision on implementation of the FM Radio Task Force recommendations. This representation had been referred to TRAI, for its recommendations, by the Government on February 24, 2004.

7. The Government had in its letter pointed out that in respect of Mumbai, the next license fee for the third year is due in April 2004. In respect of Delhi, Calcutta and Chennai, licensees have not paid the license fee for the 2nd year due in August 2003 requesting the Government to charge the license fee from the date of actual operation. This matter is under consideration of the Government and if approved these license fees will also become due in April 2004. It has been pointed out that the request of private broadcasters involves the relaxation of terms and condition of the license. In accordance with provisions of Section 11 (i) (a) (ii) read with Section 11 (i) (d) an

Section 11 (i) (b) (i) of the TRAI Act, it is mandatory for the Government to seek recommendations of TRAI in such matters.

Present issue

8. The present issue pertains to the second request of the Government dated February 24, 2004 for recommendations by TRAI. The recommendation on this issue overlaps with and is linked to the first request for recommendations. Dr. Amit Mitra gave a presentation on his report relating to licensing policy for FM Radio to the Authority on 8th March 2003. The Authority raised a number of points for further information and Dr. Amit Mitra will be submitting the additional information in a follow up of the presentation to the Authority. The accounts of the licensees have been called for and these are being scrutinised. TRAI is also in the process of holding meetings with various stakeholders in this regard. Based on the inputs received from Ministry of Information and Broadcasting and the Report of the Radio Broadcast Policy Committee, TRAI has been in the process of preparing a consultation paper on which it would seek the comments of all the stakeholders. Subsequently after receiving the comments TRAI would make its recommendations to the Government. This process is likely to take time and in the meanwhile the license fees of some of the operators is likely to fall due.

9. In view of the above, an interim recommendation is being provided so that the action taken when the next installment of license fees is due is consistent with the final decision of Government. It is, therefore, recommended that the licensees may be given the option of deferring the payments which may fall due till a final decision is taken.

This would be subject to the condition that the dues as finally decided by the Government, after taking into account the recommendation of TRAI would be collected from the licensees with interest from the due date, on the quantum of license fees found to be payable. The final recommendations of TRAI would address the issue of license fee payable as well as the relevant interest rate.

10. Accordingly all licensees could be given the option of deferring their next installment of dues subject to the condition that they would pay this amount, after the issue is decided by Government, with interest as may be decided finally.

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