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Sub: Suggestions in response to Telecom Regulatory Authority of India Consultation Paper on Issues related to FM Radio Broadcasting

Dear Sir:
We write on behalf of the HT Media Ltd and its step-down subsidiary Next Radio Ltd jointly referred to as (**HT**), engaged in FM Radio Business under Channel Identity Fever FM and Radio One and has presence in 22 stations across India, to provide suggestions in response to the Telecom Regulatory Authority of India (**TRAI**) Consultation Paper on Issues related to FM Radio Broadcasting (**Consultation Paper**). We submit as under:

1. The private FM Radio industry has suffered serious financial repercussions owing to a multitude of factors, including the economic slowdown owing to the COVID-19 pandemic, high license fees and music acquisition costs, reduced FM radio listenership, high recurring infrastructure costs, and declining ad-revenues.

2. One of the major challenges faced by FM Radio is the competition from Digital and TV Industry ("**Competitors**"). With the proliferation of internet and smart phones, the way Indian are consuming content has changed dramatically. Digital media is neither as heavily regulated nor does it have to bear heavy regulatory costs as Radio. As per a GroupM report, the Digital media is leading the ad market and has a share of over 50%. In the year 2022 Competitors jointly have advertisement market share over 80% which is increase in 2023. If we compare the percentage of regulatory cost to revenue of the Competitors with FM Radio, the results would be stark and would clearly demonstrate that Radio industry is overburdened with them. Infact, the Industry is facing multiple existential threats on account of unviable statutory costs and grim economic environment worsened by the Covid- 19 pandemic.

3. Further, Radio is highly controlled and regulated from content, expansion or any other perspective in comparison to Competitors. The Competitor due to their dominant position is available everywhere including mobile handsets, on the contrary Radio presence is shrinking in mobile handsets or other available technology equipment despite being free to air.

4. Despite being the medium for public interest, and ensuring that all Government information or initiatives reach at the last mile listener the FM Radio Industry hasn't been provided with adequate attention and liberal scheme by the Government.

5. With the aforesaid, we now proceed to state the following in response to the specific issues raised in the Consultation Paper:

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Q.1. Are provisions related to Annual License Fee prescribed in the extant Policy guidelines for FM Radio broadcasting reasonable? If not, please provide methodology and criteria for arriving at Annual License Fee for private FM Radio channels with detailed justification.

a. Earlier in Phae-1 and Phase- 2, there was different criteria for calculation of the annual license fee payable by the FM Radio Broadcaster. The annual license fee payable by private FM radio broadcasters to operate FM radio broadcasting services in Phase – II of the licensing regime was based on *@ 4% of Gross Revenue of its FM radio channel or 10% of the Reserve OTEF for the city, whichever is higher."*

b. The Policy Guidelines on the expansion of FM Radio broadcasting services through private agencies (**Phase III Policy Guidelines**) dated 25.7.2011 modified the formula for calculation of annual license fees as currently stands is - higher of: (a) 4% of Gross Revenue for the financial year; or (b) 2.5% of the NOTEF. NOTEF is the successful/ highest bid amount arrived in a particular city through an ascending e-auction process of Phase III licenses (Clause 4.1 of Phase III Guidelines).

c. It is submitted that the formula for annual license fee calculation under Phase III is not based on TRAI's Recommendations on Phase III, 2008, which recommended that the annual fee may be same as prescribed for FM Radio broadcasting Phase-II. TRAI recommended calculation of annual license fee on the basis of reserve One Time Entry Fee (OTEF).

d. We submit that the calculation of annual fee based on NOTEF results in serious discrimination and adverse economic consequences as places where frequencies have been auctioned in the Phase III regime, the bid amount have exceedingly increased which ultimately affects all license/ permission holders even those who had no part in the bidding, determination, and auction of Phase III license. In cities where frequencies were not put up for auction under Phase III such as Kolkata, the annual fee was calculated, in the absence of NOTEF, as a percentage of the gross revenue in such cities which was much more reasonable.

e. It is evident that the calculation of annual license fees based on NOTEF prices is discriminatory, creating gaps, particularly against smaller private FM radio operators who are economically unequipped to compete with the highest bids and pay the license fee based on such NOTEF. Further, NOTEF creates discriminatory annual license fees in different cities and also casts additional burden on radio broadcasters who are not a part of the e-auction process.

f. It is pertinent to note that the private FM radio industry is still suffering from financial hardships and has not yet recovered from the aftermath of Covid – 19 pandemic. In this backdrop, the calculation of annual license fees based on NOTEF only further adds to the existing hardships of the radio industry. It is estimated that on account of the calculation of annual fees based on NOTEF, the private FM radio industry has lost up to INR 150 – 200 crores in the form of excess license fees for FY 2020 and FY 2021.

It is imperative to mention that the %total regulatory cost to revenue is exorbitantly high. Even for the current year YTD Dec 22-23, the same is 48% of revenue. The below number of Next Radio Ltd are self-explanatory:

Rs. In Lacs

Particulars	YTD Dec'22	FY 21-22	FY 20-21	FY 19-20
License Fees	1,024	1,366	1,366	1,369

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License fees as % of revenue	39%	53%	70%	26%
WOL	18	24	24	24
Tower rental	**204**	**271**	**248**	**225**
Total	**222**	**295**	**272**	**249**
Other Stat cost as % of revenue	**8%**	**11%**	**14%**	**5%**
Total statutory cost	**1,246**	**1,661**	**1,638**	**1,618**
% of Revenue	48%	65%	84%	31%

Although the regulatory cost to revenue is coming down its still very high in comparison to pre-covid level. It is pertinent to mention that FM Radio cost has remained static and the revenues has gone down drastically.

It can be seen that there is an urgent need to offload FM Radio Industry from the high regulatory cost in order to survive in long run, and financial relief packages.

In light of the above, we suggest the annual license fee payable by private FM radio broadcasters ***ought to be amended and calculated basis 4% of the gross revenues, and the requirement of applicability of NOTEF must be removed with retrospective effect from April 2020 (Covid period).*** In the pandemic impacted period 20-21 and 21-22 the statutory fees was 84% and 65% of the revenues for NMW

Last but not the least, we believe there are precedent available with TRAI e.g. the Telecom policy to dispense with non-refundable license fee payable by Telecom players in the year 1999, and provided much relief to then debt-ridden Industry.

Q2. Is there a need to extend the permission period for existing FM Radio licensees?

> **a. If yes, what should be the revised permission period? Please prescribe the period with detailed reasoning/ justification.**
> **b. If not, is there a need to extend any other assistance to private FM Radio broadcasters to overcome the impact of the pandemic? If so, please suggest suitable measures with quantified parameters and justification.**

a) We agree with the TRAI recommendation to urgently extend the license period for existing FM radio licensees by an additional period of 3 years. This is one of the most crucial and immediate reliefs for private FM radio broadcasters, this will help in FM Radio Broadcaster to from the effect of Covid 19 pandemic. It is pertinent to mention that despite constant demand for adequate financial relief to Government of India, Ministry of Information and Broadcasting, FM Radio Industry was ignored and no demand was accepted including waiver of license fee and interest on it.

b) The Consultation Paper accurately records, by way of a bar graph, the advertisement revenues earned by private FM radio broadcasters, which demonstrates a decline in advertisement revenue earnings from INR 623.96 crores in March 2019, to INR 362.63 crores in March 2023. The decline in advertisement revenues has caused substantial losses to radio broadcasters in India.

c) The revenues of HT Radio Business and Next Radio has drastically declined in past 3 years. The below table is self-explanatory. Given the country-wide lockdowns, which continued from

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2020 through 2022 in three different phases, the radio broadcasters also lost revenue-earning opportunities by cancelling on-ground events, which is a secondary source of income for only the larger radio broadcasters.

d) Even for the current year FY 22-23 which has not been effected by the COVID-19 , revenues for NMW and Radio(Inc NMW) are way below pre-covid level at around 66% and 67% of pre-covid level respectively.

					Rs. Lacs
NMW	**YTD Dec'19**	**FY 19-20**	**FY 20-21**	**FY 21-22**	**YTD Dec'22**
Revenue	3,952	5,189	1,949	2,566	2,622
Loss before tax	-1,750	-5,145	-3,919	-3,072	-1,833
% drop in revenue vs pre-covid			**-62%**	**-51%**	**-34%**
Radio(Including NMW)	**YTD Dec'19**	**FY 19-20**	**FY 20-21**	**FY 21-22**	**YTD Dec'22**
Segment Revenue	16,173	20,166	7,425	10,140	10,767
Segment results	-3,072	-5,881	-9,958	-5,043	-1,726
% drop in revenue vs pre-covid			**-63%**	**-50%**	**-33%**

Also to give the balance sheet positions, NMW Networth as on 31st Dec is at negative Rs -99.9 crs because of these losses and is running on huge loan book for the survival

Despite the cancellation of events, advertisements and decline in advertisement investments on the radio by businesses, the private radio broadcasters had to continue their businesses with severe losses and by making payment for fixed costs, including tower rentals and license fee payments to the Government, payment of salaries to employees, payment of fee / royalty for content/ music acquisition, and FM Radio Industry continued to promote Government initiatives including PM Modi Maan Ki Baat and other public interest initiatives on FOC basis. It is also noteworthy that despite Covid-19 being a 'Force Majeure Event' which directly and materially affected businesses and performance by radio broadcasters under the GOPA entered with MIB, the Government did not provide any relief or reduction in license fee. On the contrary, demanded late payment fees and interest from the broadcasters which put them in further losses.

In light of this, we humbly request and seek an extension of the existing Phase III FM license period by another 3 years to overcome the loss of 3 years of the license period on account of the pandemic. Further, initiating a new license regime for Phase IV would require substantial industry input, consultation and fixation of rates based on the existing economic position of the radio industry.

Given the fall in revenue earnings by radio broadcasters, it is also submitted that any revision of the license fee components may not be sufficient and adequate' as the radio industry is still in the decline phase and is yet to recover from the losses suffered because of the pandemic.

Q3. Is there a need to review the present Policy guidelines as regards the News and current affairs on private FM radio stations? If so, please provide detailed justification, including the additional compliance/ reporting (if any), duration of news and current affair programmes and method of effective monitoring may be suggested.

a) We state that the continued restriction on broadcast of news and current affairs content on radio is violative of our members' right under Article 19(1)(a) of the Constitution, which encompasses not just the right to disseminate information but also the right to receive

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information. In the CAB decision, the Supreme Court held that the right of dissemination included the right of communication through any media: print, electronic or audio-visual. The freedom of the press also implies that the choice of what is to be printed in the editorial or the news-columns of a newspaper should rest with the editor of the paper, and not any public official or even the Government. This can be extended to the radio stations as well, so far as their news dissemination function is concerned. By dictating the types of information and news items that could be broadcast, the Government is therefore indirectly interfering with the autonomy of these channels; almost akin to an interference with the editorial policies of a newspaper, which in itself is a problematic exercise.

b) The reason which has always been cited for the continued restriction is the accessibility and reach of radio, which necessitates stricter regulation of speech on the medium. In fact, the aforesaid reason was cited by the government in its counter to a PIL filed by the NGO Common Cause praying for the quashing of this restriction, arguing that the same amounted to a reasonable restriction within the contours of Article 19(2). However, we seek to highlight that this issue has been squarely addressed in the CAB decision, where the Supreme Court considered '*whether there is any distinction between the freedom of the print media and that of the electronic media such as radio and television, and if so, whether it necessitates more restrictions on the latter media*'. The Court clearly stated:

> *The virtues of the electronic media cannot become its enemies. It may warrant a greater regulation over licensing and control and vigilance on the content of the programme telecast. However, this control can only be exercised within the framework of Article 19(2) and the dictates of public interests. To plead for other grounds is to plead for unconstitutional measures.*

Government is well aware of the fact that Radio channels perform an important public service function, and are able to reach the remotest corners of the country. During COVID-19 pandemic, radio broadcasts into homes, workplaces and hospitals provided essential updates on health measures (free booster shots etc.,) and provided solace to scores of people cut off from their loved ones. In view of the public interest aspect involved in radio broadcast, it is important that the freedom of speech and expression of radio channels not be curtailed in relation to broadcast of news and current affairs content.

c) **Thus, the restriction/ban on broadcast via radio of news and current affairs content ought to be reviewed and relaxed. The Government may evaluate following options:**

   a) AIR news content to be given on free of Cost including the right for live running commentary for sports event to FM Radio Broadcaster. This will help in revenue generation opportunity for FM Radio Broadcaster. Further, the news content of AIR can be presented by Radio Jockey in its own style without disturbing the essence of the news content.

   b) Radio operations may be permitted to take news source form registered news agencies such as PTI and ANI to be broadcasted over FM Radio station.

Q4: Is there a need to mandate that all the Mobile Handset manufactured/ sold in India will require to have an in-built FM Radio receiver? Please provide detailed justification for your comments.

a) We agree with the observations of the Authority that (i) FM radio acts as a major fillip in serving far flung areas of the country; and (ii) in accessible areas during natural emergencies. The only medium which works during disaster situation is FM Radio.

b) As noted by the Authority, from accessibility of entertainment perspective, FM radio was privatized with the sole view to reach the common man and especially in the far-flung areas

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and Tier C and D cities and villages. Requiring mobile handset manufacturers to mandatorily insert an FM chip will necessarily expedite achievement of the aforesaid objective. Among the various reasons that this will happen is the convenience of receiving such the radio broadcast signals without having to pay for an extra device. While the radio set may no longer cost as much as it used to in the past, however, from the perspective of the audience that the government is trying to provide entertainment to, it does constitute a cost burden.

c) The international experience from similarly placed countries provides another sound reason to make this requirement mandatory.

d) It is pertinent to mention that earlier the radio receivers were inbuilt in the mobile phones and used to run without plug-in cable. However, we have seen that radio receivers are not available in the smartphone now a days.

e) The possible issue that could arise in this context is the "forcing" of mobile handset manufacturers to mandatorily provide for such a chip. In order to over this difficulty, MEITY role is very important in paying way for this change in mobile handsets.

Q5. Stakeholders may also provide their comments on any other issue relevant to the present consultation.

In addition to the above listed issues, we would also like to humbly request that due consideration may be given to following issues:

i. Colocation policy: As per the current policy, it is mandatory for all Radio Stations to co-locate at the Common Transmission Infrastructure site of Prasar Bharati, where ever available. Due to high rental/license fee charged by the Prasar Bharati, we believe, this requirement should be made **optional**. As we have seen in cities like Kolkata, where CIT was never commissioned in past 15 year. In Delhi, after the collapse of CTI in Kingsway Camp, most of the FM Radio Stations have built their own infrastructure and are operating on their own. If we compare within the same city/region, the cost borne by the FM operators for their own arrangement is much lower than the rental charged by Prasar Bharati. Thus the rentals charged by Prasar Bharati are not in sync with the market reality. There is urgent need to reset and revise the rental rates in the light of the above The FM operators should be given a choice to avail the services of Prasar Bharati or create/continue with their own setup.

ii. Permission for slump sale: As you are well aware, the process for a loss-making organization to alienate its loss-making FM radio station business into a separate entity, under the reorganization permission now available to them, involves a lot of time and procedural hurdles. To counter this, we propose that 'slump sale', which is a well-recognized concept under the Income Tax laws, should be permitted for sale/take-over of FM frequencies. This can help many small broadcasters and even big companies to reorganize their business in quick time.

iii. Change in Auction Methodology: We propose a change in auction methodology in future auctions for new frequencies, for the following reasons:

a. The historical data of the previous auctions, which is succinctly captured in the CP, demonstrates that the figures of frequencies auctioned and actually operationalized are not encouraging.

b. The success rate of auctions has been always low, primarily due to high Reserve Price and high license fees charges by the government. The chances of any further auctions being successful are completely bleak considering the current state and

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struggles faced by the existing players, which are fighting for survival. Hence it is necessary to drastically modify the future auctions, by incentivizing existing and new players with waiver of license fees completely, as the efforts towards reducing Reserve Prices have not succeeded.

c. We believe that this will be the only factor that can incentivize existing and new players to bid for additional/new frequencies. The result can be successful allocations, higher value bids collection for the government and thus upfront collection of monies for the government, even the interest on which can be more than the license fee that may be paid by the players over the term of the new licenses.

We thank you for the indulgence given to our members to put forth their views and suggestions on the captioned subject and hope the same are considered favorably.

Thanking You

Yours sincerely,

For HT Media Ltd

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Name: Ajit Dheer

Designation: CEO-Radio Business