

**Supplementary comments/amendments in the previous comments for incorporation in the Draft Policy Guidelines for Satellite Radio Service**

The issues required to be incorporated in the policy guidelines of satellite radio services are as follows:-

1. **Eligibility:** In its earlier letter of even number dated 19.5.2008, TRAI had suggested deletion of clause 1.1.4. However, on reconsideration of the issue after receiving the comments from the stakeholders, it is felt that this clause may be retained with some modification in order to keep the non-serious players out. The suggested modification is intended to make this eligibility condition more realistic. Accordingly, clause 1.1.4 may be incorporated as follows:-

“1.1.4 The applicant company must

(a) own the satellite capacity, or

(b) lease the satellite capacity, or

(c) possess a letter of commitment from Indian Space Research Organization (ISRO) or from a satellite service provider for satellite capacity

through which it proposes to broadcast the registered radio channels for public listening in India.”

2. **Procedure for application and grant of license (clause 15):** The number of licenses for Satellite Radio Service to be issued may be decided by the Government in consultation with Wireless Planning & Coordination Wing of Department of Telecom and the Indian Space Research Organization depending upon the availability of the satellite and the spectrum for Satellite Radio Service. Government may opt for auctioning of the license after deciding the number of such licenses. It would be advisable to auction a minimum of two licenses initially (in addition to the existing service provider) with a base price for one time entry free (OTEF) as Rs. 5 crores. For this purpose, Government may invite applications

from eligible parties giving six months time from the date of notification of the policy. If the number of applicants is more than the number of licenses to be issued by the Government, then the auction may be conducted inviting bids above the base price. The successful bidders should then be asked to match the highest bid. This will ensure level playing field conditions among the successful bidders. These successful bidders will then go through the procedure for grant of license as provided for in clause 15 of the policy guidelines. Sub clause 3 of clause 15 will also get modified, whereby all the successful bidders will have to pay a non-refundable entry fee equal to the highest bid amount.

If the number of eligible applicants is less than or equal to the number of licenses proposed by the Government, then no auction would be necessary and each applicant will have to pay only an amount of Rs. 5 crore being the base price for one time entry fee.

**3. Migration of existing service provider to licensing regime (clause 1.1.9 of original draft guidelines as proposed by the Ministry):** The following may be further incorporated in this clause:

(i) In order to get a provisional license after the notification of these Guidelines, the existing service provider shall fulfill all the terms & conditions of these Guidelines, including payment of the base price of Rs. 5 crores as provisional one time entry fee (OTEF) within two months of the issue of guidelines, except compliance with the terms & conditions relating to dilution of foreign investment to 74% (clause 1.1.7 of the original draft guidelines) and up-linking from the Indian soil ( clause 7.8 of the original draft guidelines). The Government shall then issue the provisional license within one month of fulfilment of necessary formalities as stated above by the existing service provider.

(ii) In addition, the existing service provider shall simultaneously submit his plan to ensure compliance with the two clauses relating to foreign investment and up-linking mentioned above within a period of four years from the date of notification of these Guidelines.

(iii) The existing service provider and the holder of provisional license shall pay the annual license fee regularly with effect from the date of notification of these Guidelines as provided for a normal licensee.

(iv) The existing service provider and the holder of provisional license shall be liable to pay 50% of the highest bid amount of OTEF if the auction for grant of license takes place within four years from the date of grant of provisional license to the existing service provider or Rs. 5 crore, whichever is higher, in order to get the regular license after fulfilment of all other terms & conditions of these Guidelines. This amount, after adjusting the amount of Rs. 5 crore already paid by him at the time of getting the provisional license, shall be payable by the existing service provider and holder of the provisional license within a period of one month from the date of full payment of the highest bid amount by the successful bidder, which shall be duly intimated to the existing service provider by the Government. The existing service provider shall give a legal assurance to the fulfilment of this condition.

**4. Permission, instead of license, for companies providing content:** In its tentative comments, TRAI had suggested to issue license to company for creating their own and/or seeking registration of non 'news and current affairs' satellite radio channels. However, the issuance of the license for the company for content creation alone may perhaps not be covered under the provisions of Indian Telegraph Act, 1885. Therefore, the Ministry may consider issuing permission/authorization for such companies instead of issuing license.

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**Analysis of comments received during consultation**

The Draft Policy Guidelines for Satellite Radio Service were placed on TRAI's website on May 19, 2008 for inviting comments of the stakeholders. The stakeholders have submitted their comments on the various issues involved in this policy. The analysis of these comments on various issues is as follows-

**1. Band of Operation**

1.1 The band of operation for satellite radio services was proposed to be in L band or S band in the draft policy guidelines formulated by the ministry of Information and Broadcasting. Accordingly, the downlinking and terrestrial transmission is proposed to be in L band or S band in the draft policy. One of the stakeholders was of the opinion that while the operation of terrestrial transmission may be permitted in L band or S band, the downlinking may be permitted in C band and Ku band also in addition to L or S band, and the DTH and HITS operators should be permitted to offer satellite delivered multimedia services by acquiring L band or S band terrestrial spectrum.

1.2 The Authority considered the suggestion for the use of Ku band and C band for downlinking the signal. The Authority in its earlier recommendations on satellite radio service had clearly mentioned in para 1.2.6 that the frequency bands available for providing satellite radio services are in L band and S band. The terrestrial repeaters envisaged in the draft satellite radio policy are not the primary service, but it is a complementary service to the satellite service for better widespread coverage. The user is able to receive the radio signal directly from satellite as well as from the terrestrial repeaters in the same band. On the other hand, if the downlink is permitted in C Band and Ku Band also (in addition to L and S Bands), but the terrestrial repeaters are permitted in L or S bands, then it will require two different receivers or a multiband receiver which would push up the cost. Therefore, it is advisable that same band of operation (i.e., L and S bands) are used for both terrestrial as well as satellite operation.

## **2. Number of Licenses**

2.1 In the draft policy Guidelines, there is no explicit mention about the number of licenses to be issued for providing satellite radio service. One of the stakeholders has mentioned that the number of operators may be decided on the basis of available spectrum of this service. The Authority finds merit in this view of the stakeholders. This is because spectrum is a scarce commodity. At this stage, it is difficult to assess whether the number of potential service providers would exceed the number of available frequency bands for this service or not. Therefore, the Authority has recommended that the number of licenses for Satellite Radio Service to be issued may be decided first by the Government in consultation with Wireless Planning and Coordination wing of Department of Telecom and ISRO depending upon the availability of the spectrum for Satellite Radio service. However, it would be advisable to have atleast 2 licenses initially apart from the existing service provider to have competition and option for service to the consumers.

## **3. Auctioning of licenses**

3.1 The draft policy Guidelines do not provide for auctioning of licenses. The draft Guidelines envisage awarding the license to eligible applicants as and when they apply, subject to terms & conditions of the Guidelines. In its earlier recommendations in 2005 on satellite radio, TRAI had recommended that auction route for awarding license should be adopted if the number of applicants is more than the available spectrum. As already pointed above, in the absence of any policy on satellite radio, it is difficult to assess at this stage whether the number of potential service providers would exceed the number of available frequency bands for this service or not. Moreover, since spectrum is a scarce commodity and spectrum for satellite radio transmission is proposed in L and S bands which are shared bands as per the National Frequency Allocation Plan (NFAP), it is likely that the availability of bandwidth may be limited. In such a scenario, it is best to auction the license so as to determine the prevailing market rates for spectrum. This would also be in keeping with the recent recommendations of TRAI on telecom side on the issue of spectrum allocation. It may be pointed out here that auction of license/permission has not so far been done by the Ministry of Information & Broadcasting for other satellite services such as uplinking/downlinking of TV channels, DTH, teleport services or HITS. This was because

there was no mismatch between the available spectrum and the aspirants for license. In the case of satellite radio service, it is difficult to state with certainty at this stage the number of applicants and the available frequency bandwidth. Moreover, satellite radio service as proposed differs from other satellite services in one important aspect because of the proposal to permit terrestrial repeaters here. This makes the satellite radio service a hybrid service.

3.2 Under the circumstances, TRAI has recommended that Government should first make an assessment of the number of licenses to be issued depending upon the availability of spectrum and satellite capacity as pointed out in para 2.1 above. Thereafter, the Government should auction the licenses if the number of eligible applicants is more than the number of licenses being offered. Further, in order to allow the prospective service providers to make up their mind about applying for satellite radio service and thus to assess the market demand for this license in the light of approved policy guidelines, TRAI has recommended that a time period of six months may be allowed after the publication of the policy Guidelines within which the prospective service providers will have to apply. If it turns out that the number of eligible applicants is more than the number of licenses on offer, then auction should be conducted using one time entry fee (OTEF) as the bidding parameter. On the other hand, if the number of eligible applicants is less or equal to number of licenses proposed, then the license may be awarded on payment of base price of Rs. 5 crore towards one time entry fee subject to fulfilment of other terms & conditions of the policy Guidelines.

#### **4. Entry Fee**

4.1 One time entry fee (OTEF) in the draft policy was specified as Rs. 2.50 Crores, which was proposed to be enhanced to Rs. 5 Crores. The existing satellite radio service provider is of the opinion that this fee should be retained at Rs. 2.50 Crores as proposed. One stakeholder is in favour of increasing OTEF to Rs. 10 Crores. The existing FM operators are broadly of the opinion that there should be a level playing field between FM Radio and Satellite Radio. They are of the opinion that there should be a bidding process on the same lines as in FM radio. One of the stakeholders is of the view that OTEF for satellite radio should have some reference to OTEF for FM Radio for pan India operation.

4.2 The Authority has carefully gone through the arguments of the stakeholders. Accordingly, the auction route has been recommended above (para 3). However, it is not advisable to keep the base price for OTEF at par with the total entry fee collected from all FM Radio operators in the country, because the business models of satellite radio and FM radio are different. The business model permitted for satellite radio is based purely on subscription. Accordingly, TRAI has recommended that base value of OTEF should be kept at Rs. 5 Crores.

## **5. Terrestrial Repeaters**

5.1 In the draft policy guidelines for satellite radio services, terrestrial repeaters are proposed to be permitted. Some of the stakeholders are of the view that terrestrial repeaters should also be allowed for FM radio in line with satellite radio. One of the stakeholders is of the view that repeaters should not be allowed for satellite radio services.

5.2 The Authority in its recommendations dated June 27, 2005 had thoroughly analysed the issue of permitting terrestrial repeaters for satellite radio service providers and to FM radio operators. The relevant extract of the recommendations dealing with this issue is as follows-

### **“ 4.4.8 Terrestrial Repeaters**

It is mentioned that all the existing satellite radio systems operational today are either using or plan to use terrestrial repeaters in urban areas where satellite signal is obstructed due to high rise buildings. Recognising the problem, ITUs' WARC-92 while assigning the spectrum for satellite radio service had already made the provision for complementary terrestrial sound broadcasting service in the same spectrum. Thus the terrestrial repeaters have been considered essential for providing quality service in urban areas and are therefore key to the successful implementation of any satellite radio service. Terrestrial repeaters should therefore be considered as an integral part of the satellite radio licensing regime. However, these repeaters should only be allowed to re-broadcast satellite signals and not other programmes which are locally produced and inserted. This is essential since the regulatory regime for satellite radio is different and it should not be used for unfair competition with FM radio.

**4.4.9** In FM broadcasting, it is not a common practice to license additional frequencies for low power terrestrial repeaters to cover areas of unsatisfactory reception of high power licensed frequency behind the hills. This is primarily due to the fact that additional frequencies required for terrestrial repeaters put significant demand on already scarce FM radio spectrum which can otherwise be used for regular FM radio licensing. Due to the intrinsic property of radio waves in VHF band used for FM radio, even a low power terrestrial repeater station will render the use of co-channel and adjacent channel frequencies at reasonable distances. On the other hand, frequencies assigned to satellite radio service travel only up to line of site distances and therefore have the ability for reuse at comparatively short distances. Thus, it is not appropriate to compare satellite radio with FM radio so far as provision of terrestrial repeaters is concerned.

**4.4.10 In view of the above considerations, it is recommended that a single license may be issued to provide satellite radio service and complementary terrestrial service to the potential service providers to efficiently plan the network in a seamless fashion to deliver quality of service to customers."**

5.3 There has been no change in the technology on this issue after the recommendations were sent by TRAI. Accordingly, there is no need for any reconsideration in this regard.

## **6. News and Current Affairs**

6.1 The existing service provider has commented that the news content from Doordarshan, authorised TV news channels, UNI, PTI and other authorised agencies should also be added on the lines of TRAI's recommendations on "3rd phase of private FM Radio Broadcasting".

6.2 TRAI in its earlier recommendations dated June 27, 2005 had recommended that there should be no ban on News and Current Affairs for satellite radio. The rationale for such recommendations was based, apart from others, on factors such as –

- The expected clientele of satellite radio is limited compared to FM radio:
  - The subscriber base of Satellite Radio was then a little over 30,000. The listener base of FM Radio is much wider, though no definitive numbers are available

(depending on the definition of listener base these could be as high as 30 million) but these are quite clearly several times the subscriber base of Satellite Radio.

- o In the case of Satellite Radio the subscribers are from upper income homes who already have access to private news and current affairs in both print and television media.

6.3 Now, as per the draft policy guidelines, the Satellite radio service provider will be able to carry only the following types of radio channels on its service:

(i) Non-News and Current Affairs radio channels registered with Government of India as per provisions contained in Part-II of the policy Guidelines.

(ii) The news broadcast of All India Radio(AIR) as mutually agreed between the service provider/radio channel and AIR.

(iii) channels of Prasar Bharati as provided in the paras 5.13 and 5.14 of the draft policy guidelines.

6.4 The Authority recognizes the Government's concern behind such provisions of limited news contents. There are already restrictions on FM radio regarding news reporting. Therefore, the Authority has agreed to the provisions stipulated in the draft policy guidelines relating to news and current affairs, and do not favour any changes at this stage.

## **7. Advertisements**

7.1 Ministry of Information and Broadcasting in its draft guidelines has stipulated that satellite radio service provider will not carry any commercial advertisements on its service except a maximum of two minutes per hour of promotional material about the satellite radio service and the channel(s) carried by it.

7.2 The existing satellite radio service operator, and some of the stakeholders from advertisement sector have suggested that advertisement should be permitted on satellite radio. On the other hand there has been an intensified demand from the consumers of other platforms such as television and FM radio channels that the duration of advertisements should be curtailed. In such a scenario where an existing service is operating only on subscription revenue model without advertisement, it may not be in public interest to tinker with the existing model of consumers getting content without the interventions of commercial breaks.

## **8. Foreign Investment**

8.1 In the draft policy guidelines, 74% Foreign investment limits have been proposed. One of the stakeholders is of the view that since 26% foreign investment is proposed for news channels, and 49% for non-news FM channels, no special consideration need be given to satellite radio.

8.2 Since this service is primarily satellite based service, the Authority, at this stage, agrees with 74% limit for foreign investment in satellite radio service as proposed in the draft policy guidelines. This is in line with the proposed limit for other satellite services like Teleports, DTH operators, HITS to have uniformity of approach.

## **9. Technology and Interoperability**

9.1 The clauses in the draft policy for the technology to be adopted by the service providers, and the provisions of interoperability are as under:-

“ 7.3 The service provider will be allowed to adopt any technology with the condition that the technology to be deployed for providing such service shall be based on standards issued by International Telecommunication Union (ITU), Telecom Engineering Centre of India (TEC) or any other International Standards Organization/ body such as the European Telecommunications Standards Institute (ETSI) or any other standardization organization/ body specified by the Government of India, on recommendation of TRAI or otherwise.

7.4 The company should provide technical compatibility and effective interoperability of receiver sets among different service providers using the same technology and standards. They should also provide commercial interoperability so that if the subscribers decide to switch over to any other service provider or platform they should be able to do so at least cost. Commercial interoperability here would mean that in addition to offering the receiver set on an outright purchase basis, a subscriber should also have the option to purchase it on a hire-purchase basis or rental basis with a provision to return the receiver set on such terms and conditions as may be laid down by regulations issued by TRAI.”

9.2 One of the stakeholders in his comments is of the view that if a technology is proved in the field tests then preference to be given to that developed technology. Another stakeholder suggested that after selection of one or more technologies, the BIS should lay down the standard so that there is future interoperability in the devices and systems. Another stakeholder advocated that the technical and commercial interoperability clause which requires receiver sets among different service providers to be interoperable, should be reviewed. He is of the opinion that the interoperability will make the service unviable.

9.3 On the issue of technology to be adopted, the Authority in its earlier recommendations on satellite radio services dated June 27, 2005 has recommended that the licensor need not mandate a particular transmission standard for any potential satellite radio service providers who should be free to decide their own preferred transmission standard. This was primarily because all the existing and planned satellite radio systems in the world employ proprietary transmission standards. This has led to the result that their satellite radio receivers are also proprietary and are therefore not interoperable. It was also indicated that since there are several competing transmission standards, it will be complex and time consuming for the licensor to select the standard which is best suited to the country.

9.4 The Government, in its present draft policy, has not mandated a particular technology or standard in line with TRAI's earlier recommendations. It is desirable that the regulations should not come in a way of adopting the benefit of technological advancement, and therefore, it is not appropriate to mandate a particular type of technology or standard or version. It is also essential that right type of technology should be adopted by the service providers to provide world class service to the consumers. Therefore, the Authority feels that the provisions formulated in the draft policy leave sufficient choice to the service providers to choose the technology for satellite radio services and do not recommend any further changes in the draft policy. At the same time, the provisions of interoperability provided in the draft policy are sufficiently consumer friendly. This is because the technical compatibility and effective interoperability of receiver sets have been mandated among the service providers who are using same technology.

## **10. Registration of Channels:-**

10.1 Ministry of Information and Broadcasting in its draft guidelines has made provision for one time registration of channels for distribution on satellite radio platform. The Authority has not proposed any change in this in its tentative comments.

10.2 Some of the stakeholders in their comments have desired that FM radio should be allowed to provide their content to satellite radio service providers without the need of registration. The Authority finds no merit in this request. This is because the content for the satellite radio has to be without any advertisement whereas the content on FM radio is permitted with advertisements. In any case, the registration of channels as provided for in the draft guidelines is easy and not cumbersome.

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