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GOVERNMENT OF INDIA
MINISTRY OF INFORMATION & BROADCASTING

Dated: 19.10.2004.

Shri Rakesh Kacker,
Adviser (B&CS),
TRAI,
New Delhi.

Subject: TRAI's recommendations dated 11.8.2004 on "Licensing issues relating to second Phase of private FM radio broadcasting."

Sir,

The TRAI's recommendations on "Licensing issues relating to second phase of private FM radio broadcasting" cover a number of aspects concerning expansion of private FM Radio in Phase-II. The recommendations on the following aspects have been examined in this Ministry, whereas other issues are being examined separately: and detailed observations have been made in respect of each in the enclosed note:

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- From Spl (contd)
- a) Method of licensing, licence fee structure and period of licence;
 - b) Migration of Phase I licensees to the revised Phase II regime;
 - c) Ownership issues;
 - d) Networking.


DA (R&C) 2. The proviso to Section 11(1) of TRAI Act prescribes that:

".....if the Central Government, having considered that recommendation of the authority, comes to a prima facie conclusion that such recommendation cannot be accepted or needs modifications it shall refer the recommendation back to the authority for its reconsideration and the authority may, within 15 days from the date of receipt of such reference, forward to the Central Government its recommendation after considering the reference by that Government. After receipt of further recommendation, if any, the Central Government shall take a final decision".

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3. The enclosed note explains the areas of disagreement of this Ministry with the TRAI's recommendations in respect of (a) to (d) above. This may be treated as a reference under the above provision of TRAI Act and appropriate response may be conveyed to this Ministry.

Yours faithfully,


(U.S. Bhatia)

Joint Secretary to the Government of India.

a) Method of licensing, and licence fee structure:

(i) The TRAI's recommendation, with regard to adoption of closed bid tender system without any reserve entry fee and adequate penal provisions for withdrawal and with a provision for a waiting list, is considered to be susceptible to both pre-tender and post-tender cartelization and therefore can't be accepted. There is a case for prescribing a reserve entry fee, with sufficient withdrawal penalty to deter a non-serious bidder, from participating in the tender process.

(ii) The recommendation in respect of eligibility criteria with specific reference to withdrawal of court cases by phase-I bidders needs further examination in this Ministry, in consultation with Law Ministry.

(iii) TRAI's recommendation for annual license fee @4% of gross revenue is found unacceptable on the following grounds:

- The revenue earnings of a radio operator are expected to be in the form of advertising revenues, which are un-metered, unlike the earnings of a telecom service provider. In many cases, it would be difficult to segregate the earnings accruing on account of radio operations, in case the licensee company has other business activities, as in the case of SUN TV. Two FM licensees of phase-I, viz., Hitz FM and India FM, have contracted out the advertising time to a third party, where the advertising revenues are paid to the third party by the advertisers and only a portion of the same are ploughed back to these companies. This arrangement has a great potential of under reporting of revenues by a company.
- In the case of private FM radio operations, about 300-400 licensees could be anticipated for 100 centers, making the task of getting the correct picture about gross revenue far more complex and time consuming. Thus, revenue sharing arrangement is likely to be cumbersome to administer on the above grounds and also considering the propensity of the licensees to move law courts at each stage, whereas fixed license fee regime could be much simpler to administer.
- Further, the adoption of the license fee @4% of gross revenue would result in a steep decline in revenues to the government, going by the trends of earnings in the previous two financial years. As per the revenue figures quoted in TRAI's report, 4% of revenue earnings of all the private radio players come to Rs. 1.92 crores for 2002-03 and Rs. 4.63 crores for 2003-04; as against the current annual revenue of more than Rs. 100 Crores. TRAI has not provided the analysis of the nature of losses incurred by various operators. It is also not clear as to whether or not all the

licensees have suffered losses. This input could have provided some basis to arrive at the optimal annual license fee.

(iv) TRAI has not recommended any Performance Bank Guarantee (PBG) for the entire license period, to safeguard the interest of the government.

b) Migration of Phase I licensees to the revised Phase II regime:

All the issues mentioned above are relevant here as well. It would have helped matter if TRAI had provided an analysis on the nature of losses, giving clear position on the following:

- Number of licensees, who are currently running into losses and have no chances of breaking even in the foreseeable future.
- Whether the business model, adopted by the loss making licensees has also contributed to the non-viability of radio operations or in other words, whether there was any scope for reducing operational expenses to make the business viable.
- Details of licensees who have actually not incurred any loss.

c) Ownership issues:

The TRAI's recommendation with regard to multiple licenses in one center and the total number of licenses at the national level is likely to create monopoly and therefore is not acceptable. The matter requires to be considered in the light of the observations of Supreme Court in the case titled **Union of India through Secretary (I&B) -vs- Cricket Association of Bengal.**

d) Networking.

Unfettered networking as suggested by TRAI could lead to minimization of local content and emergence of virtual national networks and, therefore, this recommendation in its present form is not acceptable.