

Consultation Paper No. 8 /2004

Telecom Regulatory Authority of India

Consultation Paper

On

Licensing Issues Relating to 2nd Phase

Of Private FM Radio Broadcasting

New Delhi

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Preface

Keeping in line with the policy of liberalization and reforms followed by the Government since 1991, the Government during the Ninth Plan period allowed fully owned Indian companies to set up private FM radio stations on a license fee basis. However, the progress of operationalising FM Radio was very slow. In May 2000, the Government auctioned 108 frequencies in the FM spectrum across 40 cities in the country through an Open Auction Bidding process. Out of this, services started in only 14 cities. 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).

2. The result of the first phase of liberalization of FM radio broadcasting in India has thus not been very encouraging. Most of the broadcasters were finding the projects commercially unviable primarily due to very high amount of license fee, which they have to pay for the Government. The private players in the FM industry reported heavy losses that are likely to continue for some time.

3. The Working Group on Information and Broadcasting Sector for the Formulation of the Tenth Five Year Plan group felt that treating these services as source of revenue for the Government is counter productive as they hinder the growth and quick roll out of the services to the people. As such suitable corrective policy measures should be taken, so that, in future growth of these services is accelerated and substantial private investment is attracted to supplement the efforts and investment of All India Radio.

4. The Tenth Five Year Plan emphasized the need for substantially enhancing FM coverage from the present 30 per cent population coverage to 60 percent by the end of the plan. One of the thrust areas of the Plan was to encourage private participation in providing quality services and replacing the existing system of bidding for licenses with a revenue sharing mechanism.

5. As such the Government decided to reformulate its policy for the second phase of licensing of the FM Radio and subsequently constituted a Radio Broadcast Policy 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 and it submitted its Report in November 2003. The Committee found that the broadcast industry appears to be unviable under phase-I licensing regime and, therefore, recommended restructuring of the FM broadcast industry and the phase-I licenses. It recommended, inter alia, revision of license fee structure and migration of the license terms from fixed license fee basis to a one time entry fee with an annual revenue sharing arrangement.

6. The Government notified broadcasting to be a telecommunication service under Section 2 (i) (k) of TRAI Act On 19th January, 2004. On February 12, 2004, the Ministry of Information and Broadcasting, Government of India sent the report of the Radio Broadcast Policy Committee to TRAI for making appropriate recommendations.

7. Subsequently, on February 24, 2004, the Government referred the representation made by five private FM broadcasters for deferment of the Annual FM License fee, till the Government takes a decision on implementation of the FM Radio Task Force recommendations. Since this issue was linked to the recommendation on phase II licensing and TRAI was in the process of preparing a consultation paper on the same, which was likely to take time, TRAI issued an interim recommendation on 5th April 2004. It gave the option to the phase I licensees to defer their next installment of dues subject to the condition that they would pay this amount, after the issue is decided by the Government, with interest as may be decided finally.

8. This Consultation Paper is based on the extensive analysis and also comprehensive inputs received from various stakeholders in meetings held with them. The accounts of the phase I licensees were called for and these

are being scrutinized. Inputs were also received from Ministry of Information and Broadcasting. Dr. Amit Mitra, Chairman, Radio Broadcast Policy Committee, gave a presentation on its Report to the Authority on 8th March 2003. The objective of this Consultation Paper is to examine the various licensing, regulatory and level playing field issues in enabling the issue of 2nd phase of FM Private Radio Licenses.

9. We are hopeful that this paper would provide the necessary platform for discussing the important issues relating to issue of licenses for the 2nd phase of Radio FM Private Broadcasting. The paper has already been placed on TRAI's website (www.traigov.in)

10. Written comments on this Paper may be furnished to Secretary, TRAI by 7th May, 2004. For any further clarification on the matter, Secretary TRAI or Advisor (B&CS), may be contacted at traio7@bol.net.in (Ph.No.26167448) and rkacker@traigov.in(Ph.No.26713291) respectively.

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Chapter 1 - INTRODUCTION

1.1 Background

Radio is one of the most popular and affordable means for mass communication, largely owing to its wide coverage, terminal portability, low set up costs and affordability. In India, Radio coverage is available in SW, MW and FM mode. In terms of reach, MW broadcasts cover 98.02% of the Indian population and 88.92% of the geographical area, while FM broadcasts cover about 30% of the population and 21% of the geographical area. Until 2000, the Public Service Broadcaster i.e., All India Radio (AIR) was the sole provider of radio broadcast services in the country. AIR presently has a network of 213 broadcasting centers supported by 143 MW, 54 SW and 139 FM transmitters, and transmits programmes in 24 languages and 146 dialects for domestic listeners and in 15 foreign and 12 Indian languages for its external services. In 2000, the Government auctioned private radio service licenses in 40 cities. Today, there are 24 privately owned FM radio stations in the country in 14 cities (two have not commenced broadcast).

1.2 Policy objectives for Radio in the 9th and 10th Five Year Plan:

In the Ninth Five-Year Plan, the thrust areas for All India Radio, being the only radio broadcaster at that time, were

- Improvement of Program content;
- Providing wider choice of programs;
- Improving broadcast quality;
- Enhancing technical features,
- Renewal of old and obsolete equipment,
- Addition of new facilities at radio stations

The focus in the Ninth Plan very clearly was on improving the variety of content and technical quality. Also, on the technology front the focus shifted from MW to FM, largely due to:

- a) Ubiquity of MW transmission
- b) Superior quality of FM transmission

During the plan period, the Government allowed fully owned Indian companies to set up private FM radio stations on a license fee basis.

In the Tenth Five Year Plan (2002-2007), the objective is to expand coverage of television and radio services to the unserved areas, particularly north eastern states, border regions, hilly terrain and enhance the present 30 percent population coverage of FM to 60 percent by the end of the plan. The plan also stipulates that private operators are to be encouraged to provide FM radio services in metros and small cities. For the FM licenses, it also envisages replacement of the existing system of bidding for licenses with a revenue sharing mechanism.

Text Box 1: Tenth Five-Year Plan

In the case of radio, MW transmission has reached 99 per cent of the population. However, FM broadcasting is the preferred mode of radio transmission all over the world due to its high quality stereophonic sound. The emphasis in the Tenth Plan, therefore, needs to be on substantially enhancing FM coverage from the present 30 per cent of the population along with efforts to consolidate the MW transmission network. The following are the major thrust areas:

- § No further expansion of MW transmission except in sparsely populated, hilly terrain and strategic border areas where it will still be more cost effective.
- § Expanding the reach of FM radio to cover 60 per cent of the population by the end of the Tenth Plan. Private operators are to be encouraged to provide FM radio services in metros and small cities.
- § Encouraging private participation in providing quality services and replacing the existing system of bidding for licenses with a revenue sharing mechanism.
- § Automating all FM transmitters and all MW transmitters of 20 kilowatt (KW) and below capacity.
- § Creation of high quality content with long shelf life to enable AIR to fulfill its role of public service broadcaster.
- § Strengthening and expanding the reach of radio in the northeastern states (including Sikkim) and island territories.
- § Use FM radio to spread literacy, because of better transmission and reception

1.3 Roll out of private FM broadcasting

In May 2000, 108 frequencies in the FM spectrum (VHF 87 –108 Mhz) were auctioned across 40 cities in the country. The objectives behind opening up of these frequencies for private participation included:

- (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.

Multiple round auction mechanism was followed to award these licenses. The list of licensees and the amount of license fees is placed at Annexure I. The start-up has been slow. Out of 40 cities and 108 frequencies, services have started in only 14 cities and on 22 frequencies; two frequencies are “deemed” operational.

1.4 Radio Broadcast Policy Committee

In 2003, the Government appointed a Radio Broadcast Policy Committee under the Chairmanship of Dr. Amit Mitra to provide recommendations on the second phase of Private FM Broadcast liberalization. The committee after delving through the lessons from the first phase, the relevant experience from the Telecom Sector as well as global experiences made a series of recommendations. These primarily relate to the

- a) Entry & exit mechanism,
- b) License fees structure,
- c) Enhancing the scope of services,
- d) Improving roll out and
- e) Migration of existing licensees to Phase II

1.5 Context of this Consultation Paper

The Government notified broadcasting to be a telecommunication service under Section 2 (i) (k) of TRAI Act On 19th January, 2004. On February 12, 2004, the Ministry of Information and Broadcasting, Government of India sent the report of the Radio Broadcast Policy Committee to TRAI for making

appropriate recommendations. The Report included various issues like revenue sharing, migration and attendant matters involved in the issue of licenses for the second phase of private FM Radio Broadcasting. The letter of Ministry of Information and Broadcasting is at Annexure II.

In line with the consultative approach of TRAI, this consultation paper has been prepared to seek the views of the stakeholders on the licensing terms and conditions for the second phase of FM licensing. It also calls for comments of the stakeholders on the issue of migration for existing licensees. The paper is divided into the following chapters

- Chapter 2: Details of the experience so far in Phase –I
- Chapter 3: Raises the issues for consideration in Phase-II of licensing
- Chapter 4: Migration of Phase-I licenses to Phase-II
- Chapter 5: Summarizes the issues for consultation

Comments on this paper may be sent by 7th May 2004. These may be sent to Secretary TRAI or Advisor (B&CS), at trai07@bol.net.in (Ph.No. 26167448) and rkacker@tra.gov.in (Ph.No.26713291) respectively.

Section 2: First Phase of License for Private FM Radio Broadcast

- 2.1 In the first phase, the licenses for private FM Radio Broadcast were granted on the basis of cities. These cities were divided into five categories on the basis of the amount of reserve license fees.

Table 2.1: Category of licensees, reserve fees, amount paid

Cat	Cities	Reserve License Fees(in Rs.)	Range of Amount Paid (in Rs.)
A+	Delhi, Mumbai	125 lakhs	712-975 lakhs
A	Calcutta, Chennai, Bangalore	100 lakhs	100-680 lakhs
B	Ahmedabad,Hyderabad	75 lakhs	255-772 lakhs
C	Indore, Lucknow, Pune, Vishakapatnam, Chandigarh,Cochin,Coimbatore,Jaipur, Jalandhar,Kanpur, Ludhiana, Madurai, Nagpur, Panaji, Patna, Srinagar, Tiruchy, Trivandrum	50 lakhs	50-740 lakhs
D	Agra,Allahabad,Aurangabad,Bhopal, Bhubaneshwar, Cuttack, Guwahati, Jabalpur, Jamnagar, Mysore, Raipur, Rajkot, Shillong, Tirunaelveli, Varnasi	20 lakhs	22-400 lakhs

The license was awarded for a period of 10 years and the annual license fees was escalated at 15% per annum on the base of the first year fees. The eligibility conditions for applying included

- a) Only one license could be applied for in one center;
- b) All the shareholding in the bidder company was required to be held by Indians except for limited portfolio investment by FIIs/ NRIs/ Persons of Indian Origin/ OCBs subject to ceilings prescribed by the Ministry of Finance. Interconnected-undertakings, companies under the same management and control or parent-subsidiaries were also prohibited from bidding at the same center.
- c) Political/ religious bodies, advertising agencies, companies incorporated outside India and a company controlled by an insolvent (actual or potential) or a person convicted of an offence involving moral turpitude were not eligible to apply for licenses.

- d) The applicants were also required to demonstrate their financial and managerial competence through evidence of capital adequacy, credit worthiness etc.

The license award procedure adopted in the first phase is given in Text Box 2.1.

The important conditions in the license included the following:-

- The license was issued on a non exclusive basis for free to air broadcasts (excluding News and Current affairs);
- The Metro operators were required to form a consortium and co-locate their transmitters and transmit with same power (between 10 kW and 20 kW). This would reduce the inter frequency separation requirements from 800 kHz to 400 kHz, thereby increasing the number of available frequencies.
- The licensees were not permitted to carry out networking of FM broadcasting stations provided, however, on special occasions networking may be done on prior written approval of the licensor.
- 50% of the program broadcast were required to be produced in India
- The licensees were required to follow certain content guidelines and the AIR code.

Text Box 2.1: License award procedure for FM Radio License in the 1st phase

The procedure for award of Letter of Intent (LOI) was as follows:

- a) On receipt of application, together with an Earnest Money Deposit (EMD), the application was scrutinized by the licensor and the eligible applicants were invited to the auction;
- b) These applicants had to deposit 50% of the reserve fees for the first year;
- c) In places where the number of applicants were less than the number of frequencies, all the applicants were eligible for LOI;
- d) A multiple round bid with an escalation of 10% in each round was carried till the number of frequencies equalled the number of applicants.
- e) An LOI was awarded at this stage

After receipt of LOI,

- f) Each successful bidder had to furnish a Bank Guarantee equal to the first year of license;
- g) In case of metro operators, the licensees were required to form a consortium, to fulfill the co-location condition, (within 75 days in accordance with the Model Consortium Agreement supplied with LOI) before the execution of the License Agreement;
- h) The applicant had to apply for WPC frequency and SACFA clearance within 3 months of the date of issues of LOI;
- i) Effective date of license meant the date of issue of operational license by the WPC;

The installation of broadcast facility was to be completed within 12 months from the date of earmarking of frequency by WPC.

Source: Report on Radio Broadcast Policy Committee

2.2 Assessment of the Liberalization process

The Radio Broadcast Policy Committee notes that “ Government received 101 bids for an aggregate of Rs 425 crores as against the estimated of Rs.79.65crores. However, the actual collection was only Rs.158.8 crores from bids for 37 frequencies as bidders in respect of 64 frequencies defaulted.

About 22 licenses are currently operational and two licensees are paying license fees though they have not operationalised the license. The Government has accepted such payments by describing the licenses as deemed operationalised. The deadline for operationalising the licenses was one year from signing the License Agreements, i.e. December 29, 2001. However, even after furnishing the bank guarantees and signing the License Agreement, some successful bidders did not operationalise their licenses within the required time frame and ultimately surrendered their licenses”.

2.3 Results of the first phase of liberalization

From the above, it is evident that the results of the first phase are not very encouraging as only 25% of the expected licenses could become operational. Also, even the existing licensees have reported their operation as unviable. For the year 2002-03 i.e., the first year of operations, the amount of license fees as percentage of Revenue & total operating expenses as percentage of revenue is shown in Table 2.2. (as reported by the licensees).

	License fees as percentage of revenue	License fees as percentage of expenditure
A	234%	59%
B	321%	67%
C	114%	56%
D	120%	44%
E	998%	73%

Source: Data from industry

The amount of license fees from the second year onwards would go on escalating at a rate of 15%, affecting the viability further.

There is a clear evidence of speculative bidding as the long term business plan shown by operators does not justify such levels of license fees. The Radio Broadcast Policy Report Committee notes that:

“The euphoric projections that drove bidding were unjustified as the assessment of the market and the projected revenues by the bidders were wide off the mark. In this respect, the bidders did not submit proper

documentation and did not carefully study the market. Therefore, the first year license fee, arrived at through the bidding process, was in several cases entirely unrealistic. As a result several of the licensees defaulted and are even today making huge losses. The license fee for the first year for the ten licensees amounted to about Rs.162 crores, 60% more than the annual revenues of AIR.”

The report also notes some of the other lessons, which include

- a) Litigations over clarifications in the tender Documents, LOI and License Agreement,

There were litigations following the issue of LOI, with its genesis in the lack of clarity at the stage of tendering and introduction of new conditions in the license post bidding. The committee notes “The LOI introduced additional conditions of: (a) forfeiture of 50% of the license fee deposited by the parties in case the License Agreement was not executed or the BG not submitted and (b) black listing of defaulters. Much of the litigation and dispute resolution through arbitration is on account of the lack of clarity in the Tender documents and the post tender communications. Further, in certain cases the Government permitted the licensees to pay the license fees pending operationalisation of the license by recognizing “deemed operationalisation”, which in effect amounted to an extension of the operationalisation period, a concept alien to the License Agreement and the Tender Documents.”

- b) Restrictions having impact on investment & the extent of viewership

In the Radio industry, the source of revenue is essentially from advertising. Certain restrictions on the present licensee have substantial effect on the number of listeners, which in turn adversely affects the advertising revenue. The report mentions “The radio industry in India shares only around 2% of the advertising pie out of which 1% is attributable to AIR while the share of the radio industry in advertising in other countries like USA, Australia etc. is about 12%.”

i) Restriction on News and Current Affairs: The first phase of licensees were not permitted to provide News and Current Affairs. The reasons for such a restriction have been explained in the report as:

- (a) FM mode is best utilized for music broadcast as contrasted with talk broadcasts;
- (b) Security concerns in sensitive areas prone to communal/caste tensions as policing of radio stations is difficult.

Incidentally, the live up-linking of News & Current Affairs has already been permitted to Television and near live up-linking from even outside the Indian soil is a norm. However, it is also important to note that the medium of radio is different from Television in terms of reach. The ease of monitoring is much higher in case of satellite television as against radio, which is localized.

In addition to news uplinking by Satellite TV stations, technological advances have made available satellite radio services in India for which such broadcasters are not presently required to pay any license fees to the Government as the broadcast is through a satellite and the up-linking facilities are also situated outside the country. Whilst FM broadcasters in India are not allowed to broadcast news and current affairs, satellite channels, many of which are owned by foreign companies, are broadcasting news that is received by audiences in India.

ii) Restriction on networking of various FM licenses

Networking or chain broadcasts means simultaneous broadcast of programmes by the same licensee on different frequencies or by different licensees. Networking implies connectivity between radio stations – real time through satellite or telecom networks. Licensees in Phase I were not permitted to network except on important occasions with the prior permission of the Government. The License Agreement states that *“The Licensee shall not carry out networking of broadcasting stations provided, however on special and important occasions networking may be done on prior written approval of the Licensor.”* This essentially means that the same content will not be transmitted simultaneously through more than one transmitter.

iii) Requirement to co-locate facilities

The License Agreement stipulated that the transmission facilities of the private broadcasters in the metro centers should be co-located. However, in spite of a model contract having been supplied to the bidders, there were delays in arranging for co-location as parties could not agree on certain arrangements. Since the requirement of all the parties coming together was a necessity, the roll out got delayed even in cases where a few LOI holders did not agree. In some metros, the licensor relaxed this condition, while in some the LOI holder's agreed to share Prasar Bharti's infrastructure.

iv) Restriction on Foreign Investment: The 1st phase of license required all shareholding in such company to be Indian except for portfolio foreign investment by FIIs/ NRIs/ PIOs/ OCBs subject to such ceiling as may be decided from time to time. No direct investment by foreign entities, NRIs and OCBs is permitted in the licensee company.

In other competitive segments in Television such as DTH and Cable TV this limit is 49%.

v) Restriction on Multiple Licenses: Presently, there are restrictions on an entity holding multiple FM broadcast licenses in the same center that arguably does not allow content specialization.

Chapter 3 – The Second Phase of FM Radio Licensing

3.1 Types of license

Licenses in FM Radio Broadcasting can be classified on the basis of services and coverage area. On the basis of Services, the types of licenses could be

- a) Commercial licenses i.e., service neutral licenses with no defined characteristics,
- b) Specialized licenses such as separate license for News & Current Affairs; Cultural and Educational Programs, Talk show. Such licenses are awarded in U.K.
- c) Commercial licenses with pre specified requirements to broadcast local content, News etc. In countries such as Australia, Canada and USA commercial licenses have/had such conditions.
- d) Non Commercial licenses or 'niche' licenses

Such conditions on content specialization are generally used to provide diversity of content. The issues with specifying special conditions in commercial licenses are those related to defining the content and monitoring the same. This would also require Government intervention, monitoring and inspection.

Non-commercial licenses are often required to promote social, cultural and educational objectives of the policy. These can be implemented either through

- mandating such provisions on 'Public Service Broadcaster',
- creating and incentivising special purpose licenses, or
- mandating a certain amount of timeslot in each commercial license for this purpose as explained above.

The objectives relating to educational programmes and community development are to some extent met by the present 'Community Radio Licenses'. The issue of promoting policy objectives is discussed later.

The issue for consultation is:

- **Should there be stipulation on the type of content to be carried on each license or the choice be entirely left to the licensee? If yes, what are the options that should be exercised?**

3.2 Service Area

Another issue for consultation is the extent of area covered by the license. In the first phase, the licenses were awarded on the basis of cities. In some countries, such as U.K. there are concepts of National and Local license. On the basis of service area, the possible options are to grant licenses on one of the following basis

- a) National
- b) Provincial
- c) City
- d) Rural

The advantage of having larger service area is two-fold. It provides the operators with flexibility to roll out in several areas at their convenience i.e., they do not have to wait for the licensing process. Such roll out would help them in increasing their advertising revenue potential. On the other side, it would meet the policy objective of roll out.

In case we continue with the present city wise licenses, there would be no roll out of private FM in rural areas.

Another option could be to grant separate licenses for Metros & Big Cities (with population >10 lakhs) and rest of the geographical areas. For the first category a fixed and comparatively higher revenue share can be levied. For the second category, slab wise revenue shares can be charged based on the proportion of rural and remote coverage (For example rebate can be considered for every 25% rural & remote area coverage). This would work as an incentive for the operators to roll out in these areas.

International experiences on Type of license and service area

- Argentina : Licenses defined on the basis of geographical reach.
- Australia: Commercial, Community, Temporary community, Narrowcasting, International broadcasting, subscription, class, apparatus, transmitter, special events, retransmission.
- Canada : 7 categories of radio stations : Public, commercial, native, community, campus, digital, ethnic
- Malaysia: Licenses defined under the new convergence regime, and not based on geographies or usage but are based on technologies used.

Philippines: Not defined geographically.

UK: Licenses defined on the basis of usage and geographical reach.

USA: Restriction on number of licenses on the basis of ownership rules.

The issues for consultation are

- **Should we consider licensing of private FM Radio stations on the basis of city, or should we migrate to the concept of Regional / National Licenses?**
- **What types of licenses should be created on the basis of service area?**
- **Whether the locations of the Stations to be put on bid for Phase II can be spread out to cover more towns and further what steps can be taken to ensure that the coverage is evenly spread out?**

3.3 Duration of Licenses

In Phase-I, the period of license was fixed at ten (10) years with no possibilities of extension. The issue of extending / renewing the license period was taken up by the Radio Policy Broadcast Committee. The committee observed that Internationally the initial period of license is lower (e.g. in Canada the period is seven (7) years, in U.K it is eight (8) years). However, in many countries renewal of the licenses is permitted which taken together with the original license period would mean that the term of the license would be more than 10 years (e.g. in Canada renewals of license for terms not exceeding seven years (7) is permitted while in U.K licenses are renewable for one term not exceeding eight (8) years, after the completion of the first eight (8) years of license).

Fast developments are taking place in the field of Digital Audio Broadcasting which has a number of advantages over existing Analogue transmissions such as AM and FM. It is certain that analogue systems currently in vogue will be phased out one day and digital systems will be introduced in future. Keeping in view the developments in the field of Digital Audio broadcasting technology renewal of license can be considered. The possibility of such a renewal of the license would provide an additional incentive to the broadcasters to comply with the terms and conditions of the license agreement during the initial period of the license.

The Radio Broadcast Policy Committee Report recommended that the licenses could be renewed for a further period of five years subject to satisfactory performance by the licensee and provided that no default has occurred during the period.

Such extension would provide the present industry with an incentive to recover from the high license fees. It may be noted that such an automatic extension would in effect increase the license period to 15 years.

The following issues arise for consultation

- **Is there a need to change the present license period?**
- **Whether license renewal may be permitted? If so for how many years and what should be the condition for renewal?**

3.4 Roll out Obligation:

One of the objectives of the Tenth Five Year Plan (2002-2007), is to expand coverage of television and radio services to the unserved areas, particularly north eastern states, border region, hilly terrain and enhance the present 30 per cent population coverage of FM to 60 per cent by the end of the Plan. This can be done by stipulating suitable Roll Out Obligations for the service providers since around 70% of our population lives in rural areas.

Failure to meet these Obligations may lead to penalties ending in the cancellation of the license and withdrawal of permission to use frequency spectrum. This would also help in eliminating non-serious players. The license can contain strict conditions obliging the service provider to roll out. The performance of the Roll Out Obligation would need to be backed by a Bank Guarantee that can be invoked in the event of the service provider failing to fulfil his obligations.

Another option could be in line with the 'USO Fund' in the Telecom Sector. Such a concept has been discussed by the Radio Broadcast Policy Committee for supporting Non Commercial channels. The committee has recommended 1% of the license fees revenue share for the purpose. However, the fund could be considered for improving roll out or for a combination of both. The issue is discussed in subsequent section.

- **Should we consider a provincial license for FM Radio together with a specified roll out criteria laid down in a manner to meet the Tenth plan objectives of 60% population coverage by 2007?**

3.5 Fund for Radio roll out

As discussed in the previous section, we need to examine the need for instituting a fund for improving roll out and promoting niche programs. Several issues that arise in this context relate to specific targets to be funded, size of

the fund, entitlement to participate in the process and administration of the Fund.

In telecom sector, the NTP'99 had laid down specific targets. The size of the fund is construed to be 5% of the Adjusted Gross Revenue at present (included in the license fees). Including this levy as a part of license fees provides the industry with greater certainty. Awarding of the contract is a competitive process where any of the licensees can bid and the one with minimum subsidy gets the contract. Another alternative is to entrust this responsibility to the 'Public Service Broadcaster'. In Telecom sector, the Government presently administers the USO Fund.

The issues for consultation include:

- **Should there be created a FM Radio Fund to improve roll out and / or to promote non commercial programs?**
- **If yes,**
 - **What should be the specific targets to be funded?**
 - **What should be the size of the fund?**
 - **Who would be entitled to participate in the process?**
 - **Who would administer the fund?**

3.6 Licensing Process:

One of the essential tasks in the broadcasting sector is the granting of broadcasting licenses. The process that needs to be adopted has to be open, transparent and should meet the policy objectives of the Government. The choice of licensing process has very close linkage with the national policy. These policy objectives could be

- i) Maximization of revenue from license fees;
- ii) Improve roll out of these services in rural / remote areas;
- iii) Induct variety in the programs;
- iv) Promote local content and culture;
- v) Maximize the number of licensees.

For the award of FM Radio license, a variety of approaches can be considered;

i) Areas with no scarcity of spectrum

In conditions, where there is no scarcity of resources, such as radio spectrum and the policy objective is not to maximize revenues and roll out, the licenses can be awarded on a first-come-first served basis on the basis of a reserved

price subject to the applicant meeting certain pre specified criteria. These criteria could be

Company background

Viable Business Plan

Sources of funding the project

Payment of relevant entry fees / license fees;

Agreeing to other stipulated conditions such as roll out, monitoring, security etc.

Any licensee would be free to apply for a license at any point of time. The Radio Broadcast Policy Committee had recommended a scrutiny of financial and technical eligibility criteria including the requirement to adhere to the submitted business plan. Some of the stakeholders have expressed their concern over sharing / sticking to a business plan, as these are dynamic in nature.

ii. Area where spectrum is scarce

A comparative / competitive selection procedure becomes a requirement where the demand exceeds supply. Lotteries, Beauty Contest and Auctions are the three main methods used to award licenses through a competitive mechanism.

Lotteries

Lotteries provide a fast, inexpensive and transparent approach for selecting from substantially similar or equally qualified applicants. Lotteries should generally be preceded by a formal qualification process to select lottery participants.

Comparative Evaluation Processes (Tender / Beauty Contest)

Under a comparative evaluation approach, the Government decides the winner of a license by way of certain pre specified evaluation criteria. There are two main variants to this approach:

- a) The techno-commercial criteria serve as a qualifying parameter, and amongst those meeting them the selection is made purely on financial bids.
- b) Weights are attached to commercial, financial and technical criteria, and the winners are decided based on their combined scores.

These criteria are required to be published in advance, and applicants will strive to demonstrate how their applications meet the criteria better than other applications. The criteria may include coverage, network rollout targets,

quality and range of service commitments, quality of programs, variety of programs, financial offer.

There have been criticisms of this type of approach on the ground that it lacks transparency. There is a subjective element to most comparative evaluation processes. Because of the subjective element, there is a greater likelihood of litigation in adopting this route. The advantage of this method is that it avoids the building up of frenzy attitude in an auction process. This approach provides the flexibility to build obligations that are socially important.

Auctions

Auctions are used to grant competitive licenses to the highest bidders. The auction procedure can be either be:

- one round auctions, or
- multiple-round ascending auctions.

In one round auctions, the bid opens and closes in the first round itself. This approach was adopted in the Telecom Sector for the grant of first round of telecom service licenses. This was not very successful as limited number of operators could be inducted and even for those a relief had to be given by the Government. However, the relief granted in the telecom sector came along with certain commitments from the licensee also.

In multi-round ascending auctions, the bids continue to increase during these rounds until a bidder is determined for each license. The final outcome may result in imposing the

- a) same license fees for all successful bidders, or
- b) different license fees based on the bids submitted by each operator

In case of first phase of FM Radio, the license fees was kept the same (highest) for all successful licensees. The first model ensures that all licensees start at the same level and pay the same price for the same product but has the disadvantage of distorting business plan of some licensees. Also in the first model, the issue for discussion is whether the license fees be fixed at highest or lowest. The second option is based on the argument that everyone pays as per their business plan and those who bid low carry with them the risk of losing out.

The other important aspect in auction is whether it should be an informed auction, where all bidders know about the previous bid value and the bidder or should the auction be carried out in a manner where the bidders identity is not disclosed.

The arguments in support of and against auctions are as follows

a) Arguments in support of auctions

- a. Provide an efficient, transparent and objective means of awarding licenses to the bidder who values them most highly.
- b. Investments required to win an auction can be viewed as incentives for rapid rollout of infrastructure and services, since that is the only way the successful bidder can recoup its investment in the license fee.
- c. No change in principle from the first round of license award;
- d. As upfront amount is high, non-serious players would be discouraged.

b) Arguments against use of auctions

- a. Non serious bidders can significantly hamper the auction process
- b. Bidding may result in high license fees. High costs paid by bidders often results in projects becoming unviable.
- c. High auction fees may discourage smaller participants from entering the market.

The Broadcast Policy Committee Report did not find the auction process suitable for FM Radio Licensing, essentially, because of the experience in the first phase. The committee has recommended tender process for the second phase. The detail of the procedure recommended is given in Text Box 3.1.

Text Box 3.1: License award procedure for FM Radio License in the phase II

- Advertisement inviting tenders for specified frequencies should be published in the local newspapers in the concerned areas and in leading national daily newspapers.
- The advertisement should specify the manner for procuring the application form along with the tender documents
- The bidders should submit all the supporting documents, earnest money deposit, a business plan and a bid in two parts – a technical and a financial bid.
- The licensing process should consist of two rounds. In the first round, i.e. the pre-qualification round, only bidders complying with the financial and technical eligibility criteria should qualify. After the pre-qualification round, the financial bids of the qualified applicants should be opened at a notified time and place to determine the Entry Fees.
- The bid license amount must be based on the business plan and the security for the same should be in the form of an irrevocable unconditional and confirmed bank guarantee for the full amount of the quoted license fees.
- The bank guarantee shall be the security for the period from the date of application till the date of payment in full of the entry fees.
- The number of highest bidders that equal the number of frequencies available would automatically win the frequencies at each center.
- Immediately upon award of the bid, 25% of the entry fees should be payable and the frequency should be allocated only upon payment of the balance amount of the entry fees.
- In case the number of bids exceed the number of frequencies available then the unsuccessful bidders should be kept on a waiting list and allowed to step in sequentially in order of bid ranking, in case of default by the successful bidder.

While, it is apparent that the auction process did not yield the desired results, it may not be appropriate to conclude that auction process is undesirable. There have been instances in the telecom sector, where the first phase of auction ended up in a similar manner. However, the second phase of auction i.e. for the fourth cellular license was litigation free and successful. Learning from the 1st phase, the bidders this time are also likely to be more cautious. Also, the concern that auctions would always result in very high bids is also not established. In the 3G Mobile auctions, the license fees varied considerably across the EU countries.

Entry fees

Entry fees are a one time fees imposed by the Government to allow entry into the market and / or allocate licenses under competitive situations. Entry fees structure is normally linked to the competition strategy and policy objectives that the licensing system intends to sub-serve. It may relate to:

- eliminating non serious players through entry barriers;
- mopping up rents expected to accrue especially in a market situation with limited competition;

- raising resources for the budget;
- regulating scarce resources to which the service roll out is linked; and/or
- recovering the cost of administering the license from the service providers.

In case of FM Radio, there were no entry fees. However, entry was decided through a bid on the amount of license fees to be paid. In other sectors such as telecommunications, entry fees is separate from license fees. Entry fees in telecom are one-off fees to meet the above objectives of deterring non serious players or deciding on an applicant through a competitive mechanism.

As per the Radio Broadcast Policy Committee Report, the bidding process adopted for awarding licenses in the first phase of licensing for Radio FM (based on highest up- front license fee) with limited competition has not proved successful. The bidders had based their projections on high market expectations, which did not materialize. High up-front license fee imposed heavy tax on the private operators, eroding the financial viability of their projects with most of the operators encountering difficulties in effecting financial closures, and feeling threatened for their survival.

The Working Group on Information and Broadcasting Sector for the formulation of the Tenth Five Year Plan was of the view that:

- treating FM Radio services as a source of revenue for the Government is counter productive as they hinder the growth and quick roll out of the services to the people;
- corrective policy measures should be taken, so that, the future growth of these services is accelerated and substantial private investment is attracted to supplement the efforts and investment of All India Radio.

While very high entry fees erode financial viability, it helps deters non-serious players. A judicious balance is perhaps the requirement.

License Fee

License Fee is generally an annual fees, which is a rent to a government or licensing authority for the right to operate a network, provide a service or use a limited resource.

In FM Radio, the first years license fees (decided through bidding) escalated by 15% each year, was the annual license fees. In the telecom sector, prior to 1.8.99, the license fee was decided through Beauty Contest/auctions. However, 1st August 99 onwards, a revenue share mechanism was evolved, wherein service providers paid an annual share of their revenue. This revenue would grow as the number of subscribers grew, and in effect the

amount of license fees had the likelihood of effecting a breakeven at some point.

It is pertinent to note that revenues in FM are not directly linked to the number of users in an area, as these services are not individually subscribed. It is more sensitive to roll out in different service areas.

From the above discussions, there are two possible models emerging

- I. No entry fees but license fees to be decided through a competitive mechanism;
- II. Entry fees to decide the market entry and license fees to be a revenue share

The Committee has proposed the second alternative with an entry fee decided through a tender process and a 4% share of gross revenues as annual license fees.

The first model has the advantage that the burden of license fees grows as the revenue increases, reducing thereby the need from the applicants to raise upfront cost. However, the disadvantage is that it encourages non-serious bidders / speculative bidding, as the upfront payments to be made are small. Often, a lot of time passes before such non-serious players are proven to be so.

International practices

- | | |
|--------------|---|
| Argentina : | In case applications for stations with power over one kilowatt exceed spectrum available, licenses are auctioned. |
| Australia: | Licenses are auctioned |
| Canada : | In case applications exceed spectrum available, licenses are auctioned. The licensee fee otherwise depends on revenue earned. In certain cases it may be nil. |
| Malaysia: | No auction. There is shortage of spectrum and the government is not granting any licenses for radio broadcasting currently. |
| Philippines: | In case applications exceed spectrum available, licenses are auctioned. |
| Singapore: | MDA may designate an entity as a Lead Broadcaster. It may also conduct open tender to grant license. |

- South Africa: Licenses are auctioned
- United Kingdom: National Service and FM (ASL) licenses are auctioned.
- USA: In case applications exceed spectrum available, licenses are auctioned.

The main issues for consultation are:

- **What approach should be adopted to award the FM Radio Licenses in the second phase in areas where there is no scarcity of spectrum?**
- **In areas where there is scarcity of spectrum, which of the above mentioned approaches be adopted?**
- **In case comparative evaluation criteria is adopted, what should be the different parameters for evaluation, and what weights should these parameters carry?**
- **In case auction route is continued with, what changes are required to be made in the existing process, i.e. should we adopt a one time entry fees + annual revenue share model?**
- **In the event of auction, whether the entry fees should be the same for all licensees, based on individual bids, based on lowest of all bids? Or should it be based on the highest of all bids?**
- **In the event of a tender process should the entry fee be based on what each bidder has quoted? Or the highest? Or the lowest?**
- **Should the identity of bidders be disclosed at the time of auction?**
- **What changes are required in the bidding process to reduce the scope of litigation and speculative bidding?**

3.7 Quantum of Entry & License Fee

a) Entry fees and Reserve Price

Entry fees are generally a fixed amount in cases where the license is awarded on a first come first serve basis. In cases of auction / tender, this amount is decided through the bid submitted. It is an upfront payment over and above the 'Reserve Price'. There are a number of options to set the Reserve Price. These are

- a) **Based on the amount in the first phase of licenses:** In 1st Phase Reserve Price (expressed as the 1st year's license fees) varied from Rs 20 lakhs to Rs 1.25 Crore depending upon the city. This amount increased by 15% per annum. One option could be to set 'Reserve Price' for one time entry as these amounts multiplied by the license period, i.e., for a 10 year license, it varies from Rs 2 Crores to Rs 10 Crores.

b) **Based on recovery of administrative costs**

- c) **Decided through a Pre-auction bidding:** While calling for applicants, the applicants may be asked to submit a pre bid price. The highest offer received could be treated as the 'Reserve Price' for the auction. This approach was successfully used in 4th Cellular Mobile Licenses.
- d) **No Reserve Price:** One option is to consider zero Reserve Price as a starting point and then leave it to the auction to decide the entry fees. However, this process has the potential of non serious entry and collusion amongst bidders, so as to reduce entry fees.

b) License fees

For License Fees, one option is to retain the earlier model of charging annual license fees through the bidding process, with a 15% escalation each year. In the event we chose to migrate to a revenue share, what should be the percentage of this amount?

International practices

Australia – Revenue slabs range from 0.25% to 3.25%

Canada – 1.365%

South Africa- 1% of gross revenue

UK – Fee based on population covered

US – It is specified amount for a service area based on radio population and class of license.

France –No license fee paid. Government collects income via social service taxes and levies

Considering benchmarks from Telecom Sector, the annual revenue share license fees for the Basic, Cellular and Unified Access varies from 5% to 10% depending upon the area for the entire Service Area (Higher revenue share in Metros and Category A, while lower in Cat 'B' and Cat 'C'. Radio Broadcast Policy Committee report has recommended 4% as the annual revenue share.

In view of the above, the following are the issues for consultation:

- **How should the entry fees be set in case auction is not adopted?**
- **What should be the basis of reserve price, when auctions are held?**
- **If we adopt a revenue sharing arrangement then what should be the annual revenue share? Should it vary depending on the size of the city or should it be the same for all areas?**

3.8 Requirement to keep accounts

In the event that the Government decides to implement a revenue share mechanism to determine the annual license fee, it would become important to define revenues for the purpose adequately.

The licensee would be required to maintain a separate account for their radio business covered under the scope of their license. This separation could be either by creating a separate entity for each license awarded or by maintaining accounting separation between this business and others covered by the same Company.

Radio Broadcast Policy Committee has recommended the following:

“The revenue shall be computed on the basis of gross revenue.

Further, the Government should be entitled to require an audit of the accounts of the licensee, at the cost of the licensee. These audits shall be separate from the obligation of the company to maintain audited accounts that represent a true and fair view of the affairs of the company and are in conformity with the accounting standards issued by the ICAI or other authorities.

In the course of its deliberations the committee has highlighted the need for a regulator for the radio industry. As and when a regulator is constituted it would have the necessary expertise to regulate revenue understatement through appropriate guidelines for accounting. As in case of the insurance sector, the regulator may by rules or regulations prescribe the format to be followed by licensees for reporting the gross revenue. Formulation of such a format for reporting gross revenue may be done by the regulator in consultation with the Institute of Chartered Accountants of India. In the interim, till such regulator is constituted the Ministry may issue clarifications to seek further clarity in accounts.

The licensees should follow all relevant accounting standards of the Institute of Chartered Accounts of India like the accounting standard on segment reporting and the accounting standard on related party transactions.”

The issues for consultation are:

- **Should the Regulator/Government specify the accounting reporting formats and accounting separation norms for the purpose?**
- **What accounting norms are required to ensure proper functioning of revenue share mechanism, the main emphasis being to prevent any under reporting of revenues/building cross subsidies?**

- **Should there be a special audit by government to check under reporting of gross revenue as recommended by the Radio Broadcast Policy Committee?**

3.9 Multiple Licenses in the Same City and nationwide

In Phase I, the licensees were not permitted to own multiple frequencies in the same city in order to prevent broadcast monopoly/duopoly/oligopoly on airwaves. There have been submissions by the industry to permit ownership of multiple licenses. Holding multiple licenses would provide benefits such as flexibility to broadcast programs in different languages or to provide diversity of content. Some of the consumer organizations have also favoured such ownership of multiple licenses. However, there are also concerns of emerging monopoly from smaller licensees.

In the event that such ownership is permitted, certain safeguards are required to prevent monopoly. These can be exercised through

- a) Shareholding restrictions;
- b) Cap on the number of licenses in terms of absolute numbers or percentage of licenses;
- c) Total market share in terms of revenue.

Some of the stakeholders have suggested that there should be restrictions on cross media ownership to prevent concentration of media power by a group of companies. Also there are suggestions that no single entity be allowed to own more than 20% of total licenses in a particular category (A+, A, B, C, D) of license (Phase I & II combined).

Radio Broadcast Policy Committee has recommended

- the ceiling as 33% of the frequencies and not more than 25% nationally in a city in a particular phase.
- Also no entity shall hold more than one frequency for news and current affairs in any one center and
- such additional licenses should be permitted only if the total number of frequencies available in a center to establish a broadcast station is equal to or more than 6.
- The content plan for each separate frequency for each center must be different
- Undertaking with more than 25% of operationalised licenses be said to be dominant and special conditions be attached if dominance is misused.

This effectively means a minimum of 3 different players in each phase. However, it does not prevent entities to keep their frequencies less than 25% nationally at the same time exercise larger dominance in specified cities. It may perhaps be worthwhile to consider defining dominance in toto rather than

on the basis of phases. In Singapore, Media Development Authority (MDA) classifies certain licensees as dominant and such dominant licensees are subjected to certain obligations¹.

In Australia, a person can own only upto 2 commercial radio licenses in a licensed area. Further, cross media ownership rules prohibit a person from being in a position to exercise control of any combination of a commercial Television Broadcaster, Commercial Radio Station and a Newspaper in the same licensed area. Limitations on Directorship also apply.

In U.K., a points system was used to check dominance. The U.K. guidelines on ownership mentions:

“Currently, no one person is permitted to hold two or more licenses for national or local radio services where the total number of points attributable to these services exceeds 15% of the total number of points available in the system.

4.8 Points are attributed to licences as follows:

C A T E G O R Y O F S E R V I C E P O I N T S

<i>National radio service</i>	<i>25</i>
<i>Category A local radio service</i>	<i>15</i>
<i>Category B local radio service</i>	<i>8</i>
<i>Category C local radio service</i>	<i>3</i>
<i>Category D local radio service</i>	<i>1</i>

4.9 For the purposes of the Table at 4.8 (the ‘Table’) a local radio service falls

- i) into category A if the number of persons over the age of 15 resident in the coverage area of that service exceeds 4.5 million;*
- ii into category B if the number of such persons exceeds 1 million but does not exceed 4.5 million;*
- iii into category C if the number of such persons exceeds 400,000 but does not exceed 1 million; and*
- iv into category D if the number of such persons does not exceed 400,000.”*

Also,

“The current rules are that:

i No person may hold two FM or AM local licences which share a potential audience, unless the Authority has determined in all circumstances that this

¹ Code of Practice for Market Conduct in the Provision of Mass Media Services:

could not be expected to operate against the public interest within the area concerned.

ii No person may hold three local licences, any of which shares a potential audience with each of the other two services, unless they include both an AM and FM licence and the Authority has determined that this could not be expected to operate against the public interest within the area concerned.

iii No person may hold any four or more local licences, any of which shares a potential audience with each of the other services.”

There are also restrictions on the cross media ownerships of i.e. Radio, Television and Newspapers. Such as

- National newspaper group with a market share of 20% or more may not provide a national or local radio service;
- National newspaper group with a national market share of 20% or more may not be participants with more than 20% interest in a national or local radio license and vice versa;
- Local newspaper or newspaper group with a local market share of 50% or more in the coverage area of local radio license is prohibited from holding that radio license, unless :
 - That service shares a potential audience with another local radio service; and
 - They do not hold any other license to provide a local radio service which overlaps at all with the service in question
- No person may hold a license for a UK wide channel 3 or a channel 5 service and a national radio service license

To address the concern of monopoly/oligopoly, the following issues arise for consultation:

- **Whether the number of frequencies that an entity, directly or indirectly, may hold in a particular center be restricted? If so, then to what extent?**
- **Whether there should be any restriction on the number of frequencies (license) for news and current affairs in any one center?**
- **What should be the total number of frequencies that an entity may hold, directly or indirectly, nationally in each phase ?**
- **Whether the content plan for each separate frequency at the same center being bid for by the same bidder must be different to ensure wider availability of choices to the listeners?**
- **Whether the licensees should maintain separate accounts for each frequency allocated to them**

3.10 Program code

The present licensees are required to adhere to the AIR program code, which essentially lays out the following conditions

- Criticism of friendly countries.
- Attack on religion or communities.
- Anything obscene or defamatory.
- Incitement to violence or anything against maintenance of law and order.
- Anything amounting to contempt of court.
- Aspersions against the integrity of the President, Governors and Judiciary.
- Attack on political party by name.
- Hostile criticism of any State or the Centre.
- Anything showing disrespect to the Constitution or advocating change in the constitution by violent means, but advocating changes in the constitutional way should not be debarred.

On the other hand it could be argued that there are other laws of the land that already impose code of conduct on every citizen and entity, and the responsibility of the licensees to comply with those laws be enunciated.

Internationally, such program codes / code of practice is common. In Australia, code of practice lays down

- a) Programs unsuitable for broadcast;
- b) Code relating to broadcast of news & current affairs program;
- c) Advertising code including maximum advertising time per hour
- d) Promoting Australian music by laying down percentage of time for Australian music out of total music broadcast.
- e) Broadcast of Emergency information etc.

Similar conditions exist in Canada (available at www.crtc.gc.ca/eng/legal/Radioreg.html). In Singapore, Multimedia Development authority (MDA) has laid down specific code of practice for market conduct.

Often there are restrictions on the maximum advertising time in an hour. In Singapore, this is 14 minutes in an hour. In Australia, “where a commercial radio station is the only commercial station in a licensed area in which 30% or less of the license is attributed to overlap, the licensee of that station must not broadcast more than 18 minutes of advertisements in a period of an hour”.

The issues for consultation are:

- **Do the existing laws of the country impose sufficient self-restraint on the licensees or is there is a need to impose any Program Code?**
- **Are the existing guidelines on AIR sufficient or do they require any amendments?**

3.11 Technical requirements

FM radio is licensed in the frequency band 87 – 108 Mhz. Internationally, the frequency spacing between two channels in most of the cases is either 100 kHz or 200 kHz. In India, the spacing is specified as 100 kHz. However, there are restrictions imposed by interference, which warrant spacings between two FM Channels in the same city to be in excess of even 200 kHz.

The main technical issues in licensing of FM Radio are:

- a) Co-location of transmitters
- b) Transmitter Power specification
- c) Tower Height

Co-location of transmitters

As discussed earlier Co-location of the transmission tower of various broadcasters in metros had been mandated in the first phase. The basic idea behind co-location is that the Effective Radiated Power (ERP) of all the channels would be nearly the same and since they are located at the same site, they will be attenuated similarly with the distance thus maintaining the same protection between the channels. Therefore, the amount of margin at a particular frequency separation is higher, when compared with non co-sited transmitters. Effectively, this margin helps in reducing the frequency separation required. Through co-location the spacing was reduced to 400 kHz instead of 800 kHz in Phase I, thereby enabling higher number of channels in the given band. Thus with co-location there is efficient use of available frequencies. The Radio Broadcast Policy Committee has recommended a separation of 800 kHz on grounds that co-location has commercial problems. The commercial aspects are discussed later. Assuming that the commercial aspects are taken care of, the point to be delved here is what is an ideal spacing requirement.

Also, there are issues linked with the ability of low cost Receiver to provide interference free transmission at lower frequency separation.

Transmitter Power, Tower Height and Location

A transmitter power requirement of 10 kW for non-metros and between 10 ~ 20 kW for metros was specified in the license. The Antenna height was required to be between 75 m and 100 m in Non metros and upto 300 m in Metros. Also the transmitter was required to be within the municipal limits of the license centre.

Estimates from service providers suggest coverage between 15 Km radius to 33 km radius (depending upon dB uV/ m) for a tower height of 75 m with a 10 KW transmitter.

ITU-R Recommendation BS 412-9 recommends

“Minimum usable field strength

1.1 In the presence of interference from industrial and domestic equipment (for limits of radiation from such equipments refer to Recommendation ITU-R SM.433, which gives the relevant CISPR recommendations) a satisfactory service requires a median field strength (measured at 10 m above ground level) not lower than those given in Table 1:

TABLE 1

Areas	Services	
	Monophonic dB(V/m)	Stereophonic dB(V/m)
Rural	48	54
Urban	60	66
Large cities	70	74

Some stakeholders have provided measurements of the effective radius covered using field strengths of 74 dB uV/m and 56 dB uV/m. The details are mentioned in the Tables below:

**Urban Stereo Coverage Radius in Kms
for 74 dBuV/m for an Antenna gain -2**

Tower HtM Tx Power in KW	30 M	50M	75 M	100 M
1 KW	4.7	6.8	8.5	9.6
3 KW	6.5	9.0	12	13
5KW	7.8	10.5	13	14.5
10 KW	9.6	12.5	15	18

**Urban Stereo Coverage Radius in Kms
for 56 dBuV/m for an Antenna gain -2**

Tower Ht M Tx Power in KW	30 M	50M	75 M	100 M
1 KW	1.5	19	24	27.5
3 KW	20.5	2.5	30	35
5KW	22.5	27.5	33	38
10 KW	24	28	33	38

Source: FM Radio licensee

Stakeholders have suggested that most of the centres have smaller municipal limits and specification of 10 kW transmitter power and 75 ~ 100 m height is an overestimate and have sought revision of these norms. A reduction in this would reduce their capital cost considerably. Estimates suggest reduction in transmitter capex from Rs 125 lakhs to Rs 15 lakhs if transmitter power is reduced from 10 kW to 1 kW and a reduction from Rs 40 lakhs to Rs 20 lakhs if the tower height is reduced from 75m to 20m.

The point to consider is whether the existing specifications of transmitted power and antenna height are necessary? If this is not mandated, how should coverage requirements be specified?

In U.K., the engineering code on transmission states

“The technical characteristics of the transmissions as radiated should fulfil a reasonable proportion of the characteristics permitted (where these

represent maxima), and where 'reasonable' includes that some account is taken of practical circumstances applying at each transmitter site (e.g. practicable antenna location and design).

This transmission should be maintained other than for periods of technical failure or maintenance requirements, the duration of which should not be unreasonably protracted. Typically, the radiated powers should not be at levels less than -6dB with respect to permitted maxima, over significant portions of the horizontal arc from the transmitter site, unless the portions of arc concerned lead only towards areas of low population density (at the time of acceptance), or towards nearby terrain which would in any case obstruct effective propagation beyond the achieved limit of coverage."

In USA, FM licenses have generally been granted with spectrum difference of 800 kHz. In terms of FM transmitter class, 8 classes have been defined varying in power from 6 kW to 100 kW and height from 100 metres to 600 metres. On power requirements Rule 73.211 of FCC Code of Federal Regulations mentions minimum and maximum ERPs for each category of station. For example, for Class B stations, the minimum ERP is 25 kw and maximum ERP is 50 kw. In cases of maximum ERP reference antenna height above average terrain (HAAT) has been specified.

On the use of common site, FCC Rule 73.239 require "*No FM broadcast station license or renewal of FM broadcast station license will be granted to any person who owns, leases, or controls a particular site which is peculiarly suitable for FM broadcasting in a particular area and (a) which is not available for use by other FM broadcast station licensees; and (b) no other comparable site is available in the area; and (c) where the exclusive use of such site by the applicant or licensee would unduly limit the number of FM broadcast stations that can be authorized in a particular area or would unduly restrict competition among FM broadcast stations.*"

It is apparent that the requirements of co-siting or site sharing exist even in the USA.

Issues for consideration are:

- **Should we continue to mandate co-location of transmitter sites? Or should this be mandated only in the event that multiple licenses are issued and restricted to the holder of such a multiple licensee?**
- **If no, what should be the spacing between frequencies in the same city?**
- **Should we specify maximum or minimum transmitter power and Height of tower?**
- **How to specify reasonable coverage requirements on the Service Providers?**

- **Should the licensees be permitted to install antenna outside the premises?**

3.12 Networking

Networking or chain broadcasts means simultaneous broadcast of program by the same licensee on different frequencies or by different licensees. As discussed earlier, the first phase of licenses did not permit networking. The License Agreement states that *“The Licensee shall not carry out networking of broadcasting stations provided, however on special and important occasions networking may be done on prior written approval of the Licensor.”* The Radio Broadcast Policy Committee is of the opinion that since Indian radio industry has turned unviable there is a need to review the restriction on networking.

Networking would add value to the licenses and also provide cost savings to the operators. It would serve as an incentive for licensees to set up transmitters in less popular areas by acquiring licenses and increasing coverage. Setting up of local transmission facilities facilitates development of local content and helps tap the potential advertisement revenues from smaller business centers.

Networking can be between:

- i) Licensee of same city - In case of small centers there may not be enough local content available while capital expenditure and operational expenditure would be quite high, which renders the market unviable in these centers. Sharing of important content between licensees of the same city may improve viability. The main apprehension is that this would not promote diversity of content and may lead to monopoly / oligopoly. However, it would make little business sense for two channels to transmit the same program in a city for long durations. As regards competitive measures certain safeguards could be adopted in terms of ownership restrictions, maximum number of channels in a city etc., to prevent such monopoly, oligopoly.
- ii) Same licensee in different cities: This means sharing of contents between broadcasters having multiple licenses in different cities. Such sharing has the advantage of reducing cost, improving viability and in effect increasing roll out. But this may have the characteristics of a national license, which would result in preferential treatment of one's own company in comparison to others thus affecting the level playing field.

- iii) Different licensee in different cities: This situation is similar to the case of 'same licensee in different city' except that in such negotiations, dominant behaviour is less likely. Networking amongst such licensees can be in two possible ways:
- a) it can be by way of one licensee buying the content from another licensee and transmitting the same or
 - b) one licensee transmitting its output to another licensee in a different city.

The Radio Broadcast Policy Committee has recommended not to permit, the (i) & (iii) model of networking and has mentioned the following safeguards

“Networking or replication/sharing of programmes between licensees, whether in the same or different centers, should be prohibited. Further, networking should not be permitted between frequencies licensed to the same licensee within the same center (city). However, on special occasions networking may be permitted with the prior permission of the Government.”

While providing a number of benefits as mentioned above permission to network raises certain competitive concerns. Small-localized players would be in a disadvantaged position as compared with players of larger reach in terms of the potential to tap revenue and compete. In the event provincial or national licenses are considered, it would tantamount to bypass of such a license regime.

In view of the above, whether networking should be allowed? If, so

- **Whether it should be allowed between broadcasters in the same city;**
- **Whether between broadcast stations of the same entity in different cities be permitted?**
- **Whether between different broadcasters across the cities.**
- **What safeguards are necessary for ensuring that competition is not compromised in the process?**

3.13 News and Current Affairs:

Phase I licensees were not permitted to broadcast news and current affairs. The reasons for restriction on news and current affairs coverage in private FM broadcasting were mentioned as:

- (i) FM mode is best utilized for music broadcast as contrasted with talk broadcasts;
- (ii) Security concerns in sensitive areas prone to communal/caste tensions, as policing of radio stations is difficult.

However, the Radio Broadcast Policy Committee has recommended permitting the licensees to broadcast News and Current Affairs noting the following aspects:

“a. The important social role that news programmes and channels perform has been well recognized. In LIC v. Manubhai Shah, (1992) 3 SCC 637 the Hon’ble Supreme Court observed that “it is well known that these communication channels are great purveyors of news and views and make considerable impact on the minds of the readers and viewers and are known to mould public opinion on national issues of vital importance”.

b. The policy in respect of private FM broadcasters is at variance with the existing policy in relation to television and print media broadcasters as they are permitted to air news programmes or print news. Thousands of different newspapers in a variety of languages are already in circulation covering the length and breadth of the country.

c. One of the objectives of privatization was to provide diversity of content on radio and to provide education, information and entertainment through radio. The restriction on news and current affairs coverage militates against this objective.

d. Radio has been envisaged as a local medium (local content requirement in case of radio is internationally well recognized and in Indian context as well) and news and current affairs constitute the most important local content.

e. It is a well accepted legal proposition that the possibility of abuse of a right or difficulties in monitoring it are not a permissible ground for negation of a right. The Hon’ble Supreme Court has specifically observed in relation to broadcast that “the wider range of circulation of information or its greater impact cannot restrict the content of the right nor can it justify its denial”. In relation to certificate for exhibition of a film it was observed in S. Rangarajan v. UOI, (1989) 2 SCC 574, that “if the film is unobjectionable and cannot constitutionally be restricted under Article 19 (2), freedom of speech and expression cannot be suppressed on account of threat of demonstration and processions or threats of violence. That would tantamount to a negation of the rule of law...it is the duty of the State to protect the freedom of speech and expression since it is a liberty guaranteed against the State. The State cannot plead its inability to handle the hostile audience problem. It is an obligatory duty to prevent it and protect the freedom of speech and expression.”

f. The Hon’ble Supreme Court in the case of Ministry of Information and Broadcasting v. Cricket Association of Bengal opined that the freedom of speech and expression includes the right of a broadcaster to inform, educate and entertain and of the viewers to be informed, educated and entertained. In light of the aforesaid, it may be contended that the right of a private

broadcaster to air news programs is entitled to protection on the grounds of the right to freedom of speech and expression.

g. AIR is providing news and current affairs on its FM channels though public broadcasters stand on a different footing from private broadcasters.

h. In any event, due to their inherent nature news and current affairs programs are not capable of any precise definition especially in case of radio and therefore, the restriction is not likely to be observed in letter and spirit.

In the light of the foregoing, the restriction on broadcast of news by private FM broadcasters does not seem appropriate anymore.”

The Committee has therefore recommended that the restriction on news and current affairs should be lifted and also that the AIR Code of Conduct and the applicable industry codes should be strictly followed. The violation of any aspects of these codes should result in the immediate revocation of the license

Permission to broadcast News & Current Affairs would serve as an important means to promote local content and accord local flavour to the channels. The benefits would be even larger, when these operators are permitted networking, as then a judicious mix of national, regional / provincial, local news could be provided. The issue of whether News should be on a dedicated channel and / or service neutral channels is an issue for consideration and has already been discussed earlier.

If News & Current Affairs is permitted, the content can be in accordance with the Programme Code for both AIR and Doordarshan, which in any case is binding even today. The code includes:

- a) Criticism of friendly countries;
- b) Attack on religions or communities
- c) Anything obscene or defamatory
- d) Incitement to violence or anything against maintenance of law and order
- e) Anything amounting to contempt of court.
- f) Aspersion against the integrity of the President and Judiciary.
- g) Anything affecting the integrity of the Nation, and criticism by name of any person.

In the light of the above, comments of the stakeholders are invited on

- **Whether the restriction on news and current affairs be lifted for the phase II licensees?**

- **What other conditions are required to be imposed on the licensees?**
- **Is there a requirement to impose special codes for broadcast of News & Current Affairs.**

3.14 Co-location:

The technical issues linked with co-location have already been discussed earlier. There is another very important issue, which impacted the roll out in phase-I.

Commercial issues: In the first phase of licensing, there was considerable delay in the parties arriving at a consensus. As none of the infrastructure providers were in a position to set up the transmission facilities in less than 12 months, the FM radio operators were allowed to use the AIR tower in the respective cities. The consortium of FM players sought the services of infrastructure providers. However, there was great difficulty as the parties could not reach an agreement on several issues.

In the event, that the licensees are unable to arrive at a cost sharing agreement or say one licensee is not ready to agree / intends to default, the whole process gets delayed. Further what would be the charges for those who would join in later, is not clear?

Another option is to mandate availability of AIR tower in areas where it is technically feasible or mandate construction of new towers by specified entities. In the event that this is mandated, there would be issues of fixing the charges of Infrastructure sharing. As the network would spread, fixing charges on case-by-case basis would become more complicated. Alternatively, it could be left for mutual negotiation. In Telecom, the operators have the opportunity to build their own infrastructure independent of their competitors and infrastructure sharing is largely through mutual negotiations. In Mumbai, as the AIR tower was unavailable, the service providers were permitted to set up their towers as an interim arrangement.

The report notes

“As such, Private Broadcasters are of the view that for co-location purpose, it is necessary for them to form a consortium and it is very difficult to form a consortium of private broadcasters competing with each other. If a Private broadcaster backs out, his share of cost on common infrastructure would have to be borne by the remaining ones. Private broadcasters have to bear substantial cost on studio-transmitter link as in co-location case, the studio setup would mostly be at a different location. There are number of other operational difficulties.”

- **In view of the above difficulties expressed by the private broadcasters, whether co-location be made mandatory in Phase-II?**
- **If so, what should be the mechanism for such co-location out of the three options below:**
 - **Use AIR towers wherever technically feasible**
 - **Licensees make their own arrangement through mutual negotiation.**
 - **Mandated Third Party such as BECIL be required to construct towers on terms and conditions to be either agreeable to all parties or decided by the Regulator/Government.**

3.15 Penalty for Non- Operationalisation of Awarded Licenses

Drawing lessons from the first phase, it is important that applicants with an adventurous attitude be discouraged. A number of licensees did not start operations in the first phase. Generally, a performance bank guarantee of suitable value is kept and encashed in case of default.

In Phase I successful applicants were required to furnish a Bank Guarantee for the term of the license and for an amount equivalent to the license fees for the first year. The Bank Guarantee was to be furnished within 15 days from the date of receipt of the LOI. The Bank Guarantee could be invoked in the following cases:

- a) *If the licensee failed to deposit the license fee within 7 days of the beginning of each year;*
- b) *If the licensee stopped the service without giving one year's notice; or*
- c) *If the licensee was declared or applied for being declared insolvent or bankrupt.*

In Phase II, a revolving Performance Bank Guarantee could be considered. In case, Entry fees + Annual revenue share model is adopted, a suitable amount would have to be prescribed. In case an annual bid amount is chosen, the Bank Guarantee could be equivalent to the license fees.

This would be in addition to the

- a) Forfeiture of the earnest money deposit;
- b) Entry fees / Advance license fees paid;
- c) Revocation of the license and/or blacklisting of the defaulting licensees.

In light of the above discussions, comments are invited on the:

- **Penalty that should be imposed for Non-Operationalisation of the awarded Licenses.**
- **The manner in which the value of performance bank guarantee should be fixed for a revenue sharing mechanism**

3.16 Foreign Investment:

In the FM broadcasting sector, the licensee is required to be a company registered in India under the Companies Act, 1956. All shareholding is required to be Indian except for the limited portfolio investment by FIIs/ NRIs/ PIOs/ OCBs subject to such ceiling as may be decided from time to time. Company may not have any direct investment by foreign entities, NRIs and OCBs.

The Radio Broadcast Policy Committee report mentions “*At present, the foreign investment regime in relation to the media sector is as follows*”

“a. The Government has reviewed its print media policy and in June 2002 (in partial modification of the Cabinet decision in 1955) allowed 26% FDI in news and current affairs publications. In the non-news category (scientific, technical etc.), FDI up to 74% is permitted.

b. In case of DTH, total foreign equity up to 49% is permitted provided that FDI is not permitted to exceed 20%. It has been further clarified that the quantum represented by that proportion of the paid up equity share capital to the total issued equity capital of the Indian promoter company held or controlled by foreign investors through FDI/NRI/OCB investments is to form part of the above said FDI limit of 20%.

c. In case of cable television foreign investment up to 49% (including both FDI as well as portfolio investment) is permitted.

d. The guidelines on up-linking provide that: (a) the total foreign equity holding including NRI/ OCB/ PIO in the applicant company for setting up up-link hub/ telesports etc. is not permitted to exceed 49%; (b) in case of an applicant company desirous of up-linking news and current affairs channels from India, the foreign direct investment in the applicant company is not permitted to exceed 26% of the paid up equity. While calculating the 26% limit on FDI in the equity of the applicant company, the foreign holding component, if any, in the equity of the Indian shareholder companies of the applicant company will be duly factored in on a pro rata basis so as to arrive at the total foreign holding in the applicant company. The equity held by the largest Indian shareholder group should be at least 51% of the equity excluding equity held by public sector banks and public financial institutions. (c) Television channels, which do not have any news and current affairs

coverage are allowed to up-link irrespective of ownership, equity structure and management control; and (d) News agencies should be 100% owned by Indians with Indian management control. "

There has been a demand from the industry that the FM Radio Channels be permitted Foreign Direct Investment as is the case for other media sectors. At the time of privatization of FM broadcasting the foreign investment policy in the media sector was on the conservative side. However, as the policy has been liberalized over the years in other sectors, it could also be done for FM Radio Broadcast.

The International experience in this regard is mentioned below:

Argentina -	Foreign Investment not allowed
Canada –	Foreign ownership limit on holding companies 33% & at the operating level:20%. Thus effectively; 46.7% on the operating co.
Malaysia –	Foreign investment allowed for content production but not for operating the station
Philippines –	In case of a company maximum 40% foreign shareholding allowed. Individual owner has to be a Filipino
South Africa –	maximum 20%
UK -	Non-EEA nationals not permitted to hold radio broadcasting licenses but can hold radio programming license.
USA –	Maximum 20%

The Radio Policy Committee has recommended a simplified foreign investment regime for radio with the following safeguards to be introduced in the license agreement:

- a. FDI up to 26% should be permitted in FM broadcasting (news as well as entertainment).*
- b. While calculating the 26% limit on FDI, the foreign holding component, if any, in the equity of the Indian shareholder companies of the licensee should be duly factored in on a pro rata basis to determine the total foreign holding in the licensee.[7] The equity held by the largest Indian shareholder group should be at least 51% of the equity excluding equity held by public sector banks and public financial institutions.*
- c 75% of the directors of the licensee, the Chief Executive Officer of the licensee and/or head of the channel and all key executives and editorial staff of the channel must be resident*

Indians appointed by the licensee without any reference on or from any other company for all news channels. For all entertainment channels exception to the above could be made for 'People of Indian Origin' cardholders / NRIs for the position of key executives and editorial staff. This facility will not be available to channels providing any kind of news. It should be obligatory on the part of the licensee to inform the Ministry in writing before effecting any alteration in the foreign share holding pattern or in the shareholding of the largest Indian shareholder and / or in the CEO / Board of Directors. Further, the licensee should be liable to intimate the Ministry the details of any foreigners/ NRIs employed/engaged by it for a period exceeding 60(sixty) days. Further, there should be a bar on direct/ indirect outsourcing of content to foreign parties.

- d. The licensee should be required to make disclosures of any shareholders agreements, loan agreements and such other agreements that are finalized or proposed to be entered into. Subsequent changes to the said agreements should be permitted only with the prior approval of the Ministry. Further, the licensee should not be permitted to raise loans from foreign entities for all news channels beyond the proportion of foreign equity allowed. (In other words, for Licensees putting out news, upto 26% of their total equity can be taken as loans from foreign sources and no more)*

- d. In the light of the aforementioned changes to the FDI policy, in respect of FM broadcasting, the existing licensees should be required to effect the necessary amendments to their Memorandum of Association and Articles of Association and relevant agreements no later than two months from the date of migration of their licenses from Phase I to Phase II.*

The issue for consultation is:

- **whether FDI be permitted in this sector and if so, what should be the limit of FDI?**

3.17 Increase in Number of frequencies for Private FM Broadcasts:

Some of the industry players have submitted that the Government should consider increasing the number of frequencies for tendering in Phase-II of the liberalization of FM broadcasting. It has been suggested that such release of additional FM frequencies may be through:

- (a) Shift of IGNOU services from FM to MW/SW/AM bands and release of FM frequencies occupied.
- (b) Through migration of players to the new licensing regime and release of unutilized spectrum that is locked in Phase-I.
- (c) Release of additional frequencies by the Government.

In a total bandwidth of 21 Mhz in FM, about 25 channels can be provided at the same centre. Under the current rules in US there is no table of assignments. If one can squeeze an antenna and limit power to meet the interference thresholds, the FCC will consider assigning a frequency. The question is how many FM stations can a city like Mumbai or Delhi have? International practices on the number of channels are given below:

Number of FM Radio stations in cities across the world

America		Asia	
New York	82	Colombo	18
Salt Lake	84	Manila	25
Menneapolls	71	Jakarta	29
Los Angles	86	Ankara	12
Asia Pacific		Europe	
Auckland	29	London	42
Wellington	18	Finland	62
Christchurch	7		

Source: Economic Times Entertainment Report : 2001-02

3.18 Frequency Availability

NFAP-2002 has earmarked the 87-108 MHz bands for broadcasting. This would include requirements of Community Radios, AIR, Educational Channels and Private FM Radio Broadcasters. It is also understood that some of these frequencies are in shared mode and require vacation from incumbents. The number of frequencies available would be further reduced by increasing the frequency spacing.

While it should be the endeavour of the Government to meet the entire demand, it is important to note that out of 108 licenses, only 37 could be successful and of these only 24 became operational. In the light of this there does not seem to be an immediate block over availability of FM frequencies at this stage. However, as moving incumbents out of band often require longer time, the process of refarming spectrum would have to be carried out. In Phase I, one license in each city was reserved for educational broadcast by IGNOU. The committee has recommended that the frequencies that IGNOU could not operationalised should not be allotted to IGNOU.

The issue for consultation is:

- **Should the non operationalised licenses of IGNOU be included for licensing in Phase II?**

3.19 Non-Commercial Channels and Exclusive Niche Programmes:

The Radio Broadcast Policy Committee was to examine the possibility of having non-commercial, non-advertisement driven channels, to be operated/licensed by the same commercial broadcasters; terms & conditions thereof; the type of content these channels could include especially those related to the heritage and culture of India.

The committee notes *“forcing commercial broadcasters to take up additional non-commercial, non-advertisement driven channels is not a practical and workable policy. This may defeat the very purpose of boosting the radio broadcast market through a Phase II licensing process.”*

“One option could be the requirement of a 10% of the broadcast time dedicated to niche programmes related to culture or heritage of India, public health and education. However, such a compulsion introduces the problem of definition of content, as well as monitoring the 10% requirement. It also involves issues of timing within the 24 hours cycle for such programming. All of this will also require major Government intervention, monitoring and inspection for which there is no current structure or manpower within the Government.

Therefore, the Committee proposes an alternative, which is pragmatic and effective, is out of the 4% revenue share that the Government would receive from the FM broadcasters, 1% of the revenue share should be set apart as a separate fund dedicated for the purpose of developing the non-commercial channels (related to culture and heritage of India, public health etc.). This channel will have the character of Public Broadcast Service of the United States or a similar channel available in the United Kingdom through the BBC. The resources which will accumulate in this fund, will be sought by private broadcasters to develop non-commercial channels and programmes in accordance with the directions of a Committee of eminent personalities of the nation. The funds can be disbursed through transparent rules and regulations framed for this purpose by the esteemed Committee. There can be a yearly audit of the broadcaster and the audit report would be presented to the Committee.

One of the objectives of privatisation was to ensure that there is some diversity in the content being broadcast by private broadcasters so as to offer better and wider choice to listeners. The objective was subsumed in the larger objective to ensure provision of high quality radio services offering education, information and entertainment and to make available quality programmes with a localized flavour in terms of content and relevance. It has been observed that all the FM channels are increasingly offering similar content (usually only Hindi film music) and sound alike. Niche channels (like classical music) have not been developed by the private FM broadcasters. The reason cited by industry players for such standardization of content is that advertising is the only source of revenue and advertisement revenue is determined by the audience of the particular channel. High license fees structure has forced the licensees to provide content that appeals to all sections across society rather than a special interest group in society. The proposed revenue sharing principles for licensing should result in some amount of broadening of the content in the commercial channels. However, it is possible to help the market process in the direction of development of niche channels.”

The Radio Broadcast Policy Committee has recommended:

- In every city, certain frequencies should be reserved for niche channels to be tendered separately with a low reserve fee and low revenue share percentage. Detailed terms and conditions may be prescribed to ensure that such channels are exclusively developed for niche programming and no partial niche programming is allowed.
- The Committee feels that such niche channels will be initially required in A+, A and B category towns, followed by its expansion in other cities in future.
- The Government should consider releasing additional frequencies to encourage such niche channels

An alternative method to promote niche programming has already been discussed earlier. Apart from this there is also the possibility of having small radio stations with low power, which primarily covers a part of a large city. For such stations a different licensing regime may need to be evolved with lesser revenue share. The issues for discussion are

- **Should certain frequencies be reserved for niche channels to be tendered separately with a low reserve fee and low revenue share percentage?**
- **If so, the terms and conditions to be prescribed to ensure that such channels are exclusively developed for niche programming and there is no partial niche programming?**
- **Whether Government should release additional frequencies to encourage such niche channels?**
- **What should be the licensing regime for community stations so that these can increase rapidly?**

3.20 Effective Date of license

In Phase I license, the effective date was taken as the date of issue of the wireless operating license by the WPC. The license agreement required the licensee to complete installation and commission the system within 12 months from the date of frequency earmarking by WPC. Some of the stakeholders have mentioned that the procedural delays involved in clearances such as SACFA often necessitates larger roll out time.

- **In light of the above, what roll out period should be specified in the license?**

CHAPTER IV MIGRATION OF PHASE-I LICENSES TO THE REVISED PHASE-II REGIME

- 4.1 The private FM Radio industry had reported heavy losses and had sought relief by way of migration to a revenue share regime. These losses are largely a result of the high amount bid by these service providers at the time of auction. The FM Radio Broadcast Policy Committee held the view that the annual license fee that was determined by the auction procedure in Phase I of FM licensing has proved to be unviable and it has recommended the migration of existing licensees to a one-time entry fees plus revenue sharing model for FM Radio as in the case of Telecom Services. The revenue share model has the advantage that the burden of license fees increases only with the increase in revenue.

In the Telecom Sector, the National Telecom Policy '99 brought about a revenue sharing regime that enabled the licensees to pay license fees as a percentage of the revenue. While effecting migration the license fees amount payable till the date of migration was taken as entry fees.

The Migration package of Telecom regime to New Telecom Policy states that:

“The licensee will be required to pay one time Entry Fee and License Fee as a percentage share of gross revenue under the license. The Entry Fee chargeable will be the license fee dues payable by existing licensees up to 31.7.1999, calculated up to this date duly adjusted consequent upon notional extension of effective date”

However, in return the Service Providers agreed to migrate from a duopoly regime to an open competition regime. The license fees revenue share varied from 8% to 12% (now 5% to 10%) for the Basic and Cellular Mobile services, depending upon the licensed services and the geographic area of operation. An important thing to note is that Telecom networks generally involve huge investments and, service disruption of these networks result in great subscriber inconvenience as one subscriber is connected to one network. Also, with the increase in the subscriber base the revenue from telecom services would have increased and in effect the license fees. Therefore, at some point in time the license fees would have exceeded the annual amount payable as a result of bid.

In case of radio, the investment levels are low, thereby permitting easy replication. Also, the revenue is not directly determined by the number of listeners but by the increase in the amount of revenues earned from advertisements. These revenues are linked with the advertising rate per minute and the roll out (number of cities / areas covered). Other competitive

media such as satellite channels, terrestrial TV etc, provide a cap on the advertising rate per minute.

	License fees as percentage of revenue	License fees as percentage of expenditure
A	234%	59%
B	321%	67%
C	114%	56%
D	120%	44%
E	998%	73%

Source: Data from Industry

It is apparent that at the present level of license fees, the licenses are not viable.

Radio Advertisement revenue growth

The source of revenue for Radio is advertisement. Globally, the average share of radio in ad-spend is 6% to 7%², while that in India is about 2.5%. Also, estimates suggest that the radio business globally is about 0.06% of GDP as compared to 0.005% in India. These aspects are related to population coverage and listening time. In terms of recent NRS survey, an average Indian listens to 15 min of radio per week as compared to 1813 minutes in UK. But at the same time population coverage would be much higher in India when compared with U.K. under similar roll out condition. The industry therefore has tremendous potential to grow.

It may, therefore, be worthwhile for operators to roll out in new areas that would help tap local advertising market, for which other competitive electronic media such as satellite TV / Terrestrial TV is expensive.

The grant of relief by way of migration would provide the industry with a fillip and improve their viability. However, if such a migration is to be granted so as to promote the policy objectives of roll out, it may well be appropriate to mandate their roll out in other less lucrative parts of the country. On one hand it would increase their revenue potential while at the other would fulfill the roll out policy objectives. This aspect of roll out has already been considered in the section of roll out obligation for second phase of licensees.

One could also argue from the other side that the decision made by the FM Radio players at the time of bidding was totally speculative and did not conform to any viable business plan, as the bidders had full knowledge of the competition from the satellite TV. Also, the facilities of FM are very easy to

² Information submitted by industry

replicate and, therefore, there is no requirement to offer a migration package. The present licensees may migrate to the new regime by way of fresh bids only.

- **Based on the above discussion, whether migration of existing licensees to revenue share regime in FM Radio be permitted? If yes, should there be any special conditions attached to this migration?**

4.2 Migration of the first phase of licensees to the second phase

Once the new terms & conditions for the second phase of licensees is decided, and if this is different from the first phase, there would be a demand to ensure level playing field amongst the two types of licensees. The various options in this regard include

- a) No migration is permitted i.e., the existing licensee may continue with their license terms and conditions. The existing licensees may, however, be permitted to acquire the new licenses on clearance of dues from the first phase. This would do away with the likely litigations and complexity that would arise from the migration process and would keep the process simple. But this may result in shutting down of various existing operators, and would create differential operating conditions for the same service in the same area.
- b) Migration of Phase I licensees to Phase II – Another option is to provide the option to Phase I licensees for migration to Phase II. This option has the advantages of ensuring uniform license terms & condition, providing relief to the current licensees and helping in the continuation of the existing services. However, there would be a number of legal issues involved in carrying out migration, which would need redressal.
- c) Existing licensees should terminate/surrender their existing licenses if they find the business unviable and cannot bid for new licenses. Similarly those who were successful in the bidding in phase I may not be permitted to bid for phase II.

The main issues in migration include:

4.2.1 Criteria for eligibility of a service provider to migrate from phase I to phase II

One of the issues in migration is the eligibility criteria that the Phase I players would have to fulfill for the purpose of migration to Phase II. There are different categories of Phase I players. These include

- i) Unsuccessful Bidders;
- ii) Successful Bidders who did not execute the License Agreement despite issue of LOI;
- iii) Successful Bidders, who did not pay the advance reserve license fees or did not provide the BG.
- iv) Successful Bidders who signed the License Agreement but did not apply to WPC for frequency allocation and as such were not issued a valid operational license by WPC.
- v) Successful bidders who have operationalised license but have failed to operationalise the frequency earmarked by WPC (deemed operation)
- vi) Successful bidders who operationalised the license but defaulted in payment of license fee either before the cut off Date or Post Cut off Date
- vii) Successful bidders that operationalised the license and are up-to-date with the payment of license fee.

The eligibility for migration is essentially for existing licensees, and categories i), ii) and iii) may not be considered as licensees.

Another set of bidders are those, who did not apply to WPC for operationalisation of their license. As per the license agreement the “effective date” is defined as the date of issue of the wireless operating license by the WPC. This means that these licenses have not come into effect.

The main issue is whether these bidders can be treated as valid licensees and should they be eligible for migration.

The Radio Broadcast Policy Committee is of the opinion that the unsuccessful bidders as well as those who breached the tender documents and/or License Agreement cannot be considered entitled to Migration. But they can participate in the tendering of phase II licenses.

The other categories, which include valid license holders, who have paid license fees may be considered eligible for migration. For the purposes of level playing field it is essential that all the licensees are treated in a similar manner. This would require

- a) Clearance of all license fees dues till the date of migration;
- b) Requirement to operationalise their license;
- c) Start Service

The issues for consultation are:-

- **Which all categories of licensees be considered eligible for migration?**

- **What should be the pre-requisite conditions that these operators be asked to meet before migrating?**

4.2.2 Cut off date for migration

Another issue is what should be date of migration. From the legal view-point, the date of effecting migration has to be after such a decision has been taken by the licensor. A relief in retrospection may lead to several legal complications. In the telecom sector, the date of migration was taken as 1.8.99, while the decision to allow migration was communicated to the service providers earlier. The Committee has recommended 24.7.2003 as the cut off date i.e., the date of appointment of Committee.

The issues for consideration are:

- **What should be the cut-off date i.e. the date of migration?**
- **What should be the terms & conditions of the migration package?**

4.2.3 Entry fees & License fees;

As discussed earlier, the Phase 1 licensees pay an annual amount, based on the outcome of the bidding process. In the event that a revenue share model with a combination of entry fees and annual revenue share is adopted, what would be the entry fees for these licensees to the new regime? In the case of telecom sector, the amount of license fees due on the date of migration was treated as the entry fees. Should a similar approach be adopted for the private FM Radio licensees.

- **The issue for consultation is whether the Government should consider payment of license fees due till the date of migration as the entry fees for the migrants?**

4.2.4 Service area

The issue of service area has already been dealt with in the earlier chapter. There are options of having national / provincial licenses in addition to / in lieu of city licenses. Under such situation, how should the service area of the existing licensees be altered to match with those of the new licensee? One relief that can be granted to the present licensees, is to increase their scope of service area (in effect their revenue potential) without any additional entry fees. This can be done even if migration is not carried out. The issues for consultation are:

- **In case the government decides to give national / provincial license, should the existing service providers be granted these licenses to improve their viability?**

4.2.5 Other conditions of license

In the event of migration, the new service providers would have to be treated as new licensees from the date of migration and would be subjected to terms & conditions applicable to the new licenses. The issue for consultation is:-

- **Whether there is likely to be any difference in the terms & conditions of those who may be given the option of migrating and the new entrants**

Chapter 5 - Issues for consideration

5.1 Type of License

Should there be stipulation on the type of content to be carried on each license or the choice be entirely left to the licensee? If yes, what are the options that should be exercised?

5.2 Service Area

- a) Should we consider licensing of private FM Radio stations on the basis of city, or should we migrate to the concept of Regional / National Licenses?
- b) What types of license should be created on the basis of service area?
- c) Whether the locations of the Stations to be put on bid for Phase II can be spread out to cover more towns and further what steps can be taken to ensure that the coverage is evenly spread out?

5.3 Duration of Licenses

- a) Is there a need to change the present license period?
- b) Whether license renewal may be permitted? If so for how many years and what should be the condition for renewal?

5.4 Roll out obligation

Should we consider a provincial license for FM Radio together with a specified roll out criteria laid down in a manner to meet the Tenth plan objectives of 60% population coverage by 2007?

5.5 Fund for rural roll out and niche programming

- a) Should there be created a FM Radio Fund to improve roll out and / or to promote non-commercial programs?
- b) If yes,
 - a) What should be the specific targets to be funded?
 - b) What should be the size of the fund?
 - c) Who would be entitled to participate in the process?
 - d) Who would administer the fund?

5.6 Licensing process

- a) What approach should be adopted to award the FM Radio Licenses in the second phase in areas where there is no scarcity of spectrum?
- b) In areas where there is scarcity of spectrum, which of the above mentioned approaches be adopted?
- c) In case, comparative evaluation criteria is adopted, what should be the different parameters for evaluation, and what weights should these parameters carry?
- d) In case auction route is continued with, what changes are required to be made in the existing process, i.e. should we adopt a one time entry fees + annual revenue share model?
- e) In event of auction, whether the entry fees should be the same for all licensees, based on individual bids, based on lowest of all bids?
- f) Should the identity of bidders be disclosed at the time of auction?
- g) What changes are required in the bidding process to reduce the scope of litigation and speculative bidding?

5.7 Quantum of Entry & License fees

- a) How should the entry fees be set in case auction is not adopted?
- b) What should be the basis of reserve price, when auctions are held?
- c) If we adopt a revenue sharing arrangement then what should be the annual revenue share? Should it vary depending on the size of the city or should it be the same for all areas.

5.8 Multiple licenses

- a) Whether the number of frequencies that an entity, directly or indirectly, may hold in a particular center be restricted? If so, then to what extent?
- b) Whether there should be restriction on number of frequencies (license) for news and current affairs in any one center?
- c) What should be the total number of frequencies that an entity may hold, directly or indirectly, nationally in each phase ?
- d) Whether the content plan for each separate frequency at the same center being bid for by the same bidder must be different to ensure wider availability of choices to the listeners?
- e) Whether the licensees should maintain separate accounts for each frequency allocated to them?

5.9 Program Code

- a) Do the existing laws of the country impose sufficient self-restraint on the licensees or is there is a need to impose any Program Code?
- b) Are the existing guidelines on AIR sufficient or do they require any amendments?

5.10 Technical issues

- a) Should we continue to mandate co-location of transmitter sites? Or should this be mandated only in the event that multiple licenses are issued and restricted to the holder of such a multiple licensee?
- b) If no, what should be the spacing between frequencies in the same city?
- c) Should we specify maximum or minimum transmitter power and Height of tower?
- d) How to specify reasonable coverage requirements on the Service Providers?
- e) Should the licensees be permitted to install antenna outside the premises?

5.11 Networking

- a) Whether it should be allowed between broadcasters in the same city?
- b) Whether between broadcast stations of the same entity in different cities be permitted?
- c) Whether between different broadcasters across the cities?
- d) What safeguards are necessary for ensuring that competition aspects are not compromised in the process

5.12 News & Current Affairs

- a) Whether the restriction on news and current affairs be lifted for the phase II licensees?
- b) What other conditions are required to be imposed on the licensees?
- c) Is there a requirement to impose special codes for broadcast of News& Current Affairs.

5.13 Co-location

- a) In view of the difficulties expressed by the private broadcasters, whether co-location be made mandatory in Phase-II?
- b) If so, what should be the mechanism for such co-location out of the three options below:
 - o Use AIR towers wherever technically feasible

- Licensees make their own arrangement through mutual negotiation.
- Mandated Third Party such as BECIL be required to construct towers on terms and conditions to be either agreeable to all parties or decided by the Regulator/Government.

5.14 Penalty for non operationalisation of license

- a) In light of the above discussions, comments are invited on the penalty that should be imposed for Non-Operationalisation of the awarded Licenses.
- b) The manner in which the value of performance bank guarantee should be fixed for a revenue sharing mechanism

5.15 FDI limit

The issue for consultation is whether FDI be permitted in this sector and what should be the limit of FDI?

5.16 Increase in frequencies

Should the non operationalised licenses of IGNOU be included for licensing in Phase II?

5.17 Non Commercial licenses

- a) Should certain frequencies be reserved for niche channels to be tendered separately with a low reserve fee and low revenue share percentage?
- b) If so, the terms and conditions to be prescribed to ensure that such channels are exclusively developed for niche programming and there is no partial niche programming?
- c) Whether Government should release additional frequencies to encourage such niche channels?
- d) What should be the licensing regime for community sections so that these can increase rapidly.

5.18 Effective date of license

In light of the above, what roll out period should be specified in the license?

5.19 Migration related issues

- a) Whether migration of existing licensees to revenue share regime in FM Radio be permitted? If yes, should there be any special conditions attached to this migration?
- b) Which all categories of licensees be considered eligible for migration?
- c) What should be the pre-requisite conditions that these operators be asked to meet before migrating?
- d) What should be the cut-off date i.e. the date of migration?
- e) What should be the terms & conditions of the migration package?
- f) Whether the Government should consider payment of license fees due till the date of migration as the entry fees for the migrants?
- g) In case, the government decides to give national / provincial license, should the existing service providers be granted these licenses to improve their viability?
- h) Whether there is likely to be any difference in the terms & conditions of those who may be given the option of migrating and the new entrants

Annexure I

Annexure II												
S. No.	Centre	No. of channels	License fee in Rs Lakhs (rounded off to nearest hundred)									
			Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
1	Agra	1	80.000	92.000	105.800	121.670	139.921	160.909	185.045	212.802	244.722	281.430
2	Ahmedabad	1	56.000	64.400	74.060	85.169	97.944	112.636	129.531	148.961	171.305	197.001
3	Allahabad	2	255.000	293.250	337.238	387.823	445.997	512.896	589.830	678.305	780.051	897.058
4	Aurangabad	1	66.000	75.900	87.285	100.378	115.434	132.750	152.662	175.561	201.896	232.180
5	Bangalore	5	680.000	782.000	899.300	1034.195	1189.324	1367.723	1572.881	1808.814	2080.136	2392.156
6	Bhopal	2	50.000	57.500	66.125	76.044	87.450	100.568	115.653	133.001	152.951	175.894
7	Bhubaneshwar	1	24.000	27.600	31.740	36.501	41.976	48.273	55.513	63.840	73.417	84.429
8	Calcutta	10	100.000	115.000	132.250	152.088	174.901	201.136	231.306	266.002	305.902	351.788
9	Chandigarh	1	665.000	764.750	879.463	1011.382	1163.089	1337.553	1538.185	1768.913	2034.250	2339.388
10	Chennai	11	330.000	379.500	436.425	501.889	577.172	663.748	763.310	877.807	1009.478	1160.899
11	Cochin	1	225.000	258.750	297.563	342.197	393.526	452.555	520.439	598.504	688.280	791.522
12	Coimbatore	1	335.000	385.250	443.038	509.493	585.917	673.805	774.875	891.107	1024.773	1178.489
13	Cuttack	1	22.000	25.300	29.095	33.459	38.478	44.250	50.887	58.520	67.299	77.393
14	Delhi	11	712.500	819.375	942.281	1083.623	1246.167	1433.092	1648.056	1895.264	2179.554	2506.487
15	Guwahati	2	126.000	144.900	166.635	191.630	220.375	253.431	291.446	335.163	385.437	443.252
16	Hyderabad	3	772.500	888.375	1021.631	1174.876	1351.107	1553.773	1786.839	2054.865	2363.095	2717.559
17	Indore	4	90.000	103.500	119.025	136.879	157.411	181.022	208.175	239.402	275.312	316.609
18	Jabalpur	1	22.000	25.300	29.095	33.459	38.478	44.250	50.887	58.520	67.299	77.393
19	Jaipur	1	365.000	419.750	482.713	555.119	638.387	734.145	844.267	970.907	1116.543	1284.025
20	Jalandhar	1	325.000	373.750	429.813	494.284	568.427	653.691	751.745	864.506	994.182	1143.310
21	Jamnagar	1	160.000	184.000	211.600	243.340	279.841	321.817	370.090	425.603	489.444	562.860
22	Kanpur	1	330.000	379.500	436.425	501.889	577.172	663.748	763.310	877.807	1009.478	1160.899
23	Lucknow	3	555.000	638.250	733.988	844.086	970.698	1116.303	1283.749	1476.311	1697.758	1952.421
24	Ludhiana	1	500.000	575.000	661.250	760.438	874.503	1005.679	1156.530	1330.010	1529.511	1758.938
25	Madurai	1	555.000	638.250	733.988	844.086	970.698	1116.303	1283.749	1476.311	1697.758	1952.421
26	Mumbai	10	975.000	1121.250	1289.438	1482.853	1705.281	1961.073	2255.234	2593.519	2982.547	3429.929
27	Mysore	1	152.000	174.800	201.020	231.173	265.849	305.726	351.585	404.323	464.971	534.717
28	Nagpur	1	740.000	851.000	978.650	1125.448	1294.265	1488.404	1711.665	1968.415	2263.677	2603.228
29	Panaji	2	415.000	477.250	548.838	631.163	725.838	834.713	959.920	1103.908	1269.494	1459.919
30	Patna	2	475.000	546.250	628.188	722.416	830.778	955.395	1098.704	1263.509	1453.036	1670.991
31	Pune	6	530.000	609.500	700.925	806.064	926.973	1066.019	1225.922	1409.811	1621.282	1864.474
32	Raipur	1	22.000	25.300	29.095	33.459	38.478	44.249	50.887	58.520	67.298	77.393
33	Rajkot	1	400.000	460.000	529.000	608.350	699.603	804.543	925.224	1064.008	1223.609	1407.151
34	Shillong	1	22.000	25.300	29.095	33.459	38.478	44.250	50.887	58.520	67.299	77.393
35	Srinagar	1	50.000	57.500	66.125	76.044	87.450	100.568	115.653	133.001	152.951	175.894
36	Tinunelveli	1	510.000	586.500	674.475	775.646	891.993	1025.792	1179.661	1356.610	1560.102	1794.117
37	Tiruchy	1	322.000	370.300	425.845	489.722	563.180	647.657	744.806	856.526	985.005	1132.756
38	Trivandrum	1	305.000	350.750	403.363	463.867	533.447	613.464	705.484	811.306	933.002	1072.952
39	Varanasi	1	318.000	365.700	420.555	483.638	556.184	639.612	735.553	845.886	972.769	1118.685
40	Vishakhapatnam	3	50.000	57.500	66.125	76.044	87.450	100.568	115.653	133.001	152.951	175.894

Annexure II

D.O. No. 212/94/2003 – B (D)/ FM
GOVERNMENT OF INDIA
MINISTRY OF INFORMATION & BROADCASTING
NEW DELHI

U.S. Bhatia
JOINT SECRETARY

February 12, 2004

Dear Harshji,

The Government had constituted a Committee under the Chairmanship of Dr. Amit Mitra of FICCI to make recommendations for issue of Licenses for the second phase of private FM Radio Broadcasting in the light of experience gained in implementation of the first phase. The Committee submitted its Report in November 2003. The Report of the Committee was put on Ministry's website www.mib.nic.in and a notice was published in leading newspapers, National as well as Regional, in December 2003, inviting comments from the general public within a period of one month. In response to this, we have received some comments including those from the existing private FM Radio Broadcasters. A copy of the Report of the Committee as well as a copy each of the comments received is enclosed.

2. Since broadcasting has been notified to be a Telecommunication Service under Section 2(i)(k) of TRAI Act making it mandatory for the Central Government to seek recommendations of TRAI in respect of (i) need and timing for introduction of new service provides and (ii) terms and conditions of license to service providers, I would request you to have the report and comments received thereon considered by the TRAI. We would be happy to receive recommendations on various issues involved therein especially the issues of revenue sharing, migration and attendant matters.

3. As Government are keen to take an early decision on these matters to provide a fillip to the FM radio sector, it is requested that the recommendations of the Authority may be expedited.

With regards,

Yours sincerely,

(U S Bhatia)

Dr. Harshvardhan Singh
Secretary
Telecom Regulatory Authority of India
Safdarjung Enclave
New Delhi