December 17, 2013

Mr. Sunil Kumar Singhal
Advisor (B & CS)
Telecom Regulatory Authority of India
New Delhi

Through email – sksinghal@trai.gov.in, traicable@yahoo.co.in

Dear Sir,

Please find attached the response of Entertainment Network (India) Limited to the consultation paper 12/2013 on "Migration of FM Radio Broadcasters from Phase-II to Phase-III".

Regards,

Prashant Panday
ED & CEO

Encl.: a/a

ENIL response
to the
Consultation Paper on
Migration of FM Radio Broadcasters
from Phase-II to Phase-III

Background:

From the perspective of radio broadcasters, Phase-3 has always stood for the following two opportunities:

a) A chance to expand into 225+ new markets and
b) A chance to acquire the "left-over" frequencies of Phase-2 in the major markets, now that the policy allows ownership of "multiple" frequencies in the same city.

Phase-3 of course does have other features as well. These have been adequately captured in TRAI's consultation paper. However, from an "economic value" perspective, we do not believe these features have much value. In many cases, they merely remove artificial restrictions to doing business, and in some cases, they have to be paid for separately in any case. Let's look at these features closely:

Allowing news & current affairs: We believe that being allowed to broadcast news and current affairs is a right that has been unfairly denied to private FM radio broadcasters. No other media faces restrictions on broadcasting news and current affairs. The restriction on FM radio is blatantly discriminatory and we have protested with the Ministry of Information & Broadcasting (MIB) on several occasions in the past.

Even now when Phase-3 policy allows us the right to broadcast news and current affairs, it imposes the totally unfair restriction that the news must be sourced from All India Radio (AIR). We find this restriction to be bizarre, as merely "repeating" what AIR already says will be of use neither to us or to our listeners. It will only lead to "amplifying" the government's point of view. This would be positively detrimental to our democratic values, as plurality of views is of utmost essence in a democracy. That we may have to pay AIR for such feeds is like rubbing salt into our wounds. That this policy overlooks the fact that many broadcasters are existing news organizations (either newspaper or TV) is also highly hurtful.

Even if news were allowed without any restrictions, we believe the economic value of news is very limited. News helps build “stickiness” in listenership….but only amongst the traveling population. As per Radio Audience Measurement (RAM) research, a very small % of listenership happens “outside home” – while traveling. Bulk of the listenership happens “at home”, where people have easy access to TV news channels. Hence the economic value of allowing news is zero.

Allowing news essentially eliminates discrimination against FM radio. It also eliminates the perpetual worry that broadcasters have of airing something that qualifies as news; it is often impossible to differentiate between news and entertainment content. The benefit of this policy is more “logistical” than economic.

There is one other point to be made here. Even if broadcasters are allowed news and current affairs without restrictions, there are huge costs they would have to incur in providing the same. The cost of running a news business is prohibitive, as is evident from the financials of news TV channels. Clearly more than an economic benefit, broadcasting news imposes a significant economic cost on the broadcaster.

<u>Multiple frequencies in same city</u>: This is of value to broadcasters who want to launch more than one channel in a market. The 2nd and 3rd frequencies wherever available, have to be acquired either from the government via the auction process, or from other broadcasters via an “M&A” type transaction. In either case, there is a substantial payment to be made to acquire the additional frequency. The benefit of this policy measure is thus available only after the additional payment is made. There is no economic value in the policy measure by itself.

<u>Networking</u>: This policy measure makes smaller stations financially viable. This helps the government to auction more frequencies in smaller stations and thus collect more

NOTEF and annual license fees. The networking feature thus helps the government more than anyone else.

Further, networking is irrelevant for the bigger markets, since they are almost always "stand-alone" operations. All content in these stations is locally produced to cater to the needs of the local population. Networking is of value only to "D" category towns, and a few "C" category ones.

Phase-2 policy already allows networking between C and D category towns. Phase-3 policy allows networking "across the network", which means even A and B category towns can be networked with C and D category towns. But networking is most likely to happen within C and D category towns only, because of a better cultural/linguistic fit between them. For example, it is easier to network Sangli with Nanded, but not with Pune which is culturally very different. Phase-3 policy is thus not much of an improvement over the existing Phase-2 policy. Consequently, we do not believe there is any economic value in this policy measure.

<u>26% FDI</u>: This is a good policy measure, but it hardly represents economic value to a broadcaster. In any case, in a subsequent development, the DIPP (Department of Industrial Policy and Promotion) has already started a discussion on raising the FDI limit to 49%. Almost the entire radio industry has supported this, as has TRAI in its recommendation on this subject. The 26% contained in the Phase-3 policy is thus irrelevant. Besides, the increased FDI limit – if finally permitted – is not limited to the FM radio sector alone. It would apply to news TV, newspapers etc. as well. None of these sectors are expected to "pay" for this enhanced FDI limit….. for the same reason, we see no reason for radio companies to be made to pay either.

For the above reasons, radio broadcasters do not believe that a "migration fee" – based on the features of the Phase-3 policy – is payable at all. None of the features of Phase-3 policy have any intrinsic economic value in them, which would justify the payment of a migration fee. Also, the “residual period” of Phase-2 licenses is so small (just 18 months in some of the biggest stations) that migration fees is really not justifiable at all.

The only way a “fee” is justifiable is if it is accompanied with the issuance of a 15-year new license. Back in 2006 also, Phase-1 broadcasters had paid migration fees while moving to Phase-2 terms because they were issued new licenses with a full tenure of 10 years. Hence a new license is a part and parcel of any discussion of migration fees. This is also what TRAI’s consultation paper suggests. We agree with it.

With this background, we would like to answer the specific questions asked in the consultation paper:

Question 1:

What should be the date of migration for FM Radio operators to migrate from Phase-II to Phase-III? Please elaborate your response with justification.

There is a lot of uncertainty as to when Phase-3 auctions will actually happen. It has already been 2.5 years since the policy was announced in July 2011. Till date, we have no idea when the auctions will actually take place, even though several announcements have been made by the government in this regard.

In February 2013, the Finance Minister announced the Phase-3 policy as part of his budget speech, suggesting that the auctions would happen within FY14. Thereafter, when the EGoM and the Cabinet cleared the Phase-3 policy one more time – after some “minor” clarifications were sought by MIB – in March and May 2013 respectively, it appeared that the process of auctioning would start immediately thereafter. But nothing happened. More recently, the Minister of I&B made a press announcement in September indicating that the process would start in October. Thereafter, in an interaction with AROI in October, the Minister reiterated that the auction process would be set rolling “at the earliest”. However, even now in December, there is no clarity about auction dates.

Considering the steps involved in the auctions process (e.g. appointment of auctioneer, technical bid, e-auctions etc.), we understand that the whole process could take at least six months to start…. after the process is formally kicked off by the issuance of the Notice Inviting Applications (NIA) and Request for Proposals (RFP). Unfortunately, we have no idea when this will happen. In the meanwhile, as the date for general elections comes closer, it looks increasingly difficult that the present government will be able to conduct the auctions during its term. If the auctions get delayed till after the elections, it is likely that the new government may take even longer in understanding the process. The auctions could be delayed until the end of FY15, close to the point when Phase-2 licenses start to expire.

As a result of repeated delays, we believe that linking the issue of migration of Phase-2 licenses to the auctions of Phase-3 is not a good idea. The migration date must be delinked from Phase-3 auctions.

Page 17 of the TRAI consultation paper mentions the following:

5.8 Every permission under Phase 2 shall be valid for a period of ten years from the date of operationalisation of the channel. There shall be no provision for its extension and it shall automatically lapse at the end of the period and the permission holder shall have no rights whatsoever to continue to operate the channel after the date of expiry. ***Government at the appropriate time shall determine procedure for issue of fresh permissions*** *and no concessional treatment shall be afforded to the permission holders in the allotment of channels thereafter."*

The clause above shows that the current Phase-2 licenses cannot be "extended". However "new licenses" for 15 years can be issued as part of the migration process. The highlighted part also talks of an "appropriate time" when the government shall determine the process of issuing fresh permissions. In our opinion, this appropriate time to issue new licenses is at the expiry of the Phase-2 license period. Since we have already paid for 10 years in advance, we would like to first complete that period. After that, new licenses could be issued upon payment of migration fees. We do no support TRAI's suggestion that the OTEF paid in 2006 for the residual period of Phase-2 licenses be set off against the migration fee for new licenses.

We recommend that the migration date be kept the same as the expiry date of the Phase-2 licenses. Since different Phase-2 stations expire on different dates, the migration dates will also vary station by station.

However, the "contract" to migrate (the new GOPA) should be signed at the earliest; as soon as the migration policy is finalized without waiting for Phase-3 auctions. This will ensure "continuity of business" to Phase-2 broadcasters. Most radio broadcasters are listed on the bourses either directly or via their parent companies (ENIL, HT Media, Sun TV, Reliance Broadcast, Dainik Bhaskar, Next Media etc), and this certainty about continuity of business will soothe the nerves of jittery investors. This in turn will encourage them to participate in Phase-3 auctions more extensively, making those auctions more successful.

The new GOPA should have a specific clause which states that the license period will only start at a future date, when current Phase-2 licenses expire. In order to "secure" this new GOPA, we would be willing to pay 15-20% of the migration fee (discussed in question 3 below) upfront – at the time of the signing of the new GOPA. This amount should be treated as an "advance". The balance fee would be paid at the time of actual migration. The advance payment ensures that the government's interests are protected. It also upholds the sanctity of the contract itself.

To summarize,

a) Migration fee should be delinked from Phase-3 auctions.
b) Migration GOPA should be signed immediately after migration policy is finalized. We would be willing to pay 15-20% of the migration fee as an advance at this time.

c) Actual start of new 15-year license period, will only be after expiry of Phase-2 licenses. At that time, we will pay the balance of the migration fee.

Question 2:

Do you agree that period of permission of the existing Phase-II operators, on their migration from Phase-II to Phase-III, should be 15 years from the date of migration? In case the answer is in the negative, please suggest the alternative period of permission? Please elaborate your response with justifications.

We agree that the license period of the new licenses granted upon migration should be 15 years. This will be consistent with the period of licenses issued under Phase-3 policy.

Question 3:

Migration fee for migration from Phase-II to Phase-III

As mentioned earlier, we are worried about when Phase-3 auctions will actually happen. Given this, we believe that the migration fee should not be linked to Phase-3 auctions at all. There are two other reasons for this:

a) Phase-3 auctions are currently planned to happen under "scarcity" conditions. There is only 1 frequency being auctioned in Delhi for example. Clearly, the auction for this sole frequency is bound to be a very "narrow" auction, and the price determined through this narrow auction would not be a true reflection of the fair market value. If this bid amount is applied to the migration of eight existing frequencies, it would be a travesty of justice. Stated differently, if auctions were held for more frequencies, and not just one, then the bid values would be far more representative of market potential. Hence we believe that Phase-3 cannot be the basis for calculating migration fees till the time they are conducted under scarcity conditions.

b) In many markets like Kolkata, where there are no frequencies available for auction under Phase-3, there will be no basis available for migrating existing Phase-2 frequencies.

As a result, we believe that the migration fees should be linked to Phase-2, and not to Phase-3.

Several formulas have been mooted by AROI to the MIB in the past for extending the Phase-2 licenses. These include a) using the *average* of all *successful* bids in Phase-2, b) using the *average* of all bids, including those that *failed* in Phase-2, c) using the lowest bid received in Phase-2 so as to be fair to the lowest bidder etc. In its latest interaction with the Minister, MIB in October 2013, AROI had even proposed the "highest bid of Phase-2" as the fee for new licenses. While many members found this to be too high, it was agreed upon by everyone as a way to end the uncertainty.
We would like to make the same offer again i.e. **the migration fee should be the highest successful bid of the Phase-2 auctions for each city.** This migration fee would result in a new 15-year long license being issued to the broadcaster.

Question 4:
Stakeholders may also provide their comments on any other issue relevant to the present consultation.

To re-iterate what we have already said, we believe the migration fee should be linked to Phase-2 bids and NOT to Phase-3 auctions at all.

However, TRAI has suggested a migration fee based on Phase-3 auctions in the consultation paper. As explained earlier, our worry with this is about the narrow nature of auctions that will happen as a result of a scarcity of spectrum.. In most big cities – Delhi, Ahmedabad, Chennai and Bangalore – there is only one frequency available for auction. There are only two frequencies available in Mumbai and Pune. We believe that this will lead to a lopsided – and unrepresentative – determination of market price. Even if we assume that this doesn't happen, the bid placed by the winner for a sole frequency would only reflect that bidder's view of the business. How fair would it be if this bid is made applicable to all other broadcasters?

We have another problem with Phase-3 policy that the industry has been protesting for a long time – that of high reserve fees. By setting the reserve fees at the level of the highest bid received in Phase-2, the government has pegged it too high. Like we've seen in telecom in the last two 2G auctions, it is very likely that several markets will fail to attract any bidders at all. Worse, some markets may see a few frequencies being auctioned, but not all. What would then happen to the left-over frequencies? If reserve fees are subsequently lowered, that would be extremely unfair to the early bidders who believed in the government's policy and bid early. In its most recent recommendations on 2G auctions, which have been accepted by the Government in large measure, TRAI has reduced the reserve fees substantially – by 53% in the case of 900 MHz and 25% in the case of 1800 MHz. Should such a reduction not take place in Phase-3 reserve fees as well?

AROI and individual broadcasters have met with almost every member of the EGoM – together as an industry body and individually as well – to explain this point. We have also protested that significant parts of the Phase-3 policy as recommended by TRAI in November 2008 – including the auction methodology and the reserve fee – was overturned by MIB without following the due process of consultation with TRAI. TRAI had recommended an auction methodology and reserve fee structure similar to the one followed in Phase-2, but the EGoM changed it to ascending e-auctions and set the reserve fee at the highest bid of Phase-2 auctions. While MIB sent this changed policy to TRAI for its views, TRAI never really got the chance to go through its regular thorough process – of floating a consultation paper, eliciting views of industry players, conducting an open house etc. We've demanded that the entire Phase-3 policy be referred to TRAI, so that a more robust one can be developed. However, for reasons best known to it, MIB has been reluctant to do so. In making its recommendations for migration of Phase-2 licenses, TRAI must keep this background in mind.

There is one other major problem (apart from failed auctions) with a high reserve fee in the radio sector. It kills plurality in content. When all licenses are priced high, only "mainstream" music formats are viable. We saw that in Phase-2. Those broadcasters who paid the highest OTEF in Phase-2 set up "contemporary music" stations, because these had the potential of attracting the most advertising monies. In the early days of Phase-2, only those who had acquired licenses by paying lesser OTEF started stations with a different music format. For example, Clear Media in Delhi paid Rs 13.3 crores as OTEF (compared to the highest bid of Rs 31.4 crores), and set up an English music station. Likewise Indigo in Bangalore (Rs 9.2 crores v/s highest of Rs 21.6 crores) and Muthoot in Chennai (Rs 8 crores v/s highest of Rs 12.3 crores) started English radio stations. For a long time there was no content differentiation in the markets and this was the biggest complaint listeners had with radio. Today, though there is some variety available, the extent of content plurality is much lesser than available abroad and what should be available in India.

The key requirement of the migration policy therefore is to ensure that a *fair market price* is determined in the Phase-3 auctions. Keeping this in mind, ENIL would like to make the following two additional recommendations with respect to calculating the migration fee:

Option 1: Ensure Phase-3 bidding happens only *after* additional frequencies are released by reducing channel separation to 400 KHz.

TRAI has already made a recommendation to reduce channel separation from 800 KHz to 400 KHz in April 2012. Keeping separation at 400 KHz or less is a worldwide practice. Given the fact that more than 90% of all radio listenership happens on mobile phones and digital radio sets (source: RAM), tuning into channels separated by 400 KHz is not an issue at all.

Subsequent to the TRAI recommendation, ENIL got a study undertaken on how many frequencies could actually be released as a result of 400 KHz channel separation. The study was conducted by M/s Technomedia Solutions Pvt Ltd, a company founded and run by Mr. P.S. Sundaram, former MD & CEO of BECIL. In doing this study, Technomedia has kept in mind factors such as "mutual FM interference between existing and new (400 KHz) frequencies" as well as "ensuring a level playing field for new broadcasters in terms of signal coverage". Their finding is that the following number of additional frequencies can be generated in the top 13 markets:

City	**Already proposed under Phase-3**	**Additional possible from 400 KHz separation**	**Total that can be made available under Phase-3**
Mumbai	2	**6**	8
Delhi	1	**3**	4
Bangalore	1	**3**	4
Kolkata	0	**3**	3
Chennai	1	**5**	6
Hyderabad	4	**5**	9
Ahmedabad	1	**6**	7
Pune	2	**2**	4
Nagpur	2	**4**	6
Jaipur	1	**5**	6
Surat	2	**6**	8
Kanpur	3	**0**	3
Lucknow	3	**3**	6
Total – top 13 A+/A cities	**23**	**51**	**74**

When TRAI's recommendations came out, several FM broadcasters had objected to more frequencies being released *during the tenure of their Phase-2 licenses*. Their worry was that more licenses would mean more division of the market, and a consequent loss of revenues and profits. Even though this argument was specious – ignoring as it did the fact that markets always expand to accommodate new players – the government perhaps thought it best to keep aside TRAI's recommendations. The government also had the view that a "technical study" was needed to be conducted before the additional frequencies could be released. A lot of time has now passed, and it doesn't appear that the government has even initiated steps to get the technical study conducted, indicating that the major reason for not accepting TRAI's recommendation was the unease of industry players.

Now that Phase-2 licenses are close to expiry, there is no reason for anyone to resist the addition of new frequencies. If the FM market has to grow, more frequencies need to be released. We have seen a massive increase in the number of newspapers, TV channels, OOH media sites, and websites since 2006, when the last of the FM frequencies were released. If the supply of FM frequencies does not increase soon, FM radio will get squeezed out of the consideration set of advertisers.

Even after all above frequencies are released, the maximum number of frequencies that would be available in a city would just be 15 in Mumbai. Contrast this with more than 25 frequencies available in smaller towns like Colombo and Manila. Even if FM broadcasters continue opposing 400 KHz, the government cannot agree with them since doing so would be tantamount to "wasting" rare and valuable spectrum. If the above 51 additional frequencies were auctioned, the government could make at least Rs 750 crores – assuming all licenses go at the reserve fee. Such a potential revenue loss cannot be passed off by the government.

Our recommendation to TRAI therefore is that it should re-iterate its earlier recommendation of 400 KHz channel separation. It must insist that Phase-3 auctions should only be conducted after additional frequencies are identified and released. The release of additional frequencies will lead to determination of a fair market price, which will be transparent for the government, and viable for broadcasters.

If this suggestion is accepted, the migration date could be set immediately after Phase-3 auctions are conducted. The new licenses would be of 15-year duration. Payment of migration fee for current licenses would be at the expiry of their 10-year tenure.

Option 2: Pooling of Phase-2 frequencies along with Phase-3 frequencies:

An alternative formula to increasing the supply of frequencies in auctions is to "pool" Phase-2 frequencies along with those planned under Phase-3. Again, the objective is to ensure that the auctions lead to a fair determination of market potential.

All existing Phase-2 frequencies, which are expiring in the next few years – should be put into the Phase-3 auctions. If this were done, the auctions in Delhi – as an example – would be for 9 frequencies (8 existing Phase-2 frequencies + 1 new Phase-3 frequency) and not just for one new frequency. The winners of the *existing* Phase-2 frequencies would only get access to them *after* the 10-year license periods of those frequencies get over. Thus the interests of *current* Phase-2 broadcasters would be adequately protected. The winner of the *new* Phase-3 frequency would be able to launch a station immediately.

A number of questions arise and need to be answered.

Who would get the *new* Phase-3 frequency and who, the *current* Phase-2 ones (which will become available only later when they expire)? TRAI can develop a "draw of lots" plan to allot existing and new frequencies to the winners…..and if this is announced in the Notice Inviting Applications (NIA) itself, there should be no legal complication.

Which winner would get which frequency? Existing broadcasters who win should have the first right to retain their old frequency. For example, if Mirchi were to win in Delhi, it would get the first right to retain its current frequency – 98.3 FM. But if a new winner comes in, it would be allotted a frequency on a random basis based on "draw of lots" – after all existing winners have been re-allotted their old frequencies.

If this suggestion is accepted, the date of signing of the new GOPA would be immediately after Phase-3 auctions. The license period of the existing Phase-2 frequencies would be 15 years from their date of expiry. For the *new* frequency, the payment would be immediate, since the license would be allotted immediately. For *existing* Phase-2 frequencies, the payment would be upon expiry, when new licenses are issued.

CAVEAT: Any linkage of migration of Phase-2 licenses to Phase-3 terms is fraught with the risk that the auctions may get further delayed. If that happens, there will be a huge uncertainty with respect to continuity of the business. To avoid this, an "outside time limit" may be set – say June 2014 – by which auctions must happen. If that time limit is breached, the government *must* migrate Phase-2 frequencies basis the formula suggested first in this document (the max of Phase-2 bid).

CONCLUSION:

1. There is NO economic value associated with migration to Phase-3 policy terms by itself. Economic value is created only if a new license of 15 years is issued.
2. Migration fee should be linked to Phase-2 bids. We are proposing that the maximum bid received in Phase-2 auctions be the migration fee for a new 15-year license.
3. If however, migration has to be linked to Phase-3 auctions, then more frequencies must be released before auctions are conducted, so that a fair market price is determined. There are two ways of doing this:
    a. MIB should accept TRAI's earlier recommendation of reducing channel separation to 400 KHz; and
    b. All existing Phase-2 frequencies should be "pooled" together with new frequencies of Phase-3.

4. In all cases, rights of existing broadcasters should be protected and their licenses must be allowed to complete their 10-year period. All new licenses should only be issued after the expiry of this period of time.