

Telecom Regulatory Authority of India SOME RECENT RECOMMENDATIONS

TRAI Recommendations on 3rd Phase of Private FM Radio Broadcasting¹

TRAI released its Recommendations on the 3rd Phase of Private FM Radio Broadcasting on 22 February 2008. The salient features of the recommendations are summarized below. The Authority recommended the following:

Regulatory Issues

- The geographical basis for Private FM Radio bidding in future may be changed from City to District.
- The bidding process will remain the same as envisaged in the policy on expansion of FM Radio broadcasting service through private agencies (Phase-II) dated 13 July 2005.
- The channels available in a district shall be auctioned to eligible bidders and shall be allocated to successful bidders in descending order of bid price.
- In case any private FM Radio broadcast is functional in any part of the district, the concerned operator/licensee may be given the option to enlarge the area of operation within three months from the date of finalisation of the bid for that district, to enable the same channel to provide coverage to full district after paying difference in maximum bid price determined through the auction for the district.
- The reserve One Time Entry Fee (OTEF) shall be re-fixed based on the maximum bidding price through the auction for the district or a similar district in the state. Annual fee for the district will now be determined considering revised reserve OTEF.
- The bidding for the remaining 97 channels of Phase-II scheduled on the city as operational area shall be rescheduled considering the district as operational area.
- Number of channels for FM Radio broadcast in Category A+, A, B, C cities, now changed to districts basis, may be restored as envisaged in Phase-II, subject to technical feasibility.
- The number of FM Radio broadcast channels for category 'D' cities, now changed to districts basis, may initially be reduced to three from five as envisaged in FM Radio broadcast Phase-II, subject to technical feasibility.

Restrictions on Ownership & Networking

- At least three channels excluding AIR in any district will be given to three different entities. Once this condition is met, then the existing operator/permission holder

¹ <http://www.trai.gov.in>

can bid for the remaining channels and may be declared successful for any channel where his bid is highest, subject to the condition that the maximum number of channels to a permission holder in the district will not be more than 50% of the total channels in the district.

- The existing ceiling limit of 15% of the total FM Radio channels in the country to be permitted to a permission holder is no longer valid as the fear of monopoly is no longer real. This limit is also not practical, as the total number of channels will vary depending on availability.
- All private FM Radio broadcasters may be permitted networking within their network. Networking across the permission holders should not be permitted.

Limits on FDI

- Foreign Direct Investment, including Foreign Institutional Investment (FII), for FM Radio broadcasting permission holders who are interested in broadcasting news may be enhanced to 26% from the present 20% in view of the FDI provision of 26% in news and current affairs in television (TV) broadcasting. All other terms and conditions will remain the same.
- Similarly, the FDI including FII for FM Radio broadcasting permission holders who do not opt for news broadcasting, may be enhanced to 49% from the present 20%. All other terms and conditions will remain the same.
- An FM radio broadcaster can later opt to broadcast news only if they bring down the FDI including FII to 26%. For this, such broadcasters will have to seek specific permission from the I&B Ministry after submitting proof of FDI including FII not amounting to more than 26%.

These limits are subject to Government revision.

Transfer of Ownership

- No change in the holding pattern of shares shall be permitted till the start of FM Radio broadcasting in any circumstances.
- Any change in ownership or further dilution shall be permitted with the written permission of the Ministry of Information & Broadcasting after a period of three years from the date of operationalisation of the permission.

Annual Fee Structure

- The method of calculation of the Reserve One Time Entry Fee (OTEF) and the annual fee may be same as prescribed for FM radio broadcasting Phase-II.
- The rate of the annual fee may be reduced to 50% of what is being charged from all existing permission holders in other areas for private FM radio broadcasters in the North East (NE) and Jammu & Kashmir (J&K) regions for an initial period of three years from the date of issue of the Letter of Intent (LoI).

Broadcast Regulations

- FM Radio broadcasters may be permitted to broadcast news taking content from AIR, Doordarshan (DD), authorized TV news channels, United News of India (UNI), Press Trust of India (PTI) and any other authorized news agency without any substantive change in the content. No other source of news is permitted at present.
- Broadcasting of news contents having speculative, anticipatory or based on rumours/ hearsay is not permitted.
- Ministry of I&B may clarify areas which do not come under restrictions of news such as traffic bulletin, results of international games such as cricket scores, etc.
- The FM Radio broadcasters shall be responsible for misrepresentation of news and current affairs from identified sources and shall be acted upon in case of any violation.
- Ministry of I&B may prescribe broad guidelines to ensure that any news broadcast may not negatively impact general law and order of the area and basic features of social cohesiveness and constitutional framework are maintained.

Issues Related to Frequency

- The determination of number of channels in a district is directly related to available frequencies, which should be analyzed and notified for private FM Radio Broadcasting by Ministry of I &B in consultation with the Wireless Planning cell of Department of Telecom.
- Co-channel Spacing within district presently used may not be changed and kept at 800 KHz. Similarly 400 KHz channel spacing between two channels in adjacent districts is maintained (as prescribed in FM Radio Phase-II).
- All successful bidders may be mandated to co-locate their transmitters with existing facilities of All India Radio if available and technically feasible within a pre-defined period say 3 month. If facilities of All India Radio are not available, the successful bidders for FM Radio broadcasting may form consortium and setup required infrastructure for collocation of all transmitters identified for that district.

Miscellaneous Issues

- Total time from the date of issue of LOI till operationalisation of the channel should not be more than one year.
- All permission holders must convey in advance, date of operationalisation of FM Radio channel to Ministry of I&B in writing to enable the Ministry monitor the programs and have effective control.
- The Reserve OTEF should be fixed at 50% of the highest bid price in a District.
- No bid shall be considered below Reserve OTEF and all such bids shall be summarily rejected.

TRAI Consultation Paper on Issues Related to Ownership of Broadcasting Activities²

As of today, broadcasting activities in India are with Prasar Bharati (created by an Act of Parliament) and with the private sector, while that of distribution is largely in the hands of private operators except the Direct to Home (DTH) services of Prasar Bharati, and some public sector undertakings like Mahanagar Telephone Nigam Limited (MTNL).

The Ministry of Information & Broadcasting had requested TRAI to examine the matter of allowing some other entities including State Governments to enter into broadcasting activities and had requested for submission of its recommendations as per the provisions of Section 11(1) (a) of the Telecom Regulatory Authority of India Act, 1997. In pursuance of this request the TRAI released its Consultation Paper on Issues Relating to Entry of Certain Entities into Broadcasting and Distribution Activities on 25 February, 2008.

The queries of the I & B Ministry basically revolved around two questions:

- Ministry of Information & Broadcasting had requested the Telecom Regulatory Authority of India (TRAI) to examine the matter of allowing some other entities including State Governments to enter into the broadcasting activities and had also requested for submission of its recommendations as per the provisions of Section 11(1)(a) of the Telecom Regulatory Authority of India Act, 1997
 - If 'yes', what are the kind of broadcasting activities which should be permitted to such organization and to what extent? What are the safeguards required to prevent monopoly or misuse?
 - If 'No', Whether disqualifications proposed in Section 12 of the Broadcasting Bill, 1997 and Part I of the Schedule thereto should be considered as it is or with some modifications for incorporation in the existing Cable Act and Rules relating thereto and in the proposed Broadcasting Services Regulation Bill, 2007, and policy guidelines
- Whether similar disqualifications with respect to religious bodies on the lines of Broadcasting Bill, 1997 or with some modifications are also considered for religious bodies.

The Consultation Paper merely outlines a comprehensive list of issues that TRAI proposes review and resolve in its recommendations on the topic of broadcast ownership. The issues put forth in the paper are as follows:

² <http://www.trai.gov.in>

- Whether, having regard to entry 31 in List I (Union List) of the Seventh Schedule to the Constitution of India (Posts and telegraphs, telephones, wireless, broadcasting and other like forms of communication) and plurality of broadcasting activity, it would be in the interest of broadcasting sector and in the interest of the public at large, to permit Union Government and its organs, State Governments and their organs, urban and rural local bodies, publicly funded bodies and political bodies to enter into broadcasting activities such as starting a radio and television broadcast channel.
- Whether permitting these entities (including State Governments or their enterprises) to enter into broadcasting activities would be within the scheme of the distribution of subjects in the Constitution between the Centre and State Governments?
- In case the Governments and government owned or controlled enterprises, local self government institutions, other publicly funded bodies, and political bodies (both at the national and regional level) are to be allowed entry into the broadcasting service, in that case, what type of broadcasting activities should be permitted to each one of such organisations and to what extent? This question must be considered keeping in view the fact that these broadcasts by these bodies will largely be limited by their broad aims and objectives.
- With regard to the fact that the sector may be used for political and religious purposes what are the safeguards needed for ensuring *bonafide* usages of the broadcasting permission granted to such entities? Are they enforceable particularly if the state machinery is the prime mover?
- Whether the disqualifications proposed in Clause 12 of the Broadcasting Bill, 1997 and Part I of the Schedule thereto are still relevant as on date, either as they are or with some modifications, for incorporation in the proposed Draft Broadcasting Services Regulation Bill or in any other relevant legislation? Correspondingly, which element of various policy guidelines would require amendments in the respective provisions relating to eligibility for entry into the broadcasting sector?
- Whether religious bodies may be permitted to enter into broadcasting activities such as starting a radio and television broadcast channel.
 - If such religious bodies are permitted to enter into broadcasting activities, then, what are the safeguards to be stipulated to ensure that the permission /license so granted is not misused?
 - How should a distinction be maintained between religious bodies running a channel and non-religious bodies offering religious content in their channels?
 - How should such religious bodies be defined? Should such religious bodies be a trust or a society or a company under section 25 of the Companies Act, 1956?

Issues Regarding Entry into Distribution Platform

- Whether the entities, other than citizens of India, should be considered as “person” under Sub-Clauses (ii) and (iii) of clause (e) of Section 2 of the Cable Television Networks (Regulation) Act, 1995.
- Whether the provisions of the Cable Television Networks (Regulation) Act, 1995, particularly, the definition of “person” as contained in the said Act, requires any clarificatory amendment or not with respect to entry of entities such as State Governments, urban and local bodies, 3-tier Panchayati Raj bodies, publicly funded bodies, political parties and religious bodies.
- In case such bodies are to be given permission to enter into the business of distribution of broadcast channels, what are the other amendments which would be required in the Cable Television Networks (Regulation) Act, 1995 and Rules thereof, other Acts and in the various policy guidelines relating to other distribution platforms?
- In view of the setting up recently of the Commission on Centre State Relations, is it necessary now for the Telecom Regulatory Authority of India to look into the issue of permitting State Governments or their enterprises to enter into broadcasting activity? If the answer is in the affirmative:
 - Whether permitting the State Governments and their enterprises to enter into the broadcasting sector or into the business of distribution thereof would have impact on the Centre-State Relationship and the inter-se relationship among the States.
 - In the light of foregoing paragraphs, whether political bodies and religious bodies should be permitted to enter into the business of distribution of broadcasting channels. If the answer is affirmative, what amendments in the laws and in the various policy guidelines will be necessary for this purpose?

The paper referred at length to the Constituent Assembly Debates, Sarkaria Commission Report and Terms of Reference of the Commission on Centre – State Relations.

TRAI Recommendations on “Provision of IPTV services”³

On the 4 January, 2008 TRAI released its Recommendations on Provisioning of Internet Protocol Television⁴ (IPTV) services. IPTV is a new method of delivering and viewing television programs using an IP network and high speed broadband technology and is fast becoming a popular service in many countries.⁵

The issues that the recommendations deal with were discussed in detail in TRAI’s Position Paper released on 6 September, 2007 and in the subsequent Draft Recommendations that were released on 28 November, 2007. At that time TRAI invited stakeholders to comment on these issues and draft recommendations.

Under the existing licensing conditions Unified Access Services license (UASL) and Cellular Mobile Telephony Service (CMTS) License are permitted to provide triple play service and IPTV is permitted under this provision. The government has permitted Internet Service Providers (ISP) having net worth of Rs.100 crores or more to provide IPTV services after obtaining permission from the licensor. The question was being raised time and again in view of the provision of Cable Television Network (Regulation) Act 1995 whether these operators need any other regulatory clearances or registration to provide IPTV to their subscribers. It will be important to mention that Cable Television Network (Regulation) Act 1995 provides that no person shall operate a cable television network unless he is registered as a cable operator under this act.

The salient features of the final recommendations are mentioned below:

Licensing Issues:

- Telecom service providers (UASL, CMTS) having license to provide triple play services and ISPs with net worth more than Rs. 100 Crores and having permission from the licensor to provide IPTV can provide IPTV service under their licenses without requiring any further registration. The Department of Telecommunications (DoT) can permit any other telecom licensee to provide IPTV services as licensor. Similarly cable TV operators registered under Cable Television Network (Regulation) Act 1995 can provide IPTV services without requiring any further license.
- Telecom service providers providing IPTV service will be subjected to percentage of Adjusted Gross Revenue (AGR) as license fee as applicable from time to time which is presently 6%, 8%, and 10% for access service licensees in category “C”, Category “B” and category “A” circles and 6% for ISPs.

³ <http://www.trai.gov.in>

⁴ <http://www.trai.gov.in/trai/upload/PressReleases/527/recom4jan08.pdf>, 22 – 03 – 2008.

⁵ <http://arstechnica.com/guides/other/iptv.ars>, 22 – 03 – 2008.

- In case any telecom service provider register itself as cable operator and provides IPTV using its telecom resources, it shall be considered as service under telecom license. Such a service provider shall have to pay the license fee on IPTV revenue also as applicable to its telecom license.

- Penal Provisions: Any breach of the provisions of Act/ License/ Registration/ Permission by telecom service provider/ cable operator/ Broadcasters shall be dealt with by designated agencies which are responsible for administering such Acts/ License/ Registration/ Permissions.

- Bureau of Indian Standards (BIS) may be requested to expedite standardization of IPTV Set Top Box specifications to help cable operators while designing their IPTV networks.

- No change in FDI cap envisaged for provision of IPTV services both by the telecom licensee and Cable TV operators.

Content Regulation:

- Telecom licensees while providing TV channels through IPTV shall transmit only such channels in exactly same form (unaltered) for which broadcasters have received up-linking / down-linking permission from Government of India (Ministry of Information and Broadcasting). In such cases, the responsibility to ensure that content is in accordance with the extant laws, rules, regulations etc shall be that of the broadcaster and telecom licensee will not be held responsible.

- In case of contents other than TV Channels from broadcasters, the telecom licensee shall be responsible for observing program code and advertisement code and such program code and advertisement code shall be the same as provided in Cable Television Network (Regulation) Act 1995 and Rules there under. In addition to this, such licensees will also be bound by various Acts, instructions, directions, guidelines issued by the government from time to time including IT Act 2000 to regulate the contents.

- Penal Provisions: The Information and Broadcast Ministry and Information Technology Ministry are acting upon non compliance of contents regulations related to their jurisdiction. It would therefore be appropriate that respective ministries regulate the content used by IPTV service providers. Operational procedures like time limit to keep a copy of the contents shown on IPTV, monitoring requirements etc can be worked out by DOT based on the feedback from respective ministries. Any violation of prevailing Acts/ Rules/ guidelines relating to content by telecom service providers in provisioning of IPTV service shall be reported to DoT by respective ministries. The decision of the respective ministries regarding violation of the law/ direction/ guidelines in respect to content shall be final. DoT may perhaps seek the guidance of the respective ministries to ascertain the penalties for the breach to maintain uniformity and shall initiate suitable action for imposing penalties for violations in time bound manner.

- Telecom service provider providing IPTV will show only those news channels which have been approved by I & B Ministry.
- All telecom licensees/ Cable operators before providing IPTV will give a self certified declaration to I&B ministry, DoT and TRAI giving details such as license/ registration under which IPTV service is proposed, the start date, the area being covered, and details of the network infrastructure etc.
- Suitable modifications may be made in respective licenses of Telecom service providers to incorporate above provisions.

Downlinking Policy:

- The up linking / down linking guidelines should be amended to enable the broadcasters to provide signals to all distributors of TV channels such as cable operators, multi-system operators, DTH operators, HITS operators, IPTV service providers.

TRAI Recommendations on Headend – In – The – Sky (HITS)⁶

TRAI, in response to an I & B Ministry reference, released its Recommendations on Headend – In – The – Sky⁷ (HITS) on 17 October, 2007. The recommendations were sought in order to frame a comprehensive policy framework on HITS.

HITS is a satellite multiplex service that provides cable channels to cable television operations. At a traditional cable television headend, multitudes of satellite dishes and antennas are used to grab cable stations from dozens of communication satellites. In contrast, HITS combines cable stations into multiplex signals on just a few satellites; cable television companies can then pull in hundreds of channels at the local headend with relatively little equipment; the HITS feed effectively replaces the more complex traditional headend operations.⁸

TRAI in its Recommendation on Digitalization of Cable Television (14 September, 2005) had cited the need for a policy framework for HITS. Furthermore, the I & B Ministry has already granted permission to two companies for providing HITS operation though the companies have not utilized these permits due to low availability of content and pending litigation in the MRTPC and thus arises a need for such a policy framework.

TRAI put forward 15 recommendations towards a HITS policy framework, the salient features of the same are mentioned below.

Licensing & Fees

- The entry fee for HITS operation should be Rs.10 crores. However, there should not be any annual fee for HITS operation in order to ensure its financial viability and to ensure that it can compete effectively both with DTH and the terrestrial MSOs.
- A minimum networth requirement of Rs. 40 crores at the close of the immediately preceding financial year should be made a qualifying condition for applying for a HITS license.
- A refundable performance bank guarantee of rupees 40 crores should be made part of the HITS license conditions. The corresponding roll out obligation to be met will be that the HITS licensee should commence uplinking/downlinking operations within a period of one year of receiving the spectrum allocation. The forfeiture provision should be such that half of the bank guarantee should be forfeited if an operator does not start service within one year of receiving spectrum allocation.
- The total foreign investment including FDI for HITS should be 74% as in case of telecom sector in view of convergence of technologies.

⁶ <http://www.traai.gov.in>

⁷ <http://www.traai.gov.in/traai/upload/Recommendations/77/rec17oct07.pdf>, 23 – 03 – 2008.

⁸ www.fcc.gov/transaction/att-comcast/jointdoc.pdf, 23 – 03 – 2008.

- The parity should be maintained between DTH and HITS services on the issue of spectrum fee.

Ownership

- HITS operator shall not allow Broadcasting Company(ies) and/or DTH licensee company(ies) to collectively hold or own more than 20% of the total paid up equity in its company at any time during the License period. Simultaneously, the HITS Licensee should not hold or own more than 20% equity share in a broadcasting company and/or DTH licensee company. Further, any entity or person holding more than 20% equity in a HITS license shall not hold more than 20% equity in any other Broadcasting Company(ies) and/or DTH licensee and vice-versa. This restriction, however, will not apply to financial institutional investors. However, there would not be any restriction on equity holdings between a HITS licensee and a MSO/cable operator company.

Up – Linking / Down – Linking Regulations

- The up - linking /down - linking guidelines should be amended to enable the broadcasters to provide signals to all distributors of TV channels such as cable operators, multi-system operators, DTH operators, HITS operators, IPTV service providers etc.
- The HITS operator should provide signals directly from his satellite only to the registered MSOs/cable operators. However, he need not be barred from providing signals, through his own cable network if any, to consumers also after first downlinking the signals to his terrestrial receiving station. This would provide a level playing field between the HITS operator and the MSO.
- For faster digitalization of cable services, the HITS policy should not impose any restrictions regarding up - linking from India only. The HITS operator should be free to choose the up - linking location.
- The HITS operator shall uplink/downlink only those channels for which the broadcasters have received up - linking/down - linking permission from the government.
- There should not be any transmission band restriction for HITS operators.

Content Regulation

- Except for the carriage of some channels of national importance of the public service broadcaster Doordarshan, there should be no “must carry” provision for the HITS operator.

- In order to ensure proper monitoring, it should be compulsory that only an Indian company should be granted the license for HITS operations. Moreover, the subscriber management system (SMS) and encryption system should be located on Indian soil for an effective control over distribution and the monitoring of contents.

Miscellaneous Recommendations

- The HITS policy should allow the hybrid model whereby the HITS operator can work both as a conventional Multi System Operator (MSO) (except that the headend would be in the sky) as well as passive infrastructure provider to other MSOs/cable operators who wish to use the facility for up - linking / down - linking their own aggregated content. The choice of operation should be left to the HITS operator.
- HITS licensee should not be barred from providing any value added services which otherwise do not require any specific license or permission.

On 15 February, 2008 TRAI released recommendations exclusively for the regulation of the two companies that had been granted permission in 2003 to run HITS operations using teleport facilities. Dish TV and Noida Software Technology Park Limited, the two companies in question, though granted permission, are not carrying out HITS operations as yet.

The recommendations state that:

- To ensure faster digitalization and addressability in the cable sector and to ensure greater competition, it is desirable that these permission holders should be allowed to provide the HITS operation on the existing terms and conditions, till at least such time that the terms and conditions of HITS license are notified by the Government of India.
- The Ministry of Information & Broadcasting should immediately inform the two existing HITS permission holders of the Government's intention to bring out the new licensing framework for HITS, and that the present permission for HITS on their teleport will be "frozen" at the existing level.
- The existing HITS permission holders will be allowed to commence the HITS operation on the basis of their existing HITS permission provided they give an undertaking to the effect that they shall migrate to the new HITS licensing regime within a period of three months from the date of notification of the new HITS licensing framework.
- Furthermore, if the existing HITS permission holder meets the roll out obligation as envisaged in the new HITS license even prior to his successful migration to the new HITS license, then such a HITS permission holder will not be required to

furnish the performance bank guarantee for migrating to the new licensing regime.

TRAI Recommendations on Issues Related to Mobile Television Service⁹

TRAI released its Recommendations on Issues Related to Mobile Television Service¹⁰ on 23 January 2008.

Mobile TV involves bringing TV services to the mobile phones. It combines the services of a mobile phone with television content and represents a logical step both for consumers and operators and content providers. Mobile TV over cellular networks allows viewers to enjoy personalized, interactive TV with content specifically adapted to the mobile medium. The services and viewing experience of mobile TV over cellular networks differs in a variety of ways from traditional TV viewing.¹¹

The terms and conditions of Unified Access Service License (UASL) agreement as well as Cellular Mobile Telephone Service (CMTS) license agreement already permit the delivery of Broadband services including triple play i.e. voice, video and data over the networks of UASL and CMTS licensees. Therefore, the primary focus of the consultation process was on provision of mobile television services using broadcasting technologies.

Prior to the issuing of the recommendations TRAI issued a Consultation Paper on 18 September, 2007 for comments from the stakeholders before giving its recommendations to the Government on the above issues relating to mobile television service. An Open House Discussion was held by the Authority on the issues on 26 October, 2007 in Delhi.

There were numerous recommendations submitted in the TRAI report, the salient features of which have been enumerated below. TRAI recommends that:

Technology

- The choice of technology should be left to the service provider with the condition that the technology to be deployed for providing mobile television should be based on standards issued by International Telecommunication Union (ITU), Telecom Engineering Centre of India (TEC) or any other International Standards Organization. The condition to be followed is that the technology should be digital.
- The chosen technology should be a proven one. For this purpose, any digital technology having been used for a global customer base of fifty thousand or more for a continuous period of one year to be reckoned from the date of commercial launch anywhere in the world, should be permissible for use regardless of its changed versions.
- In case the handset is provided by the licensee, it should be ensured that if the subscribers desire to migrate to any other licensee using the same technology and standards, they should be able to migrate without changing the handsets.

⁹ <http://www.trai.gov.in>

¹⁰ <http://www.trai.gov.in/trai/upload/Recommendations/80/recom23jan08.pdf>, 23 – 03 – 2008.

¹¹ www.qualcomm.com/technology/mobiletv.html, 23 – 03 – 2008.

- Licenses for the terrestrial transmission route only should be offered for the time being.

Spectrum Allocation

- The Ministry of Information & Broadcasting should co-ordinate with the Department of Space and Department of Telecom regarding availability of satellite capacity and frequency for satellite based mobile television services. As and when such satellite capacity is available and if the Government intends to issue such licenses, then the matter may be referred again to the Authority for its recommendations under Section 11(1)(a)(i) and (ii) of the Telecom Regulatory Authority of India Act, 1997 on the licensing framework for satellite based mobile television service.
- Earmarking of carriers in the UHF Band V (from 585 MHz – 806 MHz) for terrestrial mode of mobile television transmission has been recommended. A detailed exercise for earmarking of specific frequency bands may be carried out by the Ministry of Information & Broadcasting in consultation with Wireless Planning and Co-ordination wing of Department of Telecommunications for terrestrial mode of transmission.
- Apart from Doordarshan, private operators may be assigned at least 1 slot of 8 MHz each for mobile TV operation using terrestrial systems.
- The licenses for mobile television services (for terrestrial systems) should be granted through a Closed Tender System on the basis of One Time Entry Fees (OTEF) quoted by the bidders and the reserve OTEF for a particular license area should be 50% of the highest financial bid submitted for that particular license area.
- Every applicant and its related entities should be allowed to bid for only one license per service area in the first phase of mobile television licensing.
- Allocation of spectrum to mobile television licensees should be automatic for successful bidders and should not require any further selection process. Grant of mobile television license should entitle a licensee for allocation of 8 MHz spectrum only for terrestrial transmission, irrespective of technology and standards used.
- A mobile TV license may be made mandatory for any telecom licensees including UASL/ CMTS licensees, if such licensees wish to use broadcasting technologies for offering mobile television services.

Licensing

- The detailed methodology for grant of license through Closed Tender System on the basis of One Time Entry Fees (OTEF) quoted by the bidders should be broadly based on the bidding process followed for licensing (Phase-II) of Private FM Radio stations. However, the reserve OTEF for a particular license area should be 50% of the highest financial bid submitted for that particular license area.

- A state should be the license area for a mobile television terrestrial service license. Some of the smaller states can be combined to form an appropriate license area in order to enable financially and operationally viable model.
- The general disqualifications which have been adopted for Private FM Radio may be used for mobile television service also.
- Minimum net worth requirement of Rs. 3 Crores for each service area in terrestrial mobile television licenses should be laid down for being eligible to participate in the licensing process.
- The composite foreign investment limit including FDI of 74% for mobile television service has been recommended by the TRAI.
- The tenure of mobile television licenses should be for 10 years. The tenure of the license should be automatically extended for a further period of 10 years at the option of the licensee with payment of 100% of One Time Entry Fee (OTEF) paid by the latest licensee to acquire the mobile television license for that service area.
- The license fee should be charged at 4% of Gross Revenue for each year or @ 10% of the Reserve One Time Entry Fee limit for the concerned license area, whichever is higher.
- For the purpose of license fee and other levies, the UASL/ CMTS licensees (including Mahanagar Telephone Nigam Ltd. and Bharat Sanchar Nigam Ltd.) providing mobile television services using their existing network and spectrum will have to pay all levies and fees required to be paid for offering any service permitted under the said license.
- The roll out obligations should be secured through a Performance Bank Guarantee. The licensees should be required to pay liquidated damages @ 1% of the Performance Bank Guarantee for delay of each week or part of the week in commencement of the mobile television service beyond the first eighteen months, but within a period of two and a half years after the date of allocation of spectrum, subject to a maximum of 50% of the Performance Bank Guarantee.
- Once a licensee commences the mobile television service (maximum within a period of two and a half years from the date of allocation of spectrum), 50% of the Performance Bank Guarantee should be returned after receiving payments towards the liquidated damages, if any.
- The mobile television licensees having statewide licenses (for terrestrial systems) should be required to furnish a Performance Bank Guarantee of Rs. 2 Crores for each license area.
- Any mobile television licensee should not allow any broadcasting company or group of broadcasting companies to collectively hold or own more than 20% of the total paid up equity in its company at any time during the License period. Simultaneously, the mobile television licensee should not hold or own more than 20% equity share in a broadcasting company. Further, any entity or person (other than a financial institution) holding more than 20% equity in a mobile television license should not hold more than 20% equity in any other broadcasting company or broadcasting companies and vice-versa. However, there would not be any restriction on equity holdings between a mobile television licensee and a DTH licensee or a HITS licensee or a MSO/cable operator company.

Transmission Regulations

- In regard to transmission of channels from broadcasters who have received up-linking/ down-linking permission from the Government of India (Ministry of Information and Broadcasting), such channels will be transmitted by mobile TV licensees in exactly the same form.
- In case of contents other than above stated TV channels from broadcasters, such mobile TV licensee shall be responsible for observing program code and advertisement code and such program code and advertisement code shall be the same as provided in Cable Television Network (Regulation) Act 1995 and Rules made thereunder
- The mobile TV licensees should carry only those news channels that are permitted by the Ministry of Information & Broadcasting.
- Any violation of prevailing Acts/ Rules/ guidelines relating to content by UASL/ CMTS licensees (including Mahanagar Telephone Nigam Ltd. and Bharat Sanchar Nigam Ltd.) providing mobile TV service as part of UASL/ CMTS license shall be reported to DoT by Ministry of Information & Broadcasting. The decision of the Ministry of Information & Broadcasting regarding violation of the law/ direction/ guidelines in respect to content shall be final and DOT will take further follow up action in time bound manner.

TRAI Recommendations on Restructuring of Cable TV Services, July 2008

In July 2008 TRAI issued draft recommendations relating to the restructuring of Cable TV services in order to “ensure effective licensing compliance, attract investment, facilitate new value added services and encourage digitisation.” It provided a deadline of only a week for comments on the draft.

The most significant recommendations propose the replacement of the present system of registration for Local Cable TV operators (LCOs) with a licensing framework, and the creation of a separate licensing provision for Multi-System Operators (MSOs), thus recognising them as separate entities from local cable TV operators.

The recommendations also include changes in the licensing authorities, the geographical boundaries of service areas permitted under such licenses, the duration of licenses, the documents to be submitted along with applications for licenses, the entry fee and administrative cess to be levied, the time frame for the grant of licenses, procedures for renewal as well as termination/cancellation/suspension of licenses, mechanisms for the redressal of subscriber complaints, responsibility for violations of rules and regulations relating to content, and technology (e.g., digitisation vs. analog transmission).

The 154-page document includes a preface and introduction that provides a useful condensed history of the advent and growth of cable television in India, with the latest data available on the subject.

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NB Last updated in July 2008.