Date: August 12, 2013

Mr. Wasi Ahmad, Advisor (B&CS),
Telecom Regulatory Authority of India,
Mahanagar Doorsanchar Bhawan,
Jawahar Lal Nehru Marg,
New Delhi – 110002

Dear Sir:

Sub: ENIL response to TRAI consultation paper on FDI in broadcasting sector in India

At the outset, we compliment you for bringing out such a lucid and enlightening consulting paper on FDI in broadcasting! It is the thoroughness of your preparations that makes industry look up to the TRAI.

While this note details our position with respect to FDI in FM radio sector, the summary of our recommendation is as follows: **FDI limit should be increased to 49% through automatic route. The limit should be the same irrespective of whether the content on the radio channel includes news and current affairs or not. In all cases, "effective control" must remain with Indians, and the onus of proving this must be with the Indian promoter.**

The detailed response is as under:

The FDI policy in the broadcasting sector needs to be guided by the following points:

1) Need for capital: As rightly highlighted in the consultancy paper, there is a likely to be a huge need for capital that the FM radio industry will face in the years to come. One major need for capital is for the license fees that need to be paid to the government *upfront* in the form of One Time Entry Fees (OTEF) for Phase 3 licenses. These fees will be determined by the auctions conducted as part of Phase

3 expansion. As per the MIB's own estimates, upfront OTEF could be as high as Rs 1700 crores in Phase 3 alone. Renewal of current Phase 2 licenses post the expiry of their current periods would require additional funds, again estimated to run into the hundreds if not thousands of crores of rupees. Further, with the government considering the launch of additional frequencies under the 400 KHz separation plan, there is bound to be a need for even more capital sometime in the not-too-distant future, again estimated to be in the hundreds if not thousands of crores of rupees. A point to be reiterated here is that the OTEF needs to be paid "upfront" – all 100% of it – unlike in telecom where the payment is staggered over several years. This will put even more burden on broadcasters.

In addition to OTEF, the FM radio sector also requires to put in substantial investments in setting up broadcasting facilities – transmission towers and associated infrastructure as well as studios facilities. On average, setting up such infrastructure for a single frequency in a single city can cost between Rs 1-6 crores, depending on the size and scale envisaged. Conservatively, one can expect investments of nearly Rs 500-750 crores in infrastructure creation if all Phase 3 licenses are successfully auctioned off in Phase 3. The 400 KHz separation linked expansion will of course, require even more funding.

Then there is further need for capital in the form of "working capital", as in all businesses. Taking just one part of working capital – credit given to advertisers and their agencies – one can factor in an additional requirement of at least 3-4 months of sales. If incremental sales are assumed at Rs 300-500 crores in the initial years, then the requirement of working capital could be of the order of Rs 100-150 crores.

Put together, the FM radio broadcasting sector could need as much as Rs 3500-4500 crores in the next few years. Radio has become the most capital intensive of all media segments, ironic considering that it is the smallest as well, with a size of just 5% of the total advertising industry. It also has no recourse to distribution revenues unlike TV and newspapers.

Given the poor financial condition of FM broadcasters, it is nearly impossible for them to participate in future expansion of FM services unless they can access capital easily. Since debt is difficult to get given poor profitability, broadcasters will have to rely on equity to fund their expansion plans. That is why foreign capital is so critical.

There is another reason why Indian broadcasters would like to avail of foreign capital. Foreign radio broadcasters – as well as foreign institutional investors – typically tend of value FM businesses more than their Indian counterparts do, probably because they have observed the sector for decades in their own countries. In contrast, FM broadcasting in India was privatized only in the year 2000; in fact, many years after the TV juggernaut rolled out all over. Till date, Indian investors are willing to bet long on TV (content and distribution), but not so in FM radio. This is why the FDI in radio broadcasting is so critical.

2) <u>Sensitivity of the sector</u>: The consultation paper rightly identifies the FM broadcasting sector sensitive in nature. With or without news and current affairs, FM broadcasting is the most sensitive – and potent – of all media sectors in many ways. It's the one medium that literally *everyone* can access – even the under-privileged – as long as they possess an ordinary mobile phone. It's available for free, unlike every other medium which needs to be "bought" by payment of subscription fees. It's the only medium that's available even during electricity breakdowns, a fact too well known in the rural – and several urban – areas. It's the medium that serves the people even when everything else is dysfunctional like in an emergency, as it did during the Mumbai floods and Delhi bomb blasts. It's the one medium that can be consumed even on the move. For all of these reasons, radio is truly unique and powerful. Surrendering the independence of such an important medium to foreign owners is surely not a good idea.

3) <u>Need for technology</u> etc? One of the advantages of attracting FDI into the country is that it brings with it new technology. But in the case of FM radio, which is essentially a content service, there is no such technology that foreign players can bring. The most substantive technological developments in the FM radio business took place many years ago, and Phase 2 broadcasters availed of these developments more than a decade back. Since then, technological developments have been mostly in studio equipment, none of which are proprietary technologies needing foreign partners. Most such equipment is available off the shelf. If radio is indeed a content business, then there is nothing that foreign players can bring that Indian players don't already know.

4) <u>Ease of attracting FDI</u>: One of the critical factors in attracting FDI into any sector is the size and scale of the sector. The bigger the sector, the easier it is to attract FDI. Another equally important factor is the ease of process. We have seen recently in the case of multi-brand retail, where the rules were so convoluted that foreign retailers have stayed away, in spite of the huge opportunity available. The government eventually has had to simplify the rules. Even now, we haven't heard of FDI rushing in. If that's true of a huge sector like retail, what can be said about a tiny sector like FM radio (private sector revenues: $200 million)? That why the rules for attracting FDI have to be extremely simple.

   If FDI is routed via the FIPB, then it's not going to be simple. For <u>one</u>, FIPB is a body that looks into foreign investments in all sectors. How much attention will it be able to give a tiny sector like FM radio? <u>Second</u>, the FIPB is only authorized to make *recommendations* on accepting foreign proposals. The final decision vests with the Finance Ministry. Such a set-up can take months and months, not something that a small foreign investor is comfortable with. <u>Third</u>, the FIPB route may be justified in sectors where there are issues of national security involved. But when the automatic route is permitted even in sensitive sectors like development of new airports and investments in the petroleum sector, then why not in FM broadcasting? <u>Fourth</u>, the automatic route is better for a sector that is already well regulated. FM Broadcasting is such a sector, where the government has full control over the entire process: from selection of a broadcaster following an auction process, approving Directors before they go onto the Boards of the broadcaster after a go ahead from the Ministry of Home Affairs (MHA), and controlling overall conduct under the Grant of Permission Agreement (GOPA). With so much regulation already in place, an automatic route would be the preferred one for the sector.

5) <u>Effective control with Indians</u>: Like we've said at the beginning, we agree with the TRAI's recommendation of 49% FDI cap in FM broadcasting. If this is the intention, then the subject of *effective control* must be dealt with strongly. The Government needs to make sure that a foreign investor who owns 49% equity in a radio broadcaster <u>does not effectively control the company</u> through clever/devious means. For example, by propping up a dummy Indian investor, who acts in concert with the foreign investor. Or by other similar means. In all such cases, even a 49% investment would give de-facto control of the company to the foreign investor, completely defeating the Government's intention. Equally, like in other media sectors, the Government must insist that all senior management personnel, including the Heads of Business (CEO and COO), Programming and Technical, are Indians. This is an *essential* condition, but not *sufficient*, since Indian managers may be made to take instructions from foreign owners. The Government, aware of this, must keep a watchful eye on whether this is happening in practice or not. At all times, the onus of proving that the control is with Indians must remain with the Indian promoter in the broadcasting company. For this, it is necessary that in case the FDI has touched 49%, the **remaining 51% must remain with a single Indian promoter**. The Government must thus specify **<u>"Up to 49% and effective Indian control"</u>** in the FDI policy announcement.

6) <u>Board representation</u>: Any foreign investor would like to have Board representation in proportion to his financial investment. With the exception of a

few sectors (like banks), extant government policy allows for such proportional representation on the Board. We believe that the same must be allowed in the FM broadcasting sector as well if FDI is to be attracted. Current policy guidelines under Phase 2, don't allow this. And as a result, there is a negligible investment from foreign broadcasters, even though FDI up to 20% is allowed. If the objective of Phase 2 policy was to liberalize foreign investment rules – by changing the "FII only" condition in Phase 1 to "all foreign investment including FDI" – then that policy has surely failed. In order to avoid such failures in the future, proportionate Board representation is a must.

Summary: In summary, we would like to state that we prefer a 49% FDI cap in FM broadcasting, provided Indian control is *effectively* maintained. The cap must be the same, whether the content of the FM service includes News & Current Affairs or not. Proportional Board representation must be permitted to the foreign investor, though critical management positions must remain with Indians. The FDI policy must be simple and attractive to foreign broadcasters; hence it must be routed via the automatic route.

We are open to any further discussions if required.

Warm regards

Prashant Panday
Executive Director & CEO
ENIL

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