



TRAI TO GIVE SUO-MOTO RECOMMENDATIONS ON LICENSE FEE

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Pursuant to the Department of Telecommunication's ("DOT") decision to replace the existing variable license fee structure with a uniform one for telecom operators, the Telecom Regulatory Authority of India ("TRAI") decided to issue *suo-moto* recommendations to the DOT in fear that such change of norms may impact the government's revenue. The uniformity in license fee was suggested by the operators to help avoid arbitrage over integrated operators allegedly loading up maximum revenues on licenses with lower fee. Presently, the operators pay between 6-10% of their annual revenue to the government as license fee, contingent upon the type of service procured. However, media sources speculate the "new" uniform fee to be 8.5% for all types of services.

PSA View – The move by DOT to have a uniform license fee will suit mobile operators that presently pay a license fee of 10% in metro regions and Circle A states of Andhra Pradesh, Gujarat, Maharashtra, Karnataka and Tamil Nadu, but will not favour operators in Circle C states of Assam, Bihar and Orissa since these operators pay a license fee of only 6% of their annual revenues. Even the long-distance operators and internet service providers pay a fee of only 6% and a uniform license fee can hamper their profits and efficiency of service. DOT will take the final call on the fee structure but is waiting for recommendations from TRAI, who presently, is also seeking inputs from industry experts through its consultation paper. The final decision is eagerly awaited.

TRAI's view sought on FDI and norms for television channels

The Information & Broadcasting ("I&B") Ministry has sought recommendations from TRAI on increasing the foreign direct investment ("FDI") limit in television channels and on amending the existing uplinking and downlinking guidelines. It is also contemplating to increase the FDI limit from 49% to 74% in the direct-to-home sector. There will be more clarity on this development in due course of time since it is still under discussion stage and no official notification has been released.

PSA View – The existing uplinking and downlinking guidelines should be amended in view of the fact that so many new television channels are being launched. If the trend continues, there is a possibility that airwaves might get jammed and ultimately hamper the process of spectrum allocation. We feel that a careful perusal of these guidelines is required to ensure that they are in sync with industry trends.

FM Radio players may be allowed to operate multiple frequencies

In sync with the liberalization policy, the I&B Ministry recently proposed to increase FDI in FM radio from the existing limit of 20% to 26%. I&B Ministry has further proposed that FM radio players may be allowed to operate multiple frequencies in the same city, provided a certain percentage of the content remains local (*percentage yet to be decided*). Limited news, which is currently allowed to the government owned stations, may also be allowed to broadcast through private radio channels, as long as the news is sourced from All India Radio relays. However, certain restrictions such as no FM radio company can own more than 15% of all stations in India shall continue to apply.

PSA View – This move will be a step ahead towards a more liberal regulatory regime and will result in a more competitive environment for the existing FM radio companies. These regulations, once affirmed, will also encourage new players to enter the industry. Broadcasting news and local information will also reduce the license fee/royalty paid for airing music since such license fee/royalty is charged on the “percentage of music used.” With more channels being launched, such regulations will certainly assist in the expansion of the industry.

Information Technology (“IT”) (Amendment) Act, 2008 (“Amendment Act”) comes into effect

By way of a notification dated October 27, 2009, Department of IT, Ministry of Commerce and IT, announced that the Amendment Act shall be implemented with full effect from October 27, 2009. Based on the UNCITRAL Model Law on E-Commerce, the IT Act, 2000 had undergone a major overhaul and the Amendment Act was passed by the Parliament in 2008 but has now been brought into effect. The Amendment Act formally introduces the concept of data protection and provides for civil and criminal liability for failure to protect personal data and information, apart from strengthening the existing criminal provisions. This Act attaches great importance to issues involving national security and empowers the Central Government to direct intermediaries (*it covers telecom/network/internet/webhosting service providers, search engines, online payment/auction sites, online-market places as well as cyber cafes*) to block websites on grounds like defence, state security and public order.

PSA View – Though with shortcomings (see our August Newsletter – <https://www.psalegal.com/pdf/E-Newsline-August-2009.pdf>), the Amendment Act provides for protecting confidential data and information by the Business Process Outsourcing (“BPO”) and IT sector, which was a long-felt need. The new provisions regarding fixing the liability of Indian BPOs should encourage greater outsourcing to India . To improve law enforcement, a police officer of the rank of an Inspector has been given the power to investigate offences committed under the IT Act, to enter public premises, to undertake search and also to make arrests. Further, the intermediaries are now obligated to preserve prescribed information for proper investigation of cyber offences. This will provide that additional sense of “security” to the outsourcing industry and other large companies that store confidential information.

By:

Neeraj Dubey

Dhruv Suri



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