

E-Auction of First Batch of Private FM Radio Phase-III Channels

Query & Response
To
Notice Inviting Applications
March 2, 2015

No. N-38014/9/2015-FM

MINISTRY OF INFORMATION & BROADCASTING
GOVERNMENT OF INDIA
20th March, 2015

Query No	Pre Bid Query	MIB Reply
1	<p>1. Clause 3.7 – Page 16 of NIA Regarding Resident Indian Directors</p> <p><u>FACTS</u></p> <p>Mr. A is a Director of XYZ Limited since last 3 years. In addition to Mr. A, there are 7 other directors of XYZ Limited who are all Indian citizens, Indian passport holders and residing in India permanently.</p> <p>Mr. A was born in India and holds a PAN issued by Income Tax Department. Mr. A is the holder of a Passport issued by the United States of America (USA). Mr. A also holds a Certificate of Registration as ‘Overseas Citizen of India’ since last 5 years. He has a permanent address in New Delhi, India.</p> <p>During the last 365 days, Mr. A has remained outside India for more than 182 days in connection with his employment in the US.</p> <p><u>QUERY</u></p> <p>Keeping in view the above facts, would Mr. A (who is an Overseas Citizen of India) would be deemed to be a ‘Resident Indian’ and therefore, XYZ Limited would qualify in terms of Para 3.7 of the NIA dated 2nd March, 2015 which provides that <i>“All Directors on the board of directors of the Company shall be resident Indians.”</i></p>	<p>NIA is self-explanatory. No change.</p>
2	<p>Net Worth certification by Statutory auditors (Annexure 10.5 read with clause 3.4.4)</p> <p>Can listed Companies be allowed to submit Net worth Certificate of 30 September 14 or a of later date duly certified by Statutory Auditors on the basis of Unaudited certified results as at 30 September 2014 or of a later date, filed with Stock Exchanges as required by SEBI regulations. Is such a certification enough or do we need to get complete accounts of 30th Sep’2014 audited on the line of Annual audit of accounts which is mandatory for Companies only for YE 31st March each year.</p>	<p>Statutory auditors certificate is essential.</p> <p>Statutory Auditors certificate for Net Worth based on audited financial of 30th September 2014 or any subsequent date upto date of application is required.</p> <p>For clause 3.4.4.1 “In case audited financials of 30th September 2014 or a later date are not available then statutory auditors certificate based on audited financials of 31st March, 2014 apart from</p>

		<p>limited review for half year ending on 30th September, 2014 or a later date will be required.”</p> <p>For clause 3.4.4.2 “statutory auditors certificate based on limited review for period ending on 30th September, 2014 or a later date will also be required.”</p>
3	<p>Disclosure on Loan agreement (under Clause 3.3.3 of NIA)</p> <p>Firstly, the disclosures required in respect of Loan agreements pertain to only the Radio business or for all businesses of the applicant. We have other business apart from Radio that we have been doing.</p> <p>Secondly, will this disclosure cover working capital loans, short term loans, long term loans, ECB’s, FCNR etc.</p> <p>Thirdly, these disclosures are in what form, a statement of such loans and borrowings or documentary evidence like sanction letters also need to be submitted.</p> <p>Fourthly, do the words ‘proposed to be entered into’ cover only those cases where sanction letters are issued by bank, pending disbursal or even those loans where Board approval has been taken with no further action ensued as on date of filing application. For future loans, not conceived right now, do we have to continue to inform the ministry, if yes, in what form and with what details.</p> <p>Fifthly, what do the words ‘Any subsequent changes in these’ specify. Is it only a change in terms and conditions of loans or also a drawl or repayment or a charge creation, hedging etc. Does this disclosure have to be provided during entire term of licence.</p>	<p>Firstly- Disclosures on Shareholders Agreements and Loan Agreements will cover all the businesses of the applicant company and such other Agreements proposed to be entered upto the date of application.</p> <p>Secondly- Yes.</p> <p>Thirdly- Statement form, Yes, documentary evidence like sanction letter also need to be submitted.</p> <p>Fourthly- Yes, for future loans, it will be covered under GOPA.</p> <p>Fifthly- Permission holders will be governed by terms of GOPA.</p>
4	<p>DSC (Clause 6.1.2 of NIA)</p> <p>Kindly specify whether the Applicant Company has to obtain an individual-type DSC or a company-type DSC, since both types of DSC can be obtained in the Authorized Signatory’s name.</p> <p>Also, during the e-Auction, can we use 2 DSC belonging to either Primary Authorized Personnel and Secondary Authorized person (now allowed under NIA for liaison etc)</p>	<p>The Applicant has to obtain Company Type of Class-III DSC.</p> <p>While the Bidders may acquire two DSCs well in advance to avoid any risk, during Auction, the bidder can use only One DSC for the Bidding Purpose.</p> <p>In case the primary bidder is</p>

		not available during the Auction then Bidder has to request MIB for the change of DSC, once MIB approves the change request the Auction Administrator will reset the DSC accordingly.
5	<p>Note 4 to Clause 3.2.1</p> <p>NIA Guideline The terms “Same Management”, ‘Subsidiary Company’ and ‘Holding Company’ shall have the same meaning as assigned to them under Section 4 of the Companies Act, 1956 and Section 2 of the Companies Act, 2013.</p> <p>Query i) It is requested to clarify from where should we derive the meaning of the term ‘Same Management’ as Section 4 of the Companies Act, 1956 and Section 2 of the Companies Act, 2013 does not define the same? (ii) Should the definition of “Same Management”, as given in Section 4, Central Excise Act, 1944 (as amended through Clause 129 of Finance Bill, 2012), may be used, since no other operable act or clause defines the same.</p>	As per Central Excise Act, 1944 as amended.
6	<p>Note 5 to Clause 3.2.1</p> <p>NIA Guideline The terms “Inter Connected Undertakings” shall have the same meaning as assigned to it as per the prevalent laws in India.</p> <p>Query Whether the definition of “Inter Connected Undertakings” as given in Section 4, Central Excise Act, 1944 (as amended through Clause 129 of Finance Bill, 2012), be considered for this purpose?</p>	As per Central Excise Act, 1944 as amended.
7	<p>Clause 3.5.1</p> <p>NIA Guideline The applicant company shall be required to furnish the following information: (i) Names of Directors with evidence of their commercial or managerial competence. (ii) Directorship or other executive positions held by the Directors in other companies / organizations with details of such companies / organizations with documentary evidence to support their claim</p> <p>Query (i) What could be the evidence of commercial or managerial competence of a Director? For e.g. will</p>	<p>The evidence would be bio-data of Directors with their designations and a list of projects carried out by them in brief.</p> <p>The evidence of directorship/ executive positions held in other companies would be in the form of self certification or application /information provided to Ministry of Corporate Affairs.</p>

	<p>a detailed bio-data of the individual describing the qualifications and work experience suffice? What could be the evidence of Directorship or executive position held by a director in another Company/Organisation?</p>	
8	<p>Para 15.8 in Annexure 10.4 NIA guideline</p> <p>In respect of List of projects carried out by the Company; Query Are these projects in relation to FM business or all businesses of the applicant. What value should be considered for defining as a Project, does it include capital expenditure above a certain value or all capital expenditures. These should be mentioned over what past period of time.</p>	<p>There is no specific upper limit on capital expenditure and any limit on past period.</p>
9	<p>1. Para 15.9 in Annexure 10.4 NIA Guideline</p> <p>List of projects carried out by the Directors Query Could you advise a framework to describe such projects in terms of what value, over what period of time etc.</p>	<p>Reply same as in query 8 above.</p>
10	<p>Clause 8.7.1 NIA Guideline</p> <p>Applications should meet the following requirements: b. Clause-by-clause compliance in respect of all Section of this Notice must be submitted. In case clause-by-clause compliance report is not enclosed with the application, the application may not be considered. A comment against specific clause (where compliance is asked for), “Noted or Understood” is not acceptable. An affirmative reply including “We comply” against each clause is necessary. Any document annexed supporting compliance may also be indicated therein. Query Do we need to prepare a compliance statement containing detail of compliance for each clause/sub-clause of the NIA, thereby reproducing almost the entire NIA completely, OR just a section-wise compliance statement would suffice? The latter will allow the Applicant to indicate compliance with each section/clause ref. no. without replicating the entire text under that</p>	<p>A clause-by-clause compliance statement in respect of sections I to IX of NIA is required. For this an omnibus certificate can be furnished confirming that all clauses/ sub clauses in respect of Section I to IX of NIA have been read, understood and complied with.</p>

	section/clause.	
11	<p>Clause 3.3.1 NIA Guideline It is stated that total direct and indirect foreign investment including portfolio and foreign direct investments in the Company shall not exceed 26% at the time of application and during the currency of license</p> <p>Query It is requested that MIB to clarify as what is the cut-off date for confirmation in respect of FDI and for any other confirmation/undertakings required under NIA</p>	<p>For new bidders Foreign Investment shall be limited to 26% at the time of application while for existing FM operators, who are in Phase II till the time they migrate to Phase III, it shall be limited to 20 % at the time of application.</p> <p>Existing FM operators can also raise FDI limit to 26% once migrated to Phase III.</p>
12	<p>Annexure 10.10 of NIA NIA Guideline It is stated under Clause (c) that the Company have made due enquiries to the extent reasonably possible of any entity who holds a direct or indirect material interest in the Applicant or any of its Associated Companies</p> <p>Query It is requested if MIB could clarify on what is the definition of ‘Associated Companies’</p>	<p>Please also see Amendment No. 1.</p>
13	<p>Clause 3.2.1 NIA Guideline It is stated under sub-clause (d) that the company should not be ‘Controlled by or associated with a religious body’ and under sub-clause (e) that the company should not be ‘Controlled by or associated with a political body’</p> <p>Query It is requested if MIB could clarify on the definition of ‘Associate’, as the companies Act does not define the same.</p>	<p>A company shall be deemed to be an associate of a religious or political body if such an association is established in its Memorandum & Articles of Association.</p> <p>It is further subject to examination by MHA during security clearance.</p>
14	<p>9 /3.2.1 Disqualifications As per NIA’s point 3.2.1 clause (j) regarding Disqualifications of the companies who are not eligible to apply, we would like to pose the following queries :</p> <p>A) Given the language of Clause 3.2.1, is it available to an entity that qualifies under the definition of an “Inter-Connected Undertaking” vis-a-vis an entity, which is a Permission Holder in a particular city, to apply for a license</p>	<p>Let us assume company A and B are inter-connected, and A holds a license in city X.</p> <p>Then B cannot apply for a vacant channel in city X under Batch-I, but A can apply</p>

	<p>for a frequency in the same city where the Permission Holder has an existing and subsisting license and is also applying for another license?</p> <p>For eg.</p> <p>We have two separate Companies under same management and are inter-connected i.e. M/s. Digital Radio (Delhi) Broadcasting Limited having license to operate in Delhi and M/s Digital Radio (Mumbai) Broadcasting Limited having license to operate in Mumbai. Now our query is this that can Digital Radio (Mumbai) Broadcasting Limited bid for another channel in Delhi given that Digital Radio (Delhi) Broadcasting Limited already has a subsisting license and is also bidding for another one in Delhi.</p> <p>B) Given the language of Clause 3.2.1, is it available to an entity that qualifies under the definition of an “Inter-Connected Undertaking” vis-a-vis an entity, which is a Permission Holder in a particular city, to apply for a license for a frequency in the same city where the Permission Holder has an existing and subsisting license and especially where the Permission Holder itself is not applying for another frequency?</p> <p>For eg.</p> <p>We have two separate Companies under same management and are inter-connected i.e. M/s. Digital Radio (Delhi) Broadcasting Limited having license to operate in Delhi and M/s Digital Radio (Mumbai) Broadcasting Limited having license to operate in Mumbai. Now our query is this that can Digital Radio (Mumbai) Broadcasting Limited bid for another channel in Delhi or is it open to only Digital Radio (Delhi) Broadcasting Limited to apply / bid for another station channel in Delhi.</p> <p>We are of the opinion that interconnected undertakings should be allowed to bid in other cities and we attaching herewith legal opinion obtained by us in this regard.</p>	<p>subject to city-wise cap.</p>
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15	<p>48 / 6.4</p> <p>Nationwide Overall Cap</p> <p>We note that Inter Connected Undertakings are considered part of the same bidder for the purpose of capping conditions, such as for the calculation of total channel share (<15%) cap . In order to keep this philosophy consistent, we request that for other purposes as well (including for the purpose of bidding, eligibility points and in calculation of tie breaks) Inter-Connected Undertakings be considered part of the same bidder.</p> <p>Specifically, we request that:</p> <ol style="list-style-type: none"> 1. Inter-Connected undertakings be clubbed as a single bidder for the purpose of the auction. 2. Total bid amount across Inter-Connected Undertakings be considered for the purpose of tie breaks (this will automatically be taken care of, if point 1 above is satisfied) <p>This has been done in all the Telecom Auctions (eg. Vodafone) and hence a past precedent does exist</p>	<p>Not Accepted</p> <p>Note(1) under clause 8.1 of FM Phase III Policy Guidelines stipulates that “The channels allotted to the following categories of companies would be reckoned together for the purpose of calculating the total channels allocated to an entity:</p> <ol style="list-style-type: none"> (a) Subsidiary company of any applicant/allottee; (b) Holding company of any applicant/allottee; (c) Companies with the Same Management as that of applicant/allottee; (d) More than one Inter-Connected Undertaking with regard to the applicant/allottee.
16	<p>3 / 1.4.2</p> <p>Digital Signatures for Interconnected Entities</p> <p>Related to above points, can an Authorised Signatory (who is also applying for DSC) be one person for both the companies as these are inter-connected undertakings and use a common login for both the entities</p>	<p>No, for the inter-connected company, there will be separate login id, so the Different DSCs must be procured by the bidder for all inter connected companies.</p>
17	<p>14/ 3.4.4.1</p> <p>Financial Competence/Net Worth</p> <p>As per this point, every company needs to furnish audited accounts of the last three years and certificate of Net worth as on 30th Sep, 14 certified by the statutory Auditors but as per Net worth Format , (provided in annexure 10.5 on page 100) provided in NIA, its say Net Worth as per audited books of accounts.</p> <p>Please note that, this is not possible to get the books of accounts audited for the period upto 30th Sep, 14 due to the limitation of time and other constraints, it is requested to take net worth as on 31st March, 14 based on the audited accounts and we can submit an auditor’s certificate for the Net Worth as on 30th September 2014 which will mention the word “reviewed” instead of “audited” as is currently mentioned in the format</p>	<p>Same as in reply to Query 2 above.</p>

18	<p>9 / 3.2</p> <p>Disqualifications</p> <p>Please clarify with the definition of the terms</p> <ol style="list-style-type: none"> 1) “Companies under the same Management (not defined under Section 4 or Section 6 of the Companies Act 2013) , 2) ‘Inter Connected Undertaking’ (the NIA just mentions “as per prevalent laws in India”) <p>‘Non Resident Indian (no definition provided in the NIA)</p>	<p>Same as in reply to Query 5.</p> <p>Same as in reply to Query 6.</p> <p>Same as in reply to Query 1.</p>
19	<p>46 / Note</p> <p>Each qualified bidder can access the EAS from a maximum of four (4) different Public Static IP addresses</p> <p>Query</p> <p>Currently the DSCs are issued in an e-token, which cannot be copied to any other e-token. If there is any issue of Internet connectivity/ Power breakdown at our office during the auction process, we need to take the e-token physically to another location.</p> <p>Will the auction be paused for such time?</p> <p>If we submit the details of four (4) different IP addresses of different locations/ cities to avoid any hassles during the auction process, we will not be in a position to share the DSCs at the 4 locations.</p> <p>We request MIB to provide four different user-id’s with separate set of DSC for each of the user to access the EAS</p>	<p>Each applicant will be provided one set of login id and password for accessing EAS. As for the precaution, the bidder may procure two DSCs well in advance to avoid any risk of breakdown in internet connectivity.</p> <p>During Auction, the bidder can use only One DSC for the Bidding Purpose.</p> <p>In case the primary bidder is not available during the Auction then Bidder has to request MIB for the change of DSC, once MIB approves the change request the Auction Administrator will reset the DSC accordingly.</p>
20	<p>62 / 6.6.6.2</p> <p>Only those Bidders who have submitted their bids for the city(s) at the Clock Round Price of the Current Clock Round will be considered for ranking for the respective city(s) at the end of this particular Clock Round.</p> <p>64 / 6.6.6.3</p> <p>In the case where the excess demand at the Clock Round Price of the Current Clock Round is negative, the Provisional Winning Bidders from the immediate previous Round will be considered</p> <p>QUERY</p> <p>There is contradiction in both the clauses. While 6.6.6.2 states that only bidders who have submitted their bids at the Clock Round Price of Current Clock Round will be considered, Clause 6.6.6.3 states that in case of Negative Demand, the Provisional Winning</p>	<p>In the current round the rank will be generated for those bidders who had submitted their bid at current clock round price and channels will be allocated as per the order by the rank and capping criteria.</p> <p>There will be two cases in this context:</p> <ol style="list-style-type: none"> 1. When excess demand is negative: - System will get the provisional winning bidders as per the clause 6.6.6.3. 2. if excess demand is zero or

	<p>Bidders from immediate previous round will be considered.</p> <p>Also, there is no mention the order in which the Provisional Winning Bidders from previous rounds would be considered.</p>	<p>greater than zero :- it may be possible that all channels put on auction are not allocated to bidders of current round due to their national cap then also system will get the provisional winning bidders from previous round and make them the provisional winning bidder in current round.</p> <p>The provisional winning bidders (excluding the provisional winning bidders who have participated in current clock round) will be considered for allocation in order of their ranking.</p> <p>Also see Table A enclosed.</p>
21	<p>62 / 6.6.6</p> <p>Ranking of Bidders</p> <p>Assuming there are two bidders, A & B, who are ranked 1 & 2 respectively in Mumbai at the end of Clock Round R. If the bidders do not revise their bids in Clock Round R+1 in Mumbai, can their ranking order change in any circumstances?</p>	<p>If bidder A & B do not revise their bids in Clock round R+1 in Mumbai</p> <p>1) Case I where bidder has submitted his bid as “No”. there are two sub cases in this scenario</p> <ol style="list-style-type: none"> 1. No other bidder has participated in Mumbai in R+1 :- the order of their rank will remain unchanged. 2. one or more than one bidder has participated in Mumbai in Round R+1 :- the Rank may change as per the ranking rule and national cap of the bidder <p>2) Case II where bidder has submitted his bid as “Yes”.</p> <p>The Rank may change as per the ranking rule and national cap of the bidder.</p>
22	<p>68 / 6.6.9.4</p> <p>Number of Channels – Depending on the capping rule</p> <p>QUERY</p> <p>We understand that the system will have the necessary validation to ensure that the bidder doesn’t submit a bid which is beyond any of the capping criteria’s.</p> <p>If NO, this is going to be a huge burden on the bidder</p>	<p>In EAS, the validation will be applied as per capping rules.</p>

	to calculate this during the bidding process. If YES, the point in the below query is contradictory.	
23	<p>65 / 6.6.6.5 (C1)</p> <p>It is important to note that if any of the bidders' holding of provisional winning channels exceeds the Nationwide 15% cap, in which case, the next ranked bidder in that order will be considered for the allotment of Provisional Winning Channels</p> <p>QUERY Won't the System have the required check to ensure that the bidder doesn't exceed the cap while bidding?</p> <p>If not, then this will be an additional burden to check for this criteria whenever a bid is submitted for each of the Cities.</p> <p>Request MIB to ensure the automation and validation of the Overall Cap through the EAS.</p>	<p>Though the EAS allows bidders to bid in each round for more channels than the prescribed national cap of 15%, the system will allocate channels only for the top 15% channels in terms of their highest values in descending order.</p>
24	<p>61 / 6.6.5.7</p> <p>The timing of these steps in the Activity Requirement will be determined by the Auction Administrator depending on the extent of overall bidding activity in the Auction process</p> <p>QUERY What is the criterion of the bidding activity on the basis of which the AAR would be increased from 80% to 90% and subsequently to 100%?</p>	<p>NIA is self-explanatory.</p>
25	<p>71 / 6.6.9.16 (d)</p> <p>Grant one or more Bidders additional Extension Budget</p> <p>QUERY Will there be any basis on how much additional extension budget would be granted to the bidders or would it be random allotment?</p> <p>Request MIB to explain this process in detail as this will be very important in the case of exigencies like Power failure, internet connectivity etc.</p>	<p>Additional 60 Minute extension budget may be provided to one or more bidders at a time.</p> <p>Please refer clause 6.6.9.16 also.</p>
26	<p>71 / 6.6.10</p> <p>Information Policy</p> <p>In what format, would the data as mentioned in 6.6.10.2, 6.6.10.3, 6.6.10.4, and 6.6.10.5, be made available to the bidders?</p> <p>Request MIB to provide such data in excel format for our own internal analysis & study during the bidding</p>	<p>In the Report Section of the bidder login Id. The bidder will be able to view and download the Information mentioned in 6.6.10.2, 6.6.10.3, 6.6.10.4, 6.6.10.5 in</p>

	process	excel format.
27	<p>23 / 4.6.3</p> <p>Programme Content</p> <p>For operators running multiple channels in a market, some of the channels may be led by international content. Please clarify that 50% of the programming doesn't mean that 50% of the content has to be produced in India – content can be international but the programme production has to be done in India</p>	NIA is self-explanatory.
28	<p>81 / 8.7.1 b</p> <p>Clause-by-clause compliance in respect of all Section of this Notice must be submitted. In case clause-by-clause compliance report is not enclosed with the application, the application may not be considered. A comment against specific clause (where compliance is asked for), “Noted or Understood” is not acceptable. An affirmative reply including “We comply” against each clause is necessary. Any document annexed supporting compliance may also be indicated therein.</p> <p>QUERY</p> <p>Request MIB to share a format for clause-by-clause compliance report to be included with the application.</p>	Same as in reply to Query 10.
29	<p>Regarding definition of the term “Same Management”, referred to in Sec 3.2.1 of NIA.</p> <p>NIA Reference:</p> <p>As per Note 4, Sec. 3.2 of NIA, MIB states that “<i>The terms ‘Same Management’, ‘Subsidiary Company’ and ‘Holding Company’ shall have the same meaning as assigned to them under Section 4 of the Companies Act, 1956 and Section 2 of the Companies Act, 2013.</i>”</p> <p>However, the aforementioned Sections of Companies Act, 1956 and Companies Act, 2013 do not refer to the definition of the term “Same Management”. It should be noted that Section 370(1b) of Companies Act, 1956 defines the term “Same Management”. However, as per footnote 6 in the Act, “<i>Nothing contained in this section shall apply to a company on and after the commencement of the Companies (Amendment) Act, 1999</i>”. It is also worth mentioning that “Same Management” is defined in Clause 129, Finance Bill, 2012-13. However, both these definitions present considerable differences in language.</p> <p>Question:</p> <p>(i) It is requested that the precise definition of “Same Management” to be used be clarified by the MIB, as neither Section 4 of Companies Act, 1956 nor Section 2 of Companies Act, 2013, both referred to in the NIA, define the term.</p>	Same as Query 5.

	(ii) Clarification is also requested regarding whether the definition of “Same Management”, as defined in Clause 129 of Finance Bill, 2012, may be used, since no other operable act or clause defines the same.	
30	<p>Regarding definition of the term “inter-connected undertaking”, referred to in Sec 3.2.1 of NIA.</p> <p>NIA Reference: As per Note 5, Sec. 3.2.1 of NIA, MIB states that “<i>The terms ‘Inter Connected Undertakings’ shall have the same meaning as assigned to it as per the prevalent laws in India.</i>” As per Sec. 4, Central Excise Act, 1944 (as amended through Clause 129 of Finance Bill, 2012) the term “inter-connected undertaking” is defined.</p> <p>Question: (i) It is requested that MIB clarify whether the definition of “inter-connected undertakings” as given in Clause 129 of Section 4, Finance Bill, 2012, may be used in reference to the “<i>prevalent laws in India</i>”, as specified in Sec 3.2.1 of NIA.</p>	Same as Query 6.
31	<p>Regarding Details of the Directors/other executives, referred to in Section 3.5.1 and Annexure 10.4 of NIA.</p> <p>NIA Reference: As per Section 3.5.1, and point 15.10 of Annexure 10.4, the applicant company has to provide “<i>Directorship or other executive positions held by the Directors in other companies/organizations with details of such companies/organizations with documentary evidence to support their claim</i>”.</p> <p>Question: (i) Clarification is requested regarding what “details” of such companies are to be provided where the Directors/Executives hold a management position, such as registered address, contact telephone/email etc. (ii) Clarification is requested regarding what management positions are to be included under “other executive positions”, such as CEO/CFO/MD/Heads of Marketing and Business, etc. (iii) Clarification is requested regarding what “documentary evidence” is to be submitted to prove the individual’s management position in other companies/organizations. Will an individual’s bio data signed by the individual suffice?</p>	Same as in reply to Query 7 above.
32	Regarding Compliance Statement restricting Applicant Company to have all Directors, key executives and head of channel to be resident Indian.	No change in NIA conditions.

	<p>NIA Reference: As per Section 3.7 of NIA, “<i>All Directors on the Board of Directors of the Company, all key executives, CEO known by any designation, Head of the channel shall be resident Indians.</i>” Moreover, it is mentioned in Annexure 10.4 that Compliance Statement for all previous clauses, including Section 3.7, be submitted by the applicant during submission of Application. It is also mentioned in Section 3.8 of NIA that “<i>The company shall take prior permission of the Government before effecting any change in the Board of Directors.</i>” Also, it is mentioned in Section 3.3.1 that Foreign Investment up to 26% is allowed.</p> <p>Question: (i) For an applicant with some Foreign Investment (less than 26%), it is natural for the foreign investors to place one independent director on the Board of the company. In this case, that Director may not be a resident Indian. It is requested that MIB allow one Independent Director of foreign nationality/not a resident Indian, since Section 3.3 allows for up to 26% of Foreign Investment.</p>	
33	<p>Definition of “projects” in Clauses 15.8 and 15.9 of Annexure 10.4. NIA Reference: As per Clauses 15.8 and 15.9 in Annexure 10.4 under the title of “List of Supporting Documents to be Attached”, it is stated that the Applicant Company submit “<i>List of projects carried out by the Company</i>” and “<i>List of the projects carried out by the Directors</i>”.</p> <p>Question: (i) It is requested that MIB clarify what it means by the term “projects” under Clauses 15.8 and 15.9 of Annexure 10.4, as these terms are not defined anywhere in the Information Memorandum or the NIA. It is requested that MIB clearly specify what subjects are to be addressed while submitting a list of projects, since there are thousands of minor/major projects undertaken in the company across the country. (ii) It is requested that MIB clarify whether the term “projects” is to be applied only to the</p>	NIA is self-explanatory.
34	<p>Format of Compliance Statement mentioned in Annexure 10.4 of NIA. NIA Reference: As per Clause 15.12 of Annexure 10.4 in the NIA, it is stated that the Applicant Company provide a “<i>Compliance statement of Sections I, II, III, IV, V, VI,</i></p>	Same as in reply to Query 10 above.

	<p>VII, VIII, and IX”, where the respective sections are those of the NIA. Moreover, it is mentioned in subpoint ‘b’ of Section 8.7.1 that “<i>Clause-by-clause compliance in respect of all Section of this Notice must be submitted.</i>” and that “<i>An affirmative reply including “We comply” against each clause is necessary.</i>”</p> <p>Question:</p> <p>(i) It is requested that MIB clarify whether every individual clause in the aforementioned sections of the NIA has to be reproduced in its entirety, thereby reproducing the NIA entirely, or if the Compliance Statement can only reference the respective section/clause number, and indicate whether the Applicant complies. The latter will allow the Applicant to indicate compliance with each section/clause without replicating the entire text under that section/clause.</p>	
35	<p>Explanation of term “<i>Loan Agreements and such other Agreements that are finalized or are proposed to be entered into</i>” as per Section 3.3.3 of NIA.</p> <p>NIA Reference:</p> <p>As per Section 3.3.3 of NIA, the Applicant Company has to “<i>make full disclosure, at the time of application, of Shareholders Agreements, Loan Agreements and such other Agreements that are finalized or are proposed to be entered into. Any subsequent changes in these would be disclosed to the Ministry of Information and Broadcasting, within 15 days of any changes, having a bearing on the foregoing Agreements.</i>”</p> <p>Question:</p> <p>(i) Clarification is sought regarding what kinds of loan agreements are to be submitted, since the Applicant Company may possess or may propose to enter into hundreds of loan agreements across India.</p> <p>(ii) It is requested that MIB specify</p>	Same as in reply to Query 3 above.
36	<p>Regarding Submission of Net Worth Certificate certified by Statutory Auditor, as per Section 3.4 of NIA.</p> <p>NIA Reference:</p> <p>As per Section 3.4.4.1 of NIA, the Applicant Company will furnish its “<i>net worth as on 30th September, 2014 or any date subsequent thereto up to the date of submission of the application, certified by the statutory auditors, to support its claim of financial competence.</i>”</p> <p>Question:</p> <p>(i) Clarification is requested regarding whether a limited review by the Statutory Auditor is acceptable,</p>	Same as in reply to Query 2 above.

	<p>since the changes to the IM were made only recently, after conducting of the Pre-Bid Conference on 28th January 2015, and conducting a complete audit of the company within this time-frame is not feasible.</p>	
<p>37</p>	<p>Regarding definition of Excess Demand, as provided in Section 6.6.7.2 of NIA. NIA Reference: As per Section 6.6.7.2 of NIA, which defines Excess Demand as the difference between “<i>the total number of Channels for which Bids received in a particular City at a price equal to the Clock Round price set in the last completed Clock Round</i>” and “<i>the number of Channels put up for auction in that City</i>”.</p> <p>Question: (i) It is requested that MIB clarify what the phrase “<i>the total number of Channels for which Bids received in a particular City at a price equal to the Clock Round price set in the last completed Clock Round</i>” means, since ‘total number of channels’ would imply that the Excess Demand would never exceed 0.</p> <p>For example: Case (a) - If City A has N channels, and in Clock Round R, there are M bids on (N-1) channels and 0 bids on one channel, then the total number of Channels for which bids have been received in City A equals (N-1), since one channel has not received any bids. Therefore, as per this definition, Excess Demand = (N-1) – N = -1. Case (b) – If City A has N channels, and in Clock Round R, there are a total of M bids on all N channels, then the total number of Channels for which bids have been received in City A equals N, since all channels have received bids. Therefore, as per this definition, Excess Demand = N – N = 0. In this way, the total number of Channels for which bids have been received in a particular round can never exceed the number of channels, and hence Excess Demand will always be less than or equal to ZERO, which is not compatible with the practical notion of Excess Demand. It is likely that the term in parentheses actually means “total number of bids received in a particular City”, i.e. Excess Demand = M – N. In this case, it is requested that MIB amend/clarify the corresponding language.</p>	<p>NIA is self explanatory. Also see Table A, annexed.</p>

38	<p>Regarding definition of Aggregate Demand, as per Section 6.6.10.2.</p> <p>Question:</p> <p>(i) As per point b of Section 6.6.10.2 of NIA, Aggregate Demand is defined to be the “<i>total number of channels for which bids have been received in the City at a value equal to the Clock Round price in the last completed Clock Round</i>”. Clarification is requested from MIB regarding this definition, since the total number of channels for which bids have been received will always be lesser than or equal to the channels being auctioned in a city. It is requested that this definition be explained using an example to clear confusion regarding the language used.</p>	Please refer Table A, annexed.
39	<p>Regarding timing of Frequency Allocation Stage</p> <p>Question:</p> <p>(i) As per section 6.7 of NIA, Frequency Allocation Stage will commence after the Channel Allocation stage is finished. However, it is not clarified whether this stage will immediately follow the Final Clock Round, or take place on a later date. It is requested that MIB clarify the timelines regarding the occurrence of the Frequency Allocation Stage post the Final Clock Round.</p>	Frequency Allocation Stage will commence on next working day after the Channel Allocation stage is finished.
40	<p>Regarding Validity of Bids of Provisional Winning Bidders post application of Nationwide 15% Cap.</p> <p>NIA Reference:</p> <p>As per point C1 of Section 6.6.6.5 of NIA, it is mentioned that for a Provisional Winning Channel which is allocated to a Provisional Winning Bidder, in the event of his/her exceeding the Nationwide 15% Cap, the Channel will be allocated to the next highest-ranked bidder.</p> <p>Question:</p> <p>(i) As per point C1 of Section 6.6.6.5, it is not clarified whether a Provisional Winning Bid made by a bidder, for which the bidder exceeds his/her 15% Cap and therefore is not counted as a Provisional Winning Bidder (PWB), is still counted as a valid bid, since that bid violates the Rules of the e-auction, namely the Nationwide 15% Cap Rule (Section 6.4). Clarification regarding the validity of this bid is requested from MIB?</p> <p>(ii) In continuation of the above question, irrespective of whether the uncounted bid (due to 15% Cap) is valid or not, it is not clarified in the Auction Rules or the</p>	<p>All Bids submitted will be included in the calculation of Excess and Aggregate Demand.</p> <p>The bid submitted by a bidder in a clock round is instrumental in recognizing bidder’s activity in that clock round and thereby helpful in maintaining its eligibility points for next clock round.</p>

	<p>PWB Rules whether that particular bid is included in the calculation of Excess Demand and Aggregate Demand or not.</p> <p>For example, consider the case where bidder X bids in 12 Cities for a total of 12 Channels (1 Channel each), but as per 15% Capping Rule, is eligible for only 10 Channels. In the case where bidder X becomes the PWB in all 12 Channels, the rules state that only the 10 highest bids will be counted and allotted to the bidder as Provisionally Allocated Channels. It is also mentioned that in the 2 remaining (lowest) Channels, the next highest-ranked bidder will be allotted PWB status. However, it is not mentioned in the NIA whether bidder X's bids in the 2 remaining cities, say A and B, are still counted in the calculation of Excess Demand and Aggregate Demand.</p> <p>(iii) If they are counted in the calculation of Excess Demand and Aggregate Demand, these bids (due to violation of Capping Rule) will lead to Price Increments for the other bidders who are participating in the auction. It is requested to MIB to clarify that in case such a bid is considered as a valid bid, how will the PWB and Provisional winning price be determined?</p> <p>Further, this may not only be violation of the rules of the e-auction but is also tantamounts to allowing other bidders to artificially raise the prices of channels for other bidders, despite being ineligible to provisionally win that channel, i.e. allowing bidders to game/rig the auction.</p> <p>It is requested that MIB provide information regarding the validity of an uncounted bid made in such a scenario, and amend the respective Clauses in NIA, or provide additional information, to remove the chance of auction arbitrage.</p> <p>(iv) It is suggested that to remove this anomaly, the 15% Cap Rule be applied at the time of submitting bids, i.e. during each Clock Round, so that bidders may not bid for more channels than they are eligible for.</p>	
41	<p>Clarification regarding allotment of Provisional Winning Channels to Bidders.</p> <p>NIA Reference:</p> <p>As per Point b of Section 6.6.2.1, in the case where in Clock Round R, all N Channels are allotted PWBs. Then in Clock Round R+1, if there is an increment in Clock Round Price (CRP), and if the number of bids received, M, is strictly less than the number of</p>	The cases referred in the Query have been explained in Table B to F, annexed.

auctioned channels in a city, N, i.e. $M < N$, then PWBs for M channels at Provisional Winning Price of R+1 will be awarded PWB status, and for the remaining N-M Channels, highest-ranked PWBs in descending order of rank are allotted PWB status.

Question:

(i) Consider the case of City A with 3 Channels being auctioned. In Clock Round R, all 3 Channels being auctioned in a City are allotted Provisional Winning Bidders. In Clock Round R+1, the number of bids received are 2. For the third Channel, the highest-ranked PWB from Round R becomes the PWB.

Case 1: In Round R, there are 3 bidders, P1, P2 and P3, all of whom bid for and win 1 Channel each. In Round R+1, there is price increment. There are 2 new bidders in Round R+1, Q1 and Q2, and all 3 PWBs from Round R do not bid in Round R+1.

In this case, Q1 and Q2 are independent bidders, and not the same as P1, P2 and P3. Therefore, Q1 and Q2 are allotted PWB status due to their bid at higher CRP. For the third channel, P1 (say), the highest ranked bidder in that city, is awarded PWB status.

Case 2: In Round R, there were only 2 bidders, P1 and P2. P1 bid for and was PWB for 2 Channels, and P2 bid for and was PWB for 1 Channel. In Round R+1, there is a price increment, and P2 does not bid (says "No"). Q1, a new bidder, bids for 1 Channel and becomes PWB. P1, the PWB for 2 Channels in Round R, only bids for 1 Channel in Round R+1, and becomes PWB for 1 Channel. In this case, for the third channel, the PWBs from previous round, i.e. P1 and P2 are ranked.

a) If P1 has a higher rank than P2, does he become the PWB for 3rd Channel as well (in addition to 1st Channel)? Will he be double-counted, given that he is only PWB for 1 Channel in Round R+1, and was PWB for 2 Channels in Round R? This is not mentioned in NIA, and we request MIB clarification.

b) If P1, who won PWB status for 2 channels in Round R, does not choose to bid in Round R+1, and P2 bids. In this case, P2 becomes PWB for 1 Channel in R+1. There are no new bidders. For remaining 2 unbidded Channels, how will ranking of PWB proceed? Will P2 be double-counted, despite him only wanting 1 Channel? Or will P1 be considered for both Channels?

Case 3: In Round R, there were 3 bidders, P1, P2 and P3, for 1 Channel each. All three became PWBs. In Round R+1, there is a price increment.

	<p>a) P1 bids for 1 Channel, and becomes PWB as there are no new bidders, and P2/P3 do not choose to bid (say “No”). In this case, for the third channel, when PWBs from previous round are being ranked, will P1 be considered again, since he has already become PWB in new round R+1? Will he be double-counted, despite the fact that he was PWB for only 1 Channel in Round R? In other words, he only wanted 1 Channel, but will he be forced to be PWB for 2nd Channel? Please clarify, as this is not mentioned in NIA.</p> <p>b) P1 bids for 2 Channels, and becomes PWB as there are no new bidders, and P2/P3 do not choose to bid (say “No”). In this case, for the third channel, when PWBs from previous round are being ranked, will P1 be considered again, since he has already become PWB in new round R+1 for 2 Channels? Please clarify, as this is not mentioned in NIA.</p>	
42	<p>Clause 2.2 of the NIA for Phase 3 states that an applicant shall not be allowed to run more than 40% of the total channels in a particular city.</p> <p>In the scenario of a city with total channels being 9 in number. Prior to the auction, can an existing Phase 2 permission holder who indicates an option to migrate his existing frequency and also bid for the available new frequency as a part of Phase 3 in the same city, acquire a Phase 2 existing station operated by a different permission holder in the same city?</p> <p>(Both Permission Holders own frequencies which have operated for more than 5 years in Phase 2)</p>	<p>Under FM Phase-III, in any case, the city wise cap of 40% for a city subject to three different operators, rounded down to the nearest lowest whole number shall not be breached.</p> <p>The lock in condition of three years will apply for permission holders in Ph III.</p>
43	<p>This query is w.r.t Clause 4.7.7 of the NIA for Phase 3 – (a) If a Phase 3 permission holder wishes to outsource content production (as indicated in Clause 4.7.2), would this be considered as a violation of Clause 4.7.7</p>	<p>Both the clauses are self-explanatory and need no clarification.</p>
44	<p>In Clause 4.7.4 of the NIA for Phase 3, (a) What borrowing/lending arrangement would be construed to restrict management/creative discretion?</p>	<p>NIA is self-explanatory.</p>
45	<p>Clause 3.3.4 (b) of the NIA for Phase 3 indicates that the largest Indian Shareholder does not reduce below 51% for a period of 3 years from the date on which all channels held by the company are operationalized.</p> <p>Is this applicable to Phase 2 operators who migrate to Phase 3 and have been in operations for more than 3 years under Phase 2?</p>	<p>Yes.</p>

46	<p>Clause 19.1 of the Phase 2 GOPA states that “<i>The Permission Holder shall continue to meet and satisfy the Eligibility Conditions as prescribed in the Tender Document during the whole term of this Agreement.</i>”</p> <p>In the referenced Tender Document (Tender Document for FM Broadcasting Phase 2 through Private Agencies, Dt. 21/09/2005), the eligibility conditions mentioned are those for a bid applicant in Phase 2 auction and there is no mention of eligibility conditions for a Permission Holder under Phase 2.</p> <p>Does this imply that an existing Phase 2 operator who has been in operations for a period of more than 5 years, be eligible to own 2 or more stations in the same city with the approval of the MIB?</p>	NO.
47	<p>This query is with respect to the surrender of Phase 2 licenses –</p> <p>(a) Can the residual fees of the license be recoverable in the case of the license being surrendered prior to Phase 3?</p> <p>(b) Can the existing owner of the Phase 2 license sell the existing physical assets of the station and also recover its security deposits from Prasar Bharati, BECIL and other statutory regulators?</p>	<p>(a) NO.</p> <p>(b) The cases of surrender of Phase-II licenses shall be dealt with as per provisions of Phase-II GOPA. The matter of recovery of security deposits from Prasar Bharati/BECIL depends on terms and conditions of agreement signed by licensee with Prasar Bharati/BECIL.</p>
48	<p>In the clarifications provided by the MIB raised during the last pre-bid conference (Replies_to_queries_raised_after_pre-bid_meeting_held_on_28-01-2015), it had mentioned that a migration GOPA was under scrutiny and would be published in due course (Query no: 67). With respect to this please clarify the following –</p> <p>(a) When will this GOPA be published?</p> <p>(b) If a station indicates an interest to migrate to Phase 3 by 23rd March 2015, from when does the clauses mentioned in the Phase 3 GOPA be applicable to the station?</p>	<p>(a) In due course.</p> <p>(b) Once the migration GOPA is signed.</p>

49	<p>Clause 5.1.2 – Director, employees and advisers</p> <p>The bid application needs an affidavit as mentioned in Para 5.1.2 of NIA. However, no format is provided for the same. Request if you could check with the authorities if there is a specific format for the affidavit to be given the director, employees and advisers.</p>	<p>The bidder can use any Affidavit format for the Para 5.1.2 of NIA provided significance of this clause is not diluted.</p>
50	<p>Clause 8.6(b) – General Instruction</p> <p>As per the instruction, the applicant cannot marked a section as “dash” or “left blank”. The application would be treated incomplete and the Application may not be considered for further processing. Can the applicant write “Not Applicable” or write “We confirm that the same is not applicable” in the form for avoiding rejection.</p>	<p>Clause 8.6(b) of NIA states that:- If the information supplied against any item in Annexure 10.4, 10.5, 10.6, 10.7, 10.8, 10.10, and 10.11 or any other relevant sections is marked as dash or is left blank, it shall be treated as incomplete and the Application may not be considered for further processing.</p> <p>The Applicant can write so by stating reasons for same.</p>
51	<p>Clause 10.4 – sub clause (15) – List of supporting documents to be attached – We need a format or clarification on the depth of details required for each of the following:</p> <ul style="list-style-type: none"> - Sr. No. 8: Details required to be furnished under “List of projects carried out by the Company”. - Sr. No. 9: Details required to be furnished under “List of the projects carried out by the Directors”. - Sr. No. 10: Details of Management positions of the Directors in other companies/ organisations and details of these companies / organisations. - Sr. No. 11: Details required to be furnished under “List of subsidiary companies, holding companies, inter-connected companies and companies having same management as that of the applicant company”. 	<p>There is no predefined format. The list should be in brief. Please also see reply to Queries 8 and 9 above.</p>

52	Clause 10.4 – sub clause (15) - Sr. No. 12: What is the ‘Compliance Statement’ of Section I, II, III, IV, V, VI, VII, VIII and IX? This requirement is very generic. We need clarification / instruction on the specific item on which compliances need to be undertaken before the bid application is filed.	Please see Query no. 10 and reply to same.
53	Clause – 10.10. Format for Ownership Compliance Certificate- as per the format, MIB file number in para 1 is required to be inserted. Request clarification on what is the MIB file number and when was this issued?	It is the number indicated on cover page of NIA.
54	Guidelines for Local Content- What is the exact determinant for local content, does it need to be produced locally for qualification as local content?	NIA is self explanatory. Please listen to any Private FM Radio Station.
55	Timelines- Given the high number of clarifications presented by the industry players, is it likely that the process timelines might be further extended?	Not likely at all. Any extensions in Timelines will be published on website.
56	<p>1 The company intends to bid for the license in Gulbarga as mentioned in the Category C of NIA. As per the notification there is a scope of four frequencies out of which one is already running. Does it mean bidding will happen only for three frequencies.</p> <p>2. Assuming the bidding is only for 3 frequencies only three applicants make bidding then it is not understood that there will be no bidding at all.</p> <p>3. Even assuming there are three bidders for three frequencies say ex: A, B & C</p> <p>a. If the bidder A bids for the frequency for 2 crores and above the reserve price of 1,50,05,000 (one crore fifty lakhs five thousand only)</p> <p>b. The bidder B goes with a price of 1.75 crores and above the reserve price.</p> <p>c. The bidder C goes with a price of 1.75 crores and above the reserve price, does it mean all the three will get the frequency the bidder price as they have mentioned (since there are only three bidder for three frequencies)</p> <p>OR</p> <p>Does the ministry considers the top bidder of A which is in this case 2 crore and fixes the remaining two bidder for also the price of 2 crores or for the amount what the bidder B & C have bided. The question arises because all three have posted the bid on basis of there business calculation.</p> <p>Hence we seek the clarification under such circumstance will the ministry allow the bidder to</p>	<ul style="list-style-type: none"> • Only 3 channels are available for auction in Gulbarga. • The bidder have to show the willingness (Yes/ No) on the clock round price. • Kindly refer NIA Clause 6.2, 6.6.1 & 6.6.2 . • NIA is self-explanatory.

	<p>withdraw without forfeiting the EMD.</p> <p>4. Assuming in Gulbarga there four bidder or more for three frequencies will the ministry allow the bids on the basis of bid amount of each of everyone of them or even after the bid is finalized whether the 2nd & 3rd bidders will be forced to match the highest bidder</p>	
57	<p>Regrading security clearance, security clearance along with the Application is given at Annexure 10.8.</p> <p>If no one director of company have passport, It is necessary to have passport or it is fine with common certificate like Pan Card, Voter Id, Adhaar Card, Ration Card.</p>	<p>In absence of a Passport, PAN card/Aadhaar Card/Voter ID card will be acceptable. But if passport is available, details about same must be provided.</p>
58	<p>1. In Cochin, 1 channel is available for auction. Frequency shown in Information Memorandum dated 21/01/2015 is 92.7 (see page 82). However, frequency for Cochin shown in NIA dated 02/03/2015 are 92.7, 104, 104.8 and 107.2 (see page 88).</p> <p>Cochin and Thrissur are adjacent places resulting in interferences. Due to this, on the basis of our request, the MIB / WPC was pleased to change our frequency at Thrissur from 94.3 to 104.8 so that it does not interfere with our Cochin frequency 94.3 Now, in the NIA, you have included 104.8 in the frequency available at Cochin. In case the winner chooses 104.8 at Cochin, there will be interference with our Thrissur frequency 104.8, which will be prejudicial to the prospective winner and to us.</p> <p>We would therefore, request you to delete 104.8 from Cochin and issue amendment to the NIA.</p>	<p>Frequency of 104.8 MHz is dropped from list of available frequencies for Cochin. Please see Amendment no. 1 in this regard.</p>
59	<p>1. Para 8.7.1 (b) in NIA refers to clause-by-clause compliance (see page 81). Kindly provide format for this to ensure uniformity for all applications.</p>	<p>There is no predefined format for giving a clause-by-clause compliance. Please also see reply to Query 10.</p>
60	<p>Para 5.1.2 of NIA refers to Affidavit to be furnished regarding Advisers for not more than one bidder (See: page 99 of NIA). Kindly provide a format for this to ensure uniformity for all applications.</p>	<p>The bidder can use any Affidavit format for the clause 5.1.2 of NIA.</p>

61	<p>1. At today's pre-bid conference, a grave mistake in the auction process was pointed out by lot of participants. Under the e-auction process as per NIA, a company can bid for any number of channels irrespective of their eligibility as per the norms prescribed ie., 15% cap of the total frequencies. This will result in artificial and unethical jacking up of prices for certain frequencies by such players by bidding higher amounts knowing fully well that they are not eligible to obtain that frequency. This will convert the auction process as never ending process resulting in unjust enrichment for such scrupulous players.</p> <p>In the light of the above, we would you to review the auction process in the larger interest of the industry and the Government and to amend the auction process in such a way that once any bidder reaches his maximum cap of 15%, he must automatically go out of the auction process or in the alternative his bids received after reaching the cap of 15% shall be considered as void.</p>	<ul style="list-style-type: none"> • Refer Query no. 22 point No. 2 & Query No. 40.
62	<p>Paragraph 8.3 of the Policy on expansion of FM Radio Broadcasting Services through pvt agencies (Ph II) dated 24th September, 2008 (Ph II Policy) reads as follows-</p> <p>“ 8.3 No permission holder, whether with or without foreign investment, shall be permitted to change the ownership pattern of the company through transfer of shares of the majority shareholders/promoters to any new shareholders without the written permission of the Ministry of Information & Broadcasting, which shall not be granted for a period of five years from the date of operationalization of the permission, subject to the condition that the new shareholders conform to all the prescribed eligibility criteria. However, requests for transfer of shares for the purpose of creation of a subsidiary company, amalgamation of companies of the same group, de-merger of company etc. may be allowed within the period of five years also subject to the fulfillment of the following conditions :”</p> <p>From a reading of the above paragraph, it is clear that under the Phase II policy, a request for demerger of the company/ restructuring of a group company may be allowed by the MIB within a period of five years also</p>	<p>FM Phase-III Policy is self explanatory and needs no further clarification.</p>

	<p>from the date of Operationalization of permission. Under the Ph III Policy, paragraph 9.4 (d) in page 18 of the IM dated 21.01.2015 reads as follows-</p> <p>“(d)Any restructuring of the ompany/reorganization of FM radio permissions between different holding companies/subsidiaries/interconnected undertakings/companieswith same management may be done only with prior approval of the Ministry of Information and Broadcasting.The Ministry may consider granting such a permission only once after the submission of the last bids till a period of three years from the date on which all the channels allotted to any of the company holding permission stand operationalised undergoing restructuring, provided such a provision has not been availed of earlier. The new permission holding entities will have to conform to the prescribed eligibility criteria and will also be subject to the fulfillment of the following conditions:”</p> <p>From a reading of the above, it appears that under the Phase III Policy, for restructuring of a company/ reorganization of FM radio permissions between different holding companies/ subsidiaries/ interconnected undertakings may be done only with the prior approval of the Ministry. Further, it appears that the ministry may consider granting such a permission only after the last bids are submitted and for a period of 3 years from the date of Operationalization of all channels allotted to any company.</p> <p>Our Query Kindly confirm if our understanding that under the Phase III Policy, restructuring of a company/ reorganization of FM radio permissions between different interconnected companies may be carried out with prior approval of the Ministry. Further, please confirm that such permission may be granted by the ministry within a period of three years from the date of Operationalization of all channels allotted to any company.</p>	
63	<p>6.5 City wise Cap Every applicant shall be allowed to run not more than 40% of the total channels i.e. sum of its existing channels and the new channels, in a city subject to a minimum of three different operators in the city.</p> <p><u>Recommendation</u> The auctioneer should provide each bidder with the city-wise caps applicable to them – prior to the auction. This would minimize confusion/ scope for error once</p>	Each bidder will be able to see on its dashboard the number of channels available to it for bidding in a city.

	the auction starts	
64	<p>Clause 6.4 Nationwide Overall Cap, last paragraph The nationwide 15% cap would be applied at the time of allocation of the FM channels in each clock round i.e. if the bidder submits the bids for more channels than this prescribed cap, then EAS would allocate channels only for the top 15% channels in terms of their highest values in descending order.</p> <p><u>Clarification</u></p> <p>1. How do we interpret this rule in context of the commitment inherent in the concept of “Provisional Winning Channel” and “Provisional Winning Bidder”</p> <p>6.6.1.b By bidding in a city for a number of channels at a Clock Round Price, if the Price becomes the Winning Price and the channel(s) becomes the Winning channel(s), the Bidder is considered committed to buy the channel(s) (i.e. the Provisional Winning channels allocated as Provisional Winning Bidders)...</p> <p>6.6.1 d. Bidders will be able to switch Bids across Cities from one round to the next... (but) Provisional Winning channels cannot be switched to other Cities.</p> <p>How will the allocation of channels work – will it pick up:</p> <p><u>Option 1:</u></p> <ul style="list-style-type: none"> - Top 15% of channels in descending order of value, irrespective of PWB commitments carrying on from earlier rounds. <p><u>Option 2:</u></p> <ul style="list-style-type: none"> - First all PWBs where $ED < 0$ and where the bidders commitment to buy holds in the current round - Then balance of channels that can be allocated, subject to the 15% cap <p>The auctioneer is requested to clarify the above aspect of auction design, using an example or illustration</p>	<ul style="list-style-type: none"> • It will work as option -1.
65	<p>Clause 6.6.2 (Consequences for Provisional Winning Bidders)</p> <p>6.6.2.2 The number of channels for which a bidder can submit the bid in Clock Round R+1 would be different for the Provisional Winning Bidder in a particular city according to the conditions mentioned below:</p>	<p>NIA is self-explanatory. No change.</p>

	<p>a. If the Clock Round Price of Current Clock Round R+1, is EQUAL to the Clock Round Price of previous Clock Round R (due to Excess Demand being Negative in Clock Round R) for a particular city, the bidder can bid for the balance of the maximum permitted channels, if available, in Clock Round R+1.</p> <p>b. If the Clock Round Price of Current Clock Round R+1, is GREATER than the Clock Round Price of previous Clock Round R, (due to Excess Demand being Positive in Clock Round R) for a particular City, the bidder can bid for the channels based on the capping rules.</p> <p><u>Recommendation</u> Please confirm that in point a. the line should read – “the bidder can bid for the balance of the permitted channels based on the capping rules, if available”. The clause should be amended accordingly</p>	
66	<p>Clause 6.6.6 Ranking of Bidders and Provisional Winning Bidders</p> <p>6.6.6.2. C. Tie Rule III - Where there is a tie according to the first two tie rules, ranking will be in descending order according to the total value of all Channels for which bid has been submitted by the bidder for all the Cities at the Current Clock Round Price;</p> <p><u>Clarification</u> If we are provisional winning bidders in a particular city in a round R, and the excess demand was negative - are we considered as default bidders in R+1 and this would get counted in the “value” for the purpose of Tie Rule III</p>	No, it will not be counted.
67	<p>6.6.10.2 – Information provided at the end of each clock round... aggregate demand and excess demand information will be provided</p> <p><u>Recommendation</u></p> <p>1. In addition to this, number of bids for that round should be provided as is the case in the telecom auctions.</p> <ul style="list-style-type: none"> • Auctioneer is also requested to illustrate how # of bids will be calculated, using an example: <ul style="list-style-type: none"> – Is the number of bids = number of bidders – Is the number of bids = aggregate bids (# of channels) of bidders who have increased their bid in that round (telecom equivalent) 	Total number of selections made in a city at current clock round price.

68	<p>Letter dated 24th February 2015, F.No.N-38014/4/2015-FM</p> <ul style="list-style-type: none"> The letter states that operators will indicate the frequencies they wish to surrender, prior to the auction <p><u>Recommendation</u> The 15% cap should be calculated net of the surrendered frequencies – the auctioneer should take note of this and ensure calculations are done accordingly</p>	The letter does not state so.
69	<p>The instructions contained in page 54 (6.6.3.3) and page 56 (6.6.4.4) create a confusion. How one can ‘make smaller EMDs’ (page-56) when the amount is fixed?</p> <p>Now in page 54, it is said ‘the total value of the EMD of the number of channels selected should be equal to or less than the EMD deposited by the bidder’.</p> <p>Does it mean a bidder bidding for more than one channel and in different cities will have more eligibility points than a single bidder bidding for one channel in one city? Does it mean such multiple bidders can have an edge over smaller bidders in terms of eligibility? Eligibility is linked to EMD.</p>	The eligibility point & EMD per channels are fixed as per the Annexure 10.12. The bidder who bids for the channels in a city the EMD & Eligibility point associated with the Channels will be deducted from the initial Eligibility Point or EMD submitted by the bidder or Eligibility point that the bidder carried forward in the various clock rounds. Kindly refer clause 6.6.5.
70	<p><u>15% national cap</u>: As highlighted yesterday, the national cap being imposed at a batch level is a major area of discontentment in the industry. We feel that MIB has misinterpreted the Phase-3 policy. The 15% cap was to be applied at a composite level, aggregated at the end of Phase-3 auction completion. As a result of this batch-level cap, big players like Red FM and Big FM will probably have to surrender licenses just to stay in line with policy. Other players like ENIL will struggle to stay within the limit, and will be forced to curtail our participation in smaller towns. This will lead to auctions failing in many smaller towns. If this happens, it will further reduce the cap, as the 15% is to be applied over “allotted” frequencies. We thus urge you to consider any of the following solutions:</p> <ol style="list-style-type: none"> Waive off 15% cap at batch level. Apply only at end of all Phase-3 auctions. Declare all frequencies won above the 15% cap as “provisional” only. No frequencies will be allotted for these at the end of 1st batch for these. When the next batch of auctions are completed, and when the cap rises, then these provisional frequencies will be made final and licenses will be issued. This was done in 	<p>(a) Not accepted.</p> <p>(b) Not accepted.</p> <p>(c) At this stage 15% cap would apply on 243 existing licenses plus 135 licenses on offer under Batch-I excluding channels in NE, J&K & Island territories.</p>

	<p>BWA auctions in 2010 when winners were declared first, and frequencies given many months later. This is also happening in the current telecom auctions, where provisional winners will be declared soon, but spectrum will be allotted only after the final ruling of the Hon'ble SC.</p> <p>c. At the very minimum, the 15% should not apply on "allotted" frequencies in the 1st batch, but on the entire 135 frequencies. As someone in the audience said, this is the norm in telecom auctions.</p>	
71	<p><u>M&A:</u> We have truly struggled to understand the ministry's objections to the several ideas given by us. But I would like to repeat a few ideas here. If required, a specific cabinet approval should be taken:</p> <p>a. In yesterday's meeting, the IEM explained that Phase-1 broadcasters (21 frequencies) would be given at extension beyond March 31st, only on the back of the undertaking they submitted on March 9th. The undertaking is <u>final and binding</u>. As we have said earlier, having given the undertaking, the Phase-3 has effectively kicked-in for Phase-1 broadcasters. There is nothing left in their hands to decide any longer. Whatever the migration fee, they have committed to paying it without even knowing it. Given this, we feel Phase-1 broadcasters should be allowed to own multiple frequencies from March 9th itself.</p> <p>b. If this is not possible for whatever reasons, then the MIB should push the cut-off date to after the auctions. The ministry has done this several times in the past, so this is not a new concept. The first cut-off date for migration was 25th July 2011 when the Phase-3 policy was announced. It was then changed to 31st March 2012, 30th July 2012, 31st December 2012, 30th June 2013, 31st December 2013, 30th June 2014 and then finally to 31st March 2015. If it has to be changed again to May-June 2015, what is the problem sir? Pushing the cut-off date behind will give buyers a chance to buy the stations of the sellers in the window of opportunity created around the time of signing the migration GOPA. A buyer will sign the migration GOPA first, become eligible for multiple licenses, buy the seller's company, and then sign the migration GOPA on the seller's behalf.</p>	<p>(a) Not accepted.</p> <p>(b) No change in terms and conditions of migration policy dated 21.01.2015.</p> <p>(c) Not accepted.</p>

	c. Building on point b above, if MIB feels that for Phase-1 broadcasters, the cut-off date must be March 31 st , then they can do that while keeping the cut-off date for Phase-2 broadcasters after the auctions. Again, this will allow Phase-1 broadcasters to acquire.	
72	To increase our bidding capacity, we would like to surrender a few of our Phase-2 licenses. Please indicate to us the process to do so. By when do we have to intimate you our decision, so that the auction software recognizes our new ownership position?	The surrender of existing licenses shall be governed by the terms and conditions of existing GOPA signed. However, software shall recognize the number of licenses held by an entity as on the date of submission of application by it for the first batch of Phase III auction.
73	With regard to the networth criteria, we discussed that the clause in the NIA should be modified to allow either a) audited financials as on March 31 st , 2014 or b) limited review as on Sept 30 th , 2014 or any date thereafter. Kindly inform us if our understanding is right sir.	Same as in reply to Query 2.
74	One query that we posed was if “broadcasters can extend their brand names to other unconnected broadcasters”? For example, if two small, but unconnected, broadcasters want to share a common brand name to generate synergies, would MIB permit that? Both broadcasters would retain independent control on their own programming. The extent of sharing of content would be limited to 50% or lower as prescribed in the NIA. Please let us know if this is allowed under the policy sir.	No.
75	You clarified that self-certification of true copies of audited financial statements of the last 3 years is OK. I hope our understanding is correct sir?	Yes.
76	6.4 Nationwide Overall Cap No entity shall hold permission for more than 15% of all channels allotted in the country excluding channels in the cities located in Jammu and Kashmir (J&K), North Eastern States and island Territories... <u>Recommendation</u> 1. How do we interpret “15% of all channels allotted”? Does the national cap change from round to round or is it a fixed number set before the auction? <u>It is recommended to make this a static figure. Change clause to “all channels allotted” to “all channels available”</u>	Please see reply to Query no 70 above.

Table A

	City A									
No of Channels	3									
Clock Round	10					11				
Clock Round Price	100					105				
Bidder	Bid	Channel Selected	Provisional Winning Bidder	Rank	No of Channel Allocated	Bid	Channel Selected	Provisional Winning Bidder	Rank	No of Channel Allocated
Bidder 1	Yes	1	Yes	1	1	No	0	Yes	2	1
Bidder 2	Yes	1	Yes	2	1	No	0	Yes	3	1
Bidder 3	Yes	2	Yes	3	1	No	0			
Bidder 4	No	0	No			Yes	1	Yes	1	1
Total No. Bid Received (Aggregate Demand)	4					1				
Excess Demand	1					-2				
Provisional Winning Price	100					100				
Next Clock Round Price	105					105				

- **Examples are for illustration purposes only.**

Query 41: Table B

City A										
No of Channels	3									
Clock Round	10					11				
Clock Round Price	100					101				
Bidder	Bid	Channel Selected	Provisional Winning Bidder	Rank	No of Channel Allocated	Bid	Channel Selected	Provisional Winning Bidder	Rank	No of Channel Allocated
Bidder 1	Yes	1	Yes	1	1	No	0	Yes	3	1
Bidder 2	Yes	1	Yes	2	1	No	0			
Bidder 3	Yes	1	Yes	3	1	No	0			
Bidder 4 (Q1)	No	0	No			Yes	1	Yes	1	1
Bidder 5 (Q2)	No	0	No			Yes	1	Yes	2	1
Total No. Bid Received	3					2				
Excess Demand	0					-1				
Provisional Winning Price	100					100				
Next Clock Round Price	101					101				

- As example given in Table B in Round No. 11, there is a negative excess demand, so for remaining one channel, the system will allocate one channel to the bidder 1, who is highest ranked Provisional winning bidder in Round No. 10 and the provisional winning price for all provisional winning bidder would be 100 as per section 6.6.2.1 (b), which is lowest value among the provisional winning bidders.
- Examples are for illustration purposes only.

Query 41: Table C

City A										
No of Channels	3									
Clock Round	10					11				
Clock Round Price	100					101				
Bidder	Bid	Channel Selected	Provisional Winning Bidder	Rank	No of Channel Allocated	Bid	Channel Selected	Provisional Winning Bidder	Rank	No of Channel Allocated
Bidder 1	Yes	2	Yes	1	2	Yes	1	Yes	2	2
Bidder 2	Yes	1	Yes	2	1	No	0			
Bidder 3	No	0	No			No	0			
Bidder 4 (Q1)	No	0	No			Yes	1	Yes	1	1
Bidder 5 (Q2)	No	0	No			No	0			
Total No. Bid Received	3					2				
Excess Demand	0					-1				
Provisional Winning Price	100					100				
Next Clock Round Price	101					101				

- As per example given in above Table C, One channel will be carried forward from the previous round apart from the provisional winning bidder of the current round will be considered for allocation, so The Bidder 1 will be provisional winning bidder for 2 channels and provisional winning price would be lowest value amongst the provisional winning channels i.e. 100.
- Examples are for illustration purposes only.

Query 41 2 (b): Table D

City A										
No of Channels	3									
Clock Round	10					11				
Clock Round Price	100					101				
Bidder	Bid	Channel Selected	Provisional Winning Bidder	Rank	No of Channel Allocated	Bid	Channel Selected	Provisional Winning Bidder	Rank	No of Channel Allocated
Bidder 1	Yes	2	Yes	1	2	No	0	Yes	2	2
Bidder 2	Yes	1	Yes	2	1	Yes	1	Yes	1	1
Bidder 3	No	0	No			No	0			
Bidder 4 (Q1)	No	0	No			No	0			
Bidder 5 (Q2)	No	0	No			No	0			
Total No. Bid Received	3					1				
Excess Demand	0					-2				
Provisional Winning Price	100					100				
Next Clock Round Price	101					101				

- As per example given in above Table D, Bidder 1 who is highest ranked Provisional winning bidder in the immediate previous round apart from the provisional winning bidder of the current round will be considered for allocation would be allocated 2 channels and provisional winning price would be lowest value amongst the provisional winning channels i.e. 100.
- Examples are for illustration purposes only.

Query 41 3(a): Table E

		City A								
No of Channels	3									
Clock Round	10					11				
Clock Round Price	100					101				
Bidder	Bid	Channel Selected	Provisional Winning Bidder	Rank	No of Channel Allocated	Bid	Channel Selected	Provisional Winning Bidder	Rank	No of Channel Allocated
Bidder 1	Yes	1	Yes	1	1	Yes	1	Yes	1	1
Bidder 2	Yes	1	Yes	2	1	No	0	Yes	2	1
Bidder 3	Yes	1	Yes	3	1	No	0	Yes	3	1
Total No. Bid Received	3					1				
Excess Demand	0					-2				
Provisional Winning Price	100					100				
Next Clock Round Price	101					101				

- **As per example given in above Table E, remaining channel will be allocated to highest provisional winning bidders in immediate previous round apart from the provisional winning bidder of the current round will be considered for allocation i.e. bidder 2 & bidder 3, will get one-one channel each & provisional winning price would be lowest value amongst the provisional winning channels i.e. 100.**
- **Examples are for illustration purposes only.**

Query 41 3 (b): Table F

		City A									
No of Channels	3										
Clock Round	10					11					
Clock Round Price	100					101					
Bidder	Bid	Channel Selected	Provisional Winning Bidder	Rank	No of Channel Allocated	Bid	Channel Selected	Provisional Winning Bidder	Rank	No of Channel Allocated	
Bidder 1	Yes	1	Yes	1	1	Yes	2	Yes	1	2	
Bidder 2	Yes	1	Yes	2	1	No	0	Yes	2	1	
Bidder 3	Yes	1	Yes	3	1	No					
Total No. Bid Received	3					2					
Excess Demand	0					-1					
Provisional Winning Price	100					100					
Next Clock Round Price	101					101					

- As per example given in above Table F, for the remaining channel, highest ranked provisional winning bidder from immediate previous round apart from the provisional winning bidder of the current round will be considered for allocation i.e. Bidder 2 and provisional winning price would be lowest value amongst the provisional winning channels i.e. 100.
- Examples are for illustration purposes only.