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Total Pages 07

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Sub: Counter-comments to Consultation Paper Number 12 / 2013 dated 3.12.2013 on Migration of FM Radio Broadcasters from Phase-II to Phase-III.

Respected Sir

1. CLEAR MEDIA (INDIA) PVT LTD (CMIPL) provided its comments with nine others as per the TRAI website. CMIPL thanks TRAI for the prompt uploading of the comments, which afforded adequate time, and deliberation to prepare the counter-comments within the due date set by TRAI, i.e. by 24.12.2013.
2. CMIPL notes with great satisfaction the points of agreement within the nine other responses, which are as follows-
 - 2.1 Consensus that migrating to Phase-III is the most appropriate means to ensure continuity of broadcast;
 - 2.2 Consensus that linking the migration to Phase-II bids is the most appropriate price-discovery mechanism available.



3. CMIPL however notes the difference between the 10 responses on the MOST IMPORTANT ISSUE:
 - 3.1 Is the revenue to the Union of India (Union) an important consideration in deciding the migration fee, and should the Union expect an escalation from the last fee that was discovered in the last auction process held in 2006 OR should broadcasters expect Concessional Fee for the migration – there are major differences between the respondents on this point.
4. CMIPL will SINGULARLY focus on the issue of conflict between Concession that Many Respondents Seek versus the Union's interest in obtaining an escalation from the fees/rates discovered in the last FM Radio auction in 2006.
5. For the above objective, CMIPL has gone through the following documents related to Phase-III Policy on FM Radio:
 - 5.1 TRAI Recommendations for Phase-III dated 22.2.2008
 - 5.2 Union's Comments for Phase-III dated 18.11.2008
 - 5.3 TRAI Comments to Union for Phase-III recommendations dated 28.11.2008
6. On Page 95 Para 5.5.1 on the TRAI Recommendations for Phase-III dated 22.2.2008, TRAI quoting Clause 5.8 of Policy Guidelines for Phase-II has stated that, "*Every permission under Phase-II shall be valid for a period of ten years from the date of operationalisation of the channel. There shall be no provision for its extension and it shall automatically lapse at the end of the period and the permission holder shall have no rights whatsoever to continue to operate the channel after the date of expiry. Government at the appropriate time shall determine procedure for issue of fresh permissions and*



no concessional treatment shall be afforded to the permission holders in the allotment of channels thereafter".

7. On Page 96 Para 5.5.4, of the TRAI Recommendations for Phase-III dated 22.2.2008, the TRAI states, "*Stakeholders suggested that the Government may charge a lump sum amount at the end of the operation period of 10 years to extend it further by another 10 years. They are of the view that such sum should be small or at least the same as the bidder paid first time during bidding process*".
8. The views of the Union have been extracted from the document dated 18.11.2008, wherein on Page 18 in Para 1.11.5, the Union states that, "*Charging the same amount as OTEF even after the ten year initial period without charging an escalation therefore will not be acceptable and will not be in Government interest...*"
9. The comments of TRAI dated 28.11.2008 to the above point made by the Union on 18.11.2008 regarding charging the same amount as OTEF without an escalation is on Page 22, Para 1.11.5 is as follows, "*...latest OTEF paid by any bidder for a similar category city in the same state maybe kept as the fee for renewal*".
10. Clearly there is a policy imperative of not providing concessions to existing broadcasters. CMIPL response takes into account all past thinking in the matter whilst ensuring protection of investments made by existing broadcasters under Phase-II.
11. The license period proposed for Phase-III post effective date of migration by nine respondents is 15 years. CMIPL had suggested 5 (five) years. After



factoring in all responses, CMIPL is willing to consider a 15 (fifteen) year license period for migration.

12. Assuming the Phase-III license period is for 15 years, using the average or the highest Phase-II bid would result in granting a concession to the Phase-II permission holders. This is because Phase-II permission period was 10 years, whereas for Phase-III the permission period is likely to be set for 15 years. Therefore, the migration fee should not be such that it provides a concession to current permission holders intending to migrate to Phase-III.
13. If the migration formula implemented for Phase-III migration will result in the Union collecting revenues amounting to less than 150% of the revenues generated from the Phase-II one-time fees it would amount to concessions granted to Phase-II permission holders, which is not acceptable to the Union.
14. The 2005 policy guidelines under which permissions were granted under Phase-II clearly state that no concessions would be granted to permission holders. In its response to TRAI dated 17.12.2013 on Page 7 of 17, ENIL, one of the respondents, has also referred to the fact that no concessional treatment shall be afforded to permission holders.
15. In any case, the Association of Radio Operators of India (AROI) claims to have made an offer to the Union in October 2013 of "highest bid of Phase-II" as a fee for new licenses. ENIL states on Page 10 of 17 of its comments that *"While many members found this to be too high, it was agreed upon by everyone as a way to end the uncertainty"*. While optically this appears to protect the gross revenues collected by the Union, when viewed in light of the fact that this amount will be applied towards a 15 year future license



period as against the fact that Phase-II bids were for a 10 year license period, such an approach would result in concessional treatment being offered to existing permission holders and will not be compatible with the policy directives already documented under the Union's policy and TRAI recommendations.

16. CMIPL wishes to state on record that it is **NOT** a Member OF AROI. The views expressed by AROI are neither the views of CMIPL nor are AROI's views binding on CMIPL.
17. All the nine other responses by AROI and its Members to the TRAI are based on one of two options for determining the migration fee – either the average OTEF (plus a percentage) paid or the highest OTEF paid in Phase-II. None of the responses deal with the individual OTEF paid by each permission holder in Phase-II which has been suggested only by CMIPL, which is not a member of AROI.
18. The formula suggested by the other nine respondents is in contrast to the recommendations of the TRAI of 2008 wherein the fee for extension was to be linked to the OTEF paid by each broadcaster in the previous round of auction (in this case the auction held in 2006).
19. At an aggregate revenue collection level for the Union, CMIPL has totalled all the migration fees that would be collected for each city in A and A+ category under the various options put forth by AROI and its members. This exercise is reflected in Table 1. It is important to note from Table 1 that the Union collects the highest revenue from amongst all the proposed migration options by adopting the suggestion made by CMIPL. Further, the structural proposition of CMIPL's suggestion is fully compliant with the



policy objectives of the Union and the recommendations put forth by TRAI till date.

20. Table 1 factors in all A and A+ radio stations and which together contributed more than two-thirds of all OTEF/Migration Fee collected for Phase-II in 2006.
21. Only in the case of CM IPL suggestions (different migration fee calculated @ of 175% of OTEF paid by each member in 2006 for a 15 year Phase-III permission) all the below mentioned criteria are fulfilled:
 - 21.1 "Escalation" in collections of the Union as stated in the Union's response to TRAI dated 18.11.2008;
 - 21.2 "No concessional treatment" to Phase-II broadcasters which was part of Phase-II policy and clearly stated on 13.7.2005 (Union Policy Guidelines of Phase-II) and repeated in the TRAI recommendations dated 22.2.2008.
 - 21.3 Achievement of 2008 recommendations of TRAI which links the extension fee to the OTEF of the previous auction for each broadcaster.
22. As per CM IPL suggestion (migration fee @ 175% of amount paid for Phase-II for each broadcaster), the migration fee payable in A and A+ cities would be Rs 1365 crores, whereas the maximum payable under the best scenario proposed under any of the other nine responses (including that of AROI), the total migration fee would be Rs 1170 crores (the suggestion made by Malar Publications Limited).



CMIPL is the only broadcaster in its market of Delhi that has helped in achieving the objective as set-out in Clause 11.5 of GoPA and provided "*heterogeneous content*" since commencing broadcasting in Delhi in 2006.

This is acknowledged and well documented by ENIL on page 12 of its response to consultation paper dated 17.12.2013. CMIPL submits that the wide range of Phase-II OTEF amounts as arising from the transparent auction process held for the same reflects the belief that plurality of content cannot be achieved by forcefully co-opting all players in a market to adopt homogeneous business models that would be a natural evolution of a one-price-for-all fee model. Unilaterally imposing a common migration fee on all existing permission holders is sure to result in the Union proactively and willfully acting against the objective of '*heterogeneous content*' which is a base requirement of the radio policy.

CMIPL is at the disposal of the Authority to make any further presentations as maybe required on this very important subject.

Yours truly



Sanjay Hemady

Chief Executive Officer

CLEAR MEDIA (INDIA) PVT LTD

Attachment: Table-1

TABLE - 1 : Recommendation-wise Revenue Profile of Union of India
for 71 Radio Stations (Category A+ & A Only)

for 71 Radio Stations (Category A+ & A Only)							(in crores)			
Market	A		B		C		D		E	
	Phase-2 OTEF/ Migration Fee	Highest OTEF of Phase-2	Average OTEF plus 30%	Average OTEF plus 50%	175% of Phase-2 Individual OTEFs					
DELHI	177.82	251.36	231.19	266.76	311.19					
MUMBAI	171.28	246.40	222.68	256.94	299.74					
CHENNAI	64.90	98.16	84.34	97.32	113.58					
KOLKATA	42.40	54.99	55.11	63.59	74.20					
BANGALORE	99.38	151.20	129.22	149.10	173.92					
HYDERABAD	46.71	72.00	60.72	70.07	81.74					
JAIPUR	25.80	30.50	33.54	38.70	45.15					
PUNE	33.90	50.48	44.10	50.88	59.33					
SURAT	9.61	14.40	12.49	14.42	16.82					
AHMEDABAD	43.90	60.00	57.07	65.85	76.83					
LUCKNOW	36.16	42.00	47.03	54.27	63.28					
NAGPUR	11.60	20.40	15.08	17.40	20.30					
KANPUR	16.55	24.00	21.52	24.83	28.96					
TOTAL REVENUES TO UNION	780.01	1,115.89	1,014.09	1,170.11	1,365.02					

Notes:

1. The above columns reflect the various recommendations made by respondents including CMPL to the Consultation Paper.
2. Column A is the OTEF/Migration Fee paid in 2006 and optically reflects status quo in terms of pricing. However, when viewed in light of the fact that the future license period will be 15-years it tantamounts to a concession being offered to existing license holders.
3. Columns B, C, D & E are revenue collection forecasts in each market assuming migration formula is as per Column Heading.
4. Column E is the approach suggested by CMPL and is compliant with stated policy objectives.

