December 17, 2013 Total Pages 08

Mr. Sunil Kumar Singhal

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Re: CLEAR MEDIA (INDIA) PVT LTD (CMIPL) Suggestions on TRAI Consultation Paper No. 12/2013 (3rd December 2013) on Migration of FM Radio Broadcasters from Phase-II to Phase-III

Through Email: sksinghal@trai.gov.in / traicable@yahoo.co.in

Respected Sir

Thank you for the opportunity to present our views.

We are submitting herewith, CMIPL Response to TRAI Consultation Paper No. 12 / 2013 dated 3rd December 2013 on Migration of FM Radio Broadcasters from Phase II to Phase III.

For any clarification, suggestion or feedback on the response submitted by CMIPL, I will be happy to respond, my contact details are mentioned below;

Kindly acknowledge receipt of this mail.

Thank you,

Yours sincerely

Sanjay Hemady

Chief Executive Officer

CLEAR MEDIA INDIA PVT LTD

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CMIPL Views:

CMIPL presents its views and suggestions to the questions in the Consultation Paper.

Q 1. What should be the date of migration for FM Radio operators to migrate from Phase II to Phase III?

CMIPL Suggestion - Option One

The effective date for migration for Phase-II broadcasters should be from the day after the ending of Phase-II license.

CMIPL Suggestion - Option Two

Date of migration should be April 1, 2015 for following broadcasters – a). Original Phase-I broadcasters who migrated on April 1, 2015 to Phase-II AND b). for those broadcasters who commenced operations between April 1, 2015 to March 31, 2016 under the Phase-II license.

The date of migration should be April 1, 2016 for those broadcasters who commenced operations between April 1, 2006 to March 31, 2007 under the Phase-II license.

The date of migration should be April 1, 2017 for those broadcasters who commenced operations between April 1, 2007 to March 31, 2008 under the Phase-II license.

This will make sure all licenses end on March 31 of any given year. Broadcasters would lose some months of license duration and no refund/adjustment option to be provided for the months that are lost by Broadcasters, in case Broadcaster opts to migrate to Phase-III.

In CMIPL case, CMIPL will lose 5 months of its Phase-II permission (if it opts to migrate) as the effective date of migration would be April 1, 2016, having commenced operations on September 1, 2006.

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Q 2. Do you agree that period of permission of the existing Phase II operators, on their migration from Phase II to Phase III, should be 15 years from the date of migration?

No, CMIPL does not agree.

CMIPL Suggestion:

The Migration policy should only provide 15 years total license duration from date of commencement of broadcast, meaning that the Phase-II license should be extended by 5 years (based on date of commencement of commercial operations under Phase-II) from date of migration. Effectively all companies that opt to migrate to Phase-III will enjoy a period of maximum 15 years (10 years under Phase-II and 5 years under Phase-III).

Q 3. Do you agree with the methodology of charging migration fee, as NOTEF minus the residual value of Phase II license, from the existing Phase II operators on their migration from Phase II to Phase III?

No, CMIPL does not agree.

3.1 Phase II One-Time Entry Fee (OTEF) bids were based on separate business plans made by respective broadcasters, and a level playing field was provided under the policy for Phase-II which prohibited networking between radio stations, even if these were owned by the same Company. A company with one radio station was treated at par with another company who had multiple radio stations in different cities so far as networking was concerned.

3.2 CMIPL is paying 14% of its revenue as annual license fee versus 4% due to the minimum threshold specified in the agreement with the Union of India. Please see table below to see the calculation behind the CMIPL annual license fee. Till date, it has not petitioned the TRAI or the Union for relief, as this higher annual fee was compensated by the lower OTEF that CMIPL paid in 2006.

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3.3 Accordingly, program diversity was achieved by non-availability of benefits of networking under Phase-II. Please refer to Annexure-III page 22 of the Consultation paper in which Ministry of Information & Broadcasting states, *"On migration to Phase-III from Phase-II, the operators gain by way of increased limit of FDI + FII (from 20% to 26%) and* ***substantial cost reduction due to networking of channels.****"* FII investors like to invest in shares that are listed/traded on stock exchanges such as Entertainment Network India Limited (Radio Mirchi 98.3 FM), TV Today (Oye 104.8 FM), SUN TV (Red FM 93.5 FM), Reliance Broadcast (BIG 92.7 FM).So the two benefits (higher FDI/FII limits and networking) mentioned above are enjoyed only by certain types of companies, e.g Indian language radio stations whose holding company is listed on the stock exchange and which has a vast number of radio stations which can be networked.

3.4 It is unfortunate that the MIB believes that any benefit accrues from higher incremental FDI/FII of 6%. None of the public companies have even hit 20% as of date (despite being listed on stock exchanges for years), and such a nominal/miniscule increase does not improve revenues nor does it decrease costs - in effect there is no improvement in the operational profit/loss on account of higher FDI/FII by an incremental 6%. 100% FDI is permitted in Defence sector and recently telecom services have been permitted 100% FDI. Hundreds of global radio stations can be downloaded and/or streamed live on telecom networks that are outside the purview of TRAI regulation. FDI/FII investors may want to acquire rights to block special resolutions as they are allowed to hold 26% which they could not have done with 20% shareholding. So 26% is in effect makes broadcasters "worse-off" than "better-off" as any FDI/FII investor who can afford to purchase 20% will now demand 26% and insist on having the right to block special resolutions. That said, the policy is already in place, and we shall not comment further, except to state that there was no benefit in the change in policy.

3.5 The Phase-II OTEF was different for each broadcaster, and was based on individual business plans, such Programming, Costs, Revenue potential for

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the programming created, Content Differentiation. The Migration to Phase III license effectively is an extension of an existing Phase-II License with cost benefits to big radio companies which can avail of benefits of networking and which have news organizations to sell news advertising.

3.6 The business plan for radio stations that are in mass-market programming (such as Hindi music in Delhi as an example), will get a boost as a result of cost reductions under Phase-III by networking which was not possible under Phase-II. Besides, Hindi and mass market Indian language radio stations do not have as much global competition as an English language radio station has. For other radio stations that not in mass-market programming and/or are standalone operations (such as English music radio station HIT 95 FM in Delhi, since Table 1.2 of Page 17 of Consultation Paper uses an example of Delhi as a market), there will no such cost benefits as they cannot do any networking as they are a standalone radio station which cannot avail of networking benefits and networking is permitted only within stations owned by one company.

3.7 A migration fee which is identical for all broadcasters effectively results in the competitive position of independently owned radio stations like HIT 95 FM being severely compromised to the benefit of the stock exchange listed big mass market oriented radio groups with FDI/FII holdings whose costs will tumble down post networking who do not have to compete against as many global broadcasters who are streaming on the internet. In anticipation of Phase-III migration policy, the share prices of Reliance Broadcast and Entertainment Network have already appreciated 50-100%.

3.8 The NOTEF suggested in this Consultation Paper is based on the reserve price decided by the MIB for Phase-III. The reserve price for Phase-III has not been suggested by TRAI and there was no consultation process carried out, and was therefore arrived at unilaterally by the MIB, and should be ignored by the TRAI. CMIPL reiterates that OTEF of Phase-II discovered prices in an open auction with differential prices is a better route to adopt than the price linked to Phase-III reserved price.

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CMIPL Suggestion to Q3:

3.9 The migration fee should not be the same for all broadcasters – it should be directly and proportionately be linked to the OTEF that all bidders in Phase-II agreed to pay on a voluntary basis in the last open auction of 2006.

3.10 CMIPL proposes that the quantum of migration fee to migrate to Phase-III be linked directly and proportionately to Phase II OTEF paid by each broadcaster, and therefore the migration fee payable should differ from one broadcaster to another, keeping in mind that Phase-III migration is nothing but an extension of Phase-II licenses with some modifications which mainly suit stock exchange listed companies who enjoy FDI/FII shareholding and will reduce costs substantially by networking in Phase-III.

3.11 As an example, CMIPL is willing to pay 150% or 1.5 times its Phase-II OTEF to migrate to Phase-III for 15 years and could even consider paying 175% or 1.75 times its Phase-II OTEF.

3.12 The migration fee collected by the Union of India with such a formula as proposed by CMIPL will exceed the migration fee that would be collected by levying a single rate/fee for migration for all broadcasters, and would make many broadcasters "worse-off".

3.13 The philosophy behind different rates of OTEF of Phase-II, i.e. different rates/prices for different broadcasters under Phase-III migration policy will ensure continuity, equity, and virtually 100% success of migration policy. It is therefore, strongly suggested that the Phase-III migration be directly and proportionately based on the OTEF paid in Phase-II.

Q 4. Other Issues?

CMIPL Suggestion:

4.1 Provide an option to pay migration fee in advance amortized annual installments, whilst paying interest at RBI linked rates of interest.

4.2 Provide a one-time relaxation in M&A conditions at least until migration takes place, so that existing permission holders in one city can acquire other permission holders in the same city. This will provide a big boost to the Migration Policy. This relaxation can be in the form of the Buyer and Seller not being required to take pre-approval of Seller, if Buyer is existing broadcaster within same city or if Buyer has net worth of Rs 500 crores or more.

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Table: CMIPL Phase-II OTEF, Revenue 2006-13, License Fee Paid

	Year ending March	**CMIPL OTEF Paid**	**CMIPL Total Revenue**	**4% of Revenue**	**Annual Fee Paid**	**Excess Paid**
	A	**B**	**C**	**D**	**E**	**F**
						(E-D)
1	2005-2006	133,300,000				
2	2006-2007		38,314,618.00	1,532,584.72	4,567,853.00	3,035,268.28
3	2007-2008		58,475,635.00	2,339,025.40	7,855,000.00	5,515,974.60
4	2008-2009		49,667,551.00	1,986,702.04	7,855,000.00	5,868,297.96
5	2009-2010		39,247,630.00	1,569,905.20	7,855,000.00	6,285,094.80
6	2010-2011		61,189,878.00	2,447,595.12	7,855,000.00	5,407,404.88
7	2011-2012		61,936,170.00	2,477,446.80	7,855,000.00	5,377,553.20
8	2012-2013		49,621,664.00	1,984,866.56	7,855,000.00	5,870,133.44
			358,453,146.00	**14,338,125.84**	**51,697,853.00**	**37,359,727.16**
		Note: Total Revenue is Excluding Service Tax as submitted in MIB			**14.42% of revenue**	

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