R B Sahajpal as individual Counter Comments on CP¹ PR²,3

Introduction:

The following may please be noted:

Level Playing Field:

- **1.** "Permission holders are governed by the FM Phase-III Policy Guidelines dated 25.07.2011, as amended from time to time. As of now all the FM Radio operators have migrated as per policy guidelines of Phase III"⁴. Thus the 'Level Playing Field' is there for all FM broadcasters as far as Policy Guidelines i.e rules are concerned.
- **2.** This phrase occurs '2' times in^{5,6}.

Policy Guide Lines:

3. This phrase occurs '20' times in CP. Policy Guideline belongs to **Legal Frame Work** and as such perhaps a Gazette Notification for the same is a mandatory prerequisite before coming into force from a specific date.

4. Issues for Consultation

Q1. Are provisions related to Annual License Fee prescribed in the extant Policy guidelines for FM Radio broadcasting reasonable? If not, please provide methodology and criteria for arriving at Annual License Fee for private FM Radio channels with detailed justification.

Ans.1. "Permission holders are governed by the FM Phase-III Policy Guidelines dated 25.07.2011, as amended from time to time. As of now all the FM Radio operators have migrated as per policy guidelines of Phase III" "and "This Stakeholder had also filed Writ Petition Number 8759 of 2015 in the Hon'ble Delhi High Court 6 months before signing the Phase-III GOPA and the WP is next on board in the Hon. Delhi High Court on 09.03.2023" 8.9.

No comments as the matter is **sub ju-dice**.

- **Q2.** Is there a need to extend the permission period for existing FM Radio licensees?
- a. If yes, what should be the revised permission period? Please prescribe the period with detailed reasoning/ justification.
- b. If not, is there a need to extend any other assistance to private FM Radio broadcasters to overcome the impact of the pandemic? If so, please suggest suitable measures with quantified parameters and justification.
- **Ans.2.** Even if the COVID period from 01.04.2020 until 31.03.2022 is considered as "Force Majeure" period even then as per Policy guidelines for FM Radio Phase III, there is no provision for extension of permission granted to an FM radio broadcaster. "More over FM phase III provisions roll out began only in late 2015" so '8' years of present permission are still remaining. Accordingly no extension may be considered on the said basis.
- **Q3.** Is there a need to review the present Policy guidelines as regards the News and current affairs on private FM radio stations? If so, please provide detailed justification, including the additional compliance/ reporting (if any), duration of news and current affair programmes and method of effective monitoring may be suggested.
- **Ans.3.**The status quo may please be maintained as per the Policy Guidelines for Phase-III of FM Radio Broadcasting dated 25th July 2011.

Q4. Is there a need to mandate that all the Mobile Handset manufactured/ sold in India will require to have an in-built FM Radio receiver? Please provide detailed justification for your comments. Initially for listening to FM Radio channels, standalone radio receivers were used. With the advancement of technology, FM radio receivers were integrated with Mobile handsets doing away with the need for standalone radio receivers.

Ans.4. Mandating technology for a specific service on Mobile Handset may be an unproductive step. Let market forces dictate that.

Q5. Stakeholders may also provide their comments/ suggestions on any other issue that may be relevant to the present consultation.

Ans.5. Please refer paras '1' & '2' above. TRAI could have taken up this CP **suo moto** instead of calling for a 'nudge' from MIB.

5.Please refer paras '1' & '2' above. Implicitly the concept of 'Level Playing Field' present in CP/ comments. However, TRAI has to take a view on phrase as per¹² and this will be taken along with CP dealing with Regulating Converged Digital Technologies and Services – Enabling Convergence of Carriage of Broadcasting and Telecommunication services¹³.

6.Suggestions

The following are for kind consideration;

- **7.** Kindly refer **'1','2', '5' and Ans.1.** above:
- **8.** The extant CP may be considered
- (a) after the issue of:
- (i) 'Level Playing Field is settled.
- (ii) Pending order/judgement is received.
- **9.** Kindly refer para '3' above:
- (a) The Gazette Notifications of all Regulations are made available.(desirable)
- (b) The Gazette Notification for the Regulation currently in force may be made available in public domain (necessary)
- (c) The information will put the relevant 'Legal Framework on **sound, transparent** footing.

10.References

- 1. https://trai.gov.in/sites/default/files/CP 09022023 0.pdf
- 2. https://trai.gov.in/sites/default/files/PR No.09of2023.pdf
- 3. counter comments date extended to 23-03-2023
- **4.** para 2.23 supra '1'.
- **5,6.** paras '35', para '53. of comments submitted by Clear Media (India) Pvt Ltd ("Stakeholder").
- **7.** supra '4'.
- **8.** para '60' of comments submitted by Clear Media (India) Pvt Ltd ("Stakeholder")
- **9.** Source: Delhi High Court Site :emphasis added.

W.P.(C) 8759/2015
 [PENDING]
 Order(s) Judgement(s)

CLEAR MEDIA (INDIA) PRIVATE LIMITED Next Date: 04/05/2023 AND ANR.

Vs. UNION OF INDIA

Advocate: GAURAV RAY & KAUSHIK

- **10.** para '2.29' supra '1'.
- **11.** Annexure III supra '1'.
- 12. para 2,64 of CP https://trai.gov.in/sites/default/files/CP 23122022.pdf
- 13. https://trai.gov.in/sites/default/files/CP 30012023.pdf