A. **Name of Stakeholder:** Clear Media (India) Pvt Ltd ("**Stakeholder**").

B. **Credentials of Stakeholder:** Independently Owned Single Station (no cross-media holdings) FM Radio Broadcaster in city of Delhi since 2006 under Phase-II Agreement ("**Phase II GOPA**") and since 2015 under Phase-III Agreement ("**Phase III GOPA**").

C. **Frequency Name and Number:** HIT 95 FM Delhi.

D. **Disclosures:**

(i) This Stakeholder's Annual License Fee ("**ALF**") is about 35% of its revenue in FY 2022-23[1].

(ii) This Stakeholder has filed litigation by way of Writ Petition 8759 of 2015 ("**WP**") against the Union of India ("**UoI**") & Others in the Hon Delhi High Court which is pending adjudication. Stakeholder submits that it is not a member of the Association of Radio Operators of India ("**AROI**") and participates in this Consultation process Independently. This Stakeholder's WP and the WP No 10572 of 2015 filed by AROI members challenges the:
(a). ALF Formula used by the UoI to link the Minimum ALF to the Non-Refundable One-Time Entry Fee ("**NOTEF**")
(b). the prohibition on News and Current Affairs ("**News**").

(iii) This Stakeholder signed the Phase-III GOPA "<u>Under Protest and Without Prejudice</u>" to its rights and contentions in the above-mentioned WP on 02.05.2016. (emphasis applied)

Stakeholder's Disclosures, Comments & Representation:

[1] See TRAI letter of 01.08.2022 to UoI on impact of Covid 19 on FM radio broadcasters.

I. Re – ALF Formula for Calculating Minimum ALF:

The main issue at hand for this Stakeholder in this Consultation Paper is the de-linking of the ALF Formula from the NOTEF paid by the sole successful Phase-III bidder in Delhi under the Notice Inviting Applications ("**NIA**") issued by UoI. The UoI passed an Order dated 21.01.2015 ("**2015 Order**")[2] without making a reference to TRAI for the new linkage of the ALF Formula to the Phase-III NOTEF. Further, the UoI issued new Phase-III GOPA with new "*terms and conditions"* without meeting the legal requirements u/s 11 (1) of the TRAI Act so far as Clause 3.1(a) of the Phase-III GOPA is concerned. Section 11 (1) mandates that the "*terms and conditions"* including inclusion of Clause3.1(a) which is new term of the Phase-III GOPA, i.e. the new ALF Formula was required to be referred to TRAI for TRAI's comments and / or recommendations, which it was not. Therefore, this Stakeholder suggests that it would be in the interest of justice and fair-play that the ALF Formula inserted into Clause 3.1 (a) of the already signed Phase-III GOPA be deleted and the ALF Formula [**on retrospective basis**] be linked to the actual revenues @ 4% as is being done for broadcasters in the cities of Kolkata and other such cities being Indore and Bhopal[3] [which had no Phase-III NOTEF] with effect from 01.04.2015.

Change in Auction Method From Phase-II To Phase-III:

1. In Phase-II bidding of 2005, successful bidders were allotted frequencies by the UoI based on their own individual single closed-bid contained in a sealed envelope which could not be revised upwards. As a result, bidders were not required to chase the highest bid. This Stakeholder's successful bid was Rs 13.33 crores whereas the highest successful bid was Rs

[2] Clause 31 of 2015 Order dated 21.01.2015 being No: N 38014/4/2014-FM
[3] Para 2.20 of TRAI Consultation Paper dated 09.02.2023

31.4 crores. In Phase-II, one of its' key policy objective was private broadcasters being guided by the need to broadcast "*local", "variegated"* and "*heterogenous"* content.

2. In Phase-III bidding of 2015, successful bidders were allotted frequencies by the UoI based on the bidders requiring to revise their bids upwards to stay in the race to be allotted a FM Radio frequency by the UoI. The successful bidder in Delhi was required to pay a NOTEF under Phase-III which was Rs 169 crores. Eight migrants from Phase-II to Phase-III, including this Stakeholder, paid a Non – Refundable Migraiton Fee ("**NOTMF**") which was Rs 33.33 crores, based on a TRAI recommended formula[4] which linked the NOTMF of Delhi to the NOTEF of other cities which did not have scarcity of spectrum in the Phase-III auction. Such a formula was accepted by the UoI because both the UoI and TRAI believed that the NOTEF derived in a bidding for cities with only 1 frequency [including Delhi] would not be "*fair*" or "*reasonable*".

Knock-On Effects on the Minimum ALF Payable by Stakeholder in Delhi:

3. The scarcity of spectrum in Delhi and the change in the auction methodology in Phase-III combined to create a perfect storm which TRAI had forecast well in advance. The TRAI Recommendations dated 20.02.2014 had specifically highlighted the issue of Delhi[5] and the risk that the auction in Delhi and other cities where spectrum was scarce would not reflect a "*fair*" price and that it would not be "*reasonable*" for the NOTMF in Delhi and such cities to be linked to the NOTEF in such cities. Because the Phase-III auction in Delhi had only one frequency, the NOTEF spiraled to Rs 169 crores in several rounds of frenzied bidding spread over several days over which this Stakeholder had no control, because this Stakeholder did not participate in the Phase-III Auctions at all.

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[4] TRAI Recommendations dated 20.02.2014 contains the formula for NOTMF calculations.
[5] See para 1.39 and 1.41 of TRAI Recommendations dated 20.02.2014

4. Therefore, the UoI's unilateral act of linking this Stakeholder's ALF Formula to such a NOTEF in Delhi was not "*fair*" and not "*reasonable*"[6]. In it's capacity as a Licensor and framer of Policies, the UoI is expected to behave fairly and reasonably in all it's dealings. With regard to FM Radio Broadcasting, one the main reason for the formation of TRAI and inclusion of FM Radio Broadcasting within TRAI's regulatory ambit was to ensure that "*terms and conditions*" of a license were vetted by TRAI before being enshrined into licensing agreement. This Stakeholder's ALF Formula linkage to the Phase-III NOTEF was not vetted by TRAI at all because of the UoI's failure to refer the issue to TRAI.

Violation of Section 11(1) of TRAI Act:

5. The UoI made a reference to TRAI on the subject of linkage of the ALF Formula with the Phase-III NOTEF only in the year 2022, seven years after this Stakeholder had protested and filed the above referred WP and AROI members had filed their separate joint WP in the Hon Delhi High Court. This shows that the entire industry was adversely affected by the linkage of the ALF Formula with the Phase-III NOTEF, in Delhi and other cities, and that this issue was neither restricted only to this Stakeholder and not only to Delhi. The UoI has been fully aware since at least the year 2015 that the almost the entire FM Radio Broadcasting sector has an issue with the linkage of the ALF Formula to the NOTEF of Phase-III. Yet, the UoI did nothing but sit like a mute spectator, whilst at the same time collecting the unreasonably high and unfair ALF from the entire private FM Radio Sector.
6. From pages 16 to 18 of the TRAI Recommendations dated 20.02.2014, it is apparent that TRAI conducted a vigorous exercise **<u>prior</u>** to the UoI approving Migration from Phase-II to Phase-III and deciding the NOTMF methodology for various cities which required very detailed analysis, scenario-building and simulations.

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[6] See paras 1.39 and 1.41 of TRAI Recommendations dated 20.02.2014

7. The TRAI conducted detailed scenario planning with simulations for auction for Phase-III and migration of Phase-II Migrants to Phasse-III in the TRAI Recommendations dated 20.02.2014.

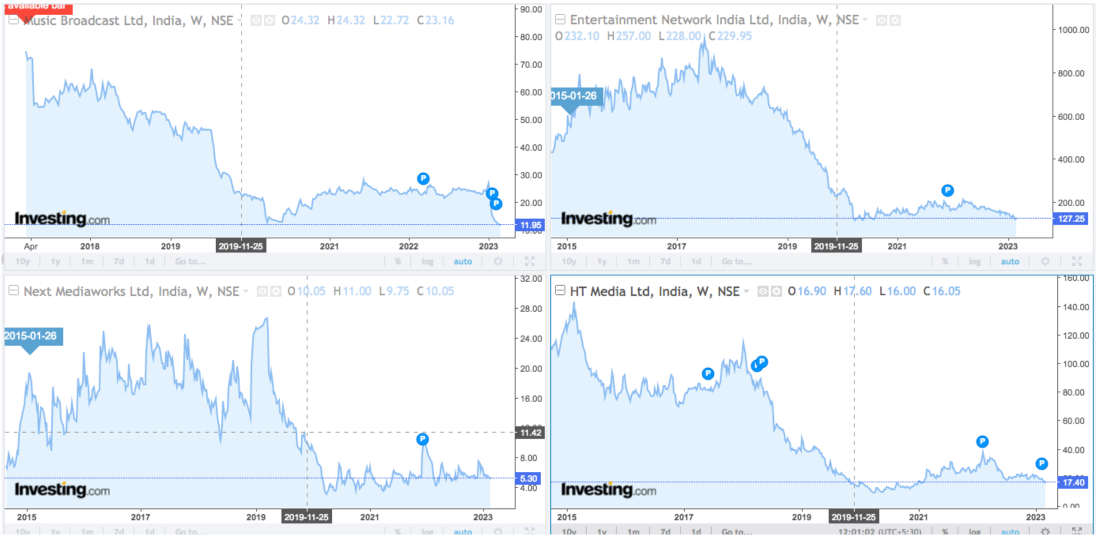
8. In stark contrast, the UoI did not do any simulations and / or scenario planning before imposing a new ALF Formula in the Phase-III GOPA in Clause 3.1 (a). An expert regulatory body like TRAI would have conducted detailed exercises, done scenario-building and run simulations before enforcing such an absurd linkage to the ALF Formula, but for reasons unknown and unexplained till date, the UoI chose to not make a reference of this matter to TRAI. The entire benefit of a reference to TRAI was lost to this Stakeholder, the Public and all other Stakeholders, due to this continuous and inexplicable omission[7] by the UoI before setting-out such a material "*term*" in the Phase-III GOPA on a take-it or leave-it basis. This act of the UoI is in violation of the requirement of Section 11(1) of the TRAI Act. (emphasis applied)

Dismal View of Investing Community Of FM Radio Sector:

9. The share prices of the leading FM Radio Broadcasters over a long period of time reflect the dismal outlook investors have on the entire sector.

[7] *the act of not including something or someone that should have been included [Cambridge Dict.]*

10. Share price charts of four companies from listing date / 2015 until 27.02.2023 (Music Broadcast, Entertainment Network, Next Radio, HT Media are reproduced:



11. The rounded-off market capitalization (to 100) on 27.02.2023 of three of the big radio companies (comprising of approximately 65% of total radio advertising revenues) is follows:

(i). Entertainment Network India Limited ("**ENIL**") market cap – 700 crores

(ii). Music Broadcast Ltd ("**MBL**") market cap – 500 crores

(iii). HT Media Ltd ("**HTML**") – 500 crores (includes 51% beneficial holding in Next – brand Radio One).

Since the promoter holding in the three companies mentioned above is on average about 70%, it can be surmised that the total aggregate value of shares held by non-promoter investors in the companies mentioned above is about Rs 500 crores, which is a very poor reflection of a sector which was privatized 20 years back. Over the past 7 years, since the imposition of the ALF Formula, the market capitalization of the four companies with a significant exposure to the FM radio business has dropped between 50% to 75%. The four publicly traded companies mentioned above control about 40% of the frequencies nationwide.

12. TRAI has noted the dismal state of the last auction where the UoI was able to find successful bidders for only 66 channels out of 266 channels. The TRAI noted that the UoI fixed reserve prices which were different from those recommended by TRAI in it's recommendations[8]. Even now, the UoI is finding it very hard to even schedule an auction of the frequencies to complete the auction of Phase-III frequencies, which first commenced in 2015.
13. The TRAI has re-looked at the Reserve Prices for the auction and in many cases recommended large reductions in the Reserve Prices, but even three years thereafter, it is not possible for the UoI to put-out a NIA to schedule a fresh auction of FM Radio frequencies. Lately, the UoI has completed an extremely successful auction of wireless telecom spectrum and raised thousands of crores.
14. During the interregnum, many radio stations are tottering on the verge of insolvency, and in one instance, in the case of a nationwide broadcaster, an Insolvency Resolution Professional has already been appointed to resolve the Corporate Insolvency of this large broadcaster as explained below.

Effects of Zombie Company Operating Unchecked Under Phase-III Policy:

15. The UoI [by not acting against violators], another error of omission, has created a situation where non-eligible and non-compliant broadcasters are damaging the FM Radio sector further by continuing to be in business.
16. Clause 23 of Phase-III GOPA requires all broadcasting companies to adhere to eligibility conditions throughout the tenure of the Phase-III GOPA. One such eligibility condition as contained in the Notice Inviting Applications ("NIA") for Phase-III of GOPA at Clause 3.4.1

[8] See para 1.9 at page 3 of TRAI Consultation Paper dated 09.02.2023

mandates that companies having a broadcasting license in Delhi have a minimum net worth of Rs 3 crores for continuing as an eligible and compliant broadcaster in this Stakeholder's market of Delhi[9].

17. A National Broadcaster, i.e., Reliance Broadcast Network Limited ("**RBNL**") first defaulted on its loans to its lenders and banks on 08.10.2019[10], well prior to the onset of Covid-19. In FY 2017-18 and in FY 2018-19, the two immediate financial years prior to the date of RBNL's default, RBNL's net revenues[11] were about Rs 298 crores and Rs 307 crores respectively. In stark contrast, for FY 2021-22, RBNL's net revenues are only about Rs 125 crores, and in FY 2022-23, RBNL's net revenues are projected at about Rs 160 crores by this Stakeholder.
18. The networth of RBNL has been negative for the last several financial years, which is to the knowledge of the UoI, because submission to the UoI of annual audited accounts, with the auditor's report is part of the Phase-III GOPA obligations[12].
19. The UoI ought to have taken appropriate steps to terminate the Phase-III GOPA of RBNL rather than let RBNL operate like a zombie company. Such power is available with the UoI, but once again, due to an inexplicable act of omission, such power has not been used, thus affecting this Stakeholder and other broadcasters adversely. The UoI has *de-facto* permitted RBNL to operate its' frequency 92.7 BIG FM in Delhi as a zombie company[13] with disastrous effects on pricing of advertisements of all other radio stations across India, including in this Stakeholder's sole market of Delhi.

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[9] Clause 3.41.1 of NIA dated 02.03.2015
[10] See paragraph 21 at page 8 of Order of NCLT, Mumbai dated 24.02.2023 in the case of *IDBI Trusteeship Services Ltd v RBNL*.
[11] RBNL Annual Accounts from website of Ministry of Corp Affairs and from reliancebroadcast.in
[12] Para 17.2 of Phase-III GOPA
[13] "Zombie" company as per Dun & Bradstreet is defined in an article published in the Economic Times dated 18.01.2023 which is at **Annexure A.**

20. It is important for the UoI to ensure that zombie companies do not distort market pricing. Such distortions take long periods of time to correct and the downward spiral seen in advertising rates since the default of RBNL in Q3 of FY 2019-20 is still continuing.

RBNL Default Created A Drop of 35 % in Radio Advertising Seen in Table 2 of TRAI Paper:

21. Table 2 at Page 19 of the TRAI Consultation Paper dated 09.02.2023 shows the quarterly revenues of private FM Radio Broadcasters across India.

22. In Q4 of FY 2018-19 (pre RBNL default), the private FM radio advertising industry achieved revenues of Rs 623 crores v Rs 401 crores of private FM radio advertising industry revenues in Q4 of FY 2019-20 (post RBNL's first default). Notably, both these comparative quarters were pre-covid, and the only difference between the two quarters was the first default by RBNL in Q3 of FY 2019-20.
23. The drop in revenues for the entire private FM Radio sector within 12 months was 35.6%, which not so co-incidentally, is close to the drop of 38.8% in the per 10 seconds rate of advertising witnessed by the # 1 player in India's radio advertising as explained herein.

Rate Wars Not Covid Related But Market Share Related:

24. In three years, i.e. from Q2 of FY 2019-20 till Q2 of FY 2022-23, the advertising rates have dropped by 38.5% for India's # 1 radio company ENIL – brand Radio Mirchi. The Head, Finance of ENIL (Page 8 of the transcript) in an investor concall[14] dated 10.11.2022 said, "*the **degrowth in the effective price** **in the current quarter we have seen compared to same period in FY20** **is about 38.5%** and if you ask about the absolute number we were operating something around Rs. 16,000 as effective rate in Q2 FY20 which is now approximately around Rs 9,900 in the current quarter that is what we have seen".* (emphasis applied)

    Thus, the effective nationwide rate per 10 seconds for ENIL dropped from Rs 16,000/- in Q2 of FY 2019-20 to Rs 9,900/- in Q2 of FY 2022-23, a 38% drop.

[14] Transcript of concall of ENIL dated 10.11.2022 is available on https://archives.nseindia.com/corporate/ENIL_16112022232951_EarningsCallTranscriptQ2FY23.pdf

25. The CEO of Radio City, MBL, the # 2 broadcaster in India in an investor concall dated 01.11.2022[15] stated (page 6 of Transcript), "***In the years of experience that we've had in media, once you drop rates, to recover that rate, it takes a long time***." (emphasis applied)

26. As per the article published in the Economic Times dated 18.01.2023[16], "*The rise of* ***zombie firms has dire economic consequences.*** *Several studies have shown that* ***zombies depress market prices, distort credit allocation, and crowd out both investment and employment at healthy firms****. These disruptions impede business dynamism and weigh on the aggregate productivity of the sector and by large, the economy*". (emphasis added)

27. In an interview with CNBC USA, Mr Raghuram Rajan, former Governor of the Reserve Bank of India ("**RBI**") in reference to zombie companies stated as follows on 09.06.2020, "*CNBC Anchor: Why? What, what, what's the danger here in propping up these, these zombie companies, as you describe it?*

    Raghuram Rajan: ***Well, the problem with propping up zombies is you create more zombies***." (emphasis applied). The excerpts of the interview related to the effect of zombies is available at: https://www.cnbc.com/video/2020/06/09/propping-up-zombie-companies-will-create-more-zombies-former-reserve-bank-of-india-governor.html

Rate War Effect On The Industry:

28. This Stakeholder is prejudiced by the UoI's acts of omission evident in the inclusion of the ALF Formula linkage to the Phase-III GOPA which increased this Stakeholder's costs and by the UoI's act of omission in letting RBNL merrily continue broadcasting without having any positive networth which has impacted this Stakeholder's rates and reduced this Stakeholder's revenues by 35%. RBNL, with it's negative networth and inability to raise capital for the last several years is operating like a copybook zombie company. RBNL

[15] Transcript of concall of MBL dated 01.11.2022 is available on https://archives.nseindia.com/corporate/RADIOCITY_07112022130500_TranscriptofNov12022.pdf
[16] **Annexure A** herein

launched a price-war in the Stakeholder's only market in FY 2019-20 which has created a downward spiral in rates of advertising for all radio stations in Delhi and severely damaged this Stakeholder's financial interests as it too has had to participate in rate wars, else it would be out of the market.

29. As a result, this Stakeholder's Annual Net Revenues have dropped from approximately Rs 18 crores in FY 2019-20 to approximately Rs 12 crores (projected) in FY 2022-23. This revenue decline of Rs 6 crores in FY 2022-23 over comparable pre-Covid FY 2018-19 is about 35% over 4 years. The revenues of MBL, the # 2 broadcaster in India have dropped from Rs 324 crores in FY 2018-19 to Rs 248 crores in FY 2019-20[17] and this Stakeholder does not foresee FM Radio Revenues of MBL to cross Rs 210 crores in FY 2022-23. MBL's revenue decline of 24% from FY 2018-19 to FY 2019-20 cannot be attributed to Covid – 19 effects at all. MBL's revenue decline from Rs 324 crores FY 2018-19 to Rs 210 crores FY 2022-23 (projection) is a decline of 35%, almost identical to the revenue decline of this Stakeholder.

30. The decline in revenues of this Stakeholder and MBL of about 35% each is similar to the rate decline of 38% mentioned by the Head of Finance of ENIL in the Investor Concall dated 10.11.2022, and the drop of 35% witnessed by the entire FM Radio industry from Q4 of FY 2018-19 to Q4 of FY 2019-20 as per Table 2 of the TRAI Consultation Paper dated 09.02.2023.

Rate Wars Lead to Market Share Wars Creating Only One Winner in the Industry:

31. The rate wars launched by RBNL in FY 2018-19 has morphed into a market share war with the # 1 radio broadcast company in India, ENIL trying to expand its market share for revenue protection, as any rational company would.

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[17] Page 8 of MBL Annual Report of FY 2019-20 shows FT 2018-19 numbers as well https://jplcorp.in/new/pdf/MUSIC_BROADCAST_LIMITED-ANNUAL_REPORT-2019-2020.pdf

32. Even the # 2 radio broadcaster in India, i.e. MBL has lost market share of the industry's revenues from FY 2021-22 onwards. The sole winner in the market share war is ENIL.

33. This gain of market share through rate wars is not a zero-sum game as the other radio stations continue to lose market share volumes to ENIL and revenues for the entire sector keep shrinking. In fact, it is a double-whammy for radio stations other than ENIL. As brought-out in the MBL concall, the rates will take a very long time to correct and revert upwards. A 38% rate reduction by ENIL needs needs to be followed-up by an approximate 60% rate hike for ENIL to revert back to the old rate of FY 2018-19.

Ongoing Rate Wars Continue Post Covid-19 As RBNL Issue Now Engulfs The Entire Industry:

34. With regard to the pricing environment for radio advertising in FY 2022-23, the comments of the management of ENIL at Page 5 on 02.02.2023[18] in the transcript of its' quarterly Investor Concall shows the efforts of ENIL to gain market share at the cost of "*compromises drawn on price*".

35. In this concall, the President of ENIL stated, "*Like I told you, the industry is very muted. And the fact that ENIL has gone out and **taken a lion's share** of the volume growth in the industry, means that **there are certain compromises drawn on price**. **That situation we expect, and we are effectively being extremely nimble in terms of pricing**"*. (emphasis applied) "*Being nimble in terms of pricing*" with a focus on taking a "*lion's share"* of volume growth is akin to a declaration of continuous war by ENIL on all other radio broadcasters which will debilitate the entire FM Radio sector for many years, unless policy reform takes place in right earnest. Neither the UoI nor TRAI can do anything except create a level-playing field and implement the policy objectives without any deviation or distortion. To be

[18] ENIL Investor Concall dated 02.02.2023 - https://archives.nseindia.com/corporate/ENIL_08022023123246_ENIL20230208EarningsCallTranscriptQ3FY23.pdf

clear, this Stakeholder does not expect any bailout or policy initiative to regulate the rate-wars in this ultra-competitive market, but does expect the UoI to not commit errors of omission.

36. The NCLT has already appointed Mr Rohit Ramesh Mehra an Insolvency Resolution Professional ("**IRP**") as the Interim Resolution Professional to conduct the Insolvency Resolution Process of RBNL under the Insolvency & Bankruptcy Code, 2016[19]. **The Board of Directors of RBNL have no role to play under the new dispensation, and has been displaced by the IRP**. (emphasis applied)

37. RBNL has had no access to any fresh capital in the form of loans and / or equity since FY 2019-20. Therefore, the zombification of the industry with the rate-wars, market-share wars and with RBNL being under an IRP will continue to debilitate the entire industry for the foreseeable future. It is only the personal grit of the current management team at RBNL that the company is afloat and this Stakeholder respects the gargantuan efforts of the RBNL management team in this regard, which however, is coming at a huge cost to the long-term health of the industry as a whole.

38. This Stakeholder apprehends that the number of players in the FM Broadcasting space will keep shrinking as they will not be able to cover their fixed overheads, the largest part of which is the ALF linked to the NOTEF. Two broadcasters have already surrendered their frequencies in Bhubaneswar and this Stakeholder is aware that unless the ALF Linkage to the Phase-III NOTEF is removed, many others will also shut-down in the next 2 – 3 years. This Stakeholder does not expect the AROI to speak-up to the true extent of the rate-wars and the market-share wars triggered-off by RBNL's default, as RBNL is an integral member of AROI since a decade, which this Stakeholder is not.

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[19] Para b. in NCLT Order on Page 14 in NCLT Mumbai proceedings in CP 310 of 2022 dated 24.02.2023.

UoI Position On Requirement of Referenceto TRAI With Regards to Terms & Conditions:

39. Paragraph 2 (iii) read with Paragraph 3 of the letter from Secretary, UoI to TRAI dated 27.01.2011 shows that the UoI believed that consultation with TRAI was required **<u>prior</u>** to determining the formula to be used to calculate ALF in Phase-III. (emphasis applied)

40. UoI's position on the need for reference to TRAI **<u>prior</u>** to deciding the ALF Formula for Phase-III is captured in UoI's letter dated 27.01.2011 to TRAI, relevant excerpts of which are:

    "(iii). *with regard to the Annual License Fee for Phase-III, the GoM recommended that the same formula used for the calculation of Annual License Fee in Phase-II should be followed for calculating the Annual License Fee for Phase-III."*

    3. In light of the above, the Authority may kindly furnish their further recommendations on the above issues in accordance with the provisions of Section 11(1) of TRAI Act, 1997 so as to enable us to seek the approval of the Cabinet in the matter".

41. What emerges from UoI's letter dated 27.01.2011 is that the UoI believed and acted on the belief that the finalization of the ALF Formula under Phase-III was to be done **<u>after</u>** obtaining TRAI recommendations u/s 11(1) of the TRAI Act and **<u>prior</u>** to seeking approval of it's own Cabinet. (emphasis applied)

42. Clause 31.4 related to ALF Formula with linkage to Phase-II One Time Entry Fee was drafted into the Phase-III Policy dated 25.07.2011 **<u>after</u>** consultation with TRAI and **<u>after</u>** the Union Cabinet had the benefit of TRAI's expert recommendation on the ALF Formula for Migrant broadcasters from Phase-II to Phase-III. (emphasis applied)

43. Thus, prior to the 2015 Order, the **<u>only</u>** TRAI Recommended linkage to ALF Formula for Phase- was stated in Clause 31.4 of the Phase-III Policy dated 25.07.2011. Paragraph 2.16 of the TRAI Consultation paper dated 09.02.2023 only deals with Clause 6.1 of the Original

2011 Phase-III Policy so far as the linkage to NOTEF within the ALF Formula is concerned, but for migrating broadcasters, the UoI had carved-out a distinct and separate ALF Formula in Clause 31.4 of the Original 2011 Phase-III Policy [and Clause 6.1 was not applicable to this Stakeholder until the 2015 Order kicked-into effect]. For the sake of convenience, this Clause 31.4 is reproduced:

> **31. Migration to Phase-III :**
>
> *"31.4 Subject to the provisions of para 6.1 (b), annual fee payable by existing permission holders of Phase-II shall continue to be determined as 4% of Gross Revenue or 10% of Reserve OTEF for the city determined for the city <u>during Phase-II bidding</u>".* (emphasis applied)

44. Conveniently, the UoI deleted Clause 31.4 by way of amendment to Clause 31 altogether in the 2015 Order dated 21.01.2015. The present ALF Formula was put-in place by the UoI by way of deletion of a previous carve-out rather than by an active process of weighment of the pros v cons, and consideration of various scenario-comparisons and simulations through various objective methods as was demonstrated by TRAI in all it's Consultation and Recommendation papers for Phase-III. By denying this Stakeholder such a benefit before writing the ALF Formula linkage to Phase-III NOTEF into the Phase-III GOPA and making the Phase-III GOPA a "take-it or leave-it", the UoI demonstrated high-handedness and arbitrariness, which the TRAI can help in correcting by doing this analysis on a *post-facto* basis and recommending a simple ALF Formula which is fair, equitable and balances public interest and this industry's interest.

45. This Stakeholder relies on comments of TRAI in it's letter dated 05.09.2014 to the UoI which demonstrates that revenue generation was incidental to a larger objective which forms the crux of expansion of FM Radio broadcasting by opening-up the sector:

> "3. *The objective of expansion of the FM radio broadcast services, by adding new cities to cover uncovered geographical areas as well as through additional channels in existing cities, is to make available a variety of content, information and educational services to general public. The primary purpose of the additional FM radio channels auction is to give a boost to the FM radio movement so that it can contribute to development of society, fulfill the needs of entertainment and information of the general public, and encourage socio- economic activities.* ***The revenue generated from the FM radio spectrum auction process is incidental[20] to this larger objective***". (emphasis applied)

TRAI's Own Interpretation of Applicability of Section 11(1) of TRAI Act to Terms & Conditions:

46. The TRAI's own interpretation of applicability of Section 11(1) of TRAI Act is pertinent and is stated in Clause 1.13 by TRAI in it's own Consultation Paper dated 09.02.2023:

> "*1.13 As per Section 11 of the TRAI Act, the Government* ***has to seek recommendations from the Authority for the terms and conditions of license*** *to a service provider. However, no such recommendations of the Authority were sought under Section 11(1)(a)(ii) of the TRAI Act*". (emphasis applied)

47. In this regard, on 15.09.2016, the Hon Delhi High Court even asked the UoI[21] to produce the relevant file on the next date of hearing, i.e. on 07.10.2016.

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[20] *happening by chance, or in connection with something of greater importance [Cambridge dict.]*

[21] Order of the Hon Delhi High Court dated 15.09.2016 in WP 8759 of 2015 and WP 10572 of 2015

48. This file was not shown to this Stakeholder on the next date of hearing.

TRAI Consultations & Recommendations of 2013 & 2014:

49. TRAI's Consultation Paper dated 03.12.2013 did not include the issue of ALF.
50. Thereafter, TRAI issued its recommendations dated 20.02.2014, making a clear mention of the effects of scarcity of frequencies in certain cities such as Delhi on the NOTEF and further that the NOTEF linkages for determining NOTMF for migrant broadcasters from Phase-II to Phase-III would not be "*fair*" or "*reasonable*"[22].
51. Paragraph 1.6 of the TRAI Consultation Paper dated 09.02.2023 states that:

> "*As per the decision of the Empowered Group of Ministers (EGoM), MIB vide its letter dated 9th April 2013, sought recommendations of TRAI on the migration fee to be charged from existing Phase II operators on their migration to the Phase-III regime of FM Radio Broadcasting. In response, the Authority sent its Recommendations on 'Migration of FM Radio Broadcasters from Phase-II to Phase-III' on 20th February 2014. MIB accepted TRAI's recommendations".*

52. The TRAI Recommendations included the TRAI's rationale in paragraphs 1.39 and 1.41 of the Recommendations dated 20.02.2014 which made it amply clear that NOTEF payable in cities with only one frequency would be based on scarcity and it would not be "*fair*" and "*reasonable*" to rely on such a NOTEF price for determining the NOTMF payable by migrating broadcasters from Phase-II to Phase-III.
53. Paragraphs 1.39 and 1.41 of TRAI's recommendations dated 20.02.2014 stated:

> *"1.39 Where fair market conditions exist, i.e. it is not a scarcity situation, migration fees derived on the basis of the Phase III auction process will be just and fair, it will ensure a level playing field and realize optimum value for a natural resource.*

[22] See Paragraphs 1.39 and 1.41 of TRAI Recommendations dated 20.02.2014

However, if the market situation is such that there is a scarcity of frequencies available for auction, say only one frequency is being auctioned, and there are eight other existing operators, then <u>linking the migration fee to the auction price obtained for that city may not be fair to the existing operators</u>". (emphasis applied)

"1.41 …where channels available for auction are one-third or less of the total channels in that city, i.e. the number of channels available for auction in such cities are scarce and thereby the auction determined prices in such cases may not represent the fair value of the resources as such prices would be determined under a supply constraint….<u>using these prices as a reference price for determining the migration fee…may not be reasonable</u>" . (emphasis applied)

54. Having accepted the entirety of the TRAI Recommendations dated 20.02.2014, including paragraphs 1.39 and 1.41, it was unconscionable for UoI to have inserted the ALF Formula in the Phase-III GOPA linking the ALF Formula to the NOTEF for Phase-III because:

(a). such a NOTEF as a "*reference price*" was not "*fair*" for linking the NOTMF, the same price "*may not be reasonable"* as for purpose of linking it to the ALF Formula as well.

(b). revenue maximization is incidental to the main policy objectives of FM Radio Policy.

Impact on Stakeholder's Programming Strategy Due to Clause 3.1 (a) of Phase-III GOPA:

55. Payments for the privilege to use a FM Radio frequency in Delhi under Phase-III for the Stakeholder are divided into two parts:

(i) NOTMF of Rs 33.33 crores

(ii) Annual ALF of Rs 4.23 crores for 15 years, being an aggregate of Rs 63.45 crores.

Total of Rs 96.78 crores, of which ALF is 65%!

56. Under the Phase-II GOPA, Stakeholder was paying Rs 78.55 Lakhs as Annual License Fee [*See* Clause 3.2 of Phase-II GOPA]. Due to the new linkage of the ALF Formula inserted by the UoI in Clause 3.1 (a)– of the Phase-III GOPA, this Stakeholder's expenses on ALF have gone up by 438% overnight, i.e. from 31.03.2015 to 01.04.2015, thus triggering a complete change in it's business strategy, especially related to Programming. (emphasis applied)
57. In 2015, this Stakeholder dropped "*variegated*" and "*heterogenous*" programming and became a mass-market FM Radio station in the Delhi market, as a tactic for survival first.
58. The annual advertising revenues earned by this Stakeholder therefore jumped from about Rs 6 crores in FY 2014-15 to about Rs 18 crores in FY 2018-19.
59. This Stakeholder has been cash flow positive over the last five financial years, but if it had not abandoned it's previous programming strategy, it would find it impossible to survive.

Stakeholder Signed Phase III GOPA Under Protest And Without Prejudice:

60. In May 2016, this Stakeholder signed the 2015 GOPA "Under Protest and Without Prejudice". 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. (*emphasis applied)*
61. The very fact that this Stakeholder had filed the WP six months **prior** to signing the Phase-III GOPA and the fact that this Stakeholder signed the Phase-III "Under Protest and Without Prejudice" shows that the ALF Formula as stated in the Phase-III GOPA was highlighted to the UoI as a serious issue on a timely basis.
62. The very fact that UoI made the reference to and TRAI issued the Consultation Paper dated 09.02.2023 show that the issues raised by this Stakeholder and the members of the AROI eight years ago are alive and deserve an in-depth consideration was finally recognized by the UoI who made a belated reference to the TRAI to de-link the ALF from the NOTEF,

with a delay of 8 years[23]. The UoI belatedly recognized the wrecking-ball effect that the ALF Formula has had on the entire radio broadcasting sector.

I. Summary of Response to Q-1 at Page 18 of TRAI Consultation Paper dated 09.02.2023

In response to Q-1 at page 18 of TRAI Consultation Paper dated 09.02.2023, this Stakeholder states that the entire contents provided hereinabove forms part and parcel of the reply to Q-1 at Page 18 and further summarizes as follows:

(a) Linking the ALF Formula to Phase-III NOTEF decided by way of frenzied NOTEF bids of third parties in an Auction of scarce available spectrum is not *"fair"* and "*may not be reasonable*", because:

(i). Such a linkage has created undeserved enrichment for the UoI at the cost of this Stakeholder and other private broadcasters.

(ii). The **only** ALF Formula on which TRAI had opined on is the linkage seen at Clause 31.4 of the Phase-III Policy dated 25.07.2011. This formula did not foresee that Phase-III auctions would be conducted in "scarcity" backdrop (emphasis applied).

(iii). There is no specific ALF Formula mentioned in Clause 31 of the 2015 Order. To the extent the ALF Formula included in the Phase-III GOPA was not specifically referred by UoI to TRAI u/s 11(1) of the TRAI Act, such a formula cannot be made applicable to the FM Radio Broadcasters. The amendments to the 2011 Phase-III Policy are clearly mentioned in the 2015 Order and to the extent such amendments were not referred to TRAI, the amendments would be *void ab-initio*.

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[23] MIB letter at Annexure III of TRAI Consultation Paper dated 09.03.2023

(b) The present ALF Formula linking the ALF to Phase-III NOTEF decided by way of frenzied bids of third parties is against the concept of basic human freedom and right to do business. In Delhi, 2 AROI members bid-up the NOTEF of the sole Delhi frequency to Rs 169 crores in Phase-III. This Stakeholder did not even participate in the Phase-III auction of any frequency anywhere in India. How is it the fault of this Stakeholder [who did not participate in the Phase-III bidding at all] that it's sees an overnight 438% spike in the Minimum ALF, i.e. an ALF of Rs 4.23 crores – instead of Rs 78.55 lakhs? The ALF Formula was protested by this Stakeholder, and yet was unilaterally inserted by the UoI in the Phase-III GOPA on a "take-it or leave-it basis".

(c). Section 11(1) of the TRAI Act required the UoI to refer the linkage between the ALF Formula and Phase-III NOTEF to TRAI **prior** to the changes made in Phase-III GOPA since the ALF Formula is an essential new material "*term*" inserted into a new license such as the Phase-III GOPA.

(d). This reference by UoI has come 8 years late, for no fault of this Stakeholder. This Stakeholder and several members of AROI have pending writ petitions in the Hon Delhi High Court on this very matter since 2015. In order to ensure speedy resolution of pending litigations, it is suggested that:

(i). TRAI may recommend that the ALF Formula be de-linked from the NOTEF for Phase-III **with retrospective effect, i.e. with effect from 01.04.2015** and

(ii). the excess ALF paid by this Stakeholder and others in the Industry maybe refunded with interest on a *mutatis mutandis* basis, i.e. @ 12%[24]. (emphasis applied)

[24] Phase-III GOPA specifies an interest rate of 12% on all delayed payments

(e). Revenue maximization is only "*incidental*"[25] to the FM Radio expansion objective which has very wide socio-economic benefits. The AROI has already laid-out it's pre-condition to it's participation in the upcoming auction. This Stakeholder has not participated in any Phase-III Auction and the Outside Investor interest in this sector is almost non-existent as reflected in the financial markets. If the present ALF Formula is not done away with in it's entirety, the entire objective of FM Radio Expansion will be lost at the altar of Revenue Maximization.

II. Re – Extension of License Period:

The Stakeholder suggests that the extension of 2 years. Extension of the license period beyond 2 years will not be in public interest. In its letter dated 01.08.2022, the TRAI has already commented on the recovery in revenues post Covid – 19. The recovery from Omicron strain of the Covid – 19 virus was completed by 31.03.2022. Therefore, the period from 01.04.2020 until 31.03.2022 be considered as the "*Force Majeure*" period, which deserves an extension of two years by way of compensation / remedy due to the Force Majeure event.

<u>Response to Q-2 at Page 21 of TRAI Consultation Paper dated 09.02.2023</u>

This stakeholder is of the view that the Phase-III GOPA, i.e the License Period may not be extended beyond 2 years because the impact from Covid – 19 is restricted only for two years.

III. Re – News and Current Affairs:

[25] Paragraph 3 of TRAI letter dated 05.09.2014

The Stakeholder believes any steps to provide "*variegated*" and "*heterogenous"* programming, including news and current affairs, will be beneficial to the public and therefore should be opened up under the Phase-III Policy Guidelines.

<u>Response to Q-3 at Page 21 of TRAI Consultation Paper dated 09.02.2023:</u>

(a) BECIL is already monitoring radio broadcasts in most cities. Such monitoring is adequate in the large metros. The Stakeholder does not have adequate knowledge of the ground situation in sensitive border areas to comment on monitoring requirements.

(b) The duration of News and Current Affairs Programmes should be left to each broadcaster as per the programming format most beneficial to their business model and to the public. With such large competition from private broadcasters and All India Radio (besides news from the internet), each company can find its own market fit within the overall compliance guidelines.

(c) Compliance can be as per the guidelines of All India Radio Program Code which is already part of Phase-III GOPA.

IV. Re – Mandating Mobile Manufacturers to Install FM Receiver:

(a) There is no need to mandate mobile manufacturers to install FM receivers in mobile sets. It is incorrect for the FM Radio Sector which is to tiny to direct a huge sector such as Mobile Telecom to install special antennas.

(b) Until the year 2002 there were no private FM Radio Broadcasters and until the year 2002 the penetration of mobile phones in India was very low. India has dealt with many emergencies and situations without private FM Radio and without mobiles. There are systems and processes on the ground which enable us to effectively deal with emergencies without the need for mandating such requirements onto the manufacturers of mobile phones.

(c) “*EASE OF DOING BUSINESS”* is a one of UoI’s successful policy measures to attract mobile manufacturers to produce in India. A step to mandate installation of antenna receiver will run counter to the policy of the UoI to attract foreign capital in the mobile sector and may reduce India’s competitiveness in the sector.

(d) The benefits derived by such a mandate, whilst important for the FM Radio Sector, are insignificant for the overall good of the manufacturing and trading sector, and therefore, on balance such a mandate will be counter-productive.

Response to Q-4 at Page 27 of TRAI Consultation Paper dated 09.02.2023:

Such a mandate will be not be incrementally beneficial as it reduces India’s attractiveness as a manufacturing hub for mobile phones. With due respect to the AROI, the cost / benefit feasibility on such a measure has not been done. Such a move may also run counter to the principle of “EASE OF DOING BUSINESS”.

V. Re – Any Other Issue:

Infusing dynamism in the sector is essential. Non-approvals for several Merger & Acquisition (“**M&A**”) transactions in the sector have bogged down exits for troubled / zombie operators, thus bringing down the entire sector, especially when a large operator such as RBNL gets into financial trouble. The following M & A transactions have failed in the past 8 years because of the excessive regulations after 2015:

(a). Failed M & A transaction wherein Zee Entertainment was to have acquired the shareholding of RBNL;

(b). Failed M & A transaction wherein MBL was to have acquired the shareholding of RBNL;

(c). Failed M & A transaction wherein ENIL was to have acquired three radio stations of TV Today Ltd in Delhi, Mumbai and Kolkata named "Ishq FM".

(d). Failed M & A transaction wherein MBL was to have acquired the Kolkata radio station named "Friends FM".

Response to Q-5 at Page 27 of TRAI Consultation Paper dated 09.02.2023:

The following five additional measures that the TRAI could consider are:

(i) Measure One – Recommend methodology of slump sale/s of individual / cluster of private FM radio stations as was permitted by UoI in FY 2015-16 with regard to the sale of 4 radio stations of TV Today Limited sold to ENIL, being radio stations in Amritsar, Jodhpur, Patiala and Shimla[26] This will help the entire industry in general and RBNL in particular.

(ii) Measure Two – Re-recommend the reduction in channel spacing from 800 kHz to 400 kHz, since all bidders in Clause 4.11.3 of the NIA dated 02.03.2015 have already consented to the proposal for reduction in channel spacing. The Inter-Ministerial Committee of the UoI has already accepted "*in-principle*" the recommendation of TRAI for reduction in channel spacing from 800 kHz to 400 kHz[27]. Since 2015, the state of the "*feasibility*"[28] study being undertaken by the UoI in this regard is unknown. Eight years have lapsed since the "*feasibility*" was mentioned in the NIA dated 02.03.2015.

[26] See page 9 of TV Today Ltd Annual Report for FY 2015-16 at http://specials.indiatoday.com/aajtaknew/download/annual-report2015-16.pdf
[27] See paragraph 4 of letter from Addl Secy, UoI to TRAI dated 16.12.2014
[28] See Clause 4.11.3 of NIA dated 02.03.2015

(iii) Measure Three – Recommend that re-farming of frequencies and on-tap availability for such re-farmed frequencies (without any need for fresh auction). Re-farmed frequencies maybe defined as those which have been offered in an auction within the previous five years, but were either:

(a). not auctioned due to lack of demand;

(b). auctioned and thereafter terminated / surrendered.

A capital city like Bhubaneshwar has seen two radio stations close down as previous operators exited by surrendering their frequency. Because the frequency is not re-farmed, public interest is affected in the Bhubaneshwar market due to lack of choice, as now there are only 2-3 private FM broadcasters left.

(iv) Measure Four –This Stakeholder suggests that TRAI conduct an annual meeting with the FM Radio Broadcasters to evaluate policy interventions that can be initiated on a "*suo-moto*" basis to ensure that the voice of the private FM Broadcasting Companies can be heard by the Regulator at least once a year. It maybe noted that all previous TRAI Consultation Papers have been issued only after a reference has been received by TRAI from the UoI. TRAI has restrained itself from using the power to issue "*suo-moto*" Consultations. This measure will help in institutionalizing the Consultation process.

(v) Measure Five – This Stakeholder suggests that TRAI recommend a cap of 15 minutes of advertising as a maximum in any clock hour. Previous recommendations placed a cap on minutes of advertising / sponsorships for Community Radio Stations, and such a cap needs to be evaluated for private FM Radio Stations as well. Presently, the number of minutes of advertising for at least 6 prime hours on weekdays exceeds 25 minutes on an almost regular basis. Any such cap will improve listenability, is in public interest and possibly ring-fence the industry from the rate-wars and market-share wars which have plagued this industry since FY 2018-19. A few countries such as Australia have successfully adopted such measures to protect the public interest and ensure healthy competition.

The counter-comments by other Stakeholders to this document shall be most welcome, and this Stakeholder shall likewise, also attempt to provide it's counter to papers put-up by other Stakeholders, to ensure that the process of consultations initiated by the UoI by way of its reference to TRAI is conducted with all relevant knowledge and facts available in the public domain. This Stakeholder shall also participate in any Open-house discussion which maybe held by TRAI on the matter.

Before closing, we express our gratitude to all stakeholders including the TRAI, the Ministry of Information & Broadcasting and other radio broadcasting companies for growing and building the private FM Radio Broadcasting industry over the last two decades for their support of and trust in Clear Media (India) Pvt Ltd.

For Clear Media (India) Pvt Ltd,

Raj Kumar

General Manager.

Annexure - A

Share of zombie firms in India doubled between FY12 & FY22

economictimes.indiatimes.com/news/company/corporate-trends/share-of-zombie-firms-in-india-doubled-between-fy12-fy22/printarticle/97088588.cms

Share of zombie firms in India doubled between FY12 & FY22

By Arun Singh, ET CONTRIBUTORSLast Updated: Jan 18, 2023, 04:01 PM IST
Share

Synopsis

Dun & Bradstreet's analysis finds that zombie firms have increased in India over the past decade. The share of zombie firms (as a percentage of listed companies) doubled between FY12 and FY22, from 4.9% to 9.8%. Zombie firms are those that do not generate sufficient profits to cover their debt servicing costs over an extended period.

The share of zombie firms (as a percentage of listed companies) doubled between FY12 and FY22, from 4.9% to 9.8%, data shows. Zombie firms are those that do not generate sufficient profits to cover their debt servicing costs over an extended period.

We identify a company as a Zombie if its Interest Coverage Ratio (ICR) has been less than 1 for at least 3 consecutive years and if it is at least 10 years old. ICR is a measure of a company's ability to meet its interest payment. The inclusion of the second criterion – age – is necessary because start-ups may need a few years to pass by before investment projects start to deliver returns.

The rise of zombie firms has dire economic consequences. Several studies have shown that zombies depress market prices, distort credit allocation, and crowd out both investment and employment at healthy firms. These disruptions impede business dynamism and weigh on the aggregate productivity of the sector and by large, the economy.

Zombie firms thrive during phases of rapid economic expansion. However, they are the among the first businesses to fail during an economic downturn. Massive fiscal packages, a flood of cheap liquidity in the capital markets, and creditors forbearance kept these businesses afloat during the COVID-19 pandemic. The global economy is now in the midst of one of the most internationally synchronous episodes of monetary policy tightening of the past half century. (Dr Arun Singh is Global Chief Economist, Dun & Bradstreet India)

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