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IN THE HIGH COURT OF SINDH AT KARACHI
[CONSTITUTIONAL JURISDICTION]

CONSTITUTIONAL PETITION NO. D-2689 OF 2009

INDEPENDENT MEDIA CORPORATION (PRIVATE) LIMITED, a public limited company incorporated under the laws of Pakistan, having its registered office at Printing House, I. I. Chundrigar Road, Karachi

.....PETITIONER

VERSUS

1. **PAKISTAN ELECTRONIC MEDIA REGULATORY AUTHORITY**, a body corporate established under the Pakistan Electronic Media Regulatory Authority Ordinance, 2002, through its Chairman, having its Sindh Region office at D-71, Block-7, Clifton, Karachi

2. **PAKISTAN**, through the Secretary, Ministry of Information and Broadcasting, 4th Floor, Cabinet Block, Pak. Secretariat Islamabad.....

.....RESPONDEDNTS

**CONSTITUTIONAL PETITION
UNDER ARTICLE 199 OF THE CONSTITUTION OF
THE ISLAMIC REPUBLIC OF PAKISTAN, 1973**

The above-named Petitioner respectfully submits as under:

Facts

1. That the Petitioner is a private limited company and engaged in the business of, *inter alia*, electronic media and setting up and operating television broadcast stations in Pakistan. Mr. Zaheeruddin s/o Mr. Qayamuddin who is the duly authorized

representative of the Petitioner, is well and sufficiently conversant with the facts and circumstances of the case and fully empowered/ authorized to commence, institute and maintain the present proceedings and to follow them up in all particulars and details.

- 2. That Respondent No. 1 has been established under the Pakistan Electronic Media Regulatory Authority Ordinance, 2002 (hereinafter referred to as the "PEMRA Ordinance"), which was promulgated for the development of the electronic media in Pakistan. Respondent No. 1 works under the supervision and control of Respondent No. 2.

TRUE COPY OF THE PAKISTAN ELECTRONIC MEDIA REGULATORY AUTHORITY ORDINANCE, 2002 IS FILED HEREWITH AND MARKED AS ANNEXURE 'A'.

- 3. That Respondent No. 1 has made the Pakistan Electronic Media Regulatory Authority Rules, 2002 (hereinafter referred to as the "PEMRA Rules") with the approval of Respondent No. 2 pursuant to Section 39 of the PEMRA Ordinance, which has been reproduced herein below for convenience:

"39. Power to make rules.- (1) The Authority may, with the approval of the Government, by notification in the official Gazette, make rules to carry out the purposes of this Ordinance.

(2) In particular, and without prejudice to the generality of the fore-going power, such rules may be provided for all or any of the following matters, namely:-

(a) to prescribe the forms for the license for working, installing, operating, or dealing in transmission broadcast or distribution apparatus and the manner in which applications for the licenses shall be granted;

(b) to prescribe the terms and conditions of the license including fee to be charges in connection with the issuance of licenses and related matters;

(c) to prescribe standards and measures for the establishment of broadcast media stations, installation of broadcasting, distribution service or teleporting equipment, transmitters, receivers, boosters, converters, distributors and common antennae;

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(d) to prescribe terms and conditions for the broadcast media or distribution service operators who own, control or operate more than one media enterprise; and

(e) to define the circumstances constituting undue concentration of media ownership and abuse of powers and anti-competitive practices by media companies."

TRUE COPY OF THE PAKISTAN ELECTRONIC MEDIA REGULATORY AUTHORITY RULES, 2002 IS FILED HEREWITH AND MARKED AS ANNEXURE 'B'.

4. That Respondent No. 1 has also made the PEMRA (TV/Radio Broadcast Operations) Regulations, 2002 (hereinafter referred to as the "PEMRA Regulations"). The power to make regulations has been purportedly conferred upon Respondent No. 1 by way of Section 4(3) of the PEMRA Ordinance, which provides that Respondent No. 1 "may, by notification in the official Gazette, make regulations and also issue determinations for carrying out the purposes of this Ordinance." Rule 30 of the PEMRA Rules purportedly stipulates that Respondent No. 1 "shall issue regulations for exercising the powers given to it under the ordinance and the rules."

TRUE COPY OF THE PEMRA (TV/RADIO BROADCAST OPERATIONS) REGULATIONS, 2002 IS FILED HEREWITH AND MARKED AS ANNEXURE 'C'.

6. That Respondent No. 1 has issued to the Petitioner licenses (herein after referred to as the "Said License") to operate Satellite Television (International Scale) Stations in respect of two channels known as 'Geo TV' and 'Geo News'. A copy of the License dated May 22, 2008 issued in respect of 'Geo TV' is attached hereto along with its terms and conditions. The terms and conditions are substantially the same for both the licenses.

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TRUE COPY OF THE LICENSE (GEO TV) DATED MAY 22, 2008 ALONG WITH TERMS AND CONDITIONS AND LICENSE (GEO NEWS) DATED MAY 22, 2008 ARE FILED HEREWITH AND MARKED AS ANNEXURE 'D' AND 'D-1' RESPECTIVELY.

7. That the Petitioner paid Rs. 200,000/- as application processing fees as may be seen from the attachments hereto and various other amounts as license fees security deposit to Respondent No. 1 at the time of the issuance of the Said Licenses.

TRUE COPIES OF THE LETTER (GEO TV) DATED JULY 2, 2007 ALONG WITH CHEQUE DATED JUNE 27, 2007 AND LETTER (GEO NEWS) DATED JULY 2, 2007 WITH CHEQUE DATED JUNE 27, 2007 ARE FILED HEREWITH AND MARKED AS ANNEXURE 'E' AND 'E-1' RESPECTIVELY.

8. That the Petitioner has also been compelled by Respondent No. 1 to pay an annual renewal fee in respect of the Said Licenses as may be seen from the attachments hereto evidencing payment of Rs. 1,000,000/- each as renewal fee in respect of Geo TV and Geo News for the year 2008-09. In addition, the Petitioner may also be compelled to pay an extension fee at the time of extension of the Said Licenses upon expiry of the initial term of fifteen years.

TRUE COPY OF THE LETTERS DATED AUGUST 17, 2009 AND AUGUST 19, 2009 ARE FILED HEREWITH AND MARKED AS ANNEXURE 'F' AND 'F-1' RESPECTIVELY.

9. That the transmission of a satellite TV channel such as the Petitioner's channels is transmitted to a communications satellite vide an uplinking facility. The communications satellite then retransmits the signal back to stations on Earth. Although the Said Licenses envisage the provision of a service by Respondent No. 1 to the Petitioner in the form of a teleporting facility for purposes of uplinking the Petitioner's transmission to the satellite, no such facility has been made available to the same to date.

Consequently, the Petitioner has had to invest significant amounts to install its own teleporting facility in order to uplink its transmission to the satellite for broadcast of its programming.

10. That no service or facility is provided by either of the Respondents to the Petitioner in support of the operation of its satellite TV Channels or is envisaged to be provided by the Respondents under the PEMRA Ordinance, PEMRA Rules, and/or the PEMRA Regulations.
11. That the PEMRA Regulations, *inter alia*, contain an unlawful and unconstitutional Regulation 9(7) which stipulates that the ***“licensee shall pay to the Authority 2% of the gross revenue receipts for airing or broadcasting the advertisements on his system.”***
12. That Respondent No. 1 has sent the Petitioner notices dated June 1, 2009 and June 2, 2009 (hereinafter referred to as the ***“Impugned Notices”***) demanding payment of 7.5% and 5% of the Petitioner's gross revenue in respect of Geo TV and Geo News respectively purportedly under Regulation 9(7) of the PEMRA Regulations. Respondent No. 1 has also threatened coercive action if its unlawful and unconstitutional demands are not immediately complied with. The Petitioner has approached the Respondents on several occasions and made repeated requests for the withdrawal of the unlawful and unconstitutional the Impugned Notice but such requests have been summarily albeit orally rejected. Hence, the Petitioner prefers this petition, *inter alia*, on the following grounds:-

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TRUE COPY OF THE IMPUGNED NOTICES DATED JUNE 1,
2009 AND JUNE 2, 2009 ARE FILED HEREWITH AND
MARKED AS ANNEXURE 'G' AND 'G-1' RESPECTIVELY.

GROUNDS

- A. That the above-mentioned demand for payment of 5% / 7.5% of the gross revenue of the Petitioner under threats of action under the PEMRA Ordinance vide the Impugned Notices based on the Regulation 9(7) is entirely unjustified, unlawful, illegal, ultra vires, unconstitutional, and as such of no legal effect.
- B. That neither Regulation 9(7) nor the Impugned Notices describe whether the levy imposed is a 'tax' or a 'fee'. Regardless however, it is submitted that the Respondents are neither entitled to impose payment of a 'fee' nor exact a 'tax' from Petitioner No. 1 except what has been provided for under the PEMRA Ordinance.
- C. That it is well settled that a 'fee' is payment for a special benefit or privilege rendered to individuals by a governmental agency. A 'fee' is a sort of return or consideration for services rendered and is meant to compensate the Government for expenses incurred in rendering services to the person from whom the fee is collected. In the case at hand, the Respondents are neither providing any service to the Petitioner nor do the provisions of the PEMRA Ordinance contemplate provision of any service to the Petitioner. All that Respondent No. 1 does is to issue the Said Licenses and renew the same annually. Neither action can by any stretch of the imagination be deemed a service. Further, for such action, Respondent No. 1 made a demand for and the Petitioner was

compelled to pay the application processing fee, license fee, and the annual renewal fee in respect of each of the three Said Licenses. The Petitioner reserves its right to challenge the levy and collection of such fee at the appropriate time when so advised. Notwithstanding the unlawful and unconstitutional nature of these levies, in any event, no additional service is provided to the Petitioner for which the Respondents can demand payment of a 'fee' under Regulation 9(7) from Petitioner No. 1.

- D. That under well settled law, the Respondents cannot impose a fee or demand payment thereof unless the Petitioner derives some benefit from it and such benefit must have a direct nexus to the fee being demanded. As submitted above, no service is being provided by the Respondents which corresponds to the levy under Regulation 9(7). There is no connection between the issuance of the Said Licenses and its annual renewal and payment of a percentage of the gross revenue of the Petitioner, which contention is further strengthened by the fact that the Respondents have already issued the Said Licenses to the Petitioner and have been renewing the same without demanding payment of the levy under Regulation 9(7). In the absence of any corresponding service, Respondents No. 1 is absolutely unjustified in imposing 'fees' in the form of Regulation 9(7). Respondent No. 2 has failed in its statutory duty to supervise and control Respondent No. 1 as it has done nothing to restrain Respondent No. 1 from making unconstitutional and illegal demands from the Petitioner and from threatening coercive action to achieve compliance.

- E. That even if Regulation 9(7) levy sought to be defended by the Respondents as a tax, it is submitted that a 'tax' cannot be imposed through a regulation. A tax can only be levied by or under the authority of an Act of Parliament. The PEMRA Ordinance does not levy or authorize the levy of a tax such as the one imposed by Regulation 9(7). It is noteworthy that there is no provision in the PEMRA Ordinance requiring the Petitioner to pay any portion of its gross revenue to the Respondents. This requirement is also not contained in the PEMRA Rules which have been made by Respondent No. 1 with the approval of Respondent No. 2. The requirement to pay a percentage of the gross revenue to Respondent No. 1 only appears in the PEMRA Regulations which have been made by Respondent No. 1 and is, thus, clearly unlawful and unconstitutional.

- F. That the PEMRA Ordinance neither levies a tax on the Petitioner nor authorizes Respondent No. 1 to levy or collect such tax. Respondent No. 1's power to perform any particular act must emanate from the powers or jurisdiction conferred upon or vested in Respondent No. 1 by the PEMRA Ordinance, which is the statute that created Respondent No. 1. Respondent No. 1 cannot exercise powers that have not been conferred on it in the clearest possible terms by the PEMRA Ordinance.

- G. That Section 4(3) of the PEMRA Ordinance restricts Respondent No. 1's power to make regulations only for "carrying out the purposes of the PEMRA Ordinance". [Underlining added]. Similarly, under Rule 30 of the PEMRA Rules, Respondent No. 1 may only issue regulations for "exercising the powers given to it

under the ordinance and the rules." [Underlining added]. Thus, Respondent No. 1's power to make regulations is limited to the extent of carrying out the purposes of the PEMRA Ordinance or exercising the powers given to it under the same and the PEMRA Rules. Such power does not include the authority to levy either a tax or a fee.

- H. That the Regulation 9(7) is ultra vires qua the PEMRA Ordinance. A bare perusal of the objectives stated in the PEMRA Ordinance shows that generation of revenue was not one of the purposes for which the same was enacted, which is the purpose of a 'tax' by definition. As such, Regulation 9(7) has certainly not been made for the purposes of the Ordinance. The objectives of the PEMRA Ordinance are reproduced herein below for ease of reference:

"WHEREAS it is expedient to provide for the development of electronic media in order to-

(i) improve the standards of information, education and entertainment;

(ii) enlarge the choice available to the people of Pakistan in the mediate for news, current affairs, religious knowledge, art, culture, science, technology, economic development, social sector concerns, music, sports, drama and other subjects of public and national interest;

(iii) facilitate the devolution of responsibility and power to the grass- roots by improving the access of the people to mass media at the local and community level;

(iv) ensure accountability, transparency and good governance by optimizing the free flow of information;"

- I. That Regulation 9(7) is also ultra vires qua the PEMRA Rules. No power has been conferred upon Respondent No. 1 under the PEMRA Ordinance and/or the PEMRA Rules in exercise of which, Respondent No. 1 may create, introduce, impose or levy any sort of charge, fees or tax on Petitioner No. 1. The role of Respondent

No. 1 under the PEMRA Ordinance is quite limited. There is no provision in the PEMRA Ordinance or the PEMRA Rules which empower Respondent No. 1 to itself levy any charges/tax/fee.

J. That there are three stages in any taxing statute: (1) imposition or creation of the tax or levy which is called the 'charge' and the provisions of the statute dealing with the charge are called the 'charging' sections; (2) quantification of the tax or levy which is called 'assessment'; and (3) recovery of the levy or tax is called 'collection' and the provisions dealing with the second and third stages are called the 'machinery' sections. In the present case, there is no provision in the PEMRA Ordinance under which a levy such as the one contemplated in Regulation 9(7) can be made. In exercise of its powers under the PEMRA Rules and PEMRA Regulations Respondent No. 1 can only 'assess' and 'collect' a levy.

K. That Respondent No. 1 has no constitutional authority to introduce or create new levies under the guise of its rule/regulation making powers, which only delegate the power to frame rules and regulations dealing with the machinery of assessment and collection. In striking contrast Respondent No. 1 has travelled beyond the powers delegated to the same and has *created* an altogether new charge/levy/tax/fee by way of Regulation 9(7), which is not envisaged by the PEMRA Ordinance. The rule/regulation making power delegated under Section 4(3) of the PEMRA Ordinance cannot be extended to creation of a new 'charge'. Respondent No. 1 has clearly acted in excess of the scope of its authority by framing Regulation 9(7). Insofar as Section 4(3) of the

PEMRA Ordinance is construed as delegating to Respondent No. 1 any such power to tax it is *void ab initio* as per the well settled principles of the law relating to excessive delegation.

- L. That even if it is assumed (but not admitted) that the power to impose a levy in the nature of the levy imposed by way of Regulation 9(7) had been delegated to Respondent No. 1 by the provisions of the PEMRA Ordinance, such delegation would be bad as it has now been held in a number of cases by the superior courts of Pakistan that under the Constitution of the Islamic Republic of Pakistan, 1973 taxes can only be levied under the Act of Parliament by or in terms of Article 77. The power to impose tax vests solely and exclusively with the Parliament and such power cannot be delegated. Hence, any purported delegation of the power to tax under the PEMRA Ordinance to Respondent No. 1 would be unconstitutional making Regulation 9(7) unconstitutional as well.

- M. That the Parliament's authority to impose tax is in turn confined to the items enumerated from No. 43 to 53 of the Federal Legislative List contained in the Fourth Schedule of the Constitution of the Islamic Republic of Pakistan, 1973. This Federal Legislative List is exhaustive. It does not include the power to impose tax in the nature of the levy sought to be imposed by Regulation 9(7). It is therefore submitted that even the Parliament, having exclusive power to levy tax, is not competent to levy the type of tax contemplated in Regulation 9(7).

- N. That notwithstanding the fact that Respondent No. 1 does not have the authority or power to frame Regulation 9(7) for the reasons

stated herein above, Respondent No. 1 has now increased the percentage required to be paid by the Petitioner from 2% as stipulated under Regulation 9(7) to 5% / 7% vide the Impugned Notices. Respondents have neither framed any rules or regulations nor issued any notification for the purpose of increasing the percentage of the levy imposed under Regulation 9(7). Respondent No. 1 has simply sent the Petitioner the Impugned Notices and is now pressurizing the same to make payment of the unconstitutional and unlawful levy under Regulation 9(7) at the increased rates of 7.5% and 5% of the Petitioner's gross revenue in respect of Geo TV and Geo News respectively.

- O. That the Petitioner submits that there is no other speedy or efficacious remedy except by way of this Petition for the cause of action, which arose within the jurisdiction of this Honorable Court.

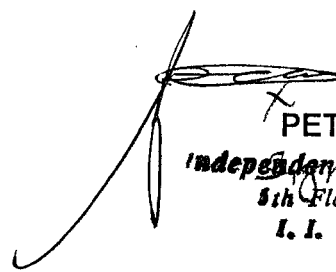
- P. That further grounds shall be urged at the time of hearing of this petition with the permission of this Honorable Court.

PRAYER

It is, therefore, respectfully prayed that this Honorable Court may be pleased to:

1. Declare that Regulation 9(7) of the PEMRA (TV/Radio Broadcast Operations) Regulations, 2002 has been issued without lawful authority, is ultra vires the powers of the Respondents, and is without lawful affect;

2. Declare that the Impugned Notices dated June 1, 2009 and June 2, 2009 are illegal, unjust and void *ab initio* and quash the same;
3. Prohibit the Respondents, jointly and severally, from claiming, demanding or recovering payment of 5% / 7.5% or any portion of the gross revenues of the Petitioner, from demanding submission of its annual audited accounts for the purposes of calculating the aforementioned amount, and from taking any adverse measures against the Petitioner as threatened in the Impugned Notices;
4. Grant cost of the petition;
5. Grant any and all other relief(s) that this Honorable Court may deem just and proper in the circumstances of the present case.

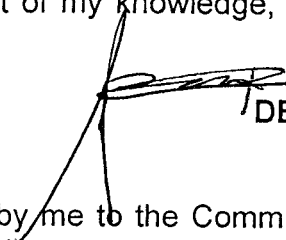

PETITIONER
Independent Media Corporation
 5th Floor Printing House
 I. I. Chundrigar Road,
 Karachi

ADVOCATE FOR THE PETITIONER

KARACHI:
DATED : .12.2009

VERIFICATION

I, Mr. Zaheeruddin s/o Mr. Qayamuddin, Muslim, adult, resident of Flat No. 20, Dada Terrace, Shaheed-e-Millat Road, Karachi, as the duly authorized representative of the Petitioner do hereby declare on oath at Karachi, this ____ day of December, 2009 that whatever is stated in the foregoing paragraphs is true and correct to the best of my knowledge, information and belief.


DEPONENT
Sign only

The Deponent above named is identified by me to the Commissioner for taking Affidavits.

ADVOCATE

Solemnly affirmed before me on oath at Karachi, this ____ day of December, 2009 by the Deponent above-named, who is identified by **Mr. Anjum Ghani Khan, Advocate**, who is personally known to me.

COMMISSIONER FOR TAKING AFFIDAVITS

DOCUMENTS FILED:

Annexures "A" to "G-1"

DOCUMENTS RELIED UPON:

Originals of the above and all correspondence, records and documents, etc., relating to the subject-matter of this petition.

ADDRESS OF THE PARTIES:

As given in the title.

ADDRESS OF ADVOCATE FOR PETITIONER & FOR SERVICE:

Fazleghani Advocates,
F-72/1, Block 8, KDA 5, Clifton,
Karachi 75600,
Pakistan
Tel : 021 35879511-19
Fax : 021 35879521-22
fgk@fazleghani.com

Drafted by me.

ADVOCATE

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IN THE HIGH COURT OF SINDH AT KARACHI
[CONSTITUTIONAL JURISDICTION]

CONSTITUTIONAL PETITION NO. D- OF 2009

INDEPENDENT MEDIA CORPORTION
(PRIVATE) LIMITED PETITIONER

VERSUS *CMANO = 13065/09*

PAKISTAN ELECTRONIC MEDIA REGULATORY
AUTHORITY & ANOTHER RESPONDEDNTS

APPLICATION UNDER ARTICLE 199 OF THE CONSTITUTION
OF ISLAMIC REPUBLIC OF PAKISTAN, 1973
R/W ORDER XXXIX RULES 1 & 2 AND SECTION 151, C.P.C.

For reasons disclosed in the accompanying affidavit and the facts stated in the Petition it is respectfully prayed on behalf of the above-named the Petitioner that this Honorable Court may be pleased to grant an order restraining the Respondents, jointly and severally, from claiming, demanding or recovering payment of 5% / 7.5% or any portion of the gross revenues of the Petitioner, and from taking any measures for recovery of the same including but not limited to demanding submission of its annual audited accounts for the purposes of calculating the aforementioned amount, and from taking any adverse measures against the Petitioner as threatened in the Impugned Notices, pending final disposal of the instant petition.

Ad interim orders are also solicited in the interest of justice.

ADVOCATE FOR THE PETITIONER

KARACHI:
DATED : .12.2009

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FOR IMMEDIATE USE IN COURT
ON BEHALF OF THE PETITIONER

IN THE HIGH COURT OF SINDH AT KARACHI
[CONSTITUTIONAL JURISDICTION]

CONSTITUTIONAL PETITION NO. D- OF 2009

INDEPENDENT MEDIA CORPORATION
(PRIVATE) LIMITED PETITIONER

VERSUS

PAKISTAN ELECTRONIC MEDIA REGULATORY
AUTHORITY & ANOTHER RESPONDEDNTS

**AFFIDAVIT IN SUPPORT OF THE APPLICATION
UNDER ARTICLE 199 OF THE CONSTITUTION
OF ISLAMIC REPUBLIC OF PAKISTAN, 1973
R/W ORDER XXXIX RULES 1 & 2 AND SECTION 151, C.P.C.**

I, Mr. Zaheeruddin s/o Mr. Qayamuddin, Muslim, adult, resident of Flat No. 20, Dada Terrace, Shaheed-e-Millat Road, Karachi, do hereby solemnly affirm and state on oath as under:-

1. That I am the duly authorized representative of the Petitioner in the above matter, well and sufficiently conversant with the facts of the case and able to depose to the same.
2. That the accompanying application under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 read with Order XXXIX Rules 1 & 2 and Section 151, C.P.C. has been drafted and filed under my instructions, the contents whereof are true and the same along with the contents of the petition be treated as an integral part of this affidavit for the sake of brevity and be read as if set out and reproduced herein *in extenso*.

3. That Respondent No. 1 has issued to Petitioner No. 1 licenses (herein after referred to as the "Said License") to establish and operate Satellite Television (International Scale) Stations in respect of two channels known as 'Geo TV' and 'Geo News'.
4. That Respondent No. 1 has sent the Petitioner notices dated June 1, 2009 and June 2, 2009 (hereinafter referred to as the "Impugned Notices") demanding payment of 7.5% and 5% of the Petitioner's gross revenue in respect of Geo TV and Geo News respectively purportedly under Regulation 9(7) of the PEMRA Regulations. To this end, the Impugned Notices also direct the Petitioner to submit its annual audited accounts under threats of legal action under the PEMRA Ordinance in case of non-compliance. Respondent No. 1 has also threatened coercive action if its unlawful and unconstitutional demands are not immediately complied with.
5. That the Petitioner has approached the Respondents on several occasions and made repeated requests for the withdrawal of the unlawful and unconstitutional Impugned Notices but such requests have been summarily albeit orally rejected.
6. That no service or facility is provided by either of the Respondents to the Petitioner in support of the operation of its satellite TV Channel or is envisaged to be provided by the Respondents under the PEMRA Ordinance, PEMRA Rules, and/or the PEMRA Regulations for which the Respondents can demand payment of a 'fee' under Regulation 9(7) from the Petitioner.

7. That even if Regulation 9(7) levy sought to be defended by the Respondents as a tax, it is submitted that a 'tax' cannot be imposed through a regulation. A tax can only be levied by or under the authority of an Act of Parliament. The PEMRA Ordinance does not levy or authorize the levy of a tax such as the one imposed by Regulation 9(7). The requirement to pay a percentage of the gross revenue to Respondent No. 1 only appears in the PEMRA Regulations which have been made by Respondent No. 1 and is, thus, clearly unlawful and unconstitutional.
8. That the PEMRA Ordinance neither levies a tax on the Petitioner nor authorizes Respondent No. 1 to levy or collect such tax. Respondent No. 1's power to perform any particular act must emanate from the powers or jurisdiction conferred upon or vested in Respondent No. 1 by the PEMRA Ordinance, which is the statute that created Respondent No. 1. Respondent No. 1 cannot exercise powers that have not been conferred on it in the clearest possible terms by the PEMRA Ordinance.
9. In striking contrast Respondent No. 1 has travelled beyond the powers delegated to the same and has *created* an altogether new charge/levy/tax/fee by way of Regulation 9(7), which is not envisaged by the PEMRA Ordinance.
10. That even if it is assumed (but not admitted) that the power to impose a levy in the nature of the levy imposed by way of Regulation 9(7) had been delegated to Respondent No. 1 by the provisions of the PEMRA Ordinance, such delegation would be bad as it has now been held in a

number of cases by the superior courts of Pakistan that under the Constitution of the Islamic Republic of Pakistan, 1973 taxes can only be levied under the Act of Parliament by or in terms of Article 77. The power to impose tax vests solely and exclusively with the Parliament and such power cannot be delegated. Hence, any purported delegation of the power to tax under the PEMRA Ordinance to Respondent No. 1 would be unconstitutional making Regulation 9(7) unconstitutional as well.

11. That the Parliament's authority to impose tax is in turn confined to the items enumerated from No. 43 to 53 of the Federal Legislative List contained in the Fourth Schedule of the Constitution of the Islamic Republic of Pakistan, 1973. This Federal Legislative List is exhaustive. It does not include the power to impose tax in the nature of the levy sought to be imposed by Regulation 9(7). It is therefore submitted that even the Parliament, having exclusive power to levy tax, is not competent to levy the type of tax contemplated in Regulation 9(7).

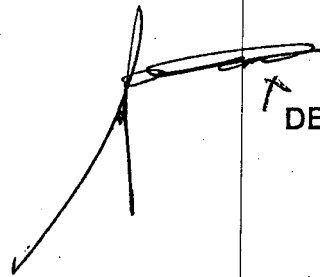
12. That notwithstanding the fact that Respondent No. 1 does not have the authority or power to frame Regulation 9(7) for the reasons stated herein above, Respondent No. 1 has now increased the percentage required to be paid by the Petitioner from 2% as stipulated in Regulation 9(7) to 5% / 7% of their gross revenue vide the Impugned Notices. Respondents have neither framed any rules or regulations nor issued any notification for the purpose of increasing the percentage of the levy imposed under Regulation 9(7). Respondent No. 1 has simply sent the Petitioner the Impugned Notices and is now

pressurizing the same to make payment of the unconstitutional and unlawful levy under Regulation 9(7) at the increased rates of 7.5% and 5% of the Petitioner's gross revenue in respect of Geo TV and Geo News respectively.

13. That therefore the above-mentioned demand for payment of 5%/ 7.5% of the gross revenue of Petitioner No. 1 under threats of action under the PEMRA Ordinance vide the Impugned Notice based on the Regulation 9(7) is entirely unjustified, unlawful, illegal, ultra vires, unconstitutional, and as such of no legal effect.
14. That the Petitioner has genuine concerns and reasons to fear that notwithstanding the unlawful and unconstitutional nature of such demands, the Respondents may resort to coercive measures in order to compel Petitioner No. 1 to pay the unlawful and unconstitutional levy of 5% / 7.5% of its gross revenue to Respondent No. 1, hence this application.
15. That the Petitioner has a good prima facie case on merits as well as on cogent reasons and the balance of convenience also lies in my favour.
16. That unless the accompanying application is granted, the Petitioner shall suffer irreparable harm, which cannot be compensated otherwise.

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~~179~~ That whatever is stated herein above is true and correct to the best of my knowledge and belief.



DEPONENT

Sign my

KARACHI:
DATED : .12.2009

The Deponent above named is identified by me to the Commissioner for taking Affidavits.

ADVOCATE

Solemnly affirmed before me on oath at Karachi, this ____ day of December, 2009 by the Deponent above-named, who is identified by Mr. Anjum Ghani Khan, Advocate, who is personally known to me.

COMMISSIONER FOR TAKING AFFIDAVITS