

September 11, 2012

**By Speed Post**

Telecom Regulatory Authority of India  
Mahanagar Door Sanchar Bhawan  
Jawahar Lal Nehru Marg (old Minto Road)  
Next to Zakir Hussain College  
New Delhi – 110 002

*Kind Attn.: Mr. Wasi Ahmad, Advisor (B&CS)*

**Ref.:** Press Release dated 27.08.2012 bearing No. 178 of 2012 (hereinafter "Press Release dated 27.08.2012") [read with Consultation Paper No.7 of 2012, Press Release No. 64 of 2012 & Press Release No.66 of 2012]

**Sub.:** Discovery Communications India's ("DCIN") Preliminary Response to Telecom Regulatory Authority of India's ("TRAI") draft regulation "Standards of Quality of Service (Duration of Advertisements in Television Channels) (Amendment) Regulations, 2012" (hereinafter "Draft Amended Regulations")

Dear Sir,

1. We write in reference to TRAI's Press Release dated 27.08.2012 whereby, TRAI has invited comments of all stakeholders on Draft Amended Regulations. We appreciate and thank TRAI for affording us with an opportunity to respond to the Draft Amended Regulations, and by way of the present Preliminary Response we are placing on record our concerns regarding the said Consultation Paper.
2. At the outset, we state that the present Preliminary Response is being filed by us without prejudice to our rights and contentions in Appeal No. 9-C of 2012 [wherein we have impugned TRAI's Standards of Quality of Service (Duration of Advertisements in Television Channels) Regulations, 2012 dated 14.05.2012 (hereinafter "Principal Regulations")], including without limitation, the issue we have taken on TRAI's lack of subject

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matter jurisdiction, which are pending adjudication before the Hon'ble Telecom Disputes Settlement & Appellate Tribunal, New Delhi ("Hon'ble TDSAT"). Further, this Preliminary Response is being filed pursuant to Hon'ble TDSAT Order dated 30.08.2012, copy whereof is being enclosed herewith for your ready reference.

3. This Preliminary Response should be read in addition to and not in derogation of (a) our communication dated 05.04.2011, which was sent in response to TRAI's Consultation Paper No.7 of 2012 dated 16.03.2012 on issues related to Advertisements in TV Channels ("Consultation Paper dated 16.03.2012"), and (b) Appeal No. 9-C of 2012 filed by us before the Hon'ble TDSAT. Copies of our communication dated 05.04.2011 and the Appeal filed by us before the Hon'ble TDSAT are being enclosed for your ready reference.
4. We reiterate that we do not agree with the regulation of advertisements (either by way of Principal Regulations and/or Draft Amended Regulations) that TRAI, has sought to impose *inter-alia* for the following reasons:
  - (a) The subject matter dealing with regulating advertisements is an area that is already being regulated by the Central Government.
  - (b) The subject matter of consultation not only falls outside the purview of the Telecom Regulatory Authority of India Act, 1997 (as amended) (hereinafter "TRAI Act") but, is also inconsistent with the provisions of Cable Television Networks (Regulation) Act, 1995 (as amended) read with Cable Television Networks Rules, 1994 (as amended).
  - (c) TRAI has no power under the TRAI Act to regulate advertisements in any form. Thus, the issues for consultation are beyond the TRAI's inherent subject matter jurisdiction. Further, the Draft Amended Regulations proposed to be framed by TRAI is beyond the scope of the powers and functions conferred upon the TRAI under the TRAI Act, and hence outside TRAI's jurisdiction.
  - (d) Central Government's Notification dated 09.01.2004 does not and cannot confer any power unto TRAI, which is not there under the TRAI Act itself. In any case, TRAI can only make recommendations

on the subject matter of Draft Amended Regulations, it cannot frame Regulations.

- (e) TRAI cannot under the guise of laying down guidelines on quality of service alter its recommendatory function (relating to duration of advertisements) to a regulatory function. This is clear from the Judgment of the Hon'ble TDSAT dated 27.04.2005 in Appeal No. 11 of 2005 titled Bharat Sanchar Nigam Limited *vs.* TRAI and in Judgment dated 03.05.2005 in Appeal No. 31 of 2005 titled Bharat Sanchar Nigam Limited *vs.* TRAI.
- (f) The Draft Amended Regulations are still contrary to TRAI's stated position in paras 8.10 and 8.12 of Clause 8 of its "Recommendations on Issues relating to Broadcasting and Distribution of TV channels" dated 01.10.2004, and TRAI has failed to give any reasons for deviation from its own stand that was taken on the need to regulate advertisements in its Recommendations dated 01.10.2004.
- (g) The Draft Amended Regulations are contrary to TRAI's own stated position in its reply-affidavit in Petition No. 34 (C) of 2011 titled Utsarg *vs.* Union of India & Ors. It is submitted that TRAI, on the issue of regulation of advertisement on television channels, in its reply affidavit dated 22.02.2011, had inter-alia, stated the following:

"8. *That from the perusal of sections 2, 5, 6 and 18 of the Cable Television Networks (Regulation) Act, 1995, it can be clearly seen that for any contravention of the Advertising Code, the authority to file a complaint before appropriate court for violation of advertisement code vests with the authorized officer. Thus it is amply clear that a policy framework and audit mechanism as prayed for by the Petitioner is already in place under the provisions of Cable Television Networks (Regulation) Act, 1995 and the rules made thereunder. It is submitted that the answering respondent has no role to play in relation to the Cable Television Networks (Regulation) Act, 1995.*

... ..

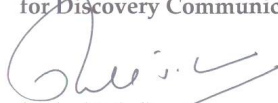
11. *That considering all the aspects of the matter, the answering respondent (TRAI) in its recommendation dated 1.10.2004, had recommended as under:*

8.15 (i) *There should not be any regulation, at present, on advertisement on both FTA and Pay Channels."*

- (h) the Draft Amended Regulations are an attempt to nullify and over-reach extant Statutory Rules, namely Rules 7(6), 7(10) and 7(11) of the Cable TV Rules, which have been framed under the Cable TV Act and have statutory sanction as opposed to the Draft Amended Regulations, which are attempted to be framed by TRAI merely as a matter of policy, in fact without even the power to frame such policy.
  - (i) Last but of supreme relevance, the Draft Amended Regulations are contrary to the constitutional ideals enshrined in Articles 14 and 19 of the Constitution of India.
5. In view of the above, it would only be appropriate for TRAI to withdraw / de-notify its Principal Regulations and not attempt to rectify the ultra vires Defective Regulation by the Draft Amended Regulations.

Thanking you.

Yours truly,  
for **Discovery Communications India**

  
(Rahul Johri)

Encl.: as above