



MULTI SCREEN MEDIA PRIVATE LIMITED
Interface, Building 7, 4th Floor,
Off Malad Link Road, Malad (West),
Mumbai - 400 064 India
Tel : (+91 22) 6708 1111
Fax : (+91 22) 6643 4748
www.setindia.com

September 11, 2012

Telecom Regulatory Authority of India ("**TRAI**")
Mahanager Doorsanchar Bhawan
Jawahar Lal Nehru Marg
New Delhi – 110002

Re: Draft regulation "Standards of Quality of Service (Duration of Advertisements in Television Channels) (Amendment) Regulations, 2012

Sub: Response to the Draft Regulation

Dear Sir/Madam,

In response to the captioned Draft Regulation issued by TRAI for seeking comments of the stakeholders by September 11, 2012, we on behalf of Multi Screen Media Private Limited and its affiliates ("**MSM**") are submitting our comments, observations, objections and response under the cover of this letter.

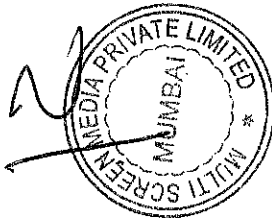
By way of background, MSM owns, operates, broadcasts and/or distributes a network of channels in India including 'SET MAX', 'Sony Entertainment Television', 'SONY SAB', 'SONY PIX', 'SONY MIX', 'AXN' and 'ANIMAX'.

We thank you for rendering an opportunity to the stakeholders to provide their comments. Should you have any queries or require any clarifications relating to our response submitted hereunder, please feel to contact me.

Yours truly,

A handwritten signature in black ink, appearing to read "Ashok Nambissan".

Name: Ashok Nambissan



Designation: General Counsel

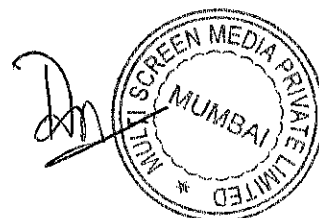
MSM RESPONSE TO DRAFT REGULATION "STANDARD OF QUALITY OF SERVICE (DURATION OF ADVERTISEMENTS IN TELEVISION CHANNELS) (AMENDMENT) REGULATIONS, 2012"

A. BACKGROUND

At the outset, it is stated that the following response to the Draft Regulations titled "*Standards of Quality of Service (Duration of Advertisements in Television Channels) (Amendment) Regulations, 2012*" ("Impugned Amendment") is in addition to the initial response filed by MSM to the Consultation Paper released on 16.03.2012 by the TRAI as also the contents of the appeal filed by MSM before the Hon'ble TDSAT, being Appeal No.7(C) of 2012 ("MSM Appeal"). The response set out herein is without prejudice to the rights and contentions of MSM as set out in the MSM Appeal. It is submitted that submission of this response may not be deemed as an acceptance of the jurisdiction of the TRAI to formulate or enact/notify the Impugned Regulations (defined below) or the Impugned Amendment, which jurisdiction has been specifically challenged by MSM. This response is also in no way a limitation of any other argument / submission which MSM may raise in the ongoing MSM Appeal or any other proceedings in which the Impugned Regulations or the Impugned Amendment is challenged.

TRAI issued a consultation paper dated 16 March 2012 titled "Issues related to Advertisements in the TV channels" ("CP"). In response to the CP, various stakeholders submitted their objections to TRAI on the CP. The stakeholders challenged the very jurisdiction of TRAI in the first place to attempt to make regulations on advertisements on television channels as being beyond its mandate under the provisions of the TRAI Act. In spite of the challenge to the jurisdiction of TRAI and without addressing any of the concerns of the stakeholders, including through the convention of conducting open house discussions to ascertain views of all stakeholders, TRAI proceeded to notify the "Standards of Quality of Service (Duration Of Advertisements in Television Channels) Regulations" dated 14th May 2012 ("Impugned Regulations").

It is now a matter of record that certain broadcasters, including MSM, have challenged TRAI's jurisdiction to notify the Impugned Regulations by way of various appeals filed and currently pending before the Hon'ble Telecom Disputes Settlement Appellate Tribunal ("TDSAT") and the enforcement of Impugned Regulations has been kept in abeyance, on the basis of the statement made by the Counsel for TRAI that the Impugned Regulations shall



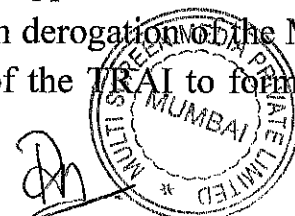
not be given effect to. It is also a matter of record that TRAI has not submitted its response in the matter and albeit has issued the Impugned Amendment.

At the last date of hearing in the matter, i.e., 30.08.2012, when all appeals of various broadcasters, including the MSM Appeal, came up for hearing, the Hon'ble TDSAT also had occasion to peruse the Impugned Amendment. On the said occasion as well, counsel for MSM reiterated the objection to the jurisdiction of the TRAI to formulate even the Impugned Amendment, on the basis that since there is no right to formulate or notify the Impugned Regulations, the power and jurisdiction to amend the same also does not exist. Counsel for TRAI submitted to the Hon'ble TDSAT that TRAI is assessing the Impugned Regulations afresh and hence the Impugned Amendment is issued to invite comments from the stakeholders with the amendments proposed in the Impugned Regulations. It may not be wholly wrong to conclude from such a submission (and without prejudice to the objections contained hereunder against the proposed provisions of the Impugned Amendment), that TRAI does acknowledge that certain amendments were indeed required in the Impugned Regulations and which amendments are now proposed only when the Impugned Regulations have been challenged in the Hon'ble TDSAT and is pending for adjudication.

TRAI, through its counsel, also submitted at the last date of hearing that TRAI is willing to consider all submissions made by broadcasters during the process of inviting objections against the Impugned Amendment and any open house discussions following the submission of such objections, including but not limited to the challenge to the TRAI's jurisdiction. The Hon'ble TDSAT then directed the matter to be listed in December, 2012 giving liberty to the broadcasters to continue agitating their respective appeals in case the objections of the Broadcasters are not adequately addressed by TRAI. The Hon'ble TDSAT has directed the TRAI to consider all the objections to be raised by the broadcasters and further made it clear that the participation of the broadcasters in such a process of considering the Impugned Amendment would be without prejudice to the broadcasters' challenge to the jurisdiction of the TRAI to frame the Impugned Regulations. In the meanwhile, the TRAI, consistent with the statement of its counsel on the first date of hearing in the matter in June 2012, will not give effect to the Impugned Regulations.

Therefore and upon the directions of the Hon'ble TDSAT, we are filing our objections hereunder against the Impugned Amendment.

We must reiterate that our objections are without prejudice to our contentions and objections raised earlier in our initial response to the CP on the nature, extent and type of advertisements dealt in the CP which by way of reference are hereby incorporated ("MSM Response to CP") and shall only be supplemental in nature, where applicable. Hence these objections to the Impugned Amendment are in addition to and not in derogation of the MSM Response to CP. For the record, the objection to the jurisdiction of the TRAI to formulate



and enact/notify the Impugned Regulations and the Impugned Amendment is hereby reiterated.

A further objection to the Impugned Amendment is that it applies an arbitrary classification to television broadcasts as a whole and fails to distinguish between a recognized and time-tested classification across different genres, and hence is violative of Article 14 of the Constitution of India.

B. PREAMBLE

The Impugned Amendment amends Impugned Regulation #3 and it is now proposed that out of the six (6) sub-regulations under the Impugned Regulation #3, five (5) sub-regulations shall be deleted ("Deleted Sub-regulations") barring the first sub-regulation and Explanation to the second sub-regulation ("Surviving Sub-Regulations").

An amended Impugned Regulation # 4 is now introduced in the Impugned Amendment on reporting requirements of the broadcasters ("Reporting Regulation").

C. WHAT DOES IMPUGNED AMENDMENT IMPLY?

With the deletion of the Deleted Sub-Regulations, we understand that all the restrictions on the nature and type of advertisements are proposed to be done away with by TRAI.

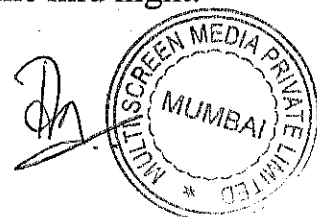
The Surviving Regulations in the Impugned Amendment are reproduced below for quick reference:

"No broadcaster shall, in its broadcast of a programme, carry advertisements exceeding twelve minutes in a clock hour.

***Explanation:** The clock hour shall commence from 00.00 of the hour and end at 00.60 of that hour (example: 14.00 to 15.00 hours)."*

This implies that:

- A. no program shall carry advertisements in excess of 12 minutes in one clock hour;
- B. such programs are deemed to include live transmissions of events; and
- C. the clock hour is explained to commence from 12 AM in the mid night.



With regards to the proposed Reporting Regulation, it is now proposed by TRAI that each broadcaster for each of its channels within fifteen (15) days from the end of a quarter submits to TRAI:

- A. in the format specified by the Authority,
- B. the details of advertisements carried on its channel.

D. FRAMING OF OBJECTIONS

Objection # 1 – Advertisement Time in Live Sports

- A. A harmonious reading of Deleted Sub-Regulations and Surviving Sub-Regulations suggests that TRAI intends to bring live sports programming under the purview of twelve (12) minutes cap which itself is not justifiable for the reasons stated in Objection # 2.
- B. With regards to the live sports, the Deleted Sub-Regulation # 3 clearly exempted live transmissions of sporting events from any caps of duration of advertisement time. As it should be and is the norm followed by all sports channels, advertisements are inserted only when the sporting action is not taking place. We are nonplussed to see that TRAI by deleting Sub-Regulation # 3 has brought live sports programming within the purview of the impugned cap on advertisement time.
- C. In this regard it must be emphasised that TRAI in its proposed regulations has failed to take cognizance of the difference between regular programming (movies, serials, etc.) and live sports. As a matter of fact this is a drastic departure from the recommendation made by TRAI in 2004 to the MIB and which recommendation it reiterated before the TDSAT in February 2011. In Para 8.12 of its 2004 recommendation TRAI did not make any recommendation on capping advertisement time for sports channels by observing that "*Moreover for sports, advertisements can only be inserted only during natural breaks, like in between overs for a cricket match or during lunch/tea*" (emphasis supplied). Further TRAI impliedly acknowledged the distinction between live sports broadcast and other television formats. In games like hockey and football, on field action is continuous from kick off till half time. There is no question of broadcasters cutting to commercials when the sporting action is occurring. But during half time or other times when no sporting action is taking place, broadcasters are at liberty to insert advertisements for the duration of the break in sporting action. Broadcasters cannot switch to other programmes during such breaks. Hence irrespective of the duration of such breaks there should not be any limitation of the Broadcasters ability to monetise such breaks as this is the only recourse the Broadcaster has to recover the cost of acquiring the rights to telecast.



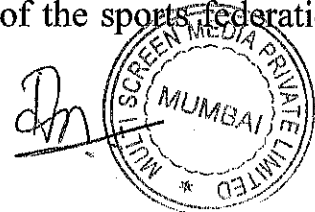
D. In proposing capping all advertisements for all programmes at 12 minutes, TRAI has failed to appreciate the manner in which different programmes and especially live sporting events are telecast. In certain sports like Formula1 and Golf, there are no breaks and advertisements are inserted before and after the live action ends. In sports like cricket, when a ball is dead, it signifies no match play is in progress. Please refer Law 23 of ICC which defines "dead ball". A "dead ball" may happen at different times during a match: when the ball crosses the boundary line, when a batsman is declared "out", when the ball is collected by the wicket keeper, at the end of an over while the wicketkeeper changes ends, etc. No balls can be bowled or runs scored when the ball is dead as per ICC Law 23. When the ball is "dead" and there is no live action on the field, the host broadcaster switches to static images to enable licensees to go into commercial breaks in their respective territories. Hence local broadcasters cannot be expected to continue showing no live action on the ground.

In short, live transmissions of sporting events have their own run of play that dictates when the broadcaster can cut to commercials. Viewers do not miss any live sporting action. Hence there is no need for a regulation that pre-determines when advertisements should be played during live telecasts.

E. Capping the advertisement will prove disastrous for the sports broadcasters. The broadcast rights in live sports are owned by the respective sports federations. These sports bodies organize the matches at high costs which include payment of match fees to the players, referees, security, cost of infrastructure like stadia, travel, accommodation, training, medical facilities, etc. The cost of organisation is then recouped by monetising various rights around these events, including the broadcast rights. It is a fact that without broadcast sponsorship marquee sporting events cannot be brought to viewing public.

F. Organization of sporting events shall not be possible if these sports federations are not able to recoup their high costs and make reasonable profits to sustain themselves. There arises the need for having sponsorships and commitment to such sponsors for coming on board and funding the sporting events. Unlike monetization by broadcasters of regular programming like made for television shows and licensed movies, the sports broadcast has different dynamics. Broadcast rights only contribute to the recoupment of high costs of sporting federations which help them to make available tickets at affordable prices to the masses. The broadcast rights are granted by these sports bodies at a substantial license fees as this is one of the largest component for recouping their costs.

G. To enable the respective broadcasters recoup the license fees paid by them and other costs like broadcast, the sports event rights organisers/rights holders contractually allow the broadcasters to put ads of specified duration at certain places while the live match is telecast by the sports broadcasters. These sports federations sign contracts with the sponsors to commit them agreed upon exposure so that the sponsors can get the value out of their money. Some of the commitments of the sports federations are

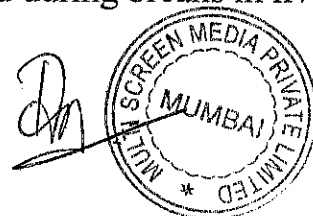


also passed on to the sports broadcasters which mandatorily have to provide exposure to such sponsors of the sports federations by way of inserting their ads tags etc. Such obligations of a sports broadcaster are recited unambiguously in the broadcaster guidelines of such sports federations which are made part of the broadcast rights contracts. It must be noted that the sports federations for each respective sport do not allow a broadcaster to insert ads at any time and place in the discretion of the broadcaster. These sports federations control the sport and are hugely motivated to provide a great viewing experience to the spectators of their respective sports. Accordingly, these sports federations provide stringent broadcast guidelines to the sports broadcasters to streamline the ad insertion, duration of each ad break, the time and place where such ads can be inserted (in the same television window showing the match or by way of taking a commercial break), the brands that can be permitted for ads etc. In a way, these sports federations regulate the manner in which advertisements can be broadcast during live transmission of sporting events.

- H. It may also be added here that if the Impugned Amendment were to become law, it would seriously impair the ability of the sports broadcaster to broadcast live sports. This is for the simple maths that it involves; if sports broadcasters are not able to recoup the exorbitant license fees that they pay to acquire the live match rights, the live sports may not be available the way it is now in the country. It is submitted that the Impugned Amendment will make live sports broadcast in the country non-viable.

Objection # 2 – Advertisement Time in Live Television Programs

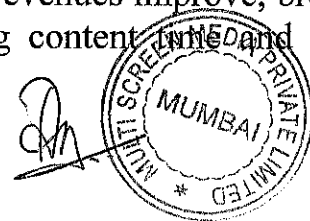
- A. The Impugned regulations and the Impugned Amendment do not make any distinction between the taped/recorded television programs (soaps and serials, etc.) and live television programs. It may be noted that live television programs are telecast in the same way as the live sports. The action in the program is telecast as it is performed from where it is uplinked unlike the recorded programs where the slots of specified duration are created for insertion of advertisements. TRAI must appreciate that the live television programs are not edited before they are broadcast and hence broadcasters are sensitive towards the viewing experience of these programs.
- B. The opportunities for inserting the advertisements in a live television program arise only when there is a changeover of anchors, performers etc. and the duration of such break is limited to the extent the changeover takes place. Allowing the viewers watching a shoddy shot of changeover taking place with a still camera will frustrate the viewers. The idea of live television programs is to enhance the experience of television viewing by bringing to the viewers live performances (singing, dances, acrobats, etc.) and hence advertisements are only inserted during breaks in live action.



C. We therefore object that the advertisement time in such live television programs be capped. Instead and as submitted above, the live programs must be treated as live sports and the advertisement insertion should be allowed to be automatically be regulated where the advertisements are permissible to be inserted depending upon the genre of the live television program.

Objection # 3 – Capping of Advertisement Time in Non-Live Television Programs

- A. In our initial response to the CP, we had pointed out that India has one of the most regulated television markets in the world where at every stage of the distribution chain there is some regulation or the other leaving broadcasters with little room to recoup investments in programming and broadcasting.
- B. TRAI's capping of the rate at which broadcasters distribute content at a retail price of Rs. 5.35 per channel per subscriber per month in CAS areas out of which a broadcaster's share is about half, results in huge losses in distribution if other modes of monetisation are not available. Similar is the case in non-CAS areas where even a GEC rate is capped at about 0.55 paise per day, irrespective of the content made available on that channel whether it is a show produced for crores of rupees or a show produced for a few lakhs.
- C. These price caps have remained in place for almost a decade despite increases in infrastructure costs, increases in content costs and overall inflation. Even the prices of essential commodities have quadrupled in this time but the cost of distributing content has been kept artificially low. This has left broadcasters with no option but to monetise breaks between and during programmes in an attempt to recoup costs and break even. However it is also a fact that ratings during breaks tend to fall as viewers switch to other programmes. Broadcasters therefore face a twin dilemma- on the one hand distribution revenue is capped and on the other too many ad breaks reduces TRPs and advertiser interest. Despite innumerable representations TRAI has declined to review these pricing caps.
- D. Capping of advertisement time on television channels without a review of caps on pricing of channels will therefore put an onerous financial burden on broadcasters. The Government has launched an ambitious digitalisation plan effective from 1 November 2012 which in phases will see the entire country switching from analogue to digital distribution with addressability. It is hoped that addressability will lead to transparency in reporting subscriber numbers and eventually lead to better collections and more revenue for broadcasters. However all this is not going to happen in a day's time or even a few months. As digitalisation gets phased in and distribution revenues improve, broadcasters will be more inclined to increase programming content and reduce ad



breaks. TRAI must appreciate that revenue ratio of broadcasters which is skewed in favour of Ad revenue due to non-addressability, will with digitalization, even out. Market forces themselves will act as a self regulating barrier limiting ad time on television. If at all TRAI wishes to regulate and assuming it has the competence to do so, which remains under challenge before the TDSAT, it is submitted without prejudice that any cap on ad time must only be brought about in tandem with the phased digitalisation plan of the Central Government.

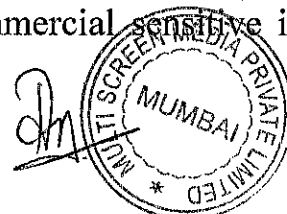
- E. It needs no repetition to say that the skewed ratio of advertisement vs. subscription has its basis in legacy issues such as under declaration and piracy and ad hoc regulatory interventions by TRAI in form of price caps and 'must provide' regime which ensures that subscription fees are the lowest in the world and continue to decline in the present inflationary spiral.
- F. TRAI should therefore defer till the last "sunset" date of analogue distribution any regulation on capping of advertisement time.

Objection # 4 – Clock Hour

- A. TRAI has explained the clock hour to commence at 12 AM (midnight) for purposes of capping the advertisement time at 12 minutes per clock hour. In doing so TRAI has failed to distinguish between the programming which is telecast during the day time and in watershed hours after 11 PM and before 5 AM.
- B. No distinction is made between the programming which is broadcast in prime time and non-prime time hours of the day.
- C. No distinction is also made for "teleshopping" programmes: during early morning and watershed hours time slots some channels run "teleshopping" programmes about products and services which can be ordered online or via telephone.
- D. The clock hour cannot be uniform for across all time zones during a given 24 hours. Instead there should not be any restrictions in insertion of advertisements in watershed hours when the consumption of television is miniscule. If at all, the clock hour should only be applicable for the programs that are telecast during the day time i.e. from 8 AM in the morning through 11 PM in the night when the watershed hours commence.

Objection # 5 – Reporting Requirements

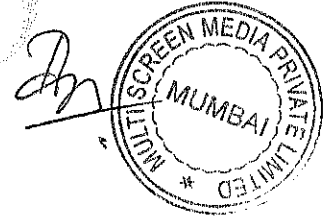
- A. The reporting requirements of advertisements inserted in each channel as provided in Impugned Regulation # 5 cast an onerous obligation on broadcasters. Further advertisements being a source of revenue, the type, nature, category and pattern insertion of advertisements in any channel forms commercial sensitive information



which TRAI by mandating it to be submitted in each quarter is exposing the channels against its competition.

- B. With approximately 700 channels in the country, it is not possible to comprehend how such a requirement will serve the purpose of regulating the insertion of advertisements in the television channels.
- C. There is no rationale for TRAI to expend resources in collating such data when on a case to case basis reports can be procured from an external agency.
- D. With no confidentiality obligations on the part of TRAI to keep the reports strictly confidential, the Impugned Regulation # 5 is absurd and against the commercial interests of the channels.
- E. Further where every entity as part of its corporate social responsibility is making paradigm shift towards e-billing, e-governance, e-documents etc., this Impugned Regulation requiring reams of papers for submitting the reports in each quarter dilutes the Government's "green" initiatives.

Dated: 11th September 2012



Comments received w.r.t. OHD

MSM RESPONSE TO "OPEN HOUSE" HELD BY TRAI ON FRIDAY, 23RD NOVEMBER 2012, AT NEW DELHI REGARDING DRAFT REGULATION "STANDARD OF QUALITY OF SERVICE (DURATION OF ADVERTISEMENTS IN TELEVISION CHANNELS) (AMENDMENT) REGULATIONS, 2012"

BACKGROUND

The following response to the Draft Regulations titled "*Standards of Quality of Service (Duration of Advertisements in Television Channels) (Amendment) Regulations, 2012*" ("**Impugned Amendment**") is in addition to the initial response filed by MSM to the Consultation Paper released on 16.03.2012 by the TRAI and also to the subsequent Draft QoS Regulation issued in August 2012. In addition this response is without prejudice to the appeal filed by MSM before the Hon'ble TDSAT, being Appeal No.7(C) of 2012 ("**MSM Appeal**"), in particular this response may not be deemed as an acceptance of the jurisdiction of the TRAI to formulate or enact/notify the "*Standards of Quality of Service (Duration Of Advertisements in Television Channels) Regulations*" dated 14th May 2012 ("**Impugned Regulations**").

It is now a matter of record that certain broadcasters, including MSM, challenged TRAI's jurisdiction to notify the Impugned Regulations by way of appeals filed and currently pending before the Hon'ble Telecom Disputes Settlement Appellate Tribunal ("**TDSAT**") and the enforcement of Impugned Regulations has been kept in abeyance, on the basis of the statement made by the Counsel for TRAI that the Impugned Regulations shall not be given effect to.

At the last date of hearing in the matter, i.e. 30.08.2012, when appeals of various broadcasters, including MSM, came up for hearing, the Hon'ble TDSAT also had occasion to peruse the Impugned Amendment. On the said occasion as well, counsel for MSM reiterated the objection to the jurisdiction of the TRAI to formulate even the Impugned Amendment, on the basis that since there is no right to formulate or notify the Impugned Regulations, the power and jurisdiction to amend the same also does not exist. Counsel for TRAI submitted to the Hon'ble TDSAT that TRAI is assessing the Impugned Regulations afresh and hence the Impugned Amendment is issued to invite comments from the stakeholders with the amendments proposed in the Impugned Regulations.

TRAI, through its counsel, also submitted at the last date of hearing that TRAI is willing to consider all submissions made by broadcasters during the process of inviting objections against the Impugned Amendment and any open house discussions following the submission

of such objections, including but not limited to the challenge to the TRAI’s jurisdiction. The Hon’ble TDSAT then directed the matter to be listed in December, 2012 giving liberty to the broadcasters to continue agitating their respective appeals in case the objections of the Broadcasters are not adequately addressed by TRAI. The Hon’ble TDSAT has directed the TRAI to consider all the objections to be raised by the broadcasters and further made it clear that the participation of the broadcasters in such a process of considering the Impugned Amendment would be without prejudice to the broadcasters' challenge to the jurisdiction of the TRAI to frame the Impugned Regulations.

TRAI called for an “Open House” in New Delhi on 23rd November 2012 and during the course thereof the Hon’ble TRAI Chairman requested participants to submit their points of view as expressed during the Open House to TRAI not later than 30th November 2012. Accordingly MSM is submitting its points for consideration of TRAI.

The relevant portion of the proposed regulation is reproduced below for quick reference:

“No broadcaster shall, in its broadcast of a programme, carry advertisements exceeding twelve minutes in a clock hour.

***Explanation:** The clock hour shall commence from 00.00 of the hour and end at 00.60 of that hour (example: 14.00 to 15.00 hours).”*

Submission # 1 – Advertisement Time in Live Sporting Events

- A. Live sports programming should be exempted from any cap on advertisement time. Instead as originally proposed by TRAI, live sporting events should be permitted to carry advertisements during “natural” breaks in play during the sporting event.
- B. In this regard it must be emphasised that in Para 8.12 of its 2004 recommendation TRAI did not make any recommendation on capping advertisement time for sports channels by observing that “ *Moreover for sports, advertisements can only be inserted only during natural breaks, like in between overs for a cricket match or during lunch/tea*” (emphasis supplied). Further TRAI impliedly acknowledged the distinction between live sports broadcast and other television formats. In games like hockey and football, on field action is continuous from kick off till half time. Hence there is no question of broadcasters cutting to commercials when the sporting action is occurring. But during half time or other times when no sporting action is taking place or when there is any interruption in play, broadcasters must be at liberty to insert advertisements for the duration of the break in live sporting action. TRAI must appreciate that given the short nature of these breaks, Broadcasters cannot switch to other programmes during such breaks. Hence irrespective of the duration of such

breaks there should not be any limitation on the Broadcasters inserting advertisements during such breaks as this is the only recourse the Broadcaster has to recover the cost of acquiring the rights to telecast live events.

- C. In certain sports like Formula1 and Golf, there are no breaks and advertisements are inserted before and after the live action ends. In other sports like cricket, when a ball is dead, it means no match play is in progress. Law 23 of ICC defines “dead ball”. A “dead ball” may happen at different times during a match: when the ball crosses the boundary line, when a batsman is declared “out”, when the ball is collected by the wicket keeper, at the end of an over while the wicketkeeper changes ends, etc. No balls can be bowled or runs scored when the ball is dead as per ICC Law 23. When the ball is “dead” and there is no live action on the field, the host broadcaster switches to static images to enable licensees to go into commercial breaks in their respective territories. Hence local broadcasters around the world and in India cannot continue showing no live action on the ground.

In short, live transmissions of sporting events have their own run of play that dictates when the broadcaster can cut to commercials. Viewers do not miss any live sporting action. Hence there is no need for a regulation that pre-determines when advertisements should be played during live telecasts.

Submission # 2 – Advertisement Time in Non Sporting Live Television Programs

- A. A distinction must be made between the taped/recorded television programs (soaps and serials, etc.) and live television programs because live television programs are telecast in the same way as the live sports. The action in the program is telecast as it is performed and from where it is uplinked unlike the recorded programs where the slots of specified duration are created for insertion of advertisements.
- B. The opportunities for inserting the advertisements in a live television program arise only when there is a changeover of anchors, performers etc. and the duration of such break is limited to the extent of time required for the changeover to take place. The idea of live television programs is to enhance the experience of television viewing by bringing to the viewers live performances (singing, dances, acrobats, etc.) and hence advertisements are only inserted during breaks in live action.

Advertisement time in such live television programs must not be capped but instead live programs must be treated as live sports and the advertisement insertion should be allowed to be self regulated so that advertisements are inserted during breaks depending upon the genre of the live television program.

Submission # 3 – Advertisement Time in Non-Live Television Programs

- A. TRAI’s capping of the rate at which broadcasters distribute content at a retail price of Rs. 5.35 per channel per subscriber per month in CAS areas out of which a broadcaster’s share is about half, results in huge losses in distribution if other modes of monetisation are not available. Similar is the case in non-CAS areas where even a GEC rate is capped at about 0.55 paise per day, irrespective of the content made available on that channel whether it is a show produced for crores of rupees or a show produced for a few lakhs.
- B. These price caps have remained in place for almost a decade despite increases in infrastructure costs, increases in content costs and overall inflation. Even the prices of essential commodities have quadrupled in this time but the cost of distributing content has been kept artificially low. This has left broadcasters with no option but to monetise breaks between and during programmes in an attempt to recoup costs and break even. However it is also a fact that ratings during breaks tend to fall as viewers switch to other programmes. Broadcasters therefore face a twin dilemma- on the one hand distribution revenue is capped and on the other too many ad breaks reduces TRPs and advertiser interest. Despite innumerable representations TRAI has shown no inclination to review these pricing caps.
- C. Capping of advertisement time on television channels without a review of caps on pricing of channels will therefore put an onerous financial burden on broadcasters. The Government’s ambitious digitalisation plan has become effective from 1 November 2012 which in phases will see the entire country switching from analogue to digital distribution with addressability. As digitalisation gets phased in and distribution revenues improve, broadcasters will be more inclined to increase programming content time and reduce ad breaks. TRAI must appreciate that revenue ratio of broadcasters which is skewed in favour of Ad revenue due to non-addressability, will with digitalization, even out. Market forces themselves will act as a self regulating barrier limiting ad time on television. If at all TRAI wishes to regulate and assuming it has the competence to do so, which remains under challenge before the TDSAT, it is submitted without prejudice that any cap on ad time must only be brought about in tandem with the phased digitalisation plan of the Central Government.
- D. It needs no repetition to say that the skewed ratio of advertisement vs. subscription has its basis in legacy issues such as under declaration and piracy and ad hoc regulatory interventions by TRAI in form of price caps and ‘must provide’ regime which ensures that subscription fees are the lowest in the world and continue to decline in the present inflationary spiral.

TRAI should therefore phase the introduction of any caps on advertisement time in a manner that coincides with the “sunset” date of analogue distribution in the country.

TRAI should also first by empirical study determine the current average percentage time per hour which broadcasters in different genres devote to advertisements. The initial caps should be pegged at these levels which can then gradually be reduced to 25% per hour of programming time. The IBF has already submitted its suggestions in this regard on behalf of broadcasters and TRAI would do well to consider the suggestions.

Submission # 4 – Clock Hour

- A. TRAI has explained the clock hour to commence at 12 AM (midnight) for purposes of capping the advertisement time at 12 minutes per clock hour. In doing so TRAI has failed to distinguish between the programming which is telecast during the day time and in watershed hours after 10 PM and before 5 AM.
- B. No distinction is made between the programming which is broadcast in prime time and non-prime time hours of the day.
- C. No distinction is also made for “teleshopping” programmes: during early morning and watershed hours time slots some channels run “teleshopping” programmes about products and services which can be ordered online or via telephone.

The clock hour cannot be uniform for across all time zones during a given period of 24 hours. Instead there should be clear distinction between “watershed” hours, “day parts” and “prime time”. There should not be any restrictions in insertion of advertisements in watershed hours when the consumption of television is miniscule. The cap if at all must be on the basis of the “average” per hour of programming and only be applicable for programs that are telecast during the day time i.e. from 8 AM in the morning through 10 PM at night when the watershed hours commence.

Exclusions:

***Teleshopping* is a genre/program by itself and hence any cap should exclude this genre altogether otherwise it will kill the business.**

Non paid Public service advertisements or advertisements issued in the Public interest should be excluded from any cap. Similarly advertisements inserted at the request of or on the notification of any Governmental or statutory body must also be excluded.

In-house “on air” promos for promoting shows of the channel on its own network. These promos are not shown on other channels. Such promos are meant merely to inform about upcoming shows and are not “commercials” as is normally understood in advertising parlance.

Submission # 5 – Reporting Requirements

- A. The reporting requirements of advertisements inserted in each channel as provided in Impugned Regulation # 5 casts an onerous obligation on broadcasters. Further advertisements being a source of revenue, the type, nature, category and pattern insertion of advertisements in any channel forms commercially sensitive information which TRAI by mandating it to be submitted via a public filing is exposing the channels against their competitors.
- B. With over 700 channels in the country, it is beyond our comprehension how such a requirement will serve the purpose of regulating the insertion of advertisements in television channels.
- C. With no confidentiality obligations on the part of TRAI to keep the reports strictly confidential, the Impugned Regulation # 5 is patently against the commercial interests of the channels.
- D. Further where every entity as part of its corporate social responsibility is making a paradigm shift towards e-billing, e-governance, e-documents, etc., this Impugned Regulation requiring reams of papers for submitting the reports in each quarter dilutes the Government’s “green” initiatives.

The above reporting requirement must be deleted or it must be substantially modified so that IF at all data is required to be furnished, only top level or aggregate data is provided and that too not more frequently than once in every six months. Further TRAI must provide assurances on the confidentiality of the information submitted by creating a separate filing and storage mechanism for such information on the lines of the procedure adopted by the Competition Commission of India for confidential filings.

Submission #6: MSO Channels

Channels operated by MSOs/LCOs: these channels are mostly not registered with the Ministry of Information and Broadcasting under their Downlinking Guidelines nor do they follow the Programming Code or the Advertising Code. However to the lay viewer, these channels are just another channel they get to see on screen. To create a level playing field, any regulation on advertisement time must apply to all channels carried on a cable network, including the channels of the cable operator.

Submission #7: Time for migration

Any regulation which attempts to change or modify existing Industry practice must be prospective in operation and provide sufficient time for Industry to migrate to the new

regulatory regime. Advertising deals are done in most cases for a period of time. In the case of sports events rights are acquired much ahead of the actual event and for periods that range from three to five to seven years. The calculation for monetisation of the rights is based on the regulatory regime in force at the time of the acquisition. If the regulatory regime changes mid-way and such time is not given it will lead to disruption and financial hardship for broadcasters who have acquired such rights at immense cost.

It is therefore submitted that TRAI must give due consideration to providing sufficient time for stakeholders to migrate to any new regulatory regime that TRAI may choose to introduce with respect to caps on advertisement time. Sufficient time in this case would be not less than six months from the date of issue of the notification in the official gazette.

Submission #8: Regulatory Overlap

TRAI is aware that currently under the Cable Television Networks Rules, 1994 framed by Parliament “Cable Rules”), there is a restriction on the amount of advertisements that can be shown per hour of television programming. Since this regulation does not have the concept of a “clock hour”, Industry practice has been to treat the requirement as an “average” per hour calculated on the basis of 24 hours of telecast.

If TRAI was to now come out with a different regulation, even while the cap under the Cable Rules remains, there will be a regulatory overlap between TRAI and the Ministry of Information and Broadcasting, the nodal ministry for the Cable Rules. This will create confusion amongst broadcasters as they would be subjected to possible penal consequences under two different legislation each having its own compliance requirements.

Hence if at all any ceiling on advertising time is proposed it must be under the aegis of only one regulatory body.

We will be only too happy to meet with TRAI and provide any further clarifications that TRAI may require.

For **Multi Screen Media Private Limited**

Ashok Nambissan
General Counsel

Date: 29th November 2012

Place: Mumbai

MSM RESPONSE