INTERNATIONAL INDIA PVT. LTD.

April 4, 2012

Dr. J.S. Sarma,
Chairperson,
Telecom Regulatory Authority of India,
Mahanagar Doorsanchar Bhawan,
Jawahar Lal Nehru Marg,
New Delhi – 110 020.

Subject : <u>Consultation Paper No. 7/2012 issued by the TRAI on Advertisements in TV Channel ("Consultation Paper")</u>

Dear Sir,

We thank the Authority to examine the various issues related to advertisements on television channels transmitted in India.

It is our belief that legislation and regulatory intervention should be minimal and judicious and be used in a manner to promote the growth of the industry, rather than impose restrictions. The present Consultation Paper posits that the heavy reliance of Indian broadcasters on advertising revenues is due to the "non-addressable nature of the cable TV networks," and "gross under declaration of the subscriber base."

These phenomena are indeed part of the Indian landscape, but the under-representation of subscription revenues in the business model of Indian broadcasting is also due to a decade of excessive regulation of subscription models -- including tight retail rate regulation, increasing interference in wholesale rate-setting, and maintenance of "must-provide" mandates that prevent platform differentiation and unnecessarily restrain competition. Thus, government over-regulation and under-enforcement have played a leading role in creating the industry's current imbalances. The key to resolving the imbalances does not lie in imposing layers of additional regulation; it lies in progressively remedying the ills at their cause.

Further, the Consultation Paper suggests a generic approach towards general entertainment channels and sports channels without detailing the unique differentiators and constraints of sports broadcasters which prevail due to the essential difference in content. The discussions in the Consultation Paper do not set out any research or data

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relating to or addressing any of the relevant factors that ought to be considered while contemplating any regulation that will affect sports channels which are *niche* channels which operate differently due to unique and periodic content availability, limited shelf life, mandatory sharing requirements, limited advertisement opportunities and huge content costs. This demonstrates an inherent issue in the approach itself that needs to be rectified even if one were to embark on such an exercise. It appears that most of the discussion relates to news channels while the proposed stipulations that have apparently stemmed out of such concerns seek to regulate the entire industry at large which is not a logical corollary.

Since the Consultation Paper set out policy recommendations and suggests changes which would affect the primary source of revenues for broadcasters, we at Turner request TRAI to take our response on the Consultation Paper on its records. We look forward to your support and will be pleased to meet you at a convenient time to explain our position in person.

Thanking you,

Yours sincerely,

Siddharth Jain
Managing Director

Encl. : Our detailed response on the Consultation Paper No. 7/2012

TURNER'S RESPONSE TO THE CONSULTATION PAPER ISSUED BY THE TELECOM REGULATORY AUTHORITY OF INDIA ON "ISSUES RELATED TO ADVERTISMENTS IN TV CHANNELS"

1. INTRODUCTION AND BACKGROUND

1.1 Turner International India Private Limited (Turner) wishes to offer comments on a consultation paper (Consultation Paper) introduced by the Telecom Regulatory Authority of India (TRAI) on March 16, 2012 on issues related to advertisements on television channels transmitted in India.

1.2 At the outset, we wish to submit that the ideal regulatory approach should be to simplify and minimize regulation given the goal of ushering in the evolution of a mature market where market forces and self-regulation would suffice. The efforts of the TRAI towards establishment of a digitized regime are noteworthy in this context. However, it appears that the current Consultation Paper and the proposals set out therein to bring in more stringent and universal guidelines are not in sync with such a progressive approach, especially when there is an existing framework which has not been faulted in its essence.

1.3 TRAI's desire to make recommendations on regulating advertising time on television channels suffers from a fundamental lack of understanding of the dynamics of the television broadcasting business. The basic business model is that broadcasts are used as entertainment for viewers and these broadcasts also carry advertisements. Viewers are then exposed to advertisements as a side product of their consumption of the entertainment content. The entertainment content is paid for by advertisers who use the intermediary of the broadcast company to deliver messages to the advertising firms' prospective customers. This model may be described as "a two-sided market with network externalities" where the intermediary, the broadcast company, is a "platform" that needs to get both sides on board in order to generate revenues. That is, the broadcaster must deliver viewers to advertisers and does so by judicious choice of the level (and perhaps the type) of advertising it proposes along with an attractive enough vehicle to attract the prospective buyers of the advertisers products to watch. Competition with other broadcasters (other platforms), is also an important feature of the competitive landscape.

1.4 Market forces ensure that a broadcaster takes into account the extent to which increasing the number of advertisements shown will cause viewers to switch off or switch channels, and this decision also impacts the amount of revenue raised per viewer from the advertisers. No broadcaster will therefore increase the number of advertisements beyond a point that will cause viewers to switch off or move to another programme. Hence for TRAI to view advertisements as an inherent nuisance that impedes viewing reflects a basic lack of understanding of the business model of the broadcasting industry.

1.5 The present consultation paper posits that the heavy reliance of Indian broadcasters on advertising revenues is due to the "non-addressable nature of the cable TV networks," and "gross under declaration of the subscriber base." These phenomena are indeed part of the Indian landscape, but the under-representation of subscription revenues in the business model of Indian broadcasting is also due to a decade of excessive regulation of subscription models -- including tight retail rate regulation, increasing interference in wholesale rate-setting, and maintenance of "must-provide" mandates that prevent platform differentiation and unnecessarily restrain competition. The rate regulations remain in effect in blatant despite of the rise of six DTH-based competitors who have now successfully brought competitive forces to play in every Indian home, and in five short years have captured roughly 25% of the pay - TV market.

1.6 Thus, government over-regulation and under-enforcement have played a leading role in creating the industry's current imbalances. The key to resolving the imbalances does not lie in imposing layers of additional regulation; it lies in progressively remedying the ills at their cause.

1.7 Further, the Consultation Paper suggests a generic approach towards general entertainment channels and niche channels without detailing the unique differentiators and constraints of niche broadcasters which prevail due to the essential difference in content. The discussions in the Consultation Paper do not set out any research or data relating to or addressing any of the relevant factors that ought to be considered while contemplating any regulation that will affect children channels which are *niche* channels which operate differently due to unique and periodic content availability, limited shelf life, limited advertisement opportunities and huge content costs.

1.8 This demonstrates an inherent issue in the approach itself that needs to be rectified even if one were to embark on such an exercise. It appears that most of the discussion relates to news channels while the proposed stipulations that have apparently stemmed out of such concerns seek to regulate the entire industry at large which is not a logical corollary.

2. KEY ISSUES RAISED IN THE CONSULTATION PAPER

The key issues raised by the TRAI in the Consultation Paper are the following:

2.1 The limits for the duration of advertisements shall be regulated on a clock hour basis i.e. the prescribed limits shall be enforced on clock hour basis.

2.2 No FTA channel shall carry advertisements exceeding 12 minutes in a clock hour. For pay channels, this limit shall be 6 minutes.

2.3 The 12 minutes of advertisements will not be in more than 4 sessions in one hour. In other words, there will be continuous airing of the TV show for at least 12 minutes each. Not more than three advertisement breaks shall be allowed during telecast of a movie with the minimum gap of 30 minutes between consecutive advertisement breaks.

2.4 In the case of sporting events being telecast live, advertisements shall only be carried during interruptions in the sporting action e.g. half time in football or hockey match, lunch/ drinks break in cricket matches, game/set change in case of lawn tennis etc.

2.5 There shall only be full screen advertisements. Part screen advertisements will not be permitted. Drop down advertisements will also not be permitted.

2.6 In so far as News and Current Affairs Channels are concerned, they are allowed to run not more that two scrolls at the bottom of the screen and occupying not more than 10% of the screen space for carrying non-commercial scrolls, tickers etc.

2.7 The audio level of advertisements shall not be higher than the audio level of the programme.

3. TURNER'S COMMENTS AND CONCERNS

Turner appreciates the efforts put forth by the TRAI. However, Turner would like to raise the following concerns in connection with the Consultation Paper and the recommendations put forth by TRAI:

3.1 LACK OF CLARITY ON THE SECTORAL REGULATOR

3.1.1 There appears to be a lack of clarity on the ministry and/or sector regulator overseeing the implementation of the advertising code (Advertising Code) under the Cable Television Networks Rules, 1994 (Cable Rules).

3.1.2 We believe TRAI does not have the authority to regulate the pricing and manner of telecast of the advertisement on television, this being the prerogative of Ministry of Information and Broadcasting (MIB). This being confirmed by TRAI by its own admission in the affidavit filed by TRAI before the Hon'ble Telecom Disputes Settlement & Appellant Tribunal in the petition No. 34(C) of 2011 filed by a society called Utsarg against TRAI and several other broadcasters and content aggregators seeking a cap on television advertising time on the ground that these advertisements interfered with viewership of television programmes. TRAI in its considered response as late as 22nd February 2011, articulated the following position:

"9. That it is submitted that Government of India vide its order [S.O. 45(E)] issued on 9.1.2004 specifically sought recommendations of the answering respondent (TRAI) on "... the parameters for regulating maximum time for advertisements in pay channels as well as other channels ... ."

10. That after following a consultation process (emphasis supplied), the answering respondent (TRAI), inter-alia, formulated its recommendations on the issue of maximum time for advertisements in TV (emphasis supplied). In Section 8 of the Recommendations dated 1st October, 2004, on "Issues Relating to Broadcasting and Distribution of TV channels", at paragraph 8.9, the answering respondent (TRAI) mentioned that the Authority has obtained average advertisement time from the pay channel broadcasters. Almost all channels have reported an average advertisement of 10 to 12 minutes per hour which is within the limits laid down in global regulations (emphasis supplied) on advertisement time .. . In paragraph 8.11 of the said recommendations it has been mentioned that "... The primary objective of the policy is to give consumer choice and good quality service at affordable prices. To ensure affordable services to the consumers, the Authority has regulated the subscription fees of television channels .... Besides regulating subscriptions, regulation of the advertisement time and its corresponding affect (sic) on revenues of broadcasters may hamper growth and competition in the broadcasting industry (emphasis supplied)...."

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 (emphasis supplied)

3.1.3 The above summarises TRAI's considered position in February 2011. Hence it is indeed surprising and manifest in TRAI's unbalanced approach that in less than a year after making this submission to the TDSAT, TRAI now comes out with a recommendation proposing drastic curbs on advertising time, reducing the time for Pay Channels by 50% from 12 minutes to six minutes per hour and proposing various other restrictions on how broadcasters must telecast advertisements.

3.1.4 TRAI has offered no explanation for this 360 degree about turn. There has been no cataclysmic event in the industry that could have remotely suggested such a drastic curb was necessary. There has been no change in this period in the regulations in any of the countries cited by TRAI in its Consultation Paper. As the Utsarg petition itself demonstrates, it is not that there has been a sudden surge of complaints by viewers. In short there are no developments to support TRAI's draconian step in reducing advertising inventory by a whopping 60%.

3.1.5 We appreciate that TRAI is issuing the Consultation Paper by virtue of the notification number 30 dated January 9, 2004 issued by the Ministry of Communication and Information Technology. However, such a Consultation Paper would not only be a colourable exercise of authority but would also be devoid of jurisdiction as the nodal ministry for regulating advertisements is the MIB and the relevant legislation is the Cable Rules.

3.1.6 Even otherwise, the January 9, 2004 notification under which TRAI is deriving its power was subsequently eclipsed by the insertion of Rule 7 (11) of the Cable Rules by the Central Government through its nodal ministry(i.e. the MIB) in exercise of its power under Section 22 of the Cable Television Networks (Regulation) Act, 1995. Moreover, though the TRAI has referred to the existing rules for advertising minutage, TRAI has failed to recognise that the Cable Act read together with the Cable Rules (an Act of the Parliament) and thus could be considered as attempting to overreach its authority that it purports to have exercised its power to issue this Consultation Paper.

3.1.7 In the past year, both the Indian Broadcasting Foundation (IBF) and the News Broadcaster Association (NBA) have been working together with the Ministry of Information and Broadcasting (MIB) on all the issues that TRAI has now raised in the Consultation Paper.

3.1.8 The IBF and the NBA have held several meetings and discussions with the MIB, the latest being a letter sent by IBF to the MIB on January 19, 2012.

3.1.9 In fact, pursuant to the discussions with the MIB, the IBF has constituted a Committee on Regulatory Affairs to study the apprehensions raised by the MIB concerning the duration and format of advertisements.

3.1.10 The IBF Committee has provided some recommendations which the IBF has already submitted with the MIB for their consideration. A copy of the letter submitted by the IBF to the MIB is annexed to this response as Annexure 1.

3.2 FUNDAMENTAL RIGHT OF EXPRESSION & MARKET FORCES

3.2.1 Turner understands that the intent of the TRAI is to prevent the circumvention of limitations on the amount of advertising that can be carried on a television channel and to ensure that programme content is clearly distinguishable from an advertisement.

3.2.2 However, recommending the format and the manner in which such advertisements can be displayed on television channels including regulating the audio levels of advertisements, could result in an interference with the fundamental right of speech and expression enshrined under the Constitution of India.

3.2.3 Governments and Courts have both been guarded in taking any such action that may amount to suppression of the free expression of views amongst or by any citizen of the country, so long as they are within reasonable bounds. Adding additional restrictions, such as imposing a limitation on the frequency of advertisement breaks that could be scheduled during a time slot and limiting the manner in which advertisements should be displayed, over and above the restrictions that are already mentioned under Rule 7(10) and Rule 7 (11) of the Advertising Code could be considered a hindrance to the freedom of expression of both broadcasters and advertisers.

3.2.4 The legislative intent and mandate of the issues raised by TRAI under the Consultation Paper is already captured under the following regulations under the Cable Act read together with the Cable Rules:

(a) The issue of volume of ad breaks is already addressed vide Rule 7 (6) of the Cable Rules. Assuming that the real concern would be of controlling and limiting loudness rather than establishing comparative standards, it is submitted that there is no demonstrated need for further regulation in this regard.

(b) The parameters for screen space is already addressed vide Rule 7(10) of the Cable Rules, which already lays down the parameters for screen space in as much as it requires that the advertisement must be distinguishable from the programme and there should be no interference.

3.2.5 **In the Tata Press Limited vs. Mahanagar Telephone Nigam** dated 3 August 1995 (1995 AIR 2438, 1995 SCC (5) 139), the Supreme Court of India observed that "Publication of Advertisements" is a "commercial speech" and protected under Article 19(1) (a) of the Indian Constitution under which freedom of speech and expression is guaranteed to all Indians. The extract of the relevant paragraph of the judgement is reproduced below:

> *"Advertising as a "commercial speech" has two facets. Advertising which is no more than a commercial transaction, is nonetheless dissemination of information regarding the product-advertised. Public at large is benefitted by the information made available through the advertisement. In a democratic economy free flow of commercial information is indispensable. There cannot be honest and economical marketing by the public at large without being educated by the information disseminated through advertisements. The economic system in a democracy would be handicapped without there being freedom of "commercial speech". In relation to the publication and circulation of newspapers, this Court in Indian Express newspaper's case, Sakal paper's case and Bennett Coleman's case has authoritatively held that any restraint or curtailment of advertisements would affect the fundamental right under Article 19(1) (a) on the aspects of propagation, publication and circulation.*
> *Examined from another angle, the public at large has a right to receive the "Commercial speech". Article (19) (1) (a) not only guarantees freedom of speech and expression, it also protects the rights of an individual to listen, read and receive the said speech. So far as the economic needs of a citizen are concerned, their fulfilment has to be guided by the information disseminated through the advertisements. The protection of Article 19(1)(a) is available to the speaker as well as to the recipient of the speech. The recipient of "commercial speech" may be having much deeper interest in the advertisement than the businessman who is behind the publication. An advertisement giving information regarding a life saving drug may be of much more importance to general public than to the advertiser who may be having purely a trade consideration.*

We, therefore, hold that "commercial speech" is a part of the freedom of speech and expression guaranteed under Article 19(1) (a) of the constitution."

3.2.5 In a situation of intense competition amongst television channels and various other advertising platforms such as newspapers, internet and mobile platforms, it is recommended that the individual television broadcasters should be given the freedom to decide the number of advertisement breaks and the manner in which advertisements should be displayed. Ultimately, it should be the broadcaster's prerogative as to how it regulates it content so long as it meets the law of the land.

3.2.6 The flexibility of scheduling advertisement breaks and length duration of the advertisement break is critical from a viewership point for the television channel as television channels try to gain audiences from other television channels by scheduling their content segments in a manner when other television channels have scheduled their advertisement break. This helps the television channel and the advertisers as the viewers is able to watch their content if the viewer moves away from the other channel during the advertisement breaks. Additionally the duration of breaks also plays a key role in movies as it ensures that maximum viewership happens for the key segments which aid in driving the overall viewership of the television channel. Further, the television channels intentionally schedule shorter advertisement breaks during viewing hours before 23:00 hours and longer breaks in lower viewing hours after 23:00 hours when the audience watching television is comparatively lower.

3.2.7 Putting in too frequent advertisement breaks (and advertisement breaks at inopportune times in the storyline) will lead to a progressive shift of viewers away from the relevant television channel towards other television channels in the same genre. This observation was also made by TRAI in its "Recommendations on Issues relating to Broadcasting and Distribution of TV channels" of 1 October, 2004" wherein TRAI had stated that the market has evolved a mechanism to regulate over advertising as any television channel which over advertised would lose subscribers. This was based on the study done by Edelweiss Capital on Zee Telefilms. The relevant para 8.12 of Section 8 under the aforesaid recommendations states as follows

"Broadcasters that put sizeable amount of time on advertisement loses viewership which is detrimental for a TV channel as such loss of viewership would mean loss of revenue. This shows that the market has a means of correcting "over advertising". This is corroborated by a report provided by Edeilweiss Capital on Zee Telefilms. Moreover for sports, advertisements can be inserted only during the natural breaks like between overs in a cricket match or during lunch/tea time."

3.2.7 Since no television channel can afford loss of viewership we recommend that each television channel be given the freedom and liberty to decide the balance between stickiness of viewership and the advertising revenue generated by frequent advertising breaks.

3.3 FREEDOM TO DECIDE THE DURATION, FORMAT AND DISPLAY OF ADVERTISEMENTS

3.3.1 No rationale has been given for the same except the traditional TRAI mechanism of drawing a golden mean between two un related figures, a practice heavily criticised by the TDSAT judgement dated 16th December 2010 in the Digital addressable tariff matter. It is also not clarified as to what the allocation of time towards the different categories of advertisements (commercial, self-promotional and educational) would be if there was indeed a prescription of 6 minutes for pay channels. In fact, given that the Authority has recognized that there are three categories of advertisements, the consideration ought to be to increase the timeline upwards from 12 minutes as the current laws prescribing this limit allow for 10 minutes of commercial advertisements and 2 minutes of self-promotion without an allocation for educational advertisements. As explained above in the introduction to this response, we would reiterate that it is premature to consider bringing in more stringent guidelines placing reliance on digitization as a solution to under declaration and revenue loss as the exercise is yet to commence and will take no less than 2 years to achieve fruition if all goes well and we have to wait to appreciate an analyse the end results. Therefore, there does not seem to be any basis to conclude that digitization would solve all issues of revenue and hence, that may be sufficient justification to curb advertisement revenues.

3.3.2 No justifiable standard has been given to arrive at the arbitrary figure of 6 minutes for pay channels. There appears to be no logic to reduce the existing permitted limits and thus depriving a certain class of broadcasters of an existing flexibility merely because there is another class of broadcasters who are voluntarily choosing to transmit their channels on FTA basis. In fact, this does not benefit the broadcasters of the FTA channels either since the permitted timelines remain the same for them while merely creating a chimera of an artificial benefit that does not exist. Even conceptually, it does not appear sound to argue that resolution of under declaration could logically flow into a need to curb advertisement revenues since they are two separate business streams and models and not substitutable.

3.3.3 TRAI has also failed to take into account the different target audience of FTA and Pay channels as well as the substantial higher cost for acquisition / generation of content for Pay channels. The historical fact of price fixation that is referred to in the Consultation Paper also evidences that the prices for all pay channels existing at the time were arrived at on the basis of relevant factors, including a certain revenue expectation from advertisements without contemplation of a later discrimination on this basis. Due to the existing ceilings, the broadcasters would not be at liberty to alter pricing of channels and the revenue loss arising out of such a drastic reduction in advertisement time will be huge. No case has been made out by data or principle that could justify such an excessive impact.

3.3.4 TRAI has ignored that the consumer is not aware of which channels are FTA and which are Pay, chiefly due to non-enforcement by TRAI of the QoS for Non-CAS systems dated 24th February 2009. No consumer currently pays more for a "pay" channel than for a "free" one and therefore there is no justification for – and no evidence for – a consumer feeling that "pay" channels should be treated any differently because someone somewhere up the value chain is paying one type of fee or another. Consumers care what they pay, not what is paid at the wholesale level. If the primary objective is to serve consumer interest, then the wisdom of such a measure would be further suspect given that the consumer would continue to have the same exposure to advertisements on FTA channels because of which he/she is not really benefitting assuming viewership is influenced by the content of each channel as much as the frequency of advertisements.

3.3.5 It is quite usual for content holders to stipulate certain minimum advertisement revenues based on which they grant broadcast rights and any prescription that is so substantially different from prevailing norms within the country and outside for pay channels could compromise contractual commitments and attract consequences under existing rights agreements. Needless to mention the losses which will be suffered by broadcasters who have entered into multi-year agreements based on such estimates. In fact such extreme guidelines could restrict the ability of broadcasters to acquire content going forward and will also limit sponsorship avenues for sports broadcasting in India due to the limited exposure that can be assured to the advertiser. This would be a great disservice not only to the audience but also to the growth and development of sport in the country.

3.3.6 It is indeed ironic, nay perverse that TRAI as the regulator introduced tariff and pricing restrictions on distribution of television channels in 2004, and complex "must provide" and other inter-connect obligations, putting caps on the MRP of television channels in CAS areas at Rs. 5 per channel (since increased by 0.35 paise after seven years- out of which the broadcaster's share is Rs. 2.25 per channel) and capping distribution revenues on analogue and digital platforms thereby foreclosing growth in distribution revenues and compelling broadcasters to increase advertising revenues to survive. And now without any change in the tariff structure on distribution, TRAI proposes drastic curbs on advertising revenue also which questions TRAI's role as an unbiased industry regulator. These new recommendations will sound the death knell of the broadcasting industry, struggling as it is in a highly fragmented and price sensitive market, with extortionate carriage and placement demands from operators.

3.3.7 We submit that the limits for the duration of advertisements should not be regulated on a clock hour basis and may continue to be regulated on a 24 hours basis in accordance with the extant laws. No basis or data to support the benefit of such a stipulation has been put forth in the Consultation Paper. At a conceptual level, a change in the existing laws in this regard would not in effect serve the consumers as it is widely known that the viewership patterns differ throughout the day due to which a clock basis approach that would apply universally to all hours would not be logical.

3.3.8 Such a proposal demonstrates the inherent deficiency where *niche* channels such as sports broadcasters have not been considered. A clock hour basis measure would not suit this *genre* of channels where live content is seasonal, limited to a specific period and the natural breaks where advertisement would be appropriate would vary from sport to sport. There cannot be a universal measure when the sports could be as varied as a one day cricket match, T20 cricket match or a soccer match.

3.3.9 Further, more particularly in connection with the movies and children's television channels, the duration of some animated episodes are fixed, e.g. an episode of the iconic *Tom & Jerry* is 7 minutes in duration. Thus, to impose a regulation to insert breaks after twelve minutes of programming will actually mean the insertion of advertising breaks in the middle of an episode which is extremely suboptimal. Therefore, once again, we believe that television broadcasters should be given the freedom to decide on the appropriate balance between advertisements and content, so that they can manage both their revenue and viewership goals.

3.4 TRANSPARENCY AND HOLISTIC APPROACH

3.4.1 TRAI assumption that the television screen is cluttered by advertisements and various type of programme content such as captions, data, graphics etc. is based on studies conducted by Centre for Media Studies (CMS), Delhi. However, the study is not made available to the stakeholders, thus leading to lack of transparency which has always been the mandate under the Telecom Regulatory Authority of India Act, 1997. Further, it appears from the extract of the CMS studies reproduced in the Consultation Paper that the observations made by CMS is in only in respect to new channels as against the other broadcasters who too would be affected by introduction of such regulations.

3.4.2 TRAI has failed to give a rational for differentiating between Free to Channels and Pay Television and the reasoning for arriving at the arbitrary figure of six (6) minutes of permissible advertisements on pay channels in a clock hour and twelve (12) minutes of permissible advertisements on pay channels in a clock hour for Free to Air channels. TRAI has failed to take into account the different target audience of the Free to Air channel and Pay TV channels as well as the substantial higher costs for acquisition/ generation of content for Pay TV channels. Additionally, TRAI has ignored that the viewer is not aware of which channels are Free to Air channels and Pay TV channels, chiefly due to lack of proper implementation of the TRAI of the QoS for the Non-CAS systems dated February 24, 2009.

3.4.3 We believe that it is imperative that while taking into consideration any studies to recommend changes in regulation that would affect the industry as a whole, a holistic approach should be taken rather than an at an atomistic approach. Moreover, since the regulations shall affect the industry as a whole, a reasoned order sets out the reasons for which such decisions are made should be provided to all stakeholders so that the television broadcasters, the stakeholders can understand the recommendations of the regulator and take a pragmatic approach to such regulations. The proposal for a differential treatment without sufficient or appropriate basis or justification appears to be discriminatory and unfair.

3.5 INTERNATIONAL SCENARIO

3.5.1 We appreciate that while formulating the Consultation Paper the TRAI has taken into consideration the international practices and regulations prevailing in a few major international markets. However, the source of such reference has not been provided to the stakeholders so as to enable a comprehensible comparison by the stakeholders. Furthermore the TRAI has erred grossly in comparing the Indian Broadcasting sector with that of developed nations, with more favorable regulatory regimes.

3.5.2 The Consultation Paper lacks in providing adequate justifications for a differential regime for Pay and FTA channels and also does not take into account the unique business model of sports broadcasters who operate in challenging regime of growing content acquisition costs while also being mandated to share their signals with the public broadcaster. The stated goal of this CP, which is to regulate content on television channels, is not only an attempt of regulatory over-reach but also an example of regulatory oversight.

3.5.3 The reference to some of the international markets which are fully digitalised fail to take into account the market conditions in India and we believe it would be out of context to compare the Indian television industry with that of developed nations. Further, TRAI has failed to take into consideration the other economic opportunities that are available to international television channels and/or broadcasters in those regions.

3.5.4 In markets outside India, international broadcasters are given the liberty to decide the price at which they can offer and distribute their television channels, as compared to the situation in India where Indian television channels and broadcasters are required to work in accordance with tariff regulations and price caps imposed by the TRAI which restrict the price at which they may offer and distribute their respective television channels to consumers and/or viewers. TRAI in its paper makes several allusions to regulatory conditions in developed countries. India cannot be compared with the US, UK and other EU countries as the economic environment and market conditions are completely different. The reference to some international markets which are fully digitised fails to take into account the market conditions in India, it is out of context to compare the Indian TV industry with that of developed nations.

3.5.5 It is illogical as to how TRAI compares vastly different markets and comes to a common conclusion. Markets such as Malaysia, Philippines, USA, Canada, France, Germany, Australia, New Zealand, UK, Sweden, Norway have been compared with India to arrive at the formula for capping television advertisement time. None of these markets have price regulation on distribution of television channels. In many of these markets there is a clear distinction between "public" broadcasting and "pay" television. "FTA" in these countries means "free" to the consumer, unlike India where TRAI defines "FTA" as "free to the cable operator". In India subscribers pay for

"FTA" as well as "PAY" television. Yet TRAI treats all these markets as homogeneous and draws its comparisons. TRAI is oblivious of the fact that in most of these countries there are no restrictions on "PAY" television. Moreover, in most other countries, the bar on advertising seems to be more relaxed and/or lenient than that which is prevalent in India. In some countries referred to in Annexure 1 of the Consultation Paper, such as Australia, Malaysia, Philippines, New Zealand, Spain and Russia, it appears that the duration permitted for telecast advertisement in each hour is much higher than that which has been recommended by the TRAI in the Consultation Paper or that which is currently in force in India, i.e., an average of 14-15 minutes per hour.

3.5.6 We wish to point out that the consultation paper's examination of international precedents suffers from a fundamental distortion that makes it in many ways inaccurate. The descriptions of international practice in the paper frequently confound regulations for terrestrial broadcast channels (free) with those pertaining to cable TV and other pay-TV systems. In many countries, terrestrial broadcast channels bear particular obligations, because of their greater social impact, and because terrestrial broadcasters may be publicly funded, or subsidized through free allocations of free, premium-value spectrum. Governments usually maintain different regulatory regimes for free terrestrial broadcasts and pay - TV.

3.5.7 Indian cable TV channels, whether "free" or "pay," do not benefit from public subsidies, and do not bear public service obligations. It is not appropriate to compare foreign FTA regulatory approaches with Indian pay - TV approaches. The confusion on this point introduces substantial errors of fact; for example the paper's description of Australia quotes the wrong Code of Practice – the Commercial TV Industry Code of Practice. The latter does not apply to the cable TV industry, which is governed by Subscription Broadcasting Codes of Practice. In fact, contrary to the paper's assertions, Australia imposes no regulatory restriction on ad-minutes on any pay - TV channel (whether "free" or "pay" in the Indian sense of those words.)

3.5.8 The Indian television advertising market also relies on a very sophisticated buying process, with the norm being spot selling. Given this reliance on spot delivery and sales, Indian broadcasters are particularly responsive to viewers and are cognizant of the need to hold on to viewership of their television channels during breaks. Therefore, the broadcasters themselves are focused on ensuring that the content and display of advertisements is not off-putting to their viewers, or experienced by their viewers as excessive, overly intrusive or overly frequent. We believe additional regulations will undermine the self-regulation already engaged by the television broadcasters due to their need to maximise the ratings and viewership in order to generate spot sales on their channels.

3.6 COSTS AGAINST REVENUES

3.6.1 In 2004 TRAI took the position that capping advertisements would put additional costs on Pay TV Broadcasters and had stated in Para 8.11 of its report that ***"Besides regulating subscriptions, regulation on the advertisement time and its corresponding revenues for broadcasters may hamper growth and competition in the broadcasting industry."*** (emphasis supplied. In Para 8.10 after quoting from experience in Thailand, TRAI had observed ***"Additionally the regulation of advertisement time, typically drives up subscription fees. .... Therefore, the advertising rates reduce subscription fees for consumers. The restriction on advertisement time would either result in increase in subscription fee or affect the variety and quality of programming."*** These pertinent observations of TRAI are as relevant today as when they were made in 2004 and reiterated in 2011. Hence the volte face by TRAI in its March 2012 recommendation is completely inexplicable and not based on empirical data.

3.6.2 The TRAI has cited the FCCI KPMG Indian Media and Industry Report 2011, which stated that in 2010 advertising revenue was Rs. 10,300 Crs which constituted 35% of the total revenues of the TV industry. However, the TRAI has failed to take into consideration the market realities and the costs that television channels and broadcasters need to incur to maintain the relevant television channel's viewership and to provide quality content to consumers and/or viewers. Infact, TRAI in its recommendations dated 1st October 2004 also concluded that advertisements keep subscription fees low and also contributes to the enhancement of the quality of content.

3.6.3 Presently, the two primary revenue streams for a television channel are subscription revenue, through distribution of the channel, and advertising revenue. TRAI in its recommendations dated 1st October 2004 has given the example of Thailand where restrictions on advertising led to a huge increase in subscription fees, the present CP contradicts the stand taken by the authority earlier while also being in variance with international experience.

3.6.4 Given that distribution revenues are seriously under-pressure across the industry due to the maladies of under reporting of subscribers, piracy and regulatory intervention in the form of "price caps" and "must provides" provisions which ensures that the subscription fees are the lowest in the world and continue to decline, television broadcasters are highly dependent on advertising revenue to meet the growing costs of content and delivery of content, including high carriage fees.

3.6.5 The advertising revenue continue to be the key driver of broadcaster revenue (80 per cent), as conventional distribution remains plagued by under declaration of subscriber base as stated above. Inability to grow the subscription pie adequately and competitive pressures continue to limit the ability of channels to invest on content. The broadcasters, especially in the highly competitive General Entertainment Space, continue to face headwinds in terms of competitive pressures and rising content costs. The costs of producing and developing television content and acquiring quality content are enormous and continue to grow each year, thus lead to an erosion of its earnings in India. Therefore, needing the income brought by advertising revenue in order to continue investing in the Indian television production industry.

3.6.6 The above production costs do not take into consideration the marketing costs that the television broadcasters have to incur to ensure viewership for their programs and thus viewership for their television channel. The segment duration and duration of breaks are key components that are used by television broadcasters to increase viewership and to telecast not only the promos of the other advertisers but also promos of their own programs and movies which the television channel proposes to telecast in future. These advertisements and on-air elements of the programs and movies telecast on the television channels play a pivotal role in informing the viewers of programmes and/or movies that are to be shown on the television channel and the time during which they can be watched by the viewers. Reducing the duration of the advertisements would lead to increase in costs and expenses for the television channel as the channel would have to avail other means of advertising and marketing platforms and tools to advertise their programmes and/or movies.

3.6.7 The TRAI has suggested in the Consultation Paper that after digitalisation the dependence of the broadcasters of pay channels on advertising revenue would go down. Implementation of mandatory digitization of the Indian cable industry will make a good start at resolving some of the problems. It is also to be expected that the gradual rebalancing of the industry's revenue model will also help re-balance the composition of the pay - TV channel bouquet, more along the lines evident in other countries. In other large pay - TV economies, there are fewer "free" channels and more "pay" ones. When subscription revenues in India suffer fewer artificial constraints, there will be more channels more reliant on subscription revenue. TRAI has assumed that the DAS mandate will be implemented successfully and basis this assumption has gone ahead and proposed to reduce the pay TV advertising to 6 minutes and control FTA advertising 12 minutes. The timing of the proposals in the current consultation paper is particularly inappropriate. The authority justifies its proposals of new measures that will have the effect of restricting advertising revenue on the concept that digitization may succeed and subscription revenues may rise. These are outcomes devoutly to be wished, but we submit that the government should avoid consideration of ad revenue constraints until after the full effect of digitization can be seen and felt by all industry players

3.6.8 Till digitalisation is fully implemented, which currently is proposed to be achieved by December 31st 2014, television broadcasters will not be able to ascertain the exact impact of digitalisation and thus will continue to feel the impact of under reporting of subscribers, etc. Furthermore, while imposing additional regulations, the impact and the costs of digitalisation should also be taken into account. These costs will ultimately be shared between the various stakeholders in the entertainment industry including broadcasters.

3.6.9 Also, regulating the format of presentation of advertisements by permitting only full screen advertisements and restricting half screen / ticker /drop down advertisements will achieve nothing other than to reduce the revenue earning capacity of television broadcasters. Today, advertisers are willing and want to pay a premium for these types of advertisements, and adopting these types of creative solutions is an important tool by which broadcasters will see to offset the planned reduction of inventory post-digitalisation.

3.7 NEW ENTRANTS

3.7.1 Keeping in mind the present market structure that exists in the Indian television industry, newer broadcasters are significantly disadvantaged vis-à-vis legacy and/or established broadcasters. For example, newer broadcasters pay significantly higher carriage fees as compared to legacy broadcasters, even if they are pay channels.

3.7.2 In addition, newer broadcasters also face a significant handicap in terms of their ability to secure subscription revenues. Lower subscription revenues leads to lesser ability to invest into connectivity, leading to lesser viewership and hence lesser advertising revenue.

3.7.3 To compensate and level the playing field, extra inventory needs to be opened up to enable new entrants to the industry to generate advertising revenue. Without this flexibility, many of the newer broadcasters (and some of the older ones as well) are running into losses.

3.8 CONSUMER PERSPECTIVE AND COSTS TO CONSUMERS

3.8.1 Advertisements are not just for marketing rather they also serve the purpose of informing consumers about the choices available for a product and service. TRAI's view of advertisements as a "nuisance" affecting the quality of a viewer's television audio visual experience and ignoring the benefits of advertising is most unfortunate. TRAI fails to acknowledge or even recognise the social benefits of advertising:

(a) the fact that advertising educates customers about goods and enables them to exercise their choice based upon a better understanding of the product and of the availability of substitute and supplementary goods.

(b) The fact that advertising is a major source of revenue for broadcasters (particularly in a market like India with overly restrictive price controls and tariff regulations that cap channel pricing at abysmally low levels denying broadcasters a fair share of distribution revenue).

(c) The fact that advertising enables broadcasters to offer superior and differentiated content to their viewers at an affordable price.

3.8.2 Advertisements serve as a powerful tool for generation of sales of new products and services and hence contributes to growth of the Indian Economy. Capping advertising will lead to poor quality programming and absence of diversity as it will reduce broadcaster profitability. Reducing advertising time will reduce overall advertising inventory leading to a situation where fewer products will be advertised squeezing out smaller brands from the consumer's vision. In short it will be short sighted and fatally flawed.

3.8.4 An in depth report by the Indian Broadcasting foundation on the "Impact of Television on India" found that 89% people agreed that advertisements was a source of valuable information as it informed them of news products and services, 96% agreed that television informed them of the latest products and 97% agreed that they were informed about the latest trends, fashion and products through television.

3.8.5 Today, the consumer and the viewer has access to over 600 channels, but for that, the consumer/viewer's monthly subscription fee is around INR 200 per month. This is the total money paid for 24 hour entertainment for an entire month for the entire family. In most cities, this is less than the cost of a single visit of a couple to a cinema house/theatre. This amount has not significantly changed in the past 12-15 years, despite the number of television channels growing more than tenfold. Needless to say, the costs for television broadcasters – both in terms of content creation / acquisition and connectivity - have also escalated many fold during the same period.

3.8.6 With more and more serious television channels and broadcasters in the business, the quality of content has also significantly improved. The consumer/viewer has enough choice to switch from one television channel to another and this choice itself is expanding with over 50% of household TVs having remotes, with this number rapidly growing. Consumers can switch television channels at the click of a button if the television content is not interesting or compelling, or if the advertisements being broadcast have no interest or relevance to them. For every person that chooses not to watch advertising, there are many more viewers/consumers who get better informed about products and services as a result, and so are happy to watch advertisements.

3.8.7 With India's Advertising-Gross Domestic Product ratio still around 0.45 (as compared to a global average of about 0.85- 0.90) there is a long way before viewers and consumers can really get tired of watching advertisements. For every consumer that is fatigued by advertising, there are many more who have no access to basic information – something which advertising provides. Moreover, we believe that the viewers do understand that since they are paying less for their subscription, they have to watch the content with advertisements or alternatively pay more for advertisement-free content.

4. **CONCLUSION**

Turner would like to take this opportunity to propose that the recommendations suggested by the IBF (which have been collectively approved by the television broadcasters and are a reflection of the discussions that have taken place between the NBA, IBF and MIB) through their letter dated January 19, 2012 to the MIB be taken on record by the TRAI. Turner trusts that the TRAI will work together with the MIB, IBF and NBA to help implement the recommendations and that discussions that are already in process between MIB, IBF and NBA.

We thank you for giving us an opportunity to present our views on these important issues.

Yours faithfully,
Turner International India Private Limited

Siddharth Jain

Siddharth Jain
Managing Director

4th April, 2012

Uday Shankar
President

Sunil Lulla
Vice President

Punit Goenka
Honorary Treasurer

I B F

19th January, 2012

Respected Madam,

Sub : Cap on advertisements on TV Channels

This is with reference to the meeting held on 9th May, 2011 with the representatives of IBF and NBA under the chairmanship of Additional Secretary I & B Ministry and the subsequent letter No. 804/17/2011-BC III dt.27.5.2011 received from the I & B Ministry.

In the said meeting, the Ministry raised the issue concerning adherence by the channels to the limit of 12 minutes of ads per hour, as laid down in Rule 7(11) of the Cable Television Networks Rules 1994.

In the meeting, IBF members had submitted that in the last five years, price cap has been put on the subscription revenue by TRAI (although it was meant to be an interim measure). Further, the number of channels has increased substantially and advertisement revenue, which was earlier divided amongst 30-40 channels, is now being shared by 300-400 channels. At the same time demand for carriage/placement fees has increased exorbitantly putting huge pressure on the bottom line of channels. In case of smaller channels, their only recourse is to go FTA, in which case advertisement revenue is their only source of income. Many channels are running into losses.

As conveyed to the Ministry in the said meeting, the IBF Board of Directors is in agreement with the Ministry that there should be a cap on the advertisements on member channels as is the practice worldwide.

In this regard, the IBF Board had set up a Committee on Regulatory Affairs to discuss this issue and place its recommendations before the IBF Board.

The Committee had taken up the issue expeditiously and also examined the worldwide practice in this regard and placed its recommendations on cap on advertisements to the IBF Board.

The IBF Board of Directors discussed the recommendations of the Regulatory Committee and humbly requests the I & B Ministry to consider the same. The recommendations are as under:-

Recommended Cap on Advertisements on TV Channels
(Applicable between 0600 hrs – 2400 hrs; Does not include trailers of films/music albums)

1. News Channels	: 18+2 minutes/hour
2. GECs	: 14+2 minutes/hour
3. Regional GECs	: 16+2 minutes/hour
4. Movie Channels	: 16+2 minutes/hour
5. Niche & other Channels	: 14+2 minutes/hour

Cont…2/-

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The Committee has also recommended the following :-

1. For live telecasts of sporting events, there should not be any cap as in these events the advertising insertions were dictated by the run of play and no inserts could be made during live match footage.

2. Above cap on ads should be effective from 1st April, 2012 with a gradual phasing down to the 12+2 minutes per hour cap.

3. In view of Digitalisation, it has been proposed that the channels should reduce 1 to 1.5 minutes of advertisements every six months to enable the channels to meet the 12+2 minutes/hour cap by 31st December, 2014.

An IBF delegation would like to meet you to discuss the above recommendations in person. We would therefore request you to kindly let us know a suitable date and time for the meeting.

Thanking you,

Yours sincerely,

(Uday Shankar)

Smt. Ambika Soni
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