

Cable Operators Federation of India

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Ref/COFI/TRAI/10/2012

23 Sep 2012

The Chairman
Telecom Regulatory Authority of India
New Delhi-110002
Kind Attention: Sh Wasi Ahmed

COMMENTS ON TRAI DRAFT ON STANDARDS OF QUALITY OF SERVICE (DURATION OF ADVERTISEMENTS IN TV CHANNELS) REGULATIONS No 15 OF 2012 DATED 27 AUGUST 2012

Sir,

Reference 'Standards of Quality of Service (Duration of Advertisements in Television Channels) Regulations, 2012 (15 of 2012)

Our comments on the regulations are given as under.

1. It is known that the regulations of 14 May 2012 are in the Hon'ble TDSAT but what is the pressure on TRAI to amend the existing regulations which were drafted after due consultation with all the stake holders? It is better to let these regulations stand the test of time or stand the test in the court before we start amending them.
2. Broadcasters, being the most interested party, must not be allowed to exploit the consumers through excessive, irritating and disturbing advertisements. Regulations are made to look after the public interest and TRAI, instead of looking after the commercial interest of broadcasters, should care for what is best for the consumers. It is not the responsibility of TRAI to ensure if broadcasters make lot of money from the content but it is definitely their responsibility to see that consumers are not made to suffer because of greed of the broadcasters.
3. Clause wise comments are given below:-
 - a) **Clause 3- Duration of Advts in TV Channels.**
 - i) 12 minutes limit on ad duration in one hr should be only for FTA channels.
 - ii) Since digital addressable system is mandatory and there will be transparency in the subscriber accounts, broadcasters will be recovering all their cost from subscribers who, in the absence of any MRP limits laid down by TRAI for DAS systems, would pay heavily for a-la-carte channels, much more than the cost of pay channels in CAS areas or FTA channels. **Hence pay channels must not be allowed any advertisements.**

iii) **All pay per view, HD and premium channels should not be allowed to carry any ads.**

b) We agree that no shortfall of advertisements should be carried over.

c) Advertisements in the clock hour should include all types of ads including **channel promotion ads, bugs, tickers, aston bands shown in a programme.**

4. **Clause 3 (3).** There should be no ads in a sports channel as they already charge the highest amount amongst all pay channels.

5. **Clause 3 (4) Time Gap between advertisements:** It should not be deleted. Time gap between advertisement slots must be regulated. Continuous ads for a long duration cause too much of irritation to consumers. Hence TRAI must fix the duration of gaps in between the ads. **A 15 mnts gap in TV serials and 30 mnts gap in movies is the barest minimum.**

6. There should be no part screen ads or tickers and aston ads.

7. All type of **'In programme advertising'** must be regulated. How will non-FCT (Fixed Commercial Time) ads like 'in programme product placement', AFP (Advertiser Funded Programming) etc. be regulated? TRAI must find a way for this. Channels make lot of money from such ads.

7. **Teleshopping: Contextual advt** (Ads in paid slots) like long duration teleshopping ads of 'Maha yantras', magical remedies etc are neither censored nor regulated for their duration. How will that be regulated? TRAI must regulate these ads too as they cause lot of inconvenience to the consumer.

8. **Audio levels** of ads are too high and inspite of existing regulations on the subject, no broadcaster follows them. Audio levels of ads should not be more than the audio of the programme and TRAI should find ways and means to implement it strictly.

9. Chapter III- Reporting to TRAI

Channels must report to TRAI regarding ads inserted in programmes and their duration. Reporting is a part of all regulatory processes and hence should not be dispensed with for TV channels. It is there for MSOs and cable operators too.

We also wish to make some additional comments that we have been doing many times earlier too, in the interest of the industry.

- a) As these regulations affect millions of subscribers and cable operators operating in far off areas of the country, much wider circulation of the consultation in Hindi and other languages is required so that realistic feedback is received from all corners. Also, TRAI should take help of state governments in circulating them on their websites and local news papers. Even the

broadcasters should be asked to carryout debates on their channels to inform the viewers and get their feedback.

- b) There should be a proper **grievance redressal system** against violations by the broadcasters of these quality of service norms and strict action must be taken as a deterrent.
- c) Once Regulations are finalized, they should be informed to the public through Doordarshan and other broadcasters as well as the print and state level media.

Yours Faithfully,

(Roop Sharma)
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Comments received w.r.t. OHD

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Ref/COFI/TRAI/13/2012
29 November 2012
The Chairman
Telecom Regulatory Authority of India
New Delhi-110002

Kind Attention: Sh Rahul Khullar

COMMENTS ON TRAI CONSULTATION ON ISSUES RELATED TO ADVERTISEMENTS IN TV CHANNELS AND OPEN HOUSE DISCUSSION ON 23 NOVEMBER 2012

Sir,

Ref Consultation Paper No 7/2012 dated April 16, 2012 on issues related to Advertisements in TV Channels and open house discussion on 23 November 2012.

We highly appreciate TRAI for taking this important step of regulating the advertisement duration in TV channels. This will ultimately benefit the consumers who are literally fed up of viewing disturbing multiple ads on their TV screens as expressed by consumer organizations in the Open House.

Regulation of Ad duration is essential to stop exploitation of consumers by the broadcasters who wish to make money in every which way, through all types of advertisements, multiple advertisements, in-content advertisements, subscriptions, sponsorships, paid news, international sales, content based advertising etc. for same content.

There is no Under-Declaration

Cable operators have not liked TRAI blaming them for under-declaration at the behest of broadcasters. They think this to be a baseless allegation on the whole community without any proof. Broadcasters bring this issue only to lobby for giving recognition to their wrong doings and convince the regulator to exploit consumers in their own way.

IN FACT MINISTRY AND TRAI'S BIAS AGAINST CABLE OPERATORS AND WRONG PERCEPTIONS ABOUT THE GROUND REALITY HAS LEAD TO MANY FAULTY REGULATIONS (EVEN TDSAT POINTED THIS IN ITS LAST

JUDGMENT) INCLUDING THE PRESENT MANDATORY DIGITALIZATION THAT MAY NOT BRING THE DESIRED RESULTS.

TRAI's perception that non-addressable nature of Cable networks has lead to gross under-declaration of the subscriber base by Cable Operators resulting in a limited pass through of the subscription revenue to the broadcasters is totally based on the advocacy of 'pay' broadcasters, research agencies supported by broadcaster and industry lobbies like IBF, FICCI, CII, ASSOCHAM, CASBAA, MPA manned/supported by 'Pay' broadcasters. All speakers and panelists in roundtables and seminars sponsored/ organized by these people are chosen from pay broadcasters or their vertically integrated DTH, MSO and aggregator companies where Ministers, senior Ministry officials, TRAI officials and other government officials are influenced with vested interests over lunches and dinners. Cable operators are not even invited or never given the dais to express their views. **People who created this industry for so many channels to flourish are looked down upon.**

Pay TV Broadcasters also push their agendas in the Ministry and Regulator's offices through a bevy of their lawyers who are often seen in the corridors of the government premises.

India is not a Pay TV Market. There is no pay channel market in India because consumers do not pay for the content. These so called Pay channels were introduced in India in an illegal way in the non-addressable networks by forcing cable operators to pay to receive them, after they became popular as FTA channels. **Unfortunately, contrary to international trends, our government has made this as a definition of 'pay channel' in the Cable Act amendment.**

How can an estimate be made of viewership of a channel in such a non-addressable market based on a TRP system that itself is faulty and corrupt? Even TRAI has never carried out any survey of under-declaration in the last eight years.

For the last 18 years pay channels have exploited the cable operators using all unethical ways like blackmailing with threats of a black out, arbitrary increase in rates, forcing bouquets on consumers, not giving content to independent operators and making cartels for distribution to increase their market power.

IT IS PAINFUL TO SEE THE INDIAN GOVERNMENT AND THE REGULATOR IGNORING PLEAS OF CABLE TV INDUSTRY TO CHECK THEIR UNETHICAL METHODS AND STOP THEM TO EXPLOIT THE MASSES, FORCING UNWANTED CONTENT, TAKING FULL ADVANTAGE OF NON-ADDRESSABILITY AND WEAKNESS OF THE REGULATORY SYSTEM. IT IS ULTIMATELY THE SUBSCRIBER WHO HAS TO PAY AND NO ONE CAN FORCE HIM TO DO THAT.

The only pay channel market that really exists today is in the CAS notified areas of Chennai since 2003, and in DTH since 2006. Even here TRAI has failed to ensure that the subscribers get to order a-la-carte channels. **Broadcasters themselves started the system of negotiated deals forcing lump-sum payments and minimum payment guarantees on cable operators to get paid for so called 'Pay' channels. These deals were again based on the perception of broadcasters on the percentage of viewers in a network for a particular channel in a bouquet and not based on any survey.**

No Deliberate Leakage of Tax Revenue. **The whole system of subscriber numbers and viewership depends on estimates.** As far as tax collection by government is concerned, state government inspectors have been visiting cable networks and collecting entertainment tax since 1994. And for Service Tax there are separate rules of who is eligible to pay and who is not, just like in any other business and there are regulations to check any violations. As far as license fee is concerned, no one stopped the government to charge a license fee from operators like the Pakistani government does. Post office registration is mandated by the law. It is the failure of the government to organize the cable TV industry considering its vast potential.

No effort by TRAI to organize Cable TV as National Broadband Infrastructure. **Countries like USA and China have transformed their cable networks as broadband infrastructure and not to carry all the TV channels.** They have made separate regulations for large MSOs and small operators so that all can exist and not like in India where **the government and the Regulator has decided to make such unreasonable regulations that small players are left with no option but to surrender to the big companies. In most of the countries a developing industry is protected against unfair competition and poachers but in India cable industry has been thrown open to international vultures to be gobbled up.**

No market Force for Pay TV and total Digitalisation. 80% of consumers in India cannot afford pay channels (70% being poor). **They watch so called Pay channels because these are given to them as free to air channels in a single package.** They pay for package of channels and not for any individual channel. **Contrary to what TRAI mentioned in its consultation paper, there was never a market force for pay channels in India. The rates of pay channels solely depended on how much the broadcasters could blackmail cable operators and not on the content (except sports).**

The above fact is substantiated by the statement of MPA mentioned in Para 1.17 of the Consultation Paper saying that ad revenue of pay channels is on the decline. It is not happening due to under-declaration but because where ever pay channels are being given as 'paid for channels', consumers reject them, like in Chennai and on DTH. Same thing will happen in Digital cable when actual

bills based on choice to consumers are generated in DAS areas. Thus **TRAI's inference that Digitalisation will lead to increase in subscription revenue is completely wrong.** Even on DTH, ARPU is as low as Rs 180/- because majority of subscribers only demand the basic package of Rs. 150/- and reject the pay channel packages. Only very few subscribers can afford to get all the pay channels in a DTH service paying Rs. 400 or more.

Broadcasters make content once and sell it in multiple ways:-

- a) **Dub it in different regional languages packaged in regional channels.**
- b) **Sell it in International market with no money coming to Government.**
- c) **Sell same content on multiple platforms like DTH, IPTV, Mobile TV etc.**
- d) **Make more channels with same content but delayed broadcast.**
- e) **Sell clippings to news channels.**
- f) **Resort to 'Paid' news. (Latest example is Zee News scam of demanding Rs. 100 Crore for favorable news).**
- g) **Do in-content advertising like on many serials and sports events.**
- h) **On-line channels.**
- i) **Sell TV serials on CDs.**

Thus, Broadcasters' projection of high expense on content and increasing losses cannot be justified because they earn from the same content in many ways. Also employees of these broadcasters get the highest salaries in the country, even more than the IT industry.

TRAI has not ensured minimum operating expense to Cable Operators. TRAI has no reason to blame cable operators for leakage of revenue unless it has worked out the basic minimum requirement of building, operating, servicing and maintaining a cable network per subscriber under the present circumstances and then compared that with the cable TV ARPU of **Rs. 150**. When subscribers do not want to pay for pay channels, how can TRAI expect Cable Operators to pay to broadcasters who introduced pay channels in India without any demand.

Because our government and the regulatory system are ineffective, we have the present situation where **Broadcasters are minting money from advertisements as well as Cable Operators.** As a consequence of a weak government control, we have hundreds of channels waiting for registration and exploit the Indian Market. **If they were so hard pressed, we would not see broadcasters growing from one channel to dozens in a span of a few years and still growing clout.**

In the present system only the large companies with vertical monopolies operating TV channels, DTH and MSO networks will gain.

- So the basic premise of broadcasters inserting more and more ads on TV screen is because **they are greedy** and they are competing among themselves.
- A few large groups take the lion's share of ad revenue because they control **powerful monopolies** and control many ad agencies.
- Because of their **cartelization in distribution**, they can manipulate viewership of all their channels serving them in bouquets. (Please examine the packages and a-la-carte rates of these MSOs)
- As has been reported in the international press, some of these multinational **broadcasters have even manipulated the TRP system** to earn more ad revenue.

Suggestions for Regulating Ads on TV Channels

1. **FTA Channels.** Regulations regarding the time duration of advertisements already exist. TRAI should implement it strictly using same nodal officers, class 'A' officers like DMs, DCs, DSPs, SDMs and others who are authorized for DAS implementation.
2. **The limits for the duration of the advertisements should be regulated on a clock hour basis and not on daily average.**
3. **No FTA channel should carry advertisements exceeding 12 minutes in a clock hour (Including all types of advertisements).**
4. **No pay channel should be permitted to carry advertisements** except public service ads since Pay broadcasters will get 100% subscription revenue in Digital Cable being fully addressable.
5. There should be no full screen ads in a sports channel as they already charge the highest amount amongst all pay channels and have in-content advertising.
6. **There should only be full screen advertisements. Part screen advertisements should not be permitted. Drop down advertisements, pop ups, upper and lower strip ads, side panels etc. should also not be permitted.**
7. **FTA News and Current Affairs channels may be allowed to run not more than 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.**

8. The audio level of the advertisements should not be higher than the audio level of the programme. Even there should be regulation on audio level of all TV channels so that no channel should sound louder than the others. Even programmes like 'Sansani' and crime related are louder than the rest.
9. Ad timings should be a sum of all types of ads like full screen, tickers, sponsored content, in programme ads etc. Multiple advertising must come under the ambit of total duration limit so that circumventing of the rules is avoided.
10. TRAI should also regulate the onscreen interactive shopping menus that will start coming up on screen soon, once the digital networks are fully operational.
11. Time slot sales to advertisers who run serial like advertisements for long durations like 'Sandhi Sudha', religious discourse, sale of Rudraksh and other religious charms etc. should also come under total ad duration limits.
12. DAVP and other state government departments should divide the ad revenue among Broadcasters, MSOs and cable operators in a prescribed manner.

Additional Comments

We also wish to make some additional comments that we have been doing many times earlier too, in the interest of the industry.

- a) As these regulations affect millions of subscribers and cable operators operating in far off areas of the country, **much wider circulation of the regulations in Hindi and other languages is required** for adherence by all. TRAI should take help of Doordarshan and state governments in circulating them on their websites, local channels and local news papers. Even the broadcasters should be asked to carryout debates on their channels to inform.
- b) **Grievance/ Complaint Redressal.** There should be a proper grievance redressal system against violations by the broadcasters of these norms and strict action must be taken as a deterrent. Same nodal officers, class 'A' officers like DMs, DCs, DSPs, SDMs and others who are authorized for DAS implementation should also listen to consumer grievances against content and ad duration.

- c) **Broadcasting Content Complaint body (BCCC) should also entertain complaints regarding violation of ad duration limits by broadcasters and send them to TRAI for further action.**
- d) **TRAI should impose a total ban on content that takes the society backwards** like spreading superstitions, false religious notions, spread fear in the name of God, show women in bad light etc. Their government support of DAVP ads etc should be stopped and their licenses cancelled.
- e) **Broadcast Content Adalats. There should be broadcast adalats organized by District Monitoring Bodies under the Cable TV Act on the lines of Bijli Adalat, Jal Adalat, Marital Discord Adalat etc.** where consumers may complain against any TV content, advertising and ad duration. These complaints with comments of the Adalat should be sent to TRAI for action on quarterly basis.

Yours Faithfully,

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CC:

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