

VIACOM18 MEDIA PRIVATE LIMITED RESPONSE TO THE TRAI'S DRAFT REGULATION "STANDARDS OF QUALITY OF SERVICE (DURATION OF ADVERTISEMENTS IN TELEVISION CHANNELS) (AMENDMENT) REGULATIONS, 2012"

Dated: September _11_, 2012

Disclaimer

This response is being filed by Viacom18 Media Private Limited ("Viacom18") without prejudice to the rights and contentions raised by the Indian Broadcasting Foundation ("IBF") on behalf of all its members and various other broadcasters independently under the Appeal Nos. 6(C) to 10 (C) pending before the Telecom Dispute Settlement & Appellate Tribunal ("Appeals") whereby the jurisdiction of the Telecom Regulatory Authority of India ("TRAI") to regulate the duration of advertisements in television channels have been challenged.

Introduction

At the outset, we wish to reiterate that the ideal regulatory approach should be to simplify and minimise regulation given the goal of ushering in the evolution of a mature market where market forces and self-regulation would suffice. However, it appears that the earlier "Standards of Quality of Service (Duration of Advertisements in Television Channels) Regulations" dated 14th May 2012 ("Regulation"), the Standards of Quality of Service (Duration of Advertisements In Television Channels) (Amendment) Regulations, 2012 ("Draft Amendment") and the proposals set 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.

We further reiterate that TRAI has continued to assume that Digital Addressable System ("DAS") mandate will be implemented successfully in November 2012 as mandated by the Ministry of Information & Broadcasting ("MIB") while being fully aware on the outstanding issues arising on the implementation of DAS. Digitization, as is the case with extensive and large scale changes of this nature, there are challenges which are being faced on implementation of DAS, including the carriage fees being demanded by the Multi System Operators ("MSOs"), which have been reported to TRAI at various meetings. Even assuming that the first stage of implementation is successful, it would cover only the four metropolitan cities and not the whole of India. While the currently proposed date (which from past experience can be considered as tentative) for complete implementation of DAS is 31st March 2015, TRAI is proceeding under the unrealistic assumption that all challenges like under declaration, carriage costs etc. have been resolved. Therefore, to herald in radical changes of the nature proposed in the Regulation and Draft Amendment based on the assumption that proposed digitization will be a game changer would be premature at this stage. We hence state that it would be wiser to wait until the DAS environment is clearer before considering new restraints.

Further we state that the market dynamics are already playing its role and the advertisement break patterns have started to change to reflect this. This is evident from the fact that more and more channels have started putting on screen displays providing information of the duration of advertisement breaks with an aim to retaining viewers. These are broadcasters who transmit "break free" movies. Further, there are broadcasters who are launching or have launched "advertisement free" channels. Thus, market should be allowed to operate under self-regulated environment to achieve their objective. We further state that many of children's television shows are of a very short duration (7-8 minutes), hence to achieve the advertisement restrictions within a clock hour for Kids Channels does not make any sense.

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PARAWISE RESPONSE**1. Implementation of Draft Amendment**

Considering that the Regulation have been challenged by the Broadcasters before TDSAT where TRAI has been directed to hold on to its commitment of not implementing Regulation till its further orders, we are of the view that the Draft Amendment should not be notified in the Official Gazette until judgement in the said matter by TDSAT.

2. Regulation 3 of Draft Amendment

We note that the TRAI has proposed to delete some of the restrictions laid in the Regulation on advertisements and we welcome such decision. However, we note that the restriction on broadcasters to carry advertisements for duration of not more than the 12 minute per clock hour has been retained. 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 hour basis in accordance with the extant laws. Further, advertisers are inclined to advertise more during such hours when viewers are likely to watch programs and the broadcasters should be provided flexibility to balance between retaining the viewer's interest in their channels and earning revenues from the advertisements. Any further restrictions on the timing of advertisements other than the present restriction of 12 minute under the Cable Television Networks Rules, 1994 (as amended) ("**Cable Rules**").

3. Regulation 4 of Draft Amendment

Without prejudice to the pending Appeals, we state that TRAI has been directed by TDSAT to not implement the Regulation till its further orders, and all the issues under such Regulation remain open till the matter is further heard on 03rd December 2012, directing the broadcasters to furnish the report for quarter ending 31st December 2012 *is ultra vires*. Moreover, TRAI has not provided for any specific format in which the details of advertisements carried on the channels is to be reported by the broadcasters.

Further considering the huge quantum of advertisements carried on the channels it is quite a cumbersome process to collate the data of such advertisements on an hour to hour basis for three months and file the same with the TRAI every 3 months. Presently, under the Policy Guidelines for Downlinking of Television Channels in India, the Ministry of Information and Broadcasting ("**MIB**") stipulates the storing of records for 90 days. On receipt of any complaint pertaining to violation of the Programme Code, the MIB calls for the records for such particular period during which the breach has occurred. Similarly, in this regard, we propose that in the event TRAI receives any complaints pertaining to the violation of duration of advertisement by any channel, TRAI may elect to seek the details regarding advertisements carried on such channel for such specific day to which the complaint pertains and avoid the onerous and cumbersome obligations of reporting proposed under Regulation 4.

Conclusion

In light of the above, we submit that the Regulation itself is premature and merits reconsideration for the reasons elaborated above. It is submitted that prior to implementation of the Regulations, TRAI needs to focus on the implementation of DAS. After reviewing the

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success of DAS implementation, through a transparent consultation process with all stakeholders, the issue of restriction on advertisements needs to be discussed and recommended to the MIB. Thereafter through an amendment to the Cable Rules, such restrictions may be implemented by the Government.

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