

September 11, 2012

Mr. Wasi Ahmed
 Advisor (B&CS)
 Telecom Regulatory Authority of India
 Mahanagar Doorsanchar Bhawan,
 Jawaharlal Nehru Marg,
 New Delhi- 110 002.

Dear Sir,

Response to "Standards of Quality of Service (Duration of Advertisements in Television Channels) (Amendment) Regulations, 2012 published by the TRAI on 27th August 2012

These submissions are being made on behalf of 'Movies Now' and 'Zoom', operated by Zoom Entertainment Network Limited (ZENL) and Bennett, Coleman and Company Limited through its Television Division (BCCL), respectively (part of 'Times Television Network'/'TTN'), in response to the "Standards of Quality of Service (Duration of Advertisements in Television Channels) (Amendment) Regulations, 2012" published by the TRAI on 27th August 2012.

1. We reiterate our stand taken in response to the Consultation Paper dated March 16, 2012 on "Issues Related to Advertisements in TV Channels" that TRAI has attempted to address the issue of regulating advertisements on television in India, which clearly is beyond the powers and functions of TRAI set out under chapter III of TRAI Act, 1997.
2. There are no real reasons shown by TRAI as to why it is attempting at the cost of exceeding its jurisdiction to raise a public debate on a subject which is well beyond its scope and authority. We reiterate that TRAI has no power or jurisdiction whatsoever to issue any kind of regulations or orders in relation to the use, allocation and formatting of advertisements and advertising time on TV channels. Given TRAI's lack of jurisdiction in regulation of advertisements on television, TRAI's current move is at best recommendatory in nature. In fact, it is a matter of record that TRAI's stated position so far has been that of non-interference and claiming lack of jurisdiction to regulate advertisements on television. This stance has been claimed by TRAI itself in its submissions made before the TDSAT in Petition No. 34(C) of 2011.
3. Presently, broadcast industry in India is undergoing transformation from analogue to digital mode. The situation will drastically change after effective and successful implementation of DAS, following which the Broadcasters hope to get a realistic estimate of subscription revenue. Hence, any recommendations for regulation of advertisements are unjustified. In any event TRAI should wait until the sunset date of June 30, 2014 for DAS to be successfully implemented across the length and breadth of the country and realistic subscription revenues to accrue to the Broadcasters. Consumer interest will also be hampered as quality and variety of programming will suffer due to limited advertisement revenue. Decrease in

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advertisement revenue will lead to increase in subscription fee to cover the exorbitant cost involved in broadcasters operation.

4. At present, Broadcasters incur huge costs in terms of placement and carriage fees which directly impact revenues, primarily consisting of advertisement revenues. With cap on channel pricing and lack of visibility of subscription income until successful implementation of DAS across the country, Broadcasters are heavily dependent on ad revenues to sustain their business operations. The carriage system has to be abolished and the cap on channel pricing has to be done away with before initiating any discussion on this subject.
5. As with the case of content on television self-regulation has been a very effective and successful method of monitoring content which has resulted in an effective self-correcting mechanism in the industry. Hence, we recommend self-regulation by the broadcast industry, rather than the imposition of impractical regulations by TRAI or the Government on advertisements.
6. Further, channels recognise the importance of subscriber satisfaction by retaining their attention for a longer duration on their channel. Hence, Broadcasters have come up with creative ideas/concepts of break-free and one break programs for different time bands. It is in the Broadcasters best interest to control their advertisements and hence, it need not be regulated. TRAI has also failed to appreciate and understand that ad breaks are judiciously and intelligently planned for enhanced consumer engagement.
7. Also, during implementation of DAS, we suggest that TRAI should encourage Broadcasters to introduce ad-free channels wherein understandably the subscription fee will be higher to compensate for absence in advertisement revenue and the subscriber will understand the reason for higher subscription fees.
8. Without prejudice to the above, following is our response to the each specific suggested amendments:
 - a. Regulation 3 of the suggested amendment to the Regulations fails to recognise the CTN Act and Rules framed thereunder, Clock hour basis will result in great practical and programming difficulties for broadcasters by taking away the creative and programming freedom of broadcasters. Ad-breaks have to be judiciously planned and cannot be constrained by the clock hour as it will not only be impractical but also irrelevant. Commercial ad-breaks are usually planned keeping in mind the nature and duration of the programme, target audience and such metrics. Clock hour basis ad-break pattern will adversely impact quality of programming and impinge the operational independence of broadcasters. Further, the key to resolving the imbalance in regulating advertisements in television industry is by enforcing the applicable regulation and not imposing additional and unwarranted layers of regulation.

Any unreasonable restriction on advertisements is violative of Article 19 (1) (a) and (g) of the Constitution, restrains commercial speech of advertisers and restrains the broadcasters from conducting business.



Supreme Court precedents on curtailing advertisement – In the case of Tata Press v/s MTNL, the SC has held that Advertising is considered to be the cornerstone of our economic system. Low prices for consumers are dependent upon mass production, mass production is dependent upon volume sales, and volume sales are dependent upon advertising. In another case of Bennett, Coleman and Company Ltd v/s UOI, SC held that allocation of space to advertisements also directly affects freedom of circulation. If the area for advertisements is curtailed the price of the newspaper will be forced up. If that happens, the circulation will inevitably go down. This would be no remote, but a direct consequence of curtailment of advertisements. The same rational would apply to broadcast media and the consumers will be directly affected by increase in subscription fees.

- b. Regulation 4 of the suggested amendment to the Regulations giving the TRAI power to issue orders and directions to ensure compliance of the said Amended Regulations, the Authority has bestowed upon itself wide and amplified powers that far exceed its jurisdiction. By doing so, TRAI has further exceeded its mandate under the TRAI Act since TRAI cannot issue orders and directions towards compliance of something that TRAI cannot regulate in the first place;
- c. Regulation 5 of the suggested amendment to the Regulations, as TRAI does not have jurisdiction over the subject of advertisements and has exceeded its mandate under the TRAI Act, Broadcasters cannot be made accountable to TRAI.

CONCLUSION:

As re-iterated throughout this response, it is our humble submission that TRAI, which is the regulatory authority for broadcasters and telecommunication sector in India, should use its good offices to successfully implement DAS across the country as per the timelines decided by it. Further, it would tremendously help the broadcast industry if TRAI were to facilitate and support the industry in successful transition to the digital era and address other pressing concerns and issues of the broadcasters relating to removal of price cap on subscriber tariffs, abolition of carriage regime etc. We re-affirm our support for self-regulation in the broadcast industry, both for advertisements and content, which is an effective mode of regulation for the industry as opposed to governmental/ external regulation and control.

Thank you,

Yours Sincerely,

For Times Television Network

R. V. Jyothi
 Authorised Signatory (Jyothi S. Kumar)