

April 05, 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 TRAI Consultation Paper dated March 16, 2012
“Issues Related to Advertisements in TV Channels”
on behalf of Times Television Network (TTN).

Preamble

First and foremost, we sincerely appreciate the forward looking initiative taken by TRAI for supporting and facilitating the roll out of digitization in India and the very progressive views on the subject of Digital Addressable Systems (DAS). However, the attempt by TRAI to address the issue of regulating advertisements on television in India is beyond the powers and functions of TRAI set out under chapter III of TRAI Act, 1997. Such attempt is also highly untimely as the roll out of digitization, far less complete digitization across India, is yet to materialize and the benefits envisaged yet to turn into reality for the broadcasters, who continue to suffer the burden of prize freeze on tariffs and a system of exorbitant carriage and placement fees.

TTN operates the television channels ‘Times Now’, ‘ET Now’, ‘Movies Now’ and ‘Zoom’. Submissions on behalf of ‘Times Now’ and ‘ET Now’ have already been made through News Broadcasters Associations (NBA). These submissions are being made on behalf of ‘Movies Now’ and ‘Zoom’.

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.

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. If at all, it is the MIB which is competent/ nodal authority under the Cable Television Networks (CTN) Act.

Response on Merits :

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



Response:

We submit that TRAI has failed to recognise that under The CTN and Rules framed thereunder, Parliament has already laid down the maximum time for advertisements including promotions as 12 minutes per hour viz. Rule 7 (11) of the CTN Rules. 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.

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

Response:

- a) Given TRAI's lack of jurisdiction in regulation of advertisements on television, TRAI's current move is at best recommendatory in nature. We reiterate our submissions made under point (i) as regards regulating duration of ad-time on television and the ineffectiveness of the clock hour basis for advertisements.
- b) The proposal made by TRAI to drastically reduce the pay channels advertisements by 50% is totally unwarranted, arbitrary and not based on any sound facts or reasoning.
- c) 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.

- d) Decrease in advertisement revenue will lead to increase in subscription fee to cover the exorbitant cost involved in broadcasters operation. Consumer interest will also be



hampered as quality and variety of programming will suffer due to limited advertisement revenue.

- e) 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.
 - f) 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.
 - g) Assuming without admitting the advertisement duration proposed herein does not specify the bifurcation between time for commercial advertisements and self-promotion. If, as per current norms, broadcasters utilise 2 minutes for self-promotion, they will only be left with 4 minutes for commercials leading to great losses of inflow and making it unfeasible for the broadcasters to continue their operations.
 - h) 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.
- iii. **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.**

Response:

- a) By restricting the availability of advertisement air time, there will be a default and substantial increase in the rate of such air time upsetting the entire advertising industry. If advertisement air time is reduced, it will lead to scarcity of FCT and increase in FCT rate. This may result in denial of fundamental right of freedom of speech and expression to small scale advertisers which will in turn adversely affect the economy and free enterprise in the country.

- b) Advertisement educates and informs customers about the choice of various goods, facilities, services, products and offers and enables them to exercise their choice based upon a better understanding of the product and of the availability of substitute and supplementary goods. The CP ignores the fact that advertising enables broadcasters to offer superior and differentiated content to their viewers at an affordable price. The Indian Broadcasting Foundation (IBF), in its recently released report 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.
- c) 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.
- d) 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.
- e) It is pertinent to note that as per Rule 7(11) of the CTN Rules, there is no differentiation between different categories and genres of channels and such an attempt by TRAI will be beyond the scope of the legislation and also exceeds the jurisdiction of TRAI itself to raise any of these issues.
- f) There is a clear distinction between the broadcasting regime in India and international territories. In the Indian context, drawing a distinction between Free TV and Pay TV appears to be redundant. In India, consumers even pay for so-called "FTA" channels, as they are free only to cable operators and not consumers, who end up paying for both FTA and Pay channels. Thus, demarcating different restrictions for each categories is not practical.
- iv. In case of sporting events being telecast live, the advertisements shall only be carried during the 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.

Response:

The sports channels only gets substantial viewership during major / live sporting event, hence, restricting advertisements during the event can cause huge losses and

probably make it unviable for broadcasters to telecast the live event, for which the broadcaster is required to pay hefty fees for acquiring the rights of such live sports event. Subscribers will end up having to pay more for the sports related channels and this will certainly not be in consumer interest.

- v. **There shall only be full screen advertisements. Part screen advertisements will not be permitted. Drop down advertisements will also not be permitted.**

Response:

This issue is already adequately covered under Rule 7 (10) of the CTN Rules. Consumer interest is sufficiently protected by the broadcasters ensuring the advertisements are clearly distinguishable from programming.

- vi. **In so far as News and Current Affairs channels are concerned, they are 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.**

Response:

- a) The tickers run on news channels are not commercial in nature but are in fact the part of news content of the channel. News broadcasters use ticker as a medium to provide current/breaking news reports to its viewers on regular basis.
- b) Further, Rule 7 (10) of CTN Rules already mandates the parameters for utilizing screen space for advertisements. Hence, TRAI should not attempt to regulate the way in which the broadcasters telecast their content. Also, such restrictions would mean to curtail the creativity of the news channel. Consumer interest is sufficiently protected by the broadcasters ensuring the advertisements are clearly distinguishable from programming.
- c) Amongst the millions of subscribers/viewers watching news channels, some may prefer to have more on-screen graphics and information, whereas there would be some viewers who like the clutter-free screen. The viewers have the option to choose the channel according to their preference.

In view of the above, TRAI should desist from attempting to exceed its jurisdiction and should refrain from interfering with and attempting to regulate dissemination of content by news channels in the form of tickers and scrolls.

- vii. **The audio level of the advertisements shall not be higher than the audio level of the programme.**

Response:

We recommend forbearance as the issue is already sufficiently addressed vide Rule 7 (6) of CTN Rules.

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,



Aamod Gupte

Authorised Signatory

Times Television Network