Response to the Telecom Regulatory Authority of India Consultation on "Issues related to Advertisements in TV Channels"

March 28, 2012

CASBAA (the Cable and Satellite Broadcasting Association of Asia) thanks the TRAI for its Consultation Paper dated March 16, 2012 on the above topic. The paper raises a number of important issues connected with the business model of the pay-TV industry in India, and we are pleased to offer to the TRAI our views, based on the extensive international experience of CASBAA and our member companies.

Regrettably, the consultation raises a number of procedural issues: we understand that a number of Indian stakeholders and other participants in the industry believe the TRAI's intervention on this issue is not supported by legal authority, and that TRAI does not have legal standing to regulate or recommend on issues related to advertisements. These objections deserve the most careful consideration. For our part, we question the haste with which this consultation has been conducted; we see nothing in the law or the business environment that presses for urgent consideration of the very fundamental issue of the role of advertising in the business model of the pay-TV industry in India. The short time available for preparation of responses has necessarily curtailed our ability to research further international precedents.

As the TRAI is aware, CASBAA is an international non-profit, industry-based trade association dedicated to the promotion of multi-channel television via cable, satellite, broadband and wireless video networks across the Asia-Pacific region. Member organizations include some 130 Asia-focused companies building, operating, and providing content for pay-TV systems, and include operators of cable, satellite, mobile and IPTV systems, as well as content providers to India, the Asian region and the world. Members are present in 17 jurisdictions in the Asia-Pacific region, and have broad experience in building a dynamic industry to meet the rapidly-growing demands of the region's over 400 million pay-TV households.

1. <u>International Precedents</u>

Our first comments therefore concern the consultation paper's examination of international precedents; we find this portion of the paper 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-to-air) with those pertaining to cable TV and other pay-TV systems, where some payment is always made. 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 premium-value spectrum. Governments usually maintain different regulatory regimes for free terrestrial broadcasts and pay-TV.

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. This does not apply to the cable TV industry, which is governed by Subscription Broadcasting Codes of Practice[1]. In fact, contrary to the paper's assertions, Australia imposes <u>no</u> regulatory restriction on ad-minutes on any pay-TV channel (whether "free" or "pay" in the Indian sense of those words.) The paper's description of New Zealand makes a similar error.

We will not attempt to catalog the errors in all the descriptions of foreign markets in the consultation paper. Instead, we provide for the record and for the Authority's greater information, the attached Appendix, with a summary of regulations for <u>pay-TV</u> systems developed and verified during CASBAA's recent research for its "Regulating for Growth 2011" study. The factual state of affairs is that about half of <u>governments in Asia and Australasia impose NO constraints on advertising minutes on pay-TV channels.</u> Of the remainder, the vast majority of ad limitations do not fall below 18-20% of broadcast time. There are only two Asian governments (Vietnam and Thailand) that impose lower limits than these on pay-TV. International precedent in fact provides scant support for the strict 6-minute limit for pay channels proposed by the consultation paper; benchmarks in the US and Europe do not provide such strict limits. (The UK has a 12-minute limit for pay-TV, and the US no limit, for most programming.)

2. <u>A Market Distorted by Regulation</u>

The 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 underdeclaration 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 seeming disregard 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. (The government has also not succeeded in restraining anti-competitive practices in the cable industry, including for example line-cutting of competitors' cables, and most recently jamming of Ku-band signals in metropolitan areas, to eviscerate DTH competition.)

[1] http://www.acma.gov.au/WEB/STANDARD/pc=IND_REG_CODES_BCAST

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.

3. The Wrong Moment to Regulate

CASBAA's member companies are greatly encouraged by the progress India is making toward the goal of full digitization of the nation's cable TV networks, as proposed by the TRAI. The leadership of the TRAI, and the MIB, in pressing for this fundamental, "game-changing" advance, has been visionary, and we applaud it.

Implementation of mandatory addressable digitization of the Indian cable industry in accordance with the legislated timeframes will make a good start at resolving some of industry's chronic imbalances. The consultation paper correctly notes that "with the proliferation of addressable cable TV systems…the dependence of the…pay channels on advertisement revenue would go down." It is also to be expected that the gradual normalization of the industry's revenue model will help re-balance the composition of the pay-TV channel bouquet, more along the lines evident in other countries. When subscription revenues in India suffer fewer artificial constraints, there will be more channels able to rely solely on subscription revenues, increasing the quality and diversity of programming available to the Indian consumer.

Therefore, the timing of the proposals in the current consultation paper is particularly inappropriate. The authority justifies its proposals for new measures that will have the effect of restricting advertising revenue on the premise 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.

Holding any regulatory proposals in abeyance is also warranted by the fact that digitization will bring positive market incentives to bear – if digital feedback systems are put in place, channels and advertisers will be able to clearly see which are actually being watched by consumers. Digitization will therefore empower consumers. If they find the number or nature of advertisements on a given channel to be excessive, they will cease watching that channel, and the improved state of audience data flowing from digital systems can provide feedback, pushing both subscription and ad revenues down for that channel. This will be augmented by audience research data from other sources. Greater incentives will therefore exist for channels to moderate any excesses. Some channels will make a point of promoting their more reasonable content, and some will eschew advertisements altogether in favor of seeking a premium subscription niche. The current situation – where channels have only incentives to drive as many ads as possible onto channels that are available (even if not watched) in as many homes as possible – will change.

Introducing new regulations now will risk – like the rate regulations introduced a decade ago and never relaxed – further distorting the marketplace well into the future. It would be wiser to wait until the new environment is clearer before considering new restraints.

4. <u>A Business Model, not a Consumer Burden</u>

It seems that TRAI does not fully appreciate the integral nature of advertising to the business model of pay-television in all countries, and specifically in India. Creation of outstanding content to meet the varied demands of consumers reposes on a dual revenue stream, which finances the creation of the content as well as the construction and maintenance of modern digital delivery systems. With the liberalization of the Thai law four years ago, we do not believe there is any pay-TV market – certainly nowhere in Asia -- that obliges pay-TV to finance itself based purely on subscription revenue. The Thai experience was instructive: while the advertising ban on pay-TV was maintained, subscription costs were demonstrably higher than in neighboring markets; relaxation of the ban produced a flowering of additional content on cable and satellite TV.

Advertising and sponsorship, therefore, serve a number of important functions:
a) They help finance premium content, which could not be developed based on existing subscription revenues;
b) They help restrain growth in subscription fees
c) They inform consumers and provide information about products and services. (In this respect, consumer needs differ: a consumer who already owns a washing machine may find not appliance advertisements useful, whereas a consumer who has just acquired new premises may draw great benefit from the information in such ads. Blanket restrictions on ads for all consumers do a disservice to those who would benefit from the information.)
d) They serve as an important tool for sellers of goods, services, and media products to develop and sustain brand loyalty, and
e) They help build demand for new products and services and hence contribute to growth of the Indian economy.

We do not agree – and we do not see international evidence for – the Authority's apparent assumption in the consultation paper that advertising is akin to a malpractice that needs to be restrained by regulators. To the contrary, most regulatory authorities recognize that a successful advertising strategy requires a broadcaster to deliver viewers to advertisers, and that to do that, most broadcasters engage in judicious choice of the advertising they propose along with an attractive enough vehicle to attract prospective buyers of products. Competition with other broadcasters (other platforms), is an important feature of the competitive landscape. Regulators internationally recognize that a broadcaster takes into account the extent to which increasing the number of advertisements might cause viewers to switch off or switch channels.

5. <u>An Artificial Distinction</u>

The consultation paper proposes a distinction between "free" and "pay" channels. Many governments, as noted above, make a distinction between free-to-air TV and pay-TV. But that is not what the consultation proposes: it makes a distinction between channels based on prices paid at the wholesale level. It is however worth noting, as the consultation paper rightly does, that from the point of view of a consumer receiving analogue cable services, all channels are paid. No such 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.

6. Sports Considerations

We are also concerned that the Authority has taken an excessively generic approach to ads on sports channels, without researching or considering the constraints that are unique to those (or other) genres. Sports broadcasters, in particular, operate differently due to unique and periodic content availability, limited shelf life, mandatory sharing requirements, limited advertising opportunities and huge content costs.

In a competitive environment, we see no need for regulation of commercial interruptions – a channel which wishes to retain its viewers will schedule advertising during half-time or game breaks, or risk consumer switch-off. The owners of sports content (the leagues which stage the game and sell rights) are well aware of this danger and in their contracts for sports broadcasting rights they take an aggressive approach to determining the parameters within which broadcasters can insert advertising breaks. Normal practices differ for different sporting events, but the guiding principle is that in live sports the flow of the action determines the rhythm of commercial breaks. In games like hockey and football, on-field action is continuous from kick off till half time. Even when the ball goes out of play during a match there is an immediate throw in and hence no question of broadcasters cutting to commercials. In some other sports like Formula1 and Golf there are no natural breaks at all. Broadcasting operators for these sports must have sufficient flexibility to cope with the particular nature of such events. One approach to coping is for the channel operator to use part-screen advertisements, which have the virtue of allowing the viewer to watch the action even while the advertisement airs. If part-screen advertisements were banned (which is arguably not within the remit of TRAI), it would be necessary to interrupt the coverage, and this would not be of benefit to consumers.

7. An Approach worth Reconsidering

Apart from the specific issues, we find the Authority’s eagerness to have the government wield its regulatory cudgel, in general, to be dismaying. To the extent there are abuses in the number or nature of advertisements, there are other less intrusive and less damaging approaches which should be tried first. Industry self-regulation is a feature of many other countries’ practices with respect to advertising; there are numerous examples of “codes of practice” or “guidelines” which have been implemented by associations of broadcasters, other media, advertising agencies, or some combination of these.

India has recently provided a luminous example of successful self-regulation; implementation of content codes by industry associations, working with government, has resulted in a light-touch regulatory system eminently suitable for a democratic society. There is every reason to expect that a determined effort to create such a self-regulatory system to govern ad practices would be equally successful. We therefore submit that, rather than further consider untimely and inappropriate binding regulations, the government should consider – once digitization is well underway and its benefits can be perceived – launching an initiative to create self-regulatory codes by the relevant Indian industries. This would be an approach more suitable for modern India, and less redolent of the regulatory excesses of the past.

Industry self-regulation would also have a greater chance of being effective than would be further tightening of regulations that are already failing. We note the consultation paper's report of apparent abuses, in which some channels are flouting the existing rules and airing more advertisements than permitted by existing regulations. The consultation paper says many consumer complaints stem from such abuses. If that is the case, however, the proper means for dealing with such abuses is not to tighten the limits on advertising from 10 minutes to six; it is for the government to effectively enforce the existing rules! Further tightening of the ad limits will only bind those broadcasters who are already following the rules; those who flout the old rules will simply flout the new ones too, and the proposed regulations will therefore effectively penalize only the virtuous.

We submit that a system of self-regulation would be the most effective and most appropriate means of dealing with reported abuses. Such a system would have the additional virtue of requiring fewer resources from the government, compared to making the government responsible for enforcing rules, whether existing or new.

We urge the Authority to abandon the approach outlined in the consultation paper, and to actively support a system of self-regulation instead.

6. Conclusion

As always, CASBAA highly values its candid and open exchanges with the Authority and the Indian government. We hope the information provided in this submission is useful to the Authority, and we stand ready to pursue a dialogue on these points – in conjunction with India's domestic pay-TV associations – as the Authority would deem useful.

Appendix
Advertising Limits on Pay-TV
Regulations of Major Asia-Pacific Markets

Australia	• Unlimited by government. • Ad content is governed by industry Codes of Practice.
China	▪ Minutage restrictions of 12 minutes per hour (9 minutes per hour in peak viewing period), with additional restrictions on number and length of in-program commercial breaks.
Hong Kong	• No limit for pay-TV.
India (existing rules)	• Limited to 10 mins. per hour plus 2 promo mins. • Applies to cable, DTH and IPTV.
Indonesia	• No limit for pay-TV.
Japan	• No regulatory restrictions. • However, since the amount of time for ads are included in the document submitted to MIC when filing, MIC could request a reduction in ad time.
Malaysia	• Limited to 10 minutes/broadcast hour/channel average over 24 hours.
New Zealand	• No regulatory limits. • An industry body, the Advertising Standards Authority, publishes self-regulatory codes.
Philippines	• No restrictions for pay-TV.
Singapore	• 14 minutes per hour.
South Korea	• Capped at a daily average of 10 mins per hour/12 minutes in any one hour. • Frequency of interruptions for commercials is also limited, e.g. two in a 60-minute program.

Taiwan	• Limited to 10 mins per hour (on basic tier channels)
Thailand	• Limited to a daily average of 5 mins per hour, with no more than 6 mins in any one hour.
Vietnam	• Limited to 5% of air time over a 24 hr period. • No more than 2 ad breaks (max five minutes each) per film, and 4 breaks in other entertainment programs. • Enforcement is not stringent.

Pay-TV Regulations of International Benchmarks

United Kingdom	• Average of 12 minutes in any one hour, with special formula for teleshopping channels.
United States	• No limits in general programming. • Ads in children's programmes limited to 10.5/12 min/hour (weekends/weekdays).