



April 4, 2012

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Mr. Wasi Ahmad

Advisor (B&CS)

Telecom Regulatory Authority of India

Mahanagar Doorsanchar Bhawan

Jawahar Lal Nehru Marg (Old Minto Road)

New Delhi-110 002

Dear Sir,

Re: Consultation Paper on "Issues Related to Advertisements in TV Channels"

Attached please find the comments of News Broadcasters Association (NBA) on the issues raised in the Consultation Paper No.7/2012 dated 16.3.2012. Counter comments would be submitted on or before 10.4.12.

Please note that this also represents the views of all NBA Members as detailed below:

S.No.	Name of the Broadcaster Member	Channels
1	TV Today Network Ltd.	Aajtak, Headlines Today, Dilli Aajtak, Tez
2	ibn18 Broadcast Ltd.	CNN IBN, IBN7
3	Television Eighteen India Ltd.	CNBC TV18, CNBC Awaaz
4	New Delhi Television Ltd.	NDTV24x7, NDTV India, NDTV Profit
5	Times Global Broadcasting Company Ltd.	Times Now, ET Now
6	Media Content & Communications Services (India) Pvt. Ltd.	Star News, Star Majha, Star Anando
7	Independent News Services Pvt. Ltd.	India TV
8	Zee News Ltd.	Zee News, Zee Business, Zee 24 Taas, Zee News - Uttar Pradesh, Zee 24 Ghantalu
9	News24 Broadcast India Ltd.	News 24
10	SUN TV Network Ltd.	Sun News, Gemini News, Udaya Varthagalu
11	Ushodaya Enterprises Pvt. Ltd. (TV Division)	ETV2Telugu, ETV Uttar Pradesh/Uttaranchal, ETV Bihar / Jharkhand, ETVMadhya Pradesh/ Chattisgarh, ETV Rajasthan
12	Broadcast Initiatives Ltd.	Live India

contd...2/-

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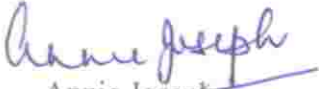


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13	INX News Pvt. Ltd.	News X
14	UTV News Ltd.	Bloomberg UTV
15	Hyderabad Media House Ltd.	HMTV
16	Total Telefilms Pvt. Ltd.	Total TV
17	MM TV Ltd.	Manorama News Central
18	Indira Television Ltd.	Sakshi
19	Associated Broadcasting Company Pvt. Ltd.	TV9, TV9 Kannada, TV1, TV9 Gujarat, TV9 Mumbai, News 9
20	Shreya Broadcasting Pvt. Ltd.	TV 5
21	Pearls Broadcasting Corporation Ltd.	P7 News

Thanking you,

Yours faithfully,


Annie Joseph
Secretary General

Encl: As above

CC: Mr. Narayan Rao, President, NBA



Response to TRAI Consultation Paper dated March 16, 2012 “Issues Related to Advertisements in TV Channels” on behalf of News Broadcasters Association (NBA)

1. TRAI Observation: TRAI has taken suo-motu cognisance based on consumer complaints relating to over advertisement without reference to the MIB which is the nodal authority as regards the existing advertisement code under Rule 7 of the CTN Rules.

NBA Response:

At the very outset, we are happy to note the effort and thank 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, in our view, beyond the jurisdiction of TRAI, since TRAI is not empowered to engage in any form of content-control.

There are no real reasons shown by TRAI as to why it is attempting to, at the cost of exceeding its jurisdiction, raise a public debate on a subject which is well beyond its scope and authority. If at all, it is the MIB which is the competent authority under the CTN Act.

- a) While TRAI has referred to existing rules for advertising minutage it fails to recognise the CTN Act & Rules (an Act of the Parliament) and hence appears to be attempting to overreach its authority by virtue of a 2004 notification. Even otherwise, the notification is not even a subordinate legislation and is at best an executive order.
- b) Even otherwise the 9th January 2004 notification under which TRAI is deriving its power was subsequently eclipsed by the insertion of Rule 7 (11) of the CTN Rules by the Central Government (MIB) in exercise of its powers under Section 22 of the CTN Act.

Further interestingly TRAI as per their own affidavit filed in TDSAT in PIL titled Utsarg vs. UoI, where all broadcasters were made party, TRAI has admitted that it has no role in respect of advertising minutage rules.

TRAI fails to recognise that under an Act of Parliament namely The Cable Television Network Regulation Act, 1994 and the 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. The Ministry of Information and Broadcasting (“MIB”) is the nodal Ministry for implementing these rules. The MIB has in fact issued advisories regarding advertisements and the manner in which they are shown on screen.

2. TRAI Observation: TRAI refers to consumer complaints and has self-assumed good viewing experience = ad free viewing experience

NBA Response:

- a) These “alleged” consumer complaints and research findings have not been made available to broadcasters.



- b) Television advertising is a function of rating, which is a function of consumer viewing experience. If the advertisements are more than what is preferred by consumers, the ratings will drop and the channel will have to reduce its advertising. This “**self-correcting**” mechanism ensures that TRAI or anyone’s intervention in regulating advertisements is unnecessary.
- c) If indeed consumer complaints do exist, they should be checked for significance. Any public service is likely to have complaints and like any public service, if these complaints are indeed significant then the same should be put in public domain for deliberation. The NBA has a robust mechanism – News Broadcasting Standards Authority – and we have not received any specific complaints so far against one or more channels, for excessive advertising.
- d) Given the choice, would consumers be willing to pay more for an ad free viewing experience? If consumers have to pay substantially more, would they still prefer the increased fee over some level of advertising? These questions need to be looked into first.
- e) If consumers are not willing to pay more, will the government, in public interest, offer subsidies / tax incentives in lieu thereof to make the business model economically viable for news channels?

3. TRAI Observation: 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.

NBA Response:

News television is a dynamic medium which has to continuously deal with breaking news, flash news, developing stories, live news events/press conferences etc. During issues of national significance where news relevance really increases like election results, budget, Prime Minister’s address, national calamities, terrorist acts etc., news channels voluntarily drop advertisements keeping in view the consumer sentiments and national interest. In such a scenario, regulating advertisements cannot be accepted, both from consumer as well as national standpoint.

4. TRAI Observation: Revenue ratio of broadcasters skewed in favour of ad revenue due to non-addressability, however situation will improve post digitalisation and therefore advertisements need to be controlled.

NBA RESPONSE:

- a) TRAI has assumed that the DAS mandate will be implemented successfully and within the time-lines and on this assumption has gone ahead and proposed to regulate advertising.
- b) Most news channels are currently struggling to cut losses, let alone make profits. In such an environment, any attempt by any regulator to further reduce revenues by reducing inventory will cause many small players to shut shop and loss of jobs on a mass scale.



This should be avoided at this time in the larger interests of the health and continued survival of the broadcast news industry.

- c) The object of the statutory regime should be to provide a safe environment for fair competitive business in order to serve consumer interests. Hence the need to curb the unhealthy practice of charging exorbitant carriage and placement fee by MSOs (giving unfair advantage to big players) is far higher and should be addressed first.
- d) TRAI in its recommendations dated 1st October 2004 has given the example of Thailand where restrictions on advertising led to a huge increase in subscription fees, the present Consultation Paper contradicts the stand taken by the Authority earlier while also being at variance with international experience.

5. TRAI Observation: No FTA channel shall carry advertisements exceeding 12 minutes in a clock hour. For pay channels, this limit shall be 6 minutes.

NBA Response:

- a) As stated at the outset, TRAI may not make recommendations on issues pertaining to advertisements. Hence, restricting the duration of advertisements would be a colourable exercise of its powers and be devoid of jurisdiction.
- b) Any unreasonable restriction on advertisements is violative of Article 19 (1) (a) and (g) of the Constitution, since it would restrain commercial speech of advertisers and restrains the broadcasters from conducting business.
- c) **SUPREME COURT views on curtailing advertisement space** - The issue of curtailing the quantum and extent of advertising in the "print" media had arisen for consideration before the Supreme Court of India in or about 1962 in the context of The Newspaper (Price and Page) Act, 1956 that was enacted by Parliament at the time. Related issues have arisen from time-to-time in various matters dealing with the freedom of the press (which is a species of the freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution of India) ; the importance of advertising revenue for the media ; the effect of curtailment of advertising revenue to the circulation and consequently to the free speech guarantee itself.

A very brief conspectus of some relevant decisions on the point is given below:

- In its decision in *Sakal Press Pvt. Ltd vs. UOI (AIR 1962 SC 305)*, curtailment of "advertisement space" of a newspaper was held to lead to reduction in its revenues, which was struck down by the Supreme Court as being violative of Article 19 (1) (a).
- In *Bennett Coleman & Company vs. UOI (AIR 1973 SC 106)*, it was held that if the area of advertisement is restricted, price of a newspaper goes up, which results in circulation going down, which was again held to be violative of Article 19 (1) (a).



- In *Tata Press Limited vs. MTNL (AIR 1995 SC 2438)*, the Supreme Court held that publication of advertisements, namely on “commercial speech” is entitled to protection under Article 19(1) (a) of the Constitution of India. Any restraint on advertising revenue of a newspaper has been held to be an infringement of the right to freedom of speech and expression under Article 19 (1) (a).
 - Lately, in *Hindustan Times vs. State of UP (AIR 2003 SC 250)*, an order directing the deduction of 5% from all bills for publication of government advertisements in order to create a fund for granting pension to working journalists (a generous objective though), was held by the Supreme Court to be an infringement of Article 19 (1) (a). Yet again, in this case the Supreme Court reiterated that curtailment of advertisement revenue would lead to a newspaper having to increase its price which would lead to reduction in circulation, which would infringe the right to freedom and expression; and which would therefore be unconstitutional.
- d) It is also important to note that in each of the foregoing cases, none of the newspapers “demonstrated” or “established” by showing their accounts that they would face imminent closure by reason of loss of revenue; but the mere fact that newspapers would be “exposed” to “financial loss” was held by the Supreme Court to be an infringement of Article 19 (1) (a) of the Constitution of India.
 - e) The importance of advertising revenue for the electronic media (especially news channels) is exactly the same, if not even more grave, as that for print media. The restriction sought to be placed upon the “advertising airtime” by Rule 7(11) of the said Rules is exactly *in pari materia* with the restrictions on “advertisement space” considered by the Supreme Court in the foregoing cases.
 - f) The Broadcasters pay a substantial chunk of their revenue as carriage fee and placement fee to have their channels placed on the networks. Unless this carriage system is completely abolished and the price cap done away with by TRAI, there cannot be any justification for even considering the proposal under consultation.
 - g) With the sole intent of highlighting the serious anomaly and without in any way consenting or agreeing to the proposal, we wish to bring the attention of TRAI the fact that the advertisement duration proposed herein does not specify the bifurcation between time for commercial advertisements and self-promotion. If broadcasters utilise 2 minutes for self-promotion, they will only be left with a ridiculously low 4 minutes for commercials leading to severe deficiency in revenue and making it absolutely non-sustainable for the broadcasters. Moreover, this is substantially lower than the countries mentioned by TRAI itself in the Consultation Paper.

A handwritten signature in blue ink, appearing to be a stylized name or initials, located at the bottom right of the page.



6. TRAI Observation: 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.

NBA Response:

- a) At the outset, TRAI has incorrect notion that ads are a “nuisance” or some sort of “disturbance”. Advertisements play a very crucial role in informing and educating the public at large about various facilities, services, products and offers which can enhance their lives and offer them savings, tax benefits etc. At a time when the country’s economy is on a growth path, curtailing advertising would have an indirect impact on the growth of the economy.
- b) Besides, as explained above, ads play an important role in off-setting costs for broadcasters who thus provide better quality content to subscribers without passing on the burden of enhanced subscriber fees to viewers.
- c) TRAI has also failed to appreciate and understand that ad breaks are judiciously and intelligently planned for enhanced consumer engagement. News channels, specifically, keep the content tickers on continuously, through the ad breaks as well in order to ensure that their task of delivering to the consumers news does not stop.
- d) As stated above, television is a dynamic medium, more so the News and Current Affairs channels, which have to continually deal with breaking news, flash news, developing stories, live news events/press conferences etc. The content on such channels has very limited shelf life. As such, advertisement breaks on clock hour basis are not only impractical but also impossible and irrelevant. Such ad-breaks have to be judiciously planned and cannot be constrained by the clock hour. Therefore frequency of advertisements cannot be fixed and is continuously adjusted as per the content. In view of the above responses we suggest forbearance on the issue of regulating advertising time.
- e) 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 externally.
- f) As with the case of other content on television, we recommend self-regulation by the broadcast industry in relation to advertising time, rather than the recommendation of impractical regulations by TRAI or the Government
- g) It is pertinent to note that under Rule 7(11) of the CTN Rules, there is no differentiation either between:
 - (i) News and Non-News Channels



- (ii) Pay Channels and FTA channels
- (iii) Different genres of channels (Movies, Sports etc.)

Such attempt by TRAI is beyond the scope of the legislation and also exceeds the jurisdiction of TRAI itself to raise any of these issues.

- h) If ad-inventory is reduced, it will create a scarcity of FCT, making ad-spots on television channels only affordable to big corporate houses and MNCs, thus denying the fundamental right of freedom of speech and expression to Small and Medium Enterprises (SMEs), which will in turn, adversely affect the economy and free enterprise in the country. Neither will this be in consumer interest, denying to consumers the fundamental right to information and knowledge to enable them to make better informed choices.
- i) References to international comparisons are unfair and incorrect, as there is a complete mismatch between GDPs of these economies and that of India. These are vastly different and matured markets and enjoy a clear distinction between “public broadcasting” and “Pay TV”. Further, in India, consumers even pay for so-called “FTA” channels, as according to TRAI they are to be free only to cable operators and not consumers, who end up paying for both FTA and Pay channels. TRAI has ignored that internationally, all Pay channels are not regulated at all.

7. TRAI Observation: 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.

NBA Response:

Since this does not pertain to news channels, we would not like to comment on this issue.

8. TRAI Observation: There shall only be full screen advertisements. Part screen advertisements will not be permitted. Drop down advertisements will also not be permitted.

NBA 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.

Format of advertising for news channels is also a function of the product creativity, which has undergone a sea change in the past few years. Any attempt to standardize the same will hamper product evolution and hence should not happen.

News channels have a responsibility to keep the consumers informed continuously, since they may switch on their TV at any time. So we keep the breaking news tickers on even during ad breaks, as this is what the viewers expect from us.



9. 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.

NBA Response:

- a) Press, including electronic news media, is the fourth pillar of democracy and a beacon of freedom of speech and expression enshrined in Article 19 of the Constitution of India. They play a crucial role and have a duty towards society by ensuring timely, extensive and analytical coverage of news and current affairs, newsworthy events and stories of public interest, dissemination of information and knowledge, analysis of political events, economic developments, sports updates etc. so as to keep their viewers informed and updated, while fulfilling their duty towards society and the nation. News channels owe a duty towards their viewers to promptly bring to their knowledge any and all issues of public interest with an intention to promptly and comprehensively bring to fore matters of public relevance.
- b) It is a testament to the vibrant democracy of India that there is a choice of several news channels in various languages, available to the viewers today and every channel has its own unique offering to its viewers in the form and format, layout, design and ideas to efficiently communicate with and engage its viewers and to utilize the available screen space for anchors/reporters, tickers, scrolls, graphics, etc.
- c) The tickers / scrolls carried on news channels are not merely commercial in nature but are in fact the part of news content of the channel. News broadcasters use tickers as an effective medium to provide current/breaking news reports to its viewers on regular basis, without disturbing the on-air story/content.
- d) The content of tickers includes news, updates, breaking news, news flash, developing stories, national and international developments, important sports updates, stock and commodity market updates, real-time data from the sensx and other indices (MCX, NIFTY, FTSE, NYSE etc.) in the case of business channels.
- e) Further, Rule 7 (10) of CTN Rules already mandates the parameters for utilizing screen space for advertisements. Consumer interest is sufficiently protected by the broadcasters ensuring the advertisements are clearly distinguishable from programming.
- f) Tickets and scrolls are an effective medium for SME and small, local advertisers who want to target specific audience according to regions, language and such factors of socio-economic relevance as these are made available at accessible prices to them.
- g) Any restriction on such tickers and scrolls would be in violation of the fundamental right of freedom of speech and expression guaranteed under Article 19 of the Constitution, as regards news channels.
- h) Further, any restriction on such tickers and scrolls would be in violation of the fundamental right of freedom of speech and expression guaranteed under Article 19(1)(a)



of the Constitution as regards all Small and Medium Enterprises (SMEs) and small local advertisers which will in turn adversely affect the economy and free enterprise in the country. Neither will this be in consumer interest, denying him the fundamental right to information and knowledge to enable him to make better informed choices.

- i) Any attempt to put such fetters and restrictions on tickers and scrolls of news channels, which carry relevant content via such medium as explained above, will be an unwarranted interference with the content of the news channels and certainly beyond the scope of TRAI.
- j) 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.
- k) As such tickers and scrolls are an integral part of the content of news channels, we recommend self-regulation of this aspect by the broadcast industry, rather than the imposition of impractical regulations by TRAI or the Government

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.

10. The audio level of the advertisements shall not be higher than the audio level of the programme.

NBA Response:

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

CONCLUSION :

In view of the aforesaid, we submit TRAI focus on successful implementation of DAS across the country within the sunset date and facilitate the broadcast industry in such transition by addressing issues of removal of price cap on subscriber tariffs, abolition of carriage and placement fee regime etc. As with the case of other content on television, we recommend self-regulation by the broadcast industry for advertisements, rather than the imposition of impractical regulations by TRAI or the Government.
