

TO BE PUBLISHED IN THE GAZETTE OF INDIA
EXTRAORDINARY, PART III, SECTION 4

TELECOM REGULATORY AUTHORITY OF INDIA
NOTIFICATION

New Delhi, the 22nd March, 2013

F. No. 23-1/2012- B&CS.----- In exercise of the powers conferred by section 36, read with sub clauses (i) and (v) of clause (b) of sub-section (1) of section 11 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), read with notification of the Government of India, in the Ministry of Communication and Information Technology (Department of Telecommunications), No.39,-----

(a) issued, in exercise of the powers conferred upon the Central Government under clause (d) of sub-section (1) of section 11 and proviso to clause (k) of sub section (1) of section 2 of the said Act, and

(b) published under notification No. S.O.44 (E) and 45 (E) dated the 9th January, 2004 in the Gazette of India, Extraordinary, Part III, Section 4, the Telecom Regulatory Authority of India hereby makes the following regulations to amend the Standards of Quality of Service (Duration of Advertisements in Television Channels) Regulations, 2012 (15 of 2012), namely:-

**STANDARDS OF QUALITY OF SERVICE
(DURATION OF ADVERTISEMENTS IN TELEVISION CHANNELS)
(AMENDMENT) REGULATIONS, 2013
(3 OF 2013)**

1. **Short title, extent and commencement.**---(1) These regulations may be called the Standards of Quality of Service (Duration of Advertisements in Television Channels) (Amendment) Regulations, 2013.

(2) They shall come into force from the date of their publication in the Official Gazette.

2. For regulation 3 of the Standards of Quality of Service (Duration of Advertisements in Television Channels) Regulations, 2012 (15 of 2012) (hereinafter referred to as the principal regulations), the following regulation shall be substituted, namely:---

“3. Duration of advertisements in a clock hour.--- No broadcaster shall, in its broadcast of a programme, carry advertisements exceeding twelve minutes in a clock hour.

Explanation: The clock hour means a period of sixty minutes commencing from 00.00 of an hour and ending at 00.60 of that hour. (example: 14.00 to 15.00 hours).”.

3. Regulation 4 of the principal regulations shall be deleted.

4. After Chapter II, the following Chapter shall be inserted, namely:---

“CHAPTER III

MISCELLANEOUS

4. **Power of the Authority to intervene.**--- The Authority may, by order or direction issued from time to time, intervene for the purpose of protecting the interests of the subscribers or for ensuring compliance of the provisions of these regulations.

5. Reporting requirement.--- Every broadcaster shall, within fifteen days from the end of a quarter, submit to the Authority, in the format specified by it by order, the details of advertisements carried in its channel.”

(RAJEEV AGRAWAL)
SECRETARY

Note.1----The principal regulations were published in the Gazette of India, Extraordinary, Part III, Section 4 dated the 14th May, 2012 vide Notification No. 23-1/2012- B&CS dated the 14th May, 2012.

Note.2----- The Explanatory Memorandum annexed to this regulation explains the objects and reasons of the Standards of Quality of Service (Duration of Advertisements in Television Channels) (Amendment) Regulations, 2013 (3 of 2013).

Explanatory Memorandum

- 1) The Telecom Regulatory Authority of India (TRAI), established under the Telecom Regulatory Authority of India Act, 1997(24 of 1997) has been entrusted with discharge of certain functions, inter alia, to regulate the telecommunications services and to protect the interests of service providers and consumers of the telecom sector. When the Telecom Regulatory Authority of India Act, 1997 was enacted, broadcasting services were specifically excluded from the definition of the “telecommunication services”. Subsequently, when the Act was amended in 2000, a proviso was added in clause (k) of sub-section (1) of section 2 of TRAI Act conferring power on the Central Government to notify other services to be telecommunication services including broadcasting services. The said sub-clause (k) reads as under :-

(k) “telecommunication service” means service of any description (including electronic mail, voice mail, data services, audio tex service, video tex services, radio paging and cellular mobile telephone services) which is made available to users by means of any transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature, by wire, radio, visual or other electromagnetic means but shall not include broadcasting services;

[PROVIDED that the Central Government may notify other service to be telecommunication service including broadcasting services;]

Government of India has, through the Ministry of Communication and Information Technology Gazette Notification NO. 39, dated 9th January 2004, vide SO no. 44(E), notified the Broadcasting Services and Cable Services to be telecommunication service thereby bringing the regulation of Broadcasting and Cable TV services under the ambit of TRAI.

- 2) Televisions channels are required to follow the ‘advertising code’ contained in the Cable Television Networks Rules 1994 (hereinafter referred to as the CTNR, 1994), as amended from time to time. The extant provisions, concerning the duration and format of advertisements in the TV channels, are as under:

“ 7. Advertising Code.—

(6) *The picture and the audible matter of the advertisement shall not be excessively 'loud;*

(10) *All advertisement should be clearly distinguishable from the programme and should not in any manner interfere with the programme viz., use of lower part of screen to carry captions, static or moving alongside the programme.*

(11) *No programme shall carry advertisements exceeding 12 minutes per hour, which may include up to 10 minutes per hour of commercial advertisements, and up to 2 minutes per hour of a channel's self-promotional programmes.*

...”

- 3) Section 11 of the TRAI Act contains the functions of the Authority. Section 11(1) states that notwithstanding anything contained in the Indian Telegraph Act, 1885, the functions of the Authority shall be to make recommendations, either suo motu or on a request from the licensor, on the matters contained therein which includes the need and timing for introduction of new service provider and terms and conditions of licence to a service provider. Section 11 (1) (b) contains the *mandatory functions* of TRAI and states that the Authority shall discharge the following functions, which, inter alia, include to ensure compliance of terms and conditions of licence and to lay down the standards of quality of service to be provided by the service providers and to ensure the quality of service provided by the service providers so as to protect interests of the consumers of Telecommunication Services. Section 11(1) (c) grants *power to the Authority to levy fees and other charges* at such rates and in respect of such services as may be determined by regulations and section 11 (1) (d) grants *residual power* to the Authority to perform such other functions including such administrative and financial functions as may be entrusted to it by the Central Government or as may be necessary to carry out the provisions of TRAI Act.
- 4) From the scheme of the Act as described above, the intention of the legislature is absolutely clear in as much as section 11 (1) (d) is in the nature of residuary functions of TRAI, whereas the core functions are prescribed in section 11 (1) (a), (b) and (c) relating to giving recommendations to the Government [section 11 (1)

(a)], its mandatory functions [section 11(1) (b)] and functions relating to levy of fees and other charges [section 11(1) (c)]. In exercise of power conferred upon it under clause (k) of sub-section (1) of section 2, the Central Government vide its notification F. No. 13-1/2004-Restg. dated 9th January, 2004 notified the broadcasting service and cable services to be telecommunication service. This order of the Central Government entailed the Authority to exercise all its core functions relating to broadcasting and cable services in as much as the same are applicable to telecommunication services. Further, through an order of even number of the same date, the Central Government in exercise of powers under clause (d) of sub-section (1) of section 11 of TRAI Act entrusted some additional functions to TRAI including the function to recommend the parameters for regulating maximum time for advertisements in pay channels as well as other channels.

- 5) The moment notification of broadcasting and cable services as telecommunication services was issued, the entire provisions of TRAI Act became applicable to such services and the responsibility to monitor such broadcasting services devolved on the Authority. The rules notified by the Government prescribe certain conditions with respect to carrying of advertisement and states that no programme shall carry advertisements exceeding 12 minutes per hour. The Authority has the power to define the term “quality of service”, lay down its standard and ensure its compliance. The advertisements carried on by the broadcaster in their programme is no doubt a quality of service issue as they interfere with the uninterrupted broadcast of a programme and intrusion of advertisements during the telecast of a programme adversely affects the viewing experience of the consumer. There being no regulatory mechanism to monitor the duration of advertisements being carried on in ‘an hour’, the broadcasters are not adhering to the stipulation of twelve minutes duration of advertisement per hour as mandated under the CTNR 1994. This needs to be effectively regulated and monitored. Therefore, TRAI has made these regulations to effectively monitor the duration of advertisement and to ensure that the broadcasters comply with the legislation in this regard.
- 6) It may also be mentioned here that the power of TRAI to make regulations to carry out the purposes of TRAI Act as contained under section 36(1) of the said Act is very

wide and is only subject to the provisions of TRAI Act and the rules made thereunder.

- 7) As discussed above, TRAI has been entrusted for laying down the standards of quality of service to be provided by the service providers and ensure the quality of service to the consumers. In this endeavour the Authority has observed that the duration of advertisements is closely related to the quality of viewing experience of the consumers. The quality of viewing experience of the consumers is akin to the quality of service provided by the service providers to the consumers. The Authority has noted that the duration and format of advertisements, being carried in TV channels are generally, not in accordance with the provisions of the advertising code as prescribed in the CTNR, 1994. Therefore, with the primary objective of striking a balance between giving a consumer a good TV viewing experience and protecting the commercial interests of broadcasters, after following the due consultation process, TRAI notified the “Standards of Quality of Service (Duration of Advertisements in Television Channels) Regulations” dated 14th May 2012. These regulations, besides prescribing that the limit of advertisement duration should be adhered to on clock hour basis, also provided that (i) advertisements should be carried only during breaks in live sporting action (ii) time gap between consecutive advertisement sessions should be of minimum 30 minutes in case of movies and 15 minutes otherwise (iii) no part screen advertisements should be permitted etc.
- 8) The said regulations were challenged by some of the broadcasters in the Hon’ble Telecom Disputes Settlement and Appellate Tribunal (TDSAT). The broadcasters had challenged the said regulations, inter-alia, mainly on the following grounds: (a) regulation on advertising time and its corresponding effect on the broadcaster’s revenues would adversely affect the growth and competition in the broadcasting industry (b) Sports channels, by very nature of the business, stand on a different footing as compared to other genres because of the reasons such as periodic availability of content, limited shelf life and mandatory sharing with Prasar Bharati. Also, the content is obtained at huge cost and with very stringent conditions which strictly regulate how the events would be broadcast with specified timelines allotted to advertisements. In order to minimize other breaks during certain live sporting events, in which natural breaks either occur after relatively long periods or there are

no natural breaks such as F1 races, part screen advertisements should be allowed (c) the “part screen” and “drop down” advertisements are integral forms of advertising and (d) statutory rules already exist under the Cable TV Act to regulate the format and duration of advertisements that may be carried on television channels and the regulations are beyond the purview of TRAI and in conflict with the provisions of rule 7 of the CTNR 1994. During hearing of the matter in Hon’ble TDSAT, on 17th July, 2012, TRAI stated that the regulator is inclined to consider the issues raised by the broadcasters in the appeal and, in the meantime, TRAI will not take any coercive action.

9) Taking into consideration the issues raised by the broadcasters in the Hon’ble TDSAT, the Authority decided to amend the said regulations. A draft of the amendments to the said regulations was uploaded on TRAI website on 27th August 2012, calling for the comments of the stakeholders. The said draft, inter-alia, has a provision regarding enforcement of the prescribed restriction on duration of advertisements on clock hour basis. Another provision is related to reporting by broadcasters, on quarterly basis, the duration of advertisements carried in their channels on clock hour basis, in a prescribed format. In response to the said consultation process, a total of 24 comments were received from the stakeholders including consumers. Subsequently, an open house discussion (OHD) was held on 23rd November 2012. After the OHD, additionally, comments from 18 stakeholders were received.

10) In response to the consultation process on the draft amendments, the broadcasters stated that prescription of restriction on duration of advertisements on clock hour basis would result in fall in advertisement revenue. It was further mentioned that any curtailment in advertisement revenue would jeopardize the business model of the broadcasters. It was also mentioned that the restriction on advertisement duration would inevitably result in sharp increase in subscription charges which would not only be detrimental to the interests of the small and medium scale enterprises but also to the interests of the consumers. Some of the broadcasters suggested that the said regulations should be deferred for the time being and be made applicable only after completion of on-going digitization process i.e. after December, 2014. On the

clock hour prescription, some of the broadcasters stated that it will result in great practical and programming difficulties for broadcasters by taking away the creative and programming freedom of the broadcasters. One of the broadcasters opined that till December 2014, duration of advertisements should not be regulated on clock hour basis, instead it should be regulated on an average basis, averaged over a period of 24 hour. Some of the broadcasters were also of the view that sports channels merit different treatment. A common benchmark cannot be applied to sports channels and channels of other genres and that live sports programmes should be exempted from any cap on advertising time, however, such advertisements may only be allowed during natural breaks. Live telecasts other than sports should also be treated at par with live sporting events. On the duration of advertisements in pay and free-to-air (FTA) channels, some broadcasters suggested that pay channels may be allowed to carry 10 minutes per hour on an average with a cap of 14 minutes in any clock hour. Some other broadcasters have stated that upto 12 minutes per clock hour for commercial advertisements, additional 3 minutes per clock hour for self-promotional advertisements be allowed. It was also stated by the broadcasters that some programs such as teleshopping programmes, non-paid public service advertisements, notification of Government or statutory body, 'on air' promos meant for informing about upcoming programmes, film trailers and music trailers should be excluded from restriction on duration of advertisements. The broadcasters were also of the opinion that restrictions on duration of advertisements is outside the purview of TRAI.

- 11) Most of the consumer/consumer organizations stated that permitted duration of advertisements for pay channels should be less than that for FTA channels and ideally, pay channels should not be allowed to carry advertisement other than self-promotion. However, as a compromise, advertisements for 5 minutes may be allowed in pay channels. For FTA channels 12 minutes (including self-promotion) may be allowed. Consumers and consumer organisations further mentioned that the restriction on duration of advertisements is outside the purview of Self Regulatory Committees of broadcasters as it is not related to content and it is the responsibility of TRAI to keep in mind consumer interests and consumer viewing experience.

- 12) Most of the cable operators/association of cable operators, in their response stated that advertisements should not be allowed in pay channels. Some of the cable operators stated that advertisement time limits should be regulated on clock hour basis. They have also stated that the cable operators should get share from the advertisement revenue of broadcasters. It has further been stated that Pay-per-View, High-Definition (HD) and premium channels should not be allowed to carry advertisements.
- 13) In the meantime, the TRAI had sought the details of duration of advertisements carried by the broadcasters on their TV channels from the Ministry of Information and Broadcasting (MIB). In its response, MIB forwarded a sample report of the Electronic Media Monitoring Centre (EMMC) that validates the widely held perception of rampant breach of permitted duration of advertisements in an hour by a large number of TV channels in brazen disregard to existing rules.
- 14) The manner of calculating the duration of advertisement on per hour basis has been an issue where the stakeholders have different interpretations. From the comments received it emerges that some of the broadcasters have taken the interpretation that restriction, on duration of advertisements, of 12 minutes per hour is to be complied on an average basis, averaged over a period of 24 hours. With this understanding the broadcasters have a tendency to push more and more advertisements during prime time (7 PM to 11 PM) which attracts the highest number of eyeballs, to fetch higher rates for the commercial time slots. This, however, adversely affects the viewing experience of the viewers during the prime time.
- 15) The Electronic Media Monitoring Centre (EMMC) sample report, taken for a very short span of three to five days, relating to violation of sub-rule 7(11), shows that there were frequent violations by a large number of TV channels during the said period. In a particular case, the number of violations, of the said sub-rule, observed within a span of five days of monitoring, was as high as forty. This report clearly establishes that the restriction on duration of advertisements, as specified in sub-rule 7(11) of the CTNR 1994, is to be adhered to in every hour i.e. on a clock hour basis.
- 16) To study the matter further, the Authority called upon on all the broadcasters of pay channels to provide information regarding duration of advertisement on their pay channels during 7th to 10th February 2013 (4 days) on clock hour basis for 24 hours

of the day beginning from 00:00 hours to 24:00 hours. The data provided by broadcasters of pay channels was analysed and from the analysis, it is clear that these broadcasters are in brazen breach of the existing law (CTNR, 1994) on the subject. Almost in all genres of pay TV channels, a large number of violations occur in a day. The number of violations in a day in some cases is as high as 24 i.e. the norms are violated virtually every hour. Further, it was observed that during peak hours (7 PM to 11 PM), the maximum duration of advertisements carried in pay TV channels in some cases is more than 40 minutes in an hour.

17) As far as consumers are concerned, they have to pay for all the subscribed channels, whether it is pay or FTA. Therefore, it is a legitimate expectation on the part of the consumers to get the programmes for which the channel is subscribed rather than it being loaded with advertisements beyond a point. Thus, the prime irritant for the consumer with regard to the advertisements is their excessive time duration in programmes. The Authority is of the view that the issue of excessive advertisements in violation of the existing rules, needs to be addressed for giving a respite to the consumer from onslaught of prolonged duration of advertisements and thereby to enhance his quality of viewing experience of TV channels. Moreover, the provisions in the Cable Television Networks Rules 1994 with regard to the maximum duration of advertisements that can be carried per hour cannot be different for different hours of the day thereby discriminating the consumers' viewing experience depending upon the hour of the day. The Authority is of the view that the restriction on maximum duration of advertisements carried in the programmes of a TV channel, as prescribed in the Cable Television Networks rules is to be effectively enforced on a clock hour basis, to ensure quality of service to the consumers. Keeping this in view, regulation 3 of the principal regulations has been suitably amended.

18) It is important to note that the provisions in these regulations do not attempt to disturb the time limit fixed by the Government regarding duration of advertisement i.e. twelve minutes per hour. As discussed earlier, TRAI is responsible to ensure that quality of service to consumer is not compromised and hence these regulations.

19) **Reporting requirement:** In order to ensure quality of service to the consumers by the service providers the Authority is of the view that there should be a proper monitoring mechanism in place. Accordingly, a reporting requirement has been

incorporated in the regulation wherein the broadcasters are required to furnish to the Authority a report in the proforma and at intervals as specified by the Authority, from time to time.
