



**BY EMAIL, SPEED POST AND COURIER  
WITHOUT PREJUDICE**

11 September 2012

Telecom Regulatory Authority of India,  
Mahanagar Door Sanchar Bhawan,  
Jawahar Lal Nehru Marg, (Old Minto Road),  
New Delhi – 110 002.

**Kind Attention:** Mr. Wasi Ahmad, Advisor (B & CS)

Dear Sir,

Without prejudice to our rights or contentions in appeal no. 4(C) of 2012, i.e., *ESPN Software India Pvt. Ltd. v. Telecom Regulatory Authority of India*, which are hereby reiterated, please find enclosed our response to the draft regulation “Standards of Quality of Service (Duration of Advertisements in Television Channels) (Amendment) Regulations, 2012” issued on 27 August 2012 for consultation with stakeholders.

Please note that this response is without prejudice to any rights or contentions we may have with regard to any of the matters discussed. We reserve the right to furnish comments/ counter comments for the purpose of further clarifying our position.

Yours faithfully,

For ESPN Software India Pvt. Ltd.

Vijay Rajput  
Chief Operating Officer

Encl: Detailed response to the draft regulation “Standards of Quality of Service (Duration of Advertisements in Television Channels) (Amendment) Regulations, 2012” issued on 27 August 2012

**ESPN Software India Pvt. Ltd.**

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11 September 2012

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Submissions of ESPN Software India Pvt. Ltd. ("ESI") to Telecom Regulatory Authority of India ("Authority") in response to the draft regulations "Standards of Quality of Service (Duration of Advertisements in Television Channels) (Amendment) Regulations, 2012" ("Draft Regulations") issued on 27 August 2012 for comments

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**INTRODUCTION:**

At the outset, we would like to clarify that the comments and submissions in this response to the Draft Regulations are without prejudice to our rights or contentions in appeal no. 4(C) of 2012, i.e., *ESPN Software India Pvt. Ltd. v. Telecom Regulatory Authority of India*. In this connection, we also refer to and reiterate our comments and submissions dated 05 April 2012 submitted in response to the consultation paper dated 16 March 2012 that was issued on the subject matter, especially in relation to the lack of authority of the Authority to embark on such an exercise in any form and the existence of a prevailing framework under the *Cable Television Network Regulation Act 1995* and rules framed thereunder ("Rules") that prescribe the maximum time of advertisements on pay channels clearly and thus renders the proposed regulations unwarranted and uncalled for in any event.

It is reiterated that the ideal regulatory approach must to simplify and minimise regulation which would facilitate the evolution of a mature market driven by market forces and self-regulation.

The above views are reinforced by the Authority's own recommendations recorded in the "Recommendations on Issues relating to Broadcasting and Distribution of TV channels" of 1 October, 2004, where the Authority had concluded in paragraph 8.15 that "[t]here should not be any regulation at present on advertisement on both FTA and Pay channels," clearly favouring self-regulation driven by market forces. This approach was endorsed by the Authority in February, 2011 through an affidavit filed before the Hon'ble Telecom Disputes Settlement and Appellate Tribunal in *Utsarg v. Union of India* (Petition No. 34(C) of 2011).

Given the current context and considering the challenges pending at the Hon'ble Telecom Disputes Settlement and Appellate Tribunal ("TDSAT") from all major broadcasters against the "Standards of Quality of Service (Duration of Advertisements in Television Channels) (Amendment) Regulations, 2012" issued on 14 May 2012 by the Authority and subsequently published in the official gazette, we are surprised that the Authority has elected to issue the current Draft Regulations which are plagued by the same infirmities and the inherent lack of authority.

Before addressing the specific proposals in the Draft Regulations, we believe it is critical to stress upon the following –

1. The current effort to regulate maximum time of advertisements under the garb of quality of service norms is an impermissible, illegal and colourable exercise of power by the Authority in as much as there is a specific notification dated 9 January 2004 which limits the powers of the Authority on the subject matter to solely 'make recommendations' on the matter of 'parameters for regulating maximum time for advertisements in pay channels as well as other channels'.

Page 1 of 6


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2. There is an existing framework under the Rules regulating the matter of maximum time of advertisements on television channels that has been enacted by the Parliament and is currently in force due to which any efforts by the Authority which seeks to modify the Rules without sanction of the Parliament amounts to a delegated legislation that exceeds authority and seeks to exceed/modify the parameters of the established framework laid down by the legislature and is hence, untenable and unsustainable.

3. Assuming but not conceding that the Authority had the power to regulate the matter of maximum time of advertisements on television channels, one of the main issues pointed out in relation to the earlier consultation paper on the subject matter was the lack of sufficient basis or data that would provide grounds for the Authority to overturn its own existing position on this issue or to interfere with the Rules or to legitimize the need for a new regulation. However, it appears that despite this being pointed out as a major lacuna, there is no such basis or data provided for issue of the Draft Regulations even in this current exercise. While the Authority is apparently seeking to protect consumer interests, there is no actual data provided on any adverse effects on the consumer under the current regime that requires advertisements to be measured on an hourly basis or to substantiate any benefits that may accrue in making the measurement clock hour based. This constitutes a violation of section 11(4) of the *Telecom Regulatory Authority of India Act 1997* (which requires the Authority to exercise its powers in a transparent manner).

4. There is no statement of purpose / premise or any explanation for the need for the Draft Regulations that has been issued. The document uploaded on the website of the Authority is in the form of a regulation with an explanatory memorandum which is surprising because the explanatory memorandum is logically to be drawn up subsequent to the consultation exercise to detail the variety and nature of comments received, critical analysis of the said comments and the rationale and justification for the Authority to arrive at a conclusion that would be enshrined in the regulation that is brought into force prospectively. In this case, it appears that the Authority has already formed its views and prepared the explanatory memorandum in advance of the consultation process and the consultation is merely an exercise for the sake of it. Therefore, there appears to be an abject and disturbing lack of due process.

5. It is submitted that given that there are extant laws enacted under the authority of Parliament that govern the matter of maximum time of advertisements on television channels, any effort to make a case for modification of these in any manner has to be substantiated with sufficient data, critical analysis and clear demonstration of assured benefits. On all these counts, the Draft Regulations are certainly lacking beyond doubt for the reasons detailed above.

6. As such, the currently prevalent laws do not contemplate separate treatment of *niche* channels such as sports channels that are characterized by several constraints and unique differentiators which prevail due to unique and periodic content availability, limited shelf life, mandatory sharing requirements, limited advertisement opportunities and huge content costs. This was pointed out in our submissions on 05 April 2012 in connection with the earlier consultation paper as well. However, even the current Draft Regulations do not account for any such constraints and only seek to make the existing laws more stringent universally without any comprehensive study of the issues involved.

7. There is an existing and active body in the form of the Advertising Standards Council of India ("ASCI") which is seized of the matter of addressing and serving consumer interests *vis-à-vis* advertisements through different media on the basis of the existing laws, thus negating the need for any efforts for further interference.

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8. Lastly, we submit again that any balanced assessment of advertisements would not be possible unless we recognize that the ultimate goal in regulation of advertisement time is perhaps not elimination of commercials altogether, but to ensure judicious telecast of commercials which have their own role in spreading information and awareness about different options available to viewers and also serve a certain educational and/or artistic purpose. Such an approach would serve the purpose of generating maximum value to a viewer who can benefit from the commercials as well as the programming.

With the above preface to contextualize our comments and submissions and the understanding that the Authority withdraws all other stipulations set out in the Standards of Quality of Service (Duration of Advertisements in Television Channels) (Amendment) Regulations, 2012 and seeks to limit itself to regulating measurement of advertisements on clock hour basis, please note our responses to the specific stipulations proposed below.

### RESPONSE TO PROPOSED STIPULATIONS

1. Proposed Draft Regulation 3 substituting the previous regulation 3 –

**"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 shall commence from 00.00 of the hour and end at 00.60 of that hour (example: 14.00 to 15.00 hours).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 the limits for the duration of advertisements should not be regulated on a clock hour basis and may continue to be regulated on a 24 hours basis in accordance with the extant laws, primarily due to the following reasons -

(i) There is an existing norm to regulate this issue under rule 7 (11) of the Rules which clearly limits advertisements to 12 minutes per hour. These Rules have been enacted by the Parliament. Any modification has to be with the sanction of the Parliament. The Authority's powers in this regard are limited to making recommendations by a specific notification of 09 January 2004 that expressly states as much. Therefore, the Authority is not empowered to enact regulations on this matter under the guise of 'quality of service' considerations or otherwise.

(ii) The Authority provides no basis or data to support the purported benefit to consumers and the explanatory memorandum merely states a proposition that the measurements cannot be on hourly basis and must be on clock hour basis. This approach demonstrates a definite lack of transparency and is against the spirit of consultation or exchanges with the industry which is expected to precede and form a basis for any regulation.

(iii) There is a fundamental assumption being made that the proposed measurement on clock hour basis would be to the advantage of the viewers without any supporting documentation, data, logic or other basis. The Draft Regulations merely posit that the viewers would automatically benefit from a clock hour measurement. It is submitted that this is an extremely simplistic and erroneous approach.

At the outset, the fundamental assumption that advertisements are harmful or intended to cause disadvantage to the viewers is misplaced. Advertisements have an important role to play in informing and



educating the viewers about options available to them in relation to goods and services, social issues and various other interesting and necessary factors. There is also an element of public interest when advertisements relating to social issues are sponsored by government bodies or when advertisers dedicate part of their revenues to social causes. These goals can be reasonable and realistic only if advertisements are available to viewers at the times of maximum viewership. Advertisers would also find merit in dedicating resources and investments only if they can be assured of a certain exposure. Therefore, a universal clock hour measure that stipulates the same amount of advertisement at all hours of the day is neither beneficial to the viewers or to the advertisers. For instance, the viewership and interested advertisers for slots between 2000 hrs to 2100 hrs would be drastically different from those for slots between 0200 hrs to 0300 hrs.

(iv) The historical fact of price fixation for all pay channels existing at the time of such fixation were arrived at on the basis of relevant factors, including a certain revenue expectation from advertisements without contemplation of a later discrimination on this basis. Due to the existing ceilings, the broadcasters would not be at liberty to alter pricing of channels and the revenue loss arising out of the proposed stipulations that are more stringent than extant laws would be huge. No case has been made out by data or principle that could justify such an impact.

(v) The proposed Draft Regulation 3 demonstrates the inherent deficiency where *niche* channels such as sports broadcasters have not been considered. A clock hour basis measure would not suit this *genre* of channels where live content is seasonal, limited to a specific period and the breaks where advertisements would be appropriate would vary from sport to sport. There cannot be a universal measure when the sports could be as varied as a test, one day of T20 cricket match, a Formula 1 race or a soccer match.

The proposed stipulation does not recognize the basic and inherent differential factors that characterize sports channels to which a universal and generic guideline that may suit general entertainment channels cannot apply. Factors such as unique and periodic content availability, limited shelf life, mandatory sharing requirements and huge content costs merit repetition in this context. There has to be a difference in approach in dealing with live sporting content and recorded general entertainment programming.

Sports broadcasters typically invest huge amounts towards content acquisition which has to be recovered within a very limited period of time on a seasonal basis and even under the current laws, there are very limited advertisement opportunities. Therefore, an additional restriction linked to timing and does not respect the nature of the content would challenge the business models on which such channels operate.

It is quite usual for content holders to stipulate certain minimum advertisement revenues based on which they grant broadcast rights and any prescription that is more stringent than prevailing norms could compromise contractual commitments and attract consequences under existing rights agreements. Needless to mention the losses which will be suffered by broadcasters who have entered into multi-year agreements based on such estimates would be huge. In fact such excessive regulation could restrict the ability of broadcasters to acquire content going forward and will also limit sponsorship avenues for sports broadcasting in India due to the limited exposure that can be assured to the advertiser. This would be a great disservice not only to the audience but also to the growth and development of sport in the country.

Furthermore, sports broadcasters are also subject to the rigorous requirements of the *Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Act 2007 ("Act")* under the terms of which our ability to earn revenues through telecast of notified events are curtailed by the content sharing requirements and revenue sharing arrangements with the national broadcaster, thereby being subject to an additional burden that is not applicable to the general entertainment channels. The practice of sharing the signals provided

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under the Act on an unencrypted basis by the national broadcaster also leads to and facilitates large scale piracy of sports content throughout the country and beyond, thus resulting in considerable business impact and revenue loss.

In light of the above, we submit that with respect to sports channels, it may be time to revisit the whole approach to advertisements rather than introduce more stringent norms without comprehensive study of issues involved or appropriate data or logic to support such changes because even the current regime does not account for the inherent constraints faced by sports broadcasters.

For instance, in relation to cricket which is an enormously popular sport in India, the Authority itself has recognized in paragraph 8.12 of Section 8 ("Advertisement") of its "Recommendations on Issues relating to Broadcasting and Distribution of TV channels" of 1 October, 2004 that over changes and other breaks would be 'natural breaks' where advertisements would be logical. Such breaks would occur during the time between the ball being dead and alive, including end of an over, injury time, lunch/drinks break, fall of a wicket, ball crosses the boundary, ball is lost or stuck (such as in a helmet) and other situations when the ball is not in play. When no sporting action is ongoing, the host broadcaster producing the live feed of the matches typically moves the camera to a static frame and commentators pause until cued by the producer. Viewers may also prefer to watch advertisements regarding products/services or other options rather than watch still frames. These norms are also recognized by international bodies regulating sports such as the International Cricket Council and are also followed by the national broadcaster, Doordarshan. On the other hand, there are sports such as Formula 1 where the event by nature continues for a long time and it is international practice and permitted by the content owners that there may be logical breaks for advertisement during the course of the telecast. Therefore, clearly the proposed clock hour measure of advertisements during telecast of such sporting events is not logical as the yardsticks that would apply are fundamentally different.

We submit again that if the norms do not respect the unique nature of each sport and attempt to prescribe generic guidelines, it could have serious impacts on the ability of broadcasters to attract sponsors for events, which in turn will have a ripple effect that will ultimately affect the development and visibility of sport in the country. Sponsorship is of utmost importance in sports broadcasting where content costs are huge and it would be naïve to assume that ticket sales alone will allow a broadcaster to recoup the investment made. Without sponsorship, the quality of athletes and production of events for television would not have reached the global standards they have attained, the ultimate benefit of which accrues to the viewer. Further, the rights agreements under which sports content is procured generally prescribe the advertisement norms and restrictions that are in accordance with international practices in sports broadcasting. This in itself is the biggest regulator and also assures parity with international norms.

In summation, we submit that there ought to be no further regulation with respect to advertisements during telecast of sporting action as it is uniquely dependent on the nature of each sport, is governed and regulated by existing market forces and there is no data or basis that has been shared to justify changes that would effectively overhaul the *status quo*. If any change is warranted, it is to create a new regime for sports broadcasters that accounts for the unique nature of the content and manner of broadcasting. We cannot stress enough on the importance of adopting a customized approach that recognizes the uniqueness of each sport which precludes the viability of a generic guideline across sports.

2. Proposed Draft Regulation 4 –

"4. **Power of the Authority to intervene.**--- The Authority may, from time to time, issue such order or direction as it may deem fit to ensure compliance of the provisions of these regulations."

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**Response** – It is submitted that an opportunity of hearing and opportunity to file written response should be provided before any directions are issued.

3. Proposed Draft Regulation 5 –

"5. **Reporting requirement** - Every broadcaster shall, within fifteen days from the end of a quarter, submit to the Authority in the format specified by the Authority, the details of advertisements carried in its channel and first such report shall be furnished to the Authority, for the quarter ending on the 31st December, 2012, by the 15th January, 2013."

**Response** – Given our submissions that the Authority does not have the powers to regulate advertisements on television channels in the manner proposed for the reasons detailed in our submissions to Draft Regulation 3 above, it follows that there is also lack of any authority to stipulate a reporting requirement in this connection under the guise of 'quality of services'. If such a requirement was deemed necessary, it would have been included in the Rules where the maximum limit is currently prescribed and which were amended as recently as in April 2012.

Further, in light of the substantial reporting requirements that apply to broadcasters under current regulations, an additional reporting requirement to be satisfied on a quarterly basis is a disproportionate additional burden. This must also be considered in the context of alternate controls that exist, including the ASCI which is intended to safeguard consumer interests and that any subscribers who may have a cause of action in this regard have the option to pursue remedies before the appropriate judicial forum.

Draft Regulation 5 therefore appears to be a burdensome requirement based on a stipulation that the Authority does not have the power to impose and is unwarranted in light of existing controls, due to which it may be withdrawn.

#### CONCLUSION:

In summation, we submit that the current Draft Regulations ought to be withdrawn by the Authority without further action because these have been proposed authority, seek to modify an existing framework prevailing under sanction of the Parliament, are not based on data or documentation that demonstrate any need for further regulation, suffer from lack of transparency and due process, and does not make any provision for *niche* broadcasters such as sports broadcasters who operate under a unique set of constraints. It is also against the stated objective of the Authority to works towards a mature market where self-regulation and market forces would govern effectively.

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**Comments received w.r.t. OHD**





**BY EMAIL, SPEED POST AND COURIER  
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30 November 2012

Telecom Regulatory Authority of India,  
Mahanagar Door Sanchar Bhawan,  
Jawahar Lal Nehru Marg, (Old Minto Road),  
New Delhi – 110 002.

**Kind Attention:** Mr. Wasi Ahmad, Advisor (B & CS)

Dear Sir,

Without prejudice to our rights or contentions in appeal no. 4(C) of 2012, i.e., *ESPN Software India Pvt. Ltd. v. Telecom Regulatory Authority of India*, which are hereby reiterated, please find enclosed our additional submissions in response to the draft regulation “Standards of Quality of Service (Duration of Advertisements in Television Channels) (Amendment) Regulations, 2012” issued on 27 August 2012 pursuant to the open house held on the subject matter on 23 November 2012. Please note that these submissions are in addition to the submissions made on 11 September 2012.

Please note that this response is without prejudice to any rights or contentions we may have with regard to any of the matters discussed. We reserve the right to furnish comments/counter comments for the purpose of further clarifying our position.

Yours faithfully,

For ESPN Software India Pvt. Ltd.

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Authorised signatory

Encl: as above

## WITHOUT PREJUDICE

30 November 2012

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Additional submissions of ESPN Software India Pvt. Ltd. ("ESI") to Telecom Regulatory Authority of India ("Authority") pursuant to the 'open house' held on 23 November 2012 in relation to the draft regulations entitled "Standards of Quality of Service (Duration of Advertisements in Television Channels) (Amendment) Regulations, 2012" ("Draft Regulations") issued on 27 August 2012 for comments

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### INTRODUCTION:

The following submissions in response to the Draft Regulations are submitted pursuant to the open house held by the Hon'ble Telecom Regulatory Authority of India ("Authority") on 23 November 2012 and are in addition to the response filed by ESI on 11 September 2012. Furthermore, this response is submitted without prejudice to our rights or contentions in appeal no. 4(C) of 2012, i.e., *ESPN Software India Pvt. Ltd. v. Telecom Regulatory Authority of India*, especially in relation to the lack of authority of the Authority to embark on such an exercise and the existence of a prevailing framework under the *Cable Television Network Regulation Act 1995* and rules framed thereunder that currently governs the subject matter.

The objective of this submission is to highlight and stress upon certain specific concerns and reasons, particularly from the perspective of sports broadcasting, for our proposal that the Draft Regulations ought to be withdrawn by the Authority and may not be brought into force. Accordingly, we submit as follows –

1. It is reiterated that the ideal regulatory approach must to simplify and minimise regulation which would facilitate the evolution of a mature market driven by market forces and self-regulation. Given this context and the existence of a current framework under the *Cable Television Network Regulation Act 1995* and rules that already regulates the matter, we submit that no further regulation is called for.
2. The Authority's powers in relation to the subject matter are limited to making recommendations on the parameters for regulating maximum time for advertisements on pay channels as well as other channels. Therefore, enactment of the Draft Regulations would in any case be beyond the powers of the Authority. The said inherent lack of jurisdiction has also been raised by all major broadcasters in the ongoing challenges against the initial "Standards of Quality of Service (Duration of Advertisements in Television Channels) (Amendment) Regulations, 2012" issued on 14 May 2012, which are proposed to be amended by the Draft Regulations.
3. Assuming but not conceding that the Authority had the power to regulate the matter of maximum time of advertisements on television channels, no sufficient basis or data has been provided in the initial consultation paper or as part of the Draft Regulations on any adverse effects on the consumer under the current regime that requires advertisements to be measured on an hourly basis or to substantiate any benefits that may accrue in making the measurement clock hour based. This would be in contravention of section 11(4) of the *Telecom Regulatory Authority of India Act 1997* which requires the Authority to exercise its powers in a transparent manner.
4. The historical fact of price fixation for all pay channels existing at the time of such fixation were arrived at on the basis of relevant factors, including a certain revenue expectation from advertisements



## WITHOUT PREJUDICE

without contemplation of a later discrimination on this basis. Due to the existing ceilings, the broadcasters would not be at liberty to alter pricing of channels and the revenue loss arising out of the proposed stipulations that are more stringent than extant laws would be huge. No case has been made out by data or principle that could justify such an impact. In genres such as sports where content costs and investments are increasing exponentially without any option to increase channel rates, sponsorship and advertisements are a major source of revenue and any further curtailment on this revenue window could limit sponsorship avenues for sports broadcasting in India due to the limited exposure that can be assured to the advertiser.

5. Advertisements have a relevant role to play in educating viewers about options available to them in relation to goods and services, social issues and other interesting and necessary factors. There is also an element of public interest when advertisements relating to social issues are sponsored by government bodies or when advertisers dedicate part of their revenues to social causes. These goals can be reasonable and realistic only if advertisements are available to viewers at the times of maximum viewership. Advertisers would also find merit in dedicating resources and investments only if they can be assured of a certain exposure during maximum viewership. Therefore, a universal clock hour measure that stipulates the same amount of advertisement at all hours of the day is neither beneficial to the viewers or to the advertisers. For instance, the viewership and interested advertisers for slots between 2000 hrs to 2100 hrs would be drastically different from those for slots between 0200 hrs to 0300 hrs.

6. As such, even the currently prevalent laws do not contemplate separate treatment of *niche* channels such as sports channels that are characterized by several constraints and unique differentiators which prevail due to unique and periodic content availability, limited shelf life, mandatory sharing requirements, limited advertisement opportunities, inherent differences between different sports and huge content costs. This has been pointed out in our previous submissions as well. However, even the current Draft Regulations do not account for any such constraints and only seek to make the existing laws more stringent universally.

7. We submit that the limits for the duration of advertisements do not warrant modification from the current method of measurement on 24 hours basis to a clock hour basis. Any such modification would make the regulatory environment for sports broadcasters even more unreasonable and non-justiciable due to the following factors that are unique to the business -

(i) A clock hour basis measure would not suit this *genre* of channels which operate under constraints of unique and periodic content availability, limited shelf life, mandatory sharing requirements, huge content costs and inherent differences in the manner of advertising permitted by the nature of different sporting events. We reiterate that there has to be a difference in approach in dealing with live sporting content and recorded general entertainment programming.

(ii) Within sports broadcasting, different sports require different treatment due the nature of play. For instance, the manner of advertising for a sport such as cricket which has natural breaks is different from a sport such as Formula 1 where there are logical breaks permitted by content owners and as per international practice. Given this context, we submit that when it is impractical to have a universal measure even within different sporting events, it would not be fair or reasonable to introduce new regulations that would increase the rigour without even accounting for sports as a separate *genre*.

(iii) Sports broadcasters typically invest huge amounts towards content acquisition under long term agreements with content owners and are under constraints to recover investments within a very limited period of time on a seasonal basis and even under the current laws, there are very limited advertisement opportunities. Therefore, an additional restriction linked to timing that does not respect the nature of the content would challenge the business models on which such channels operate.



## WITHOUT PREJUDICE

(iv) The content acquisition agreements with content owners generally contain stipulations on advertisement during the broadcast of the content that is in consonance with international practices as the content is transmitted in several jurisdictions. While this is in itself would operate as a control mechanism to ensure parity with international practices, any regulatory prescription that is more stringent than prevailing norms that are implemented with immediate effect could compromise long term contractual commitments made by broadcasters and attract consequences under existing rights agreements. In fact such excessive regulation could restrict the ability of broadcasters to acquire content going forward.

(v) Sports broadcasters are uniquely subject to the *Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Act 2007* ("Act") under the terms of which our ability to earn revenues through telecast of notified events are curtailed by the content sharing requirements and revenue sharing arrangements (currently 75:25 in our favour) with the national broadcaster, thereby being subject to an additional burden that is not applicable to the general entertainment channels. The revenue loss through this however is enormous since the national broadcaster transmits the signals provided under the Act on an unencrypted basis thus leading to large scale piracy of sports content throughout the country and beyond and causing consequential business impact and revenue loss.

8. With regard to regulations 4 and 5 of the Draft Regulations, we reiterate our submissions in our filing of 11 September 2012. To summarise, in relation to power of Authority to issue directions proposed under regulation 4, we request that the relevant party may be granted an opportunity of hearing and opportunity to file written response before any directions are issued. Further, in relation to the reporting requirements proposed under regulation 5, we would point out that if such a requirement was deemed necessary, it would have been included in the rules under the Cable TV Act where the maximum limit is currently prescribed and which were amended as recently as in April 2012. Further, in light of the substantial reporting requirements that apply to broadcasters under current regulations, an additional reporting requirement to be satisfied on a quarterly basis is a disproportionate and additional burden. However, even if such a requirement were to be introduced, it may be more efficient to have a bi-annual requirement that would be limited to the timing of advertisements on the channels and should not require any financial disclosures.

## CONCLUSION:

In summation, we submit that the current Draft Regulations ought to be withdrawn by the Authority without further action because these have been proposed without authority, seek to modify an existing framework prevailing under sanction of the Parliament, are not based on sufficient data or documentation that has been shared, suffer from lack of transparency and due process, and does not make any provision for *niche* broadcasters such as sports broadcasters who operate under a unique set of constraints. It is also against the stated objective of the Authority to works towards a mature market where self-regulation and market forces would govern effectively.

Furthermore, our submission for the path forward would be that the Authority, under the powers vested in it under the notification dated 1 January 2004, may make recommendations for legislative change to create a new regime for sports broadcasters that does not prescribe a maximum time cap for sports broadcast as it would be most ideally regulated by the nature of the sport, content agreements and market forces.

