Turner

INTERNATIONAL INDIA PVT. LTD.

HAND DELIVERY/COURIER/E-MAIL AT
advbcs@trai.gov.in;traicable@yahoo.co.in

Date: September 11, 2012

To,

Mr, Rajeev Agrawal,
Secretary,
Telecom Regulatory Authority of India,
Mahanagar Doorsanchar Bhawan,
Jawahar Lal Nehru Marg,
New Delhi – 110 020, India.

Dear Sir,

This is in reference to the draft "Standards of Quality of Service (Duration of Advertisements in Television Channels) (Amendment) Regulations, 2012" (Proposed Amendment) issued by the Telecom Regulatory Authority of India (TRAI) on August 27, 2012 vide Press Release No. 178/2012.

At the outset, we would like to thank TRAI to give us an opportunity to present our views on the draft Proposed Amendment. Turner appreciates TRAI's intent to withdraw the restrictions set out in the the Proposed Amendment's parent regulation "Standards of Quality of Service (Duration of Advertisements in Television Channels) Regulations, 2012" notified by TRAI on May 14, 2012 (Regulations).

As you are aware, broadcasters have two primary revenue streams for a television channel - distribution revenue and advertising revenue. Given the wide-scale under-reporting, piracy, and regulatory restrictions resulting in non realisation of real distribution revenues, television broadcasters are highly dependent on advertising revenue to meet the growing costs of creating and delivering quality content. Till digitalisation is fully implemented across the country, television broadcasters will not be able to ascertain the exact impact of digitisation, and will continue to be significantly dependant on advertising revenue. Any such regulation will lead to a restriction on the ability of broadcasters to raise revenues and make diverse quality content available to viewers.

Turner has the following concerns in connection with the Proposed Amendment:

(a) **Duration of Advertisements in a clock hour:** 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 twenty four hours basis in accordance with the extant laws. This is because the viewership patterns differ throughout the day and therefore a clock basis approach that would apply universally to all hours would not be logical. Additionally, a clock hour basis measure would not suit *niche* channels such as movies, children's television and sports channels are concerned. For e.g. the duration of breaks plays a key role in movies as it ensures that maximum viewership happens for the key segments which aid in driving the overall viewership of the television channel. Putting advertisement breaks at inopportune times in the storyline will lead to a progressive shift of viewers away from the relevant television channel towards other television channels. Further, market has already evolved a mechanism to regulate over advertising as any television channel which over advertised would lose subscribers. No broadcaster will therefore increase the number of advertisements beyond a point that will cause viewers to switch off or move to another programme.

CNN CARTOON NETWORK POGO HBO NOW THAT'S HOLLYWOOD!

Br. Office : 3rd & 4th Floor, Audeus,Veera Desai Road,Near Yash Raj Studios,Fun Republic Lane,
Andheri (W), Mumbai - 400053 TEL. : +91-22-42099999 FAX : +91-22-26749525
Regd Office : 5th Floor, Radisson Commercial Plaza, National Highway No. 8, Mahipalpur,
New Delhi - 110037 TEL. : +91-11-26779201/41699199 FAX : +91-11-26779205/06
A TimeWarner Company

5

(b) **Power of the Authority to intervene:** We reiterate the concern raised by us in our response to the TRAI to its earlier consultation paper dated March 16, 2012 on issues related to advertisements on television channels. We reiterate that there appears to be a lack of clarity on the ministry and/or sector regulator overseeing the implementation of the advertising code under the Cable Television Network (Regulation) Act, 1995 (CTN Act) and Rule 7 of the Cable Television Network (Regulation) Rules, 1994 (CTN Rules) on Advertisements. 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 has been engaging with Industry bodies like the Indian Broadcasting Foundation about enhancing the self-regulatory role of these Industry bodies in ensuring compliance with the CTN Rules. The IBF has challenged the legality, validity and propriety of the Regulation in the Telecom Disputes Settlement and Appellate Tribunal (Hon'ble Tribunal) and the Hon'ble Tribunal has yet to pass a conclusive decision on the authority of the TRAI to make regulations and the legality, validity and propriety of the Regulation.

(c) **Quarterly Reporting Requirement:** TRAI in the explanatory memorandum annexed with the draft Proposed Regulation has cited that the reporting requirements have been introduced in order to provide effective monitoring mechanism. However, we believe there already exists a reporting mechanism in the form of Adex data. Quarterly reporting on the broadcasters shall create additional operational difficulties on the broadcasters and increase the operational costs of the broadcasters. The broadcasters would have to incur additional costs for such additional reporting and requirements without any additional stream of revenues. Additional reporting requirements as stated in the Proposed Amendment shall further increase the costs centres for the Broadcasters. Increasing costs coupled with competitive pressures will limit the ability of the broadcasters to continue investing in the Indian television content industry.

In light of the above, we submit that there ought to be no further regulation with respect to advertisements as it is sufficiently governed and regulated by existing laws, market forces and self regulations. We believe the CTN Act and Rule already captures the legislative intent on the advertising norms that should govern the Indian television space and additional regulations shall, instead of simplifying and minimizing the regulatory framework, make it more complicated and shall be opposed to the principle of simplified and minimum regulation.

Yours faithfully,
Turner International India Private Limited

Siddharth Jain

Mr. Siddharth Jain
Managing Director

Br. Office : 3rd & 4th Floor, Audeus, Veera Desai Road, Near Yash Raj Studios, Fun Republic Lane, Andheri (W), Mumbai - 400053 TEL. : +91-22-42099999 FAX : +91-22-26749525
Regd Office : 5th Floor, Radisson Commercial Plaza, National Highway No. 8, Mahipalpur, New Delhi - 110037 TEL. : +91-11-26779201/41699199 FAX : +91-11-26779205/06
A TimeWarner Company

Comments received w.r.t. OHD

November 30, 2012 COURIER/E-MAIL AT advbcs@trai.gov.in

To,

Dr. Rahul Khullar,
Chairman,
Telecom Regulatory Authority of India,
Mahanagar Doorsanchar Bhawan,
Jawahar Lal Nehru Marg,
New Delhi – 110 020, India.

Dear Sir,

Ref: Standards of Quality of Service (Duration of Advertisements in Television Channels) (Amendment) Regulations, 2012" (Proposed Amendment) issued by the Telecom Regulatory Authority of India (TRAI) on August 27, 2012 vide Press Release No. 178/2012

This is in reference to the "Open House" called for by the TRAI in New Delhi on 23rd November 2012 to discuss the Proposed Amendment. During the course thereof the Hon'ble TRAI Chairman requested participants to submit their points of view as expressed during the Open House to TRAI not later than 30th November 2012.

At the outset, we would like to thank TRAI to arrange for an Open House which facilitated discussions between all stakeholders including the broadcasters. In addition to the representation dated September 11, 2012, we would like to put forth additional representation as stated below:

(1) CLASSIFICATION OF CHANNELS:

(a) TRAI has recommended a standard advertisement duration of "12" minutes per hour across all television content. However, we believe a distinction must be drawn depending on the programming content shown on the television channels. The categorisation could depend on live television programming, non-live television programming, movie programming etc.

(b) For example, in case of "movie channels", the duration of breaks plays a key role in movies as it ensures that maximum viewership happens for the key segments which aid in driving the overall viewership of the television channel. An advertisement breaks at inopportune times in the storyline will not be in interest of the viewers and thus may lead to progressive shift of viewers away from that television channel towards other television channels in the same genre. Therefore, advertisement time during telecast of films must not be capped on a clock hour basis but instead movie television channels must be treated as live programs and live sports and the advertisement insertion should be allowed to be self-regulated so that advertisements are inserted during breaks depending upon the storyline of the film.

(c) Moreover, the satellite rights for movies are in fact priced based on the ability of the Channels to garner advertising revenues. Restrictions on advertising times will impair the ability and lead to sharp fall in satellite rights for movies. Infact, due to the perception of TRAI that advertisements are irritating to viewers, it may deprive the viewers the opportunity to view latest movies release on television in a costs effective manner as now days going to multiplexes has become very expensive. There is no data to show that when the content is compelling, the users tend to keep away due to excessive advertising. As an example, movies running on channels which have multiple breaks have garnered high TRP's and GRP's.

(2) CLOCK HOUR

(a) In the Proposed Amendment, TRAI has explained that the clock hour to commence at 12 AM (midnight) for purposes of capping the advertisement time at 12 minutes per clock hour. In doing so TRAI has failed to distinguish between the programming which is telecast during the day time and in watershed hours after 10 PM and before 8 AM. No distinction is made between the programming which is broadcast in prime time and non-prime time hours of the day.

(b) We believe the clock hour cannot be uniform for across all time zones during a given period of 24 hours. Instead there should be clear distinction between "*watershed*" hours, "*day parts*" and "*prime time*". There should not be any restrictions in insertion of advertisements in watershed

CARTOON NETWORK HBO™ NOW THAT'S HOLLYWOOD!
Br. Office : 3rd & 4th Floor, Audeus,Veera Desai Road,Near Yash Raj Studios,Fun Republic Lane, Andheri (W), Mumbai - 400053 TEL. : +91-22-42099999 FAX : +91-22-26749525
Regd Office : 5th Floor, Radisson Commercial Plaza, National Highway No. 8, Mahipalpur, New Delhi - 110037 TEL. : +91-11-26779201/41699199 FAX : +91-11-26779205/06
A TimeWarner Company

hours when the consumption of television is miniscule. The cap if at all must be on the basis of the "*average*" per hour of programming and only be applicable for programs that are telecast during the day time i.e. from 8 AM in the morning through 10 PM at night when the watershed hours commence.

(3) IMPLEMENTATION OF DIGITAL ADDRESSABLE SYSTEM ("DAS")

(a) Given the wide-scale under-reporting, piracy, and regulatory restrictions resulting in non-realisation of real distribution revenues, television broadcasters are highly dependent on advertising revenue to meet the growing costs of creating and delivering quality content. We believe that any recommendations for regulation of advertisements should be brought about in tandem with the phased digitalisation plan of the Central Government. Till digitalisation is fully implemented across the country, television broadcasters will not be able to ascertain the exact impact of digitisation, and will continue to be significantly dependant on advertising revenue. Any such regulation will lead to a restriction on the ability of broadcasters to raise revenues and make diverse quality content available to viewers.

(b) It is hoped that the situation will change after effective and successful implementation of DAS, therefore, the changes of the nature proposed in the Proposed Amendment ought to be deferred in sync with the analogue "sunset" date. We recommend that after digitalisation is fully and successfully completed and distribution revenues improve, then if need be, TRAI could recommend changes in the advertising duration time by capping these levels which can then gradually be reduced to 25% per hour (i.e. 60 minutes).

(4) CONTINUOUS INCREASE IN INPUT COSTS

(a) In this regard it is pertinent to point out that the channel pricing have been frozen since 2003. Since the pricing for digital addressable systems are also derived from non-CAS prices (which at present is 42% of non-CAS prices), they are also indirectly frozen. On the other hand the costs for acquiring the content has increase manifold. In addition, there has been substantial increase in operational costs including the increase in manpower.

(b) Recently in June 2012, the Copyright (Amendment) Act, 2012 has introduced provisions which mandate that every time a broadcaster exploits and telecast content, the broadcaster has to share royalty with the scriptwriter, dialogue writer, screenplay, music composer, lyricist, thereby increasing the costs that the broadcaster has to incur toward procurement of content. The costs of procurement of content will further skyrocket in the coming years.

(c) Therefore, we believe that any attempt to tinker with the advertising revenues earned by the channels will completely jeopardize the business models of the broadcasters. Over and above, the broadcasters have to shell out heavy carriage fee in order to ensure carriage and viewership of the channels. Thus, the channels are already reeling under the impact of frozen channel pricing and continuous increase in input and operational costs.

(5) MARKET DYNAMICS

(a) We state that the market dynamics are already playing its role and the advertisement break patterns have started to change to reflect this. This is evident from the fact that more and more channels have started putting on screen displays providing information of the duration of advertisements breaks with an aim too retaining the viewers. These are broadcasters who transmit "break free" movies. There are broadcasters who are launching or have launched "advertisement free" channels. Thus, market should be allowed to operate under self-regulated environment to achieve their objective.

(b) Broadcasters should be allowed to display advertisements which are in the form of bugs and tickers. These, we believe should not be considered as part of the advertising duration time as these are not displayed during advertising breaks and do not cause any hindrance to viewers as their display forms a minuscule section of the screen. Market has already evolved a mechanism to regulate over advertising as any television channel which over advertised would lose subscribers. No broadcaster will therefore increase the number of bugs and tickers beyond a point that will cause viewers to switch off or move to another channels.

9

(6) EXCLUSIONS

We believe that the following content should be excluded from calculating the advertising duration:

(a) Most television channels would typically carry programming which features a mix of programs by sponsors of products, services, manufacturer and many others. These are common in the industry and go by the name of "Slot Sales" and "Teleshopping Programs". The topic discussed and/or information imparted through such "Slot Sales" and "Teleshopping Programs" range from health, travel, food, music, home shopping etc. Therefore, though being sponsored programs, they are different from advertising. We believe that inclusion of these within the parameters of "advertising" would not be for the benefit of the viewers as the viewers could watch these to gather information on the product featured in it or information provided through these programmes.

(b) Non paid Public service advertisements or advertisements issued in the Public interest should be excluded from any cap. Similarly advertisements inserted at the request of or on the notification of any Governmental or statutory body must also be excluded.

(c) Inhouse "on-air" promos for promoting shows of the channels on its networks. These promos are not shown on other channels. Such promos are meant merely to inform about upcoming shows and the time during which they can be watched by the viewers. These are not "commercials" as normally understood in advertising parlance.

(d) Bugs, tickers or advertisements which promote the programmes/content telecast on the television channel or the channel itself. Such bugs, tickers or promos and on-air elements of the programs/movies telecast on the television channels play a pivotal role in informing the viewers of program and/or movies that are to be shown on the television channel and the time during which they can be watched by the viewers. Moreover, these promos are not shown on other channels.

(7) QUARTERLY REPORTING REQUIREMENT:

TRAI in the explanatory memorandum annexed with the draft Proposed amendment has cited that the reporting requirements have been introduced in order to provide effective monitoring mechanism. However, we believe there already exists a reporting mechanism in the form of Adex data. Quarterly reporting on the broadcasters shall create additional operational difficulties on the broadcasters and increase the operational costs of the broadcasters. The broadcasters would have to incur additional costs for such additional reporting and requirements without any additional stream of revenues. Additional reporting requirements as stated in the Proposed Amendment shall further increase the costs centres for the Broadcasters. Increasing costs coupled with competitive pressures will limit the ability of the broadcasters to continue investing in the Indian television content industry.

(8) POWER OF THE AUTHORITY TO INTERVENE

We believe that TRAI does not have the authority to regulate advertising air time on television, this being the prerogative of Ministry of Information and Broadcasting (MIB). This being confirmed by TRAI by its own admission in the affidavit filed by TRAI before the Hon'ble Telecom Disputes Settlement & Appellant Tribunal in the petition No. 34(C) of 2011 filed by a society called Utsarg against TRAI and several other broadcasters and content aggregators seeking a cap on television advertising time on the ground that these advertisements interfered with viewership of television programmes.

In light of the above, we submit that there ought to be no further regulation with respect to advertisements as it is sufficiently governed and regulated by existing laws, market forces and self regulations. We believe the Cable Television Network Act and Rule already captures the legislative intent on the advertising norms that should govern the Indian television space and additional regulations shall, instead of simplifying and minimizing the regulatory framework, make it more complicated and shall be opposed to the principle of simplified and minimum regulation.

Yours faithfully,
Turner International India Private Limited

Siddharth Jain

Siddharth Jain
Managing Director