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

TELECOM REGULATORY AUTHORITY OF INDIA
NOTIFICATION

New Delhi ,the 14th May, 2012

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,-----

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(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, namely:-

STANDARDS OF QUALITY OF SERVICE
(DURATION OF ADVERTISEMENTS IN TELEVISION CHANNELS)
REGULATIONS, 2012
(15 OF 2012)

CHAPTER I
PRELIMINARY

1. Short title, extent and commencement.- (1) These regulations may be called the "Standards of Quality of Service (Duration of Advertisements in Television Channels) Regulations, 2012 (15 of 2012)".`

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

2. **Definitions.-** In these regulations, unless the context otherwise requires:

(a) "Act" means the Telecom Regulatory Authority of India Act 1997 (24 of 1997);

(b) "Authority" means the Telecom Regulatory Authority of India established under sub-section (1) of section 3 of the Telecom Regulatory Authority of India Act, 1997;

(c) "broadcaster" means a person or a group of persons or body corporate or any organisation or body providing programming services and includes his authorised distribution agencies;

(d) "broadcasting services" means the dissemination of any form of communication such as signs, signals, writing, pictures, images and sounds of all kinds by transmission of electro magnetic waves through space or through cables intended to be received by the general public either directly or indirectly and all its grammatical variations and cognate expressions shall be construed accordingly;

(e) "programme" means any television broadcast and includes;

(i) exhibition of films, features, dramas, advertisements and serials;

(ii) any audio or visual or audio-visual live performance or presentation, and----

the expression "programming service" shall be construed accordingly;

(f) "TV channel" means a channel, which has been registered under -----

(i) the guidelines for uplinking from India, issued vide No.1501/2/2002-TV(I)(Pt.) dated the 2nd December, 2005; or

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(ii) policy guidelines for downlinking of televisions channels, issued vide No. 13/2/2002-BP&L/BC-IV dated the 11th November, 2005, ---------

as amended from time to time, or such other guidelines for uplinking or downlinking of television channels, as may be issued from time to time by the Government of India (Ministry of Information and Broadcasting) and reference to the term 'channel' shall be construed as a reference to "TV channel";

(g) all other words and expressions used in this regulations but not defined, and defined in the Act and rules and regulations made thereunder or the Cable Television Networks (Regulation) Act, 1995 (7 of 1995) and the rules and regulations made thereunder, shall have the meanings respectively assigned to them in those Acts or the rules or regulations, as the case may be.

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CHAPTER II

PROVISIONS FOR DURATION OF ADVERTISEMENTS IN TV CHANNELS

3. **Duration of advertisements in TV channels.--** (1) No broadcaster shall carry in its broadcast of a programme, advertisements exceeding twelve minutes in a clock hour and any shortfall of advertisement duration in any clock hour shall not be carried over.

(2) The advertisements in the clock hour shall include all types of advertisements including advertisements promoting the channel(s) of the broadcaster.

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).

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(3) In case of live broadcast of a sporting event, the advertisements shall be carried only during the breaks in the sporting action.

(4) The time gap between end of one advertisement session and the commencement of next advertisement session shall not be less than fifteen minutes.

Provided that in case of broadcast of a film or movie the time gap between end of one advertisement session and the commencement of the next advertisement session shall not be less than thirty minutes.

Provided further that nothing contained in this sub-regulation shall apply in case of live broadcast of a sporting event.

(5) Every broadcaster shall ensure that the advertisements carried in its channels are only full-screen advertisements and there shall be no part-screen or drop-down advertisement.

(6) Every broadcaster shall ensure that the audio level of the advertisements carried in its channel shall not be higher than the audio level of the programs being broadcast in that channel.

4. The Authority may issue such directions as it deems fit to secure compliance of the provisions of these regulations.

(Wasi Ahmad)
Advisor (B&CS)

Note.-----The Explanatory Memorandum explains the objects and reasons of the Standards of Quality of Service (Duration of advertisements in Television channels) Regulations, 2012 (15 of 2012)".

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Annexure

Explanatory Memorandum

Background

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. Government of India, in the Ministry of Communication and Information Technology Gazette Notification NO. 39, dated 9th January 2004, has notified the Broadcasting Services and Cable Services to be Telecommunication Services thereby bringing the regulation of Broadcasting and Cable TV services under the ambit of TRAI.

2. Since the dawn of the television, advertisements have been used to promote a wide variety of goods and services. Advertisements provide for a significant portion of the revenue of the television industry. The broadcasters of the free to air channels[1] rely solely on the advertisements as their source of revenue, while the pay channel[2] broadcasters have twofold source of revenue in the form of advertisement and subscription revenues.

3. The consumers are presently fed with content feeds interlaced with the advertisements within and in-between the various programmes aired by the broadcasters in their channels as well as MSOs and local cable operators in their local/video channels. The majority of television advertisements consist of advertising spots, info-commercials and self-promotional campaign in various formats ranging in length from a few seconds to several minutes.

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[1] FTA Channel: A channel for which no fees is to be paid to the broadcaster for its re-transmission through electromagnetic waves through cable or through space intended to be received by the general public either directly or indirectly.

[2] Pay channel : A channel for which fees is to be paid to the broadcaster for its retransmission through electromagnetic waves through cable or through space intended to be received by the general public either directly or indirectly.

4. The extant provisions concerning the duration and format of advertisements in the TV channels, as provided in sub-clause (11) of clause 7 of the Cable Television Networks Rules, 1994, as amended, prescribe that 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. It is also provided in sub-clause (10) of clause 7 of the said rules that 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.

5. There have been several complaints, mainly from the consumers raised at various fora, regarding overplaying of advertisements, long duration of advertisements, overlaying of advertisements on the screen, increased audio level during advertisements etc. It has been said that the advertisement duration and formats are not in accordance with the provisions stated above. It has often been pointed out that the advertisements are played/repeated several times in between the programmes, which break the continuity of the programme and often done at crucial stages of a programme. In this context, there have been requests to at least restrict and regulate the duration, frequency and timings of the advertisements.

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6. With the primary objective of striking a balance between giving a consumer a good TV viewing experience, and protecting the commercial interests of broadcasters, a consultation paper was issued on 16th March 2012 titled "Issues related to Advertisements in TV channels". In the consultation paper, various issues related to advertisements on TV channels in India were discussed and a proposal for regulation of duration and format of advertisements was put forth for comments of the stakeholders. In response to this consultation paper, 29 comments were received. Based on the comments/ views of the stakeholders and analysis of various aspects, facts and available studies, the Authority has decided to issue separate regulations for the duration of advertisements carried in TV channels.

A. Regulation of advertisements

7. In general the broadcasters and their associations, the advertisers and their associations are against any regulation as proposed by TRAI. The arguments given are – i) it is outside the jurisdiction of TRAI as it is akin to content regulation, ii) rule 7 (11) of the Cable Television Networks Rules eclipses the power given to TRAI through the notification

dated 9th Jan 2004, iii)it is against the fundamental right of freedom of speech and expression guaranteed under Article 19(1) (a) and (g) of the Constitution, iv) it is contrary to the TRAI's earlier recommendations dated 1.10.2004, which stated that "there should not be any regulation, at present, on advertisements on both free to air and pay channels", v) rather than regulating the advertisements, the focus should be on successful implementation of the digitisation of the cable TV sector, vi) any restriction on advertisements would have the impact of sharp increase in subscription charges , vii) Limited availability of advertising time will imply jacking up of advertisement rates by many folds and this will be detrimental to the small and medium enterprises (SMEs), viii)advertisements increases consumption of goods and services which then drives the growth of employment and economic development.

8. The other stakeholders comprising mainly the consumers, consumer organisations and cable operators have supported the TRAI proposal for the regulation of duration and format of advertisements in the TV channels.

9. One of the industry associations has stated that it's the wrong time to regulate the advertisements since the digitization has just started. Further, advertisements are part of a business model of the broadcasters and should not be seen as a burden to the consumers. In fact advertisements help the consumers in many ways. They further submitted that a system of self regulation by the industry body is a better and appropriate way to regulate the advertisements.

10. The broadcasters have also quoted some rulings of the Hon'ble Supreme Court wherein the Hon'ble Supreme Court has held that the restriction on advertisement space in the news papers would lead to reduction in its revenue which is in violation of Article 19(1)(a) and consumer interest cannot be the only relevant factor for framing a regulation.

11. 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, their placement within or in-between the programmes and their frequency of occurrence, 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. Accordingly, to ensure the quality of the service to the consumers, the Authority is of the view that suitable regulations should be in place.

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B. Advertisement duration based on clock hour basis

12. The broadcasters are of the view that advertisement duration should not be regulated on clock hour basis as the viewership pattern differs throughout the day. Moreover, for certain channels such as sports channels, where the live content is seasonal, limited to a specific period and the natural breaks, where advertisements would be appropriate, would vary from sport to sport. There cannot be a universal measure based on clock hour basis as it would not be logical.

13. It has been stated by the broadcasters that the subscription fees of the TV channels has been regulated in order to give the consumer choice and good quality service at affordable prices. A regulation on the advertisement time and its corresponding effect on the revenues of the broadcasters will hamper growth and competition in the broadcasting industry as the regulated channel rates leave no space for the broadcasters to hike the channel rates to balance out the reduction in advertisement revenues.

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14. It is suggested by a stakeholder (multi-system operator) that in the Digital era, where a consumer has absolute choice in choosing any channel and paying accordingly, there is no need to regulate advertising time. It is up to the subscriber to opt to watch a channel with advertisements at a lower cost or pay premium to watch a channel without ads. Broadcasters on the other hand will automatically regulate the ad time as too many ad breaks will drive away subscribers, thus affecting their resources.

15. As per the news broadcasters, news television is a dynamic medium which has to continuously deal with different kind of news like breaking news, news flash, news related to natural calamity etc. They have stated that on issues of national importance the broadcasters themselves drop the advertisements, keeping in view the consumer sentiments and national interest and so any regulation in this respect is not warranted.

16. One of the cable operator association has stated that the limit for the duration of the advertisement should be regulated on a clock hour basis as well as on 24 hr basis. Supporting the clock hour based capping of advertisement duration, one of the consumer organisation has stated that this would avoid accumulation of advertisement slots, especially in peak hours. Another consumer organisation has even stated that the limits may be more stringent for children specific programmes.

17. As far as television advertising in the Indian market is concerned, the consumers, in their complaints, have been sceptical about the manner of calculating the duration of advertisements per hour by the channels. It has often been alleged that even if the total advertisement time over a period of 24 hours is averaged out for an hour, still it exceeds the permissible limits. It has further been expressed that the advertisement durations during the telecast of popular programmes/programmes in the prime time, far exceeds the permissible limit of 12 minutes per hour. The study, conducted by the Centre for Media Studies (CMS) regarding the duration of advertisements carried in six major news channels over the last 4 years, reveals that on an average around 35% of the prime time (7pm to 11pm) of the news broadcasters is just advertisements, against the per hour limit of 20% prescribed in the existing regulations. The maximum yearly average has been found to be as high as 47.4%. This in turn leads to insertion of too many advertisements in the programme leaving little time for the content to be viewed. It is important that the advertisements are not confined in any particular hour in order to ensure that it does not affect the viewing experience at that point in time. Internationally also the regulation prescribes the advertisement duration limits in any given hour. Therefore the Authority is of the view that the limits for the duration of the advertisements shall be regulated on a clock hour basis i.e. the prescribed limits be adhered to on clock hour basis.

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C. Minimum gap between two consecutive ad breaks

18. It has been stated by the broadcasters that there should not be any reduction in frequency of advertisements, as the broadcasters struggle to recover even 20% of the cost of the movie in the first year of telecast with no restriction and if 3 breaks in a movie norm is implemented then it will become unviable for the broadcasters to acquire the cable and satellite rights; also adversely affecting the movie industry. It has also been stated that 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, the broadcaster has stated that the movies running on channels which have multiple breaks have garnered high TRPs and GRPs.

19. One of the broadcasters has stated that in India, the market dynamics is 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 advertisement breaks with an aim to retaining viewers. There are broadcasters who transmit ‘break free’ movies. Thus, market should

be allowed to operate under self-regulated environment to achieve the objective. One view is that as long as the overall advertisement and channel promos are restricted within the fixed limits, there should not be any restriction of content duration in between advertisement breaks as the content duration between the breaks would be based on the content flow and the creative planning. On the issue of minimum duration between two consecutive advertisement breaks, broadcasters have stated that many of children's shows are of very short duration (7 to 8 minutes), hence breaking an episode to insert advertisement breaks in the middle of an episode to meet the regulatory requirement does not make any sense.

20. On the other side the consumer and consumer organisations and the cable operators association have in general supported the stipulations proposed by TRAI. One of the consumer organisation has stated that maximum advertisement time for any session should also be specified to ensure that two advertisement breaks of consecutive sessions are not combined together for an unusually long advertisement break.

21. The frequency as well as the timings of the advertisement breaks, to a large extent, determines the extent to which they contribute to be the irritants in the consumer viewing experience. For example, the advertisement breaks which cut into certain portions of the programme that are either climaxes of the plot or major turning points may prove to be a greater irritant as compared to the ones which coincide with natural interruptions in the programmes or spaced at adequate time intervals with respect to the attention span of the consumers. Frequent advertisements break the continuity of the programme to such an extent that it jeopardises its integrity. Impact of frequent breaks is more pronounced in case of films. To address this aspect, a number of international markets have regulated the frequency of the advertisement breaks in the TV channels. Therefore, in order to strike a balance between the consumer's viewing experience and the interest of broadcasters, with a view to keep the operations viable, the Authority is of the view that the time gap between end of one advertisement session and the commencement of next advertisement session shall not be less than fifteen minutes and during the broadcast of a film (movie), this time gap shall not be less than thirty minutes. However, in case of sporting events, being broadcast live, this provision shall not apply.

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D. Advertisements during live sporting events

22. On the issue of telecast of advertisements during live sporting events, the broadcasters and their association have stated that there exists enough stipulations in the Cable Television Network Regulation Act and the Rules made there under. They have further stated that the production and rights cost for live sporting events is very high and hence the present format of advertisement breaks should be allowed and if advertisements breaks are restricted then it may not be commercially viable to have live telecast of sporting events. There is an argument from a broadcaster that the statutory definition of 'program' include the term advertisement as an integral part of the definition and advertisement insertion is an effective tool for communication with the viewers about various products & services. They have further stated that in an increasingly competitive environment, channels have been required to develop new, creative ways of engaging their viewer on behalf of advertising clients and advertising and sponsorship insertions represent an important strategic way in which channels can seek to monetize their airtime and therefore allowing advertising only in the break time or half time as totally impractical. There is a view from sports broadcasters that nature of sporting events is too diverse and distinct and generic guideline for advertisement break during the 'interruption' may not serve the purposes as the notion of interruption is not defined and any attempt of putting proposed stipulation could lead serious impact on the ability of the broadcaster to attract sponsors and eventually degrade the quality of production of event in TV.

23. Majority of consumers, MSOs and cable operator associations have stated that there should be advertisement free transmission for any sports channel which are on Pay Mode. Some consumer associations have stated that the same prescription should be in place for other live events also. There is a suggestion from a consumer group that, in cricket matches, the advertisements after every 'over' should be banned and there could be advertisements only when there is a break in the cricket match because of events such as fall of a wicket, disruption due to rains, etc.

24. An Industry association has stated that the sports broadcasters operate in an environment where the content is periodically available, with limited shelf life and very limited advertising opportunity, huge content cost and the feed has to be shared with the public broadcaster in respect of sporting events of national importance. They have further stated that there is no need for regulation for the commercial interruptions as the flow of the

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sporting action determines the rhythm of commercial breaks. They have cited examples that in games like hockey and football, on-field action is continuous, from kick off till half time and hence no question of broadcasters cutting the live event for telecasting of commercials.

25. The insertion of advertisements during live sporting action impairs the viewing experience of the consumers. There has been a wide spread support from the consumer and consumer organisations for the proposed regulatory framework in respect of telecast of advertisement only during the interruptions and natural breaks in the live sporting action. Accordingly, the Authority is of the view that in case of sporting events being telecast live, the advertisements shall only be carried during the natural breaks in the sporting action e.g. half time in football or hockey match, lunch break / drinks break /change of overs in cricket matches, game/set change in case of lawn tennis etc.

E. Part- screen advertisements/ Drop- down advertisement

26. Majority of broadcasters have stated that the program should be clearly visible and distinguishable from the advertisement and this should not interfere with or cause any impediment in viewing and enjoying the telecast of a sporting event. However, total ban on the part screen advertisements would be a disproportionately excessive measure. They have further stated that the, Rule 7(10) of the Cable Television Networks Rules, 1994, already captures the legislative intent and mandate that advertisements must be clearly distinguishable from the programme and should not interfere with the programme. Therefore, there appears to be no need for further regulation.
27. There was a view from a broadcaster that with availability of wide and bigger TV screens, the insertion of an advertisement on any part of the screen when programme is also simultaneously being telecasted on the same screen, does not affect the quality of telecast or create a hindrance to viewer's enjoyment and therefore is in complete conformity with the rules stipulated by MIB in this behalf.
28. Industry association opined that the sports broadcasters should have sufficient flexibility regarding the format of advertisement and advocated that part-screen advertisements should be allowed as this has the virtue of allowing the viewer to watch the action even while the advertisement airs. They further stated that if part-screen advertisements were banned it would be necessary to interrupt the coverage, and this would not be of benefit to consumers.

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29. Stakeholders other than the broadcasters have stated that advertisement should be only full screen and scrolls, part of screens should not be allowed as it will disturb the entire programme ethics and disturb the viewers and divert the attention from the main programme they watch. There is a suggestion from an individual that the restrictions for cricket matches should be more elaborate and they should ban the popping up of advertisements during the ongoing game and appearance of advertisements on left and bottom portion of the screen.

30. In case of part screen advertisements, the advertisement shares the screen space with the regular program content. Such advertisements encroach upon the screen space. While the consumers tend to buy bigger and higher resolution screens to enjoy the best possible near life size images and clarity in programmes, only end up viewing larger than life commercials sharing the screen. Also in case of part screen advertisements the consumer does not have a choice to skip these advertisements, adversely affecting the overall viewing experience of the consumers. Therefore the Authority is of the view that there shall only be full screen advertisements. Part screen and drop-down advertisements shall not be permitted.

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F. Audio Level of the Advertisement

31. On the issue of audio level of the advertisements vis-a-vis the audio level of programs, consumers, the consumer organisations, multi-system operators and cable operator associations have stated that they are in agreement with the proposal of TRAI. A stakeholder has stated that it will be an unfair broadcasting practice if the audio levels of the program and the commercials are different and can create a false impression on the consumer of inconsistent service provision by the cable operator.

32. Majority of broadcasters have stated that the rule 7(6) of the Cable Television Networks Rules 1994, as amended, stipulates that the audible matter of the advertisement shall not be excessively loud and the rule already takes care of this aspect and hence no further regulation required in this regard. However, there is a view from a broadcaster that broadcasters should match the audio level of content and commercials, subject to technical feasibility.

33. From the perspective of the consumer's viewing experience, the sudden increase in audio level at the time of advertisement is quite annoying to the consumer and is not at all desirable. The Authority observed that technical solutions exist which can be employed

by the broadcasters to ensure that the audio level is maintained at the same level during the program and the advertisements. Accordingly, the Authority is of the view that every broadcaster shall ensure that the audio level of the advertisements in its channel shall not be higher than the audio level of the programs being broadcast in that channel.

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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,-----

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(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).".

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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).

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Annexure

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 9thJanuary 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:

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" *7. Advertising Code.—*

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(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.

…"

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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.

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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

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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

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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.

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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

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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.

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Dated: the 9th April, 2013

Order

Subject: Order under regulation 5 of the Standards of Quality of Service (Duration of Advertisements in Television Channels) Regulations, 2012 (15 of 2012) specifying format for submission of details of advertisements carried by the broadcasters in their television channels.

No. 23-1/2012-B&CS-------Whereas the Telecom Regulatory Authority of India (hereinafter referred to as the Authority), established under the Telecom Regulatory Authority of India Act, 1997 (24 of 1997) (hereinafter referred to as TRAI Act), has been entrusted with discharge of certain functions, inter alia, to regulate the telecommunications services; to protect the interests of service providers and consumers of the telecom sector; to ensure the terms and conditions of license and to lay down the standards of quality of service to be provided by the service providers;

2. And whereas the Authority, in exercise of its power under section 36, read with sub-clause (i) and (v) of clause (b) of sub-section (1) of section 11 of TRAI Act, made the Standards of Quality of Service (Duration of Advertisements in Television Channels) Regulations, 2012;

3. And whereas regulation 5 of the said regulations provides that every broadcaster shall, within fifteen days from the end of a quarter, submit to the Authority, in the format specified by it, the details of advertisements carried in its channels and reads as under:-

> " **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.";

4. Now, therefore, in exercise of power conferred upon it under regulation 5 of the Standards of Quality of Service (Duration of Advertisements in Television Channels) Regulations, 2012, the Authority hereby specifies the format, enclosed with this order, for submitting, on quarterly basis, the details of advertisements carried by the broadcasters in their television channels.

(Amit Sharma)
Dy. Advisor (B&CS)

To,

All Broadcasters of television channels

Format for submission of details of advertisements carried by the broadcasters in their television channels

Report for Quarter: _____

Name of the Broadcaster: _____

Name of the television channel: _____

I. For the first Saturday and Sunday & the last Wednesday and Thursday of each month of the quarter reported upon

Date	Time Period	Advertisement duration during the clock hour (in minutes)		
(separately for each channel for each of the four days)		Commercial advertisements	Self promotional advertisements	Public service advertisements where no revenue accrues to the broadcaster
	00:00-01:00 Hrs			
	01:00-02:00 Hrs			
	02:00-03:00 Hrs.			
	03:00-04:00 Hrs.			
	04:00-05:00 Hrs.			
	05:00-06:00 Hrs			
	06:00-07:00 Hrs			
	07:00-08:00 Hrs			
	08:00-09:00 Hrs			
	09:00-10:00 Hrs			
	10:00-11:00 Hrs			
	11:00-12:00 Hrs			
	12:00-13:00 Hrs			
	13:00-14:00 Hrs			
	14:00-15:00 Hrs			
	15:00-16:00 Hrs			
	16:00-17:00 Hrs			
	17:00-18:00 Hrs			
	18:00-19:00 Hrs			
	19:00-20:00 Hrs			
	20:00-21:00 Hrs			
	21:00-22:00 Hrs			
	22:00-23:00 Hrs			
	23:00-00:00 Hrs			
	Total Duration			

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II. For all the days of the quarter, excluding the days specified in I above

Maximum duration of the advertisements in any clock hour for each day of the quarter reported upon				
Date	Duration (in minutes)			Corresponding clock hour of the day
	Commercial advertisements	Self promotional advertisements	Public service advertisements where no revenue accrues to the broadcaster	

Note **1**: The above information is required to be furnished separately for each channel.
2: The soft copy of the above said details in MS Excel format should also be mailed at the e-mail: advbcs@trai.gov.in or traicable@yahoo.co.in

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