

COMMENTS ON CONSULTATION PAPER ON ISSUES RELATED TO PLACING OF TELEVISION CHANNEL ON LANDING PAGE

Respected Sir(s)

At the outset, before getting into the issues raised in the Consultation Paper, we wish to highlight some pertinent facts which would enable the Authority to appreciate our concerns and views regarding the subject matter from a holistic perspective.

Need to recognize the Constitutional Rights and freedom of the Distributors to do business

Distributors of Television Channels, such as MSOs, have been granted complete freedom in the regulatory framework with regard to placement or carrying of any channel on any LCN. This right has been fortified by the Judgment of Hon'ble TDSAT too wherein it struck down the move to restrict MSOs from charging placement fee.

However, despite DPOs given this statutory right, there has been a consistent and systematic erosion of this right, first by virtue of Direction dated 8th November, 2017 issued by the Authority which has the cumulative effect of having reduced or rendered the freedom of the DPOs to deal with placement, illusory or non-existent. This is a classic examples of incursion into a DPOs constitutionally and statutorily protected rights of freedom to trade and freedom of placement and carriage of television channel.

The MSOs approached Hon'ble TDSAT, which was pleased to stay the operation of direction on the preliminary ground of transparency. During a hearing in Hon'ble TDSAT, on 9th March, 2018, the Authority conveyed its intention to re-consider the issue in totality. Unfortunately, instead of considering the issue ab-initio with an open mind, the current consultation gives the impression that the Authority has already reached a decision on many of the issues and the reasons given in the consultation paper have been built in post-facto.

It is respectfully submitted that issues raised in this consultation not only interfere with the freedom to deal in placement and carriage of television channel but are also unreasonably prejudicial to the legitimate interest of the DPOs/MSOs.

We request the Authority to take into consideration the universe of rights provided under the Interconnect Regulation and prevent the continued erosion of these rights and instead restore the eroded statutory and constitutional rights.

We urge the Authority to understand the need to protect and preserve our statutory rights as a DPOs and create necessary balances in the existing regulatory framework or else it tends to create great imbalance between Broadcasters and DPOs.

Inherent lack of jurisdiction to regulate Television Rating

It is respectfully submitted that Authority lacks inherent jurisdiction to frame any regulation or deal with television ratings. For this very reason this entire consultation is beyond jurisdiction and entire exercise stands vitiated.

Against the above background, we hereby furnish our response to the issues raised in the Consultation Paper.

1. Do you feel that emerging concept of placing TV channel on landing page can influence TRP ratings? Suggest the action which may address the issue with justification.

- 1.1 The question posed by the TRAI is framed in a manner that it assumes certain facts and therefore it is relevant to set out a brief background before answering the issue of the influence on TRP Ratings.
- 1.2 A distinction requires to be made between “impact on television ratings” by exercise of consumer choice and “distortion of television ratings” without the exercise of consumer choice. There are various legitimate means for broadcasters to attract consumers to their content and thereby improve their television ratings without distorting television ratings or impacting consumer choice.
- 1.3 The safeguarding of consumer choice has been adequately provided through the implementation of an electronic programming guide and by providing under the DAS Regulations 2013 (i) every broadcaster declare the genre of its channel (ii) each channel appear in its genre and only once. The placement of TV Channels in the Electronic Programme Guide is the right of the MSO under the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 (**DAS Regulations 2012**) and TDSAT’s judgement in Appeal No.3(c) of 2012 [United Cable Operator’s Welfare Association vs TRAI]

- 1.4 One of the cornerstones of broadcasting regulation is that the consumer should be given a choice to view the content of its choosing and the broadcaster should be given the opportunity to place its content before the consumer. The electronic programme guide organizes channels within genres in an easily accessible manner such that the consumer is able to move to a channel of its choosing either through channel number or by scrolling at all the available options within the genre menu in the electronic programme guide. The electronic programme guide itself is sufficient to implement and provide consumer choice and full freedom to the consumer to choose the channel of its liking.
- 1.5 One of the aspects of charging placement fee by MSOs is the charging of a fee for placing a channel in at a number where it can attract viewers to its content and allow the viewer to exercise the choice to view that content. For example, within every genre the first channel within the genre may attract more views than the fifth channel. However, ultimately the consumer would have access to all the channels within the genre in an easily accessible manner by way of electronic programme guide.
- 1.6 Indeed placing a channel on the landing LCN is not the only way in which broadcasters attract viewership for their content. For example, certain sports content is advertised regularly across channels resulting in attracting viewership to that content and thus increasing the TRP of the channel which displays that content. Indeed, the entire revenue model of the Broadcasters is based on advertising products to consumers through selling ad-slots. A product that is advertised extensively also achieves more sales. However, this can not be assumed as a distortion of consumer choice, but indeed a means for the advertisers to bring their products to the consumers by means of displaying the product available to the consumer. The act of watching a channel is driven by the choice of the consumer and does not depend upon the position of the channel. .
- 1.7 In the above context we must examine the role of the landing page on consumer choice. The landing page is the LCN that opens when the step top box of a subscriber is switched on after it has been switched off. The landing LCN offers the channel the opportunity to present its content before the viewer who may not be aware of the channel or the option to view such content. There is no restriction

or obligation placed on the subscriber to view the channel which opens as the landing LCN. The consumer may by a simple click of

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the button on the remote open the channel of its choosing through the user friendly electronic programme guide or may choose to view the landing LCN channel only if the channel is to the consumer's liking. The landing LCN therefore has no effect on consumer choice and on TRPs. However if a channel is placed on a landing LCN and the consumer continues to stay on that particular channel then it is not a distortion of consumer choice, but an expression of consumer choice.

- 1.8 The inherent mistake in the TRAI approach to the issue of landing LCN is that the TRAI's entire approach is based on a very basic understanding of consumer choice and consumer behaviour and does not appreciate the benefit that the placement of a channel on the landing LCN has on enabling consumer choice to view new and different content, if the consumer so chooses.
- 1.9 The landing LCN is in fact a very important tool for broadcasters to be able to showcase their content to viewers which cannot be termed as distortion of viewer choice.
- 1.10 The TRP ratings are a measure of consumer preferences and not the basis of consumer preferences. The TRP is only relevant for an advertiser and has nothing to do with the consumer and this can be easily ascertained by the fact that a normal consumer does not subscribe to the reports on TRP. There is no study which suggests that TRP has any influence on consumer viewing; rather it is a tool for generating advertisement by the Broadcasters. The consumer is not bothered about which channel is coming first or last and it sees only that channel which the consumer wishes to watch. Therefore placing TV Channels on landing LCN cannot distort TV ratings and neither does it restrict consumer choice.
- 1.11 The basic reason why landing LCN does not distort consumer choice is that a consumer is not required to stay on the landing LCN and the electronic programme guide allows the consumer to seamlessly navigate to the channel of the consumer's choice. The choice of the consumer to remain and continue to watch landing LCN content is as much an informed choice as a choice to switch to a channel. Indeed, if the consumer does not like the content on the landing LCN then he always has the choice and ability to go to any other channel. Much like the first page of a newspaper, if the consumer is

not interested by the content of the channel on the landing LCN, he will turn to another LCN. Therefore, the underlying factor is the choice of the consumer to view the

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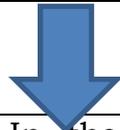
channel. The landing LCN is just a medium to advertise the content to the consumer with the option to flip the channel or to stay on the landing LCN.

- 1.12 The suggestion in the consultation paper is that a consumer may involuntarily provide a TRP minute to a channel on the landing LCN if a consumer views the channel for 30 seconds prior to exercising its choice. The consumer always has choice to go to its wished channel as soon as he switches on the STB. The same can be achieved in a few seconds, much before 30 seconds and indeed, the TRP sample households are in fact households who have been trained to use the EPG and the special equipment provided to record TRP. There is no study by TRAI which suggests any impact of rating due to first 30 seconds viewership.
- 1.13 The advantage of the landing LCN is not as TRAI envisages – i.e. a conspiracy to distort television ratings by seeking to garner rating for a potential/perceived risk of first 30 seconds of involuntary viewership, which itself has not been demonstrated.
- 1.14 The advantage and purpose of the landing LCN is to inform the consumer and enable the consumer to exercise the choice to view the channel that appears on the landing LCN. The landing LCN is thereof an enabler of choice and ultimately any increase in television ratings of a channel placed on landing LCN, if it occurs, is a consequence of the consumer choice to view the content and not change the channel on Electronic Programme Guide. In any case, when the subscriber switches on the STB then it will land on some LCN and from there he can surf the remaining channels which is exactly the same case when any LCN is designated as landing LCN. It may be noted that it is the LCN which becomes as landing page and not the particular channel.
- 1.15 In fact, the entire TV rating measurement process itself provides adequate safeguards on the TV rating process. The entire process of collection of TV rating data is briefly represented below in a step flow chart (Source:BARC)

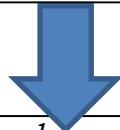
Step 1 *Identification of a sample location:* The first step involves identification of a geographic area for the purposes of selecting sample households, for collection of TV viewership data.



Step 2 *Selection and training:* The next step involves the identification and selection of households. Once a household is selected, the members are explained the purpose of the rating process and their consent is taken for registration with the rating agency. Information of the household is collected vide a questionnaire.



Step 3 *Installation of equipment:* In the selected households, special equipment such as a meter is connected to the TV and a button pushing remote handheld device is provided. The handheld device has buttons made available for assignment to household members who are asked as part of their panel participation to press their assigned buttons when they are viewing TV. Separate buttons on the remote handheld device are reserved for children below 2 years, guests etc. The members of the household are trained regarding viewing button pressing etc. and are fully informed about the rating process. The TV set metering system captures the viewership events of individual members aged 2+ years that have pressed their viewership ID button to confirm their presence in the audience



Step 4 *Attribution of viewership to a channel:* Viewership is calculated on a 'clock-minute' basis. The viewership of a channel in a clock-minute is attributed to one channel only. If an individual views a TV channel for 30 seconds or more, the viewership of that channel gets attributed to that channel in the clock-minute. However, if there are multiple channels viewed in a clock-minute, for different durations then the viewing is attributed to the channel with the maximum duration of viewing. However, where there are channels with the same maximum viewing duration, the channel with that spills over into the next clock minute gets the viewing attributed to it. In the event none of the TV channels with the same maximum viewing duration spills over to the next clock-minute, then the viewership is attributed to any one of such channels at random.



Step 5 *Collection of data in the collection server:* The TV viewing event data are then received by the rating agency's collection server where collected TV event data are simultaneously backed up and made available to pre-processing software.



Step 6 *Processing, Audience Estimation and Reporting:* The data from the collection server is first pre-processed, where errors and

inconsistencies that may creep in due to technical issues are cleaned up. The households that are clear of inconsistencies and errors are then assigned a particular weight factor that reflects their proportionate representation of the universe. The final weighted and projected audience viewing output is encrypted and made available in a form suitable for reporting, analysis and commercial use.

It may be kept in mind that the consumers who participate in BARC ratings are well trained and informed about the process involved in capturing the data hence there is no probability of having any unintended impact on capturing the viewership data from such household and all data captured is a consequence of consumer choice.

From the above rating methodology it is clearly borne out that landing LCN will not affect ratings as the TV set metering systems capture the viewership events of individual members aged 2+ years that have pressed their viewership ID button to confirm their presence in the audience. Even otherwise, it is the consumer's choice (only from a sample household) which impacts the ratings. The viewers in the sample household make an informed choice while viewing channels so as to contribute to the collection of data for viewership of channels and therefore any possible distortion of ratings is unlikely.

1.16 Finally, it is important to emphasise that the practise of placing a channel on the landing LCN is not an emerging practise. It is a consistent practise that has been followed for several years and is not a recent phenomenon.

2. Should concept of landing page be defined? If so, please suggest the definition of the landing page with justification.

2.1 The landing page is the LCN number that opens when the set top box is switched on. This term is well understood and does not require any definition.

2.2 Indeed, an attempt was made to link the definition of Landing LCN to Home Channel in the Draft Standards Of Quality Of Service And Consumer Protection (Digital Addressable Systems) Regulations, 2016. At that stage the AIDCF had provided a comment stating inter-alia that, *"It is proposed that the definition of home channel be deleted as there is no need to define the same. Furthermore, it takes away the right of a distributor of TV channels to set a landing channel/barker channel"*

2.3 As a conscious choice and after full industry consultation TRAI deleted the definition of home channel from the final draft. Therefore, there is no occasion to revisit the issue. The right of MSO's to select the Landing LCN is already an accepted industry practice.

3. Will defining Framework for placing TV channels on landing page affect the present business model of distributors? If so, will it be considered impacting the freedom to do business by distributors of TV channels? Give your suggestions with justification.

3.1 It is submitted that the placement of channels within the electronic programme guide is already regulated in the DAS 2012 regulations. The DAS regulations and the electronic programme guide represent sufficient and reasonable restrictions on the placement of television channels. Any further restriction would amount to interference, intrusion and day to day micro management of business affairs of the DPOs which in turn will clearly be unreasonable and fall foul of the constitutional right of the MSOs to freely operate their business. It is estimated that such a move would have a significant impact in excess of INR 150 Crores on the MSOs who are constituents of AIDCF.

4. Q4. Is landing page a natural choice of consumer while viewing TV channels? If not, why should channels, whose TV ratings are released by TV rating agency, be placed on landing page? Give your comments with justifications.

4.1 The presumption that landing LCN is not the natural choice of the consumer is a misnomer and viewership of channel appearing on landing LCN is actually dependent on the consumer choice to stay on that LCN or navigate to any other LCN. In fact such a presumption bring into question the entire utility of having an electronic programme guide to allow seamless transition to channels of choice.

4.2 The landing page is only the channel which opens when the set top box is switched on- in case of hard switch on and off. The viewership of the channel is not dependent on being placed on the landing page, but in the decision of the consumer to stay on the landing LCN. Consumers are well aware of the ability to change a channel and the viewership of the channel is only indicative of a choice to view that channel without any restriction or compulsion.

4.3 It may be noted that the suggestion in the consultation paper that consumer is prevented from changing the landing LCN in any manner is incorrect, without foundation and in fact contrary to the factual position that there is absolutely no restriction on changing the landing LCN.

- 4.4 In response to question 1 it is already explained that the TV channels seek to be placed on the landing LCN not because there is a direct nexus between the landing LCN and increase in TRP ratings, but because the landing LCN offers a potential to inform the consumer of the choice to view the channel on the landing LCN.
- 5. Whether placing of a TV channel on landing page increases television ratings? If yes, why TV Channels, whose TV ratings are released by TV rating agency, should not be barred from being placed on landing page? If no, why broadcasters are eager to place their channels on landing page? Give your suggestions with justification.**
- 5.1 There is no nexus demonstrated between placing a channel on the landing LCN and television ratings in the experience of the MSO's there have been no instances where the landing LCN channel increase in ratings significantly, while in other cases this may have a de-minimums or no impact. In our opinion the whole assumption of TRAI that placing a channel on landing LCN distorts consumer choice, without undertaking any kind of study, is completely de horses the realities of business prevalent today. Indeed as discussed above, television ratings are only a product of consumer choice.
- 5.2 The landing LCN only offers an option to the consumer to view the channel appearing on the landing LCN. The landing LCN therefore provides an opportunity to broadcasters to inform the users of about their content. The direct and proximate cause of any increase in television ratings of a TV channel, if any, is not the placement on the landing LCN, but the consumer choice to continue to watch the channel in question. This explains why there is no linear correlation between landing page and ratings. However, there is a liner correlation between consumer choice and TV ratings.
- 6. What should be the criteria/consideration to put a TV channels on landing page? Give your suggestion with justification.**
- 6.1 There should be no such criterion for placing a channel on landing LCN as explained in response to 1 above.
- 7. Do you think the influence, if any, in television ratings by placing of TV channels on landing page can be mitigated through changes in measurement methodology of television ratings? Give your suggestions with justifications?**

- 7.1 As stated above, in our opinion the whole assumption of TRAI that placing a channel on landing LCN influence Television rating is misnomer and current consultation is based on such presumption and surmises without undertaking any kind of study and hence it is completely de hors the realities of business prevalent today.
- 7.2 Further as stated above there is no correlation between channel rating and placing channel on landing LCN hence the above question does not arise.

8. Please comment on the feasibility to implement user's 'last visited page' as landing page in distributors' network?

- 8.1 The Respondent is not aware of any such technical capability. The landing LCN is displayed on hard reboot of the set top box and some LCN has to be assigned for reboot of set-top box.

9. Should the landing page be used to place TV channels not having TRP rating or only to provide platform specific information? Give suggestions with justification.

- 9.1 As already stated in preceding paras, there is no nexus between TRP rating and channel placed on landing LCN hence this question itself is irrelevant. Further, any additional regulation than what it is prevalent today will be an intrusion in freedom of DPOs to conduct their business. Moreover there is no classification of TRP and non TRP channels and further there is no list prescribed for TRP and non TRP channel by any authority.
- 9.2 Indeed, if the TRP is not reported for the landing LCN channel, broadcasters and advertisers would not be able to judge the TRP of the channel on the landing LCN. It is very short sighted to stop the TRP reporting of the landing LCN. Even if a channel chooses not to be reported on TRP but consumer continues to watch it on the landing LCN the channel will still attract viewership based on consumer choice. The non-reporting of TRP will only create an information deficit and will not in any way impact consumer choice.