

**RESPONSE OF
DISH TV INDIA LIMITED
TO THE
CONSULTATION PAPER
ON
ISSUES RELATED TO PLACING OF
TELEVISION CHANNEL ON LANDING PAGE**

DATED – APRIL 3, 2018

A. Brief Introduction:-

At the outset we would like to state that we are a Direct To Home service provider under the License issued by the Ministry of Information and Broadcasting, Government of India and have been operating as such for the last more than 15 years within the territory of India.

As you are aware DTH industry is thoroughly regulated right from its inception and there is hardly any element or facet of our activity which is left to forbearance. Additionally, as a DTH service provider, we always endeavor and strive to provide our sustained and steady services, solutions, resolutions to all our subscribers grievances and complaints by making the processes of the provision of services entirely consumer friendly.

We would like to assert here that so long as the competition and business exigencies at macro level required regulatory intervention, the Authority was justified in intervening by laying down various rules and regulations governing the DTH industry. However, there are certain areas and business aspects where regulatory interventions are totally unwarranted and where forbearance would be the best and the only option. The Authority cannot and need not go into micro managing the business of service providers. We are afraid as to whether the direction dated 8th November, 2017 by the Authority was really necessary in the first place and that the present Consultation paper is desirable. This direction is one such glaring example of how and when regulatory intervention is unwarranted and uncalled for and more so in respect of the aspect of the business which is sought to be regulated through such direction.

We would also like to submit that there is no need to over govern or over regulate the business involving multiple and diverse stakeholders by initiating the present Consultation exercise. The issues raised in the present consultation paper directly impinge upon the business activities and business decisions of service providers like us, despite the fact that there is zero nexus between us and the intended objective envisaged under the consultation paper and/or the direction itself. It is noted that the Consultation Paper repeatedly refers to the arrangement between Broadcasters and Distribution Platform Operators (DPOs) as "Collusion" because of which the need of present Consultation Paper has arisen. In this context, we would like to submit that the arrangement and agreement between Broadcasters and DPOs is purely commercial in nature and cannot by any stretch of imagination be termed as "Collusion". Further, the Authority itself has stated that the

channels are placed on the landing page for a very short duration of time which clearly indicates that such short duration can never have an adverse impact on consumers.

The Authority would do well to appreciate the fact that issues under the present Consultation Paper are not linked either to the distributors of TV channels or the Broadcasters, directly or indirectly. On the contrary these issues are having direct relevance to the business/activities undertaken by agencies like Broadcast Audience Research Council (“**BARC**”) and are remotely relevant to the distribution platforms or Broadcasters. Consequently, we earnestly urge the Authority to consider our above broad submissions along with our comments against every issue raised under the Consultation Paper in their proper prospective and adopt necessary measures to ensure that relevant Stakeholders like BARC are given appropriate directions and/or guidelines to alleviate any fears about choice of consumers to select channels, thereby leaving stakeholders like us out of the same.

B. Directions/Advisory issued by the Ministry of Information and Broadcasting (MIB) to Broadcast Audience Research Council (BARC) shows real direction:-

As the Authority is aware that recently MIB has directed BARC to discontinue the adoption of Landing Channels for the purpose of TV ratings. By this action, the Hon’ble Ministry has for all purposes rendered the issues under this Consultation Paper redundant and infructuous as the apprehensions of landing page influencing the TRP ratings have been taken care of by this Advisory. The direction of the Ministry has vindicated our stand about the necessity of directing BARC with regard to its methodology of properly evaluating the TV ratings than directing DTH service providers in terms of the direction issued by TRAI.

In a letter to BARC, the Ministry stated that the landing channel should always be without watermark to avoid misuse. This decision came in the wake of a few broadcasters complaining to the MIB about the alleged misuse of the landing page by certain channels to increase their viewership. Thus, it is an inter se issue amongst the Broadcasters pertaining to rating of the channels and the distributor of channels are not in any way concerned with the same. It is imperative to state that we have not received any complaints from any Consumer regarding the placement of channel on the landing page which clearly indicates that the placement of channels on landing page is not an issue for the consumer.

Thus, it is clear from above that the advisory issued by the MIB is well directed towards BARC unlike the present Consultation Paper of the Authority on the same subject, which is mis-directed involving DTH service providers/digital cable service providers without any propriety when major thrust should have been to direct the BARC to do the needful to avoid impact, if any on television ratings.

It is pertinent to note that the MIB whilst criticising the practice of running a channel on multiple logical channel numbers (LCNs) allegedly for influencing television ratings, has advised the Broadcast Audience Research Council (BARC) to discontinue the adoption of landing channels for the purposes of television audience measurement with immediate effect and sought a compliance report on the same cautioning that non-compliance of the same would be treated as violation of the Policy Guidelines for Television Rating Agencies in India.

Thus, the very issue for which the captioned Consultation Paper has been released has already been resolved by the decision of the Advisory of MIB. We, are therefore, of the view that there is now no need for the Authority to proceed with the intended exercise as the intended outcome viz. protection of consumer interests, fair growth of the sector and ensuring unbiased TRP ratings etc. has already been taken care of by the advisory and directions issued by the MIB.

C. Landing Page/Logical Channel Number (LCN) is not Anti-Consumer:-

As stated above, the placement of Channel on the landing page is not Anti-Consumer. On the contrary and in fact, it is a tool of promotion, used by Broadcasters through which the Broadcasters inform the Customers about launch of any new programme / serial / channel etc. It is submitted that the present Consultation Paper impinges upon the Constitutional right of a Broadcaster to promote and advertise its products. As the Authority is aware that the landing channel or landing page refers to the Logical Channel Number (LCN) which is displayed first on the transmission when the Set Top Box (STB) is switched on by any consumer. Therefore, by no stretch of imagination could it be said that the Landing Page/LCN is anti-consumer. The captioned direction has no co-relation with the interconnectivity of channels between two service providers. In fact, the service of placing channel is offered by the distribution platforms to better its interface with consumers. Thus, it infact enhances the viewing experience of the subscribers.

We would like the Authority to appreciate the fact that any consumer even before the Set Top Box is switched on decides the content he wants to watch and hence to say that the placement of a

channel on the landing page is discriminatory is erroneous. The observation of the Authority regarding continuous running of landing channel in some cases cannot be generalized so as to warrant the regulatory intervention. The landing page is akin to the front page advertisements given in the newspapers. Such advertisements are to only apprise the consumers about the product and for no other reason. As the consumer can flip through the newspaper page immediately, similarly a consumer of a TV channel can also change the channel immediately upon switching on the television. The question for consideration here is whether such newspapers can be restricted from carrying such advertisements or for that matter can any cinema hall be restricted to not to display/show any advertisement or movie promotion trailers prior to any show. Needless to mention therefore that similar to the newspaper industry or the cinema halls, the distributors of TV channels should also not be put to any restriction and that there is no requirement for having any regulatory intervention in this regard.

In view of this, we would urge the Authority to regulate and/or bring necessary modifications in the rating methodology which is in vogue currently by issuing suitable directions to BARC on the lines of MIB Advisory.

D. Directions to BARC required to address the issues on examining and analyzing its TRP Rating Methodology:-

Thorough examination and scrutiny of the methodology being currently adopted by BARC would give right direction to the exercise undertaken by the Authority. We would like to assert that in order to achieve all objectives as envisaged whilst coming out with the captioned Consultation Paper, it would be ideal and apt for the Authority to issue directions in the nature of directions/advisory to BARC, on the lines issued recently by the MIB. This would reflect light touch approach of governance for the sector, which would be highly appreciable. Freedom of trade would also be vindicated thus. It is well settled that what cannot be done directly ought not to be done indirectly. Constant consultation with BARC to appreciate the concerns of the Authority is going to be the first step in right direction and no other regulation would achieve the desired objective. Distribution platforms like us cannot be subject to unwarranted and unnecessary regulations so as to place restrictions on them from effectively monetizing and managing their networks which by no stretch of imagination can be said to be violative of any of the extant provisions of any regulations. We would earnestly urge the Authority to initiate the dialogue with BARC with regard to its rating system modules and on hard scrutiny of the same suggest advisory to it. We are confident and we

feel that we would help eliminate the concerns of the Authority raised whilst issuing the captioned Consultation Paper.

E. Captioned Direction and propositions under the Consultation Paper contrary to the existing Regulations of the Authority

We would like to submit that all existing and relevant provisions under various regulations issued by the Authority which permit the distribution platforms to place their channels in terms of their express understanding and agreement with broadcasters, their right to have a landing page LCN, or landing channel and to commercially deal with it within the realm of its freedom of trade, as right guaranteed under the Constitution of India and the same would be defeated by introduction of contrary provision as being deliberated under the captioned direction and the present Consultation Paper.

In the light of our aforesaid comments and response we now proceed to deal with the issues raised by the Authority:-

Issues for Consultation

Q1. 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.

Response:- We are of the view there is no need or propriety to commence the exercise as intended under the captioned Consultation Paper as we do not feel that the emerging concept of placing TV channel on landing page could possibly influence TRP ratings more so since MIB has already issued a Advisory to BARC not to consider the landing page for evaluating TRP ratings. Moreover, as suggested by us above, the Authority needs to closely examine the methodology being adhered to by BARC while reporting the ratings and then appropriate directions could be issued to BARC directly instead of involving distribution platforms. While issuing the present Consultation and giving the possible option in Clause 2.13, the Authority has given / considered the following reasons:

- Collusion between Broadcaster and DPO
- Consumer Interest
- Non-discriminatory Obligation
- Rating of channels

Collusion between Broadcaster and DPO - As stated above, the Agreements / arrangements between Broadcaster and DPO for placing a particular channel cannot be termed as Collusion since any there is no element of “illegality” or “deceit” involved. The objective of entering into the Arrangement for landing page is for the purpose of promotion of the products (channels) of a broadcasters to the consumers for which payment is made to the DPO. A broadcaster has all the right to promote its products and as such, any restriction on the same would amount of imposing illegal restriction. Further, it is also an additional revenue stream in the hands of the DPO which it has the right to monetize and it cannot be curtailed merely because some broadcasters have made a complaint because of the prevalent competition.

Consumer Interest – No consumer interest is impacted because of placement of channels on the landing page. The landing page provides the customers insight of the programme / content of the channel so that if the customer wishes, he can watch the same at the LCN on which the channel is available. The Authority has itself noted that the landing page provides the channels only for a short duration which clearly indicates that no consumer interest is impacted.

Non-discriminatory Obligation – The arrangement for placement of channels on the landing page is in no manner a non-compliance of the Non-discriminatory obligation of a Broadcaster. As stated above, it is a means of promotion of the products of the Broadcaster and the Broadcaster has all the right to use such means as it may deem fit for promotion of its products.

Ratings of Channels – It is stated that the rating of a channel is a parameter which is used by the Advertisement agency for identifying the channels where it would want to advertise its products. Since the channels are placed on the landing channels for a very short duration, it has nearly negligible impact on the rating of the channel. The Authority has itself stated that landing page arrangements between broadcaster and DPO is for a very short period of time. Accordingly, it is apparent that the same cannot have an overall impact on the rating of the channel. Advertisers look at the overall rating on various parameters and not the rating of one or two weeks. In fact, the present Consultation Paper has not demonstrated the impact on the rating of the channel when it is placed on the landing page but the same seems to have been issued only on account of certain complaints made by certain section of broadcasters. It is stated that any decision on the present issue without thoroughly identifying the impact of landing page on the rating would be a premature decision.

It is only a belief that the landing page has a negative impact on the consumers as well as on the advertisers. The belief has to have a foundation based on data to arrive at a decision. No such data is available to establish the said impact. The said belief seems to have arisen on account of certain complaints, which has been mentioned in the Consultation Paper, however, no data backing the same has been presented.

So long as the competition and trade exigencies at macro level required regulatory intervention, the Authority was justified in intervening by laying down various rules and regulations governing the Industry. However, there are certain areas and business aspects when regulatory intervention is not necessary, unwarranted where forbearance would be the best and only option. In view of the above, we state that landing page is one of the areas which does not require any regulatory intervention.

Q2. Should concept of landing page be defined? If so, please suggest the definition of the landing page with justification.

Response:- There is no need to define the concept of landing page. As the authority is aware, it had earlier issued draft consultation on Standards of Quality of Service and Consumer Protection (Digital Addressable Systems) Regulations, 2016 on 10th October 2016 and had suggested a definition of “Home Channel”. However, on detailed deliberations with all stakeholders the Authority had decided to omit the proposed definition. Moreover, since MIB has already issued an advisory to BARC to not consider the landing page in its evaluation of the TRP rating reports, it is no longer necessary to define landing page.

Q3. 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.

Response:- As averred by us in the foregoing paragraphs, we would once again state that transactional freedom between the distribution platforms and broadcasters cannot be curbed or impinged upon in any manner whatsoever. The Authority must appreciate that the distribution sector including DTH sector is already very much regulated and do not need any further regulation. Defining Framework for placing TV channels on landing page will certainly and adversely affect the

present business model of all distributors. Consequently, any such further regulation would be construed as direct interference in the freedom to do business by distributors of TV channels besides causing commercial detriment.

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.

Response:- The Landing Page is nothing but a page / channel which gets displayed first when the Set Top Box is switched on by the customer. It is natural for all platforms to get started from some LCN and thereafter the viewer can start navigation of the system by choosing the content he/she wants to view. It is submitted that placement of a channel as the default landing page does not curb in any manner the natural choice of the customer whilst selecting channels since it is solely the prerogative of the customer to stay on a particular channel or to tune into other channel. Navigation away from the landing page channel is not subject to and should not be subject to any restriction or condition. The Authority has itself stated that the channels stays on the landing page for a very short time which indicates that there is no impact on the consumer viewing experience.

It will not be out of place to mention here that the conclusion that placing of a channel on the landing page is susceptible to false and wrong viewership data and higher television ratings is absolutely unfounded and has been reached without actually appreciating or examining or analyzing the methodology used by the television rating agencies to process and report data. It will be fruitful and absolutely ideal on the part of this exercise to closely examine the Description of Methodology of BARC which explains in detail the processing, audience estimation and reporting methods.

Q5. 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.

Response:- As explained in the foregoing paragraphs, placement of a TV channel on the landing page should be left to the negotiations, discussions, agreements and business decisions of distribution platforms and broadcasters. The Authority should issue necessary directions to BARC

so as to ensure creation and reporting of correct and genuine rating pertaining to any given channel. There is no evidence and/or empirical data to indicate that by placing the channel on landing page is anti-consumer or the said channel receives better viewing or rating. It is merely a promotional tool to grab the attention of the viewers. It is submitted that the broadcasters and Distribution platforms cannot be subjected to such intrusive regulation by restricting their freedom to manage their network and this in fact would amount to micro managing their business. Further, the present Consultation Paper has not demonstrated the impact on the rating of the channel when it is placed on the landing page but seems to have been issued only on account of certain complaints made by a section of broadcasters. It is stated that any decision on the present issue without thoroughly identifying the impact of landing page on the rating would be a premature and without any basis.

Q6. What should be the criteria/consideration to put a TV channels on landing page? Give your suggestion with justification.

Response:- We earnestly urge the Authority to leave this facet to forbearance. There should be no criteria or consideration to put a TV channel on the landing page. Distribution platforms and broadcasters always keep interests of consumers in mind and give it due importance even whilst arriving at and crystallizing the terms and conditions of their explicit understanding for carriage of any given channel on the landing page. Deciding preconceived criteria/consideration for putting a channel on the landing page will certainly result in chaos across all chain and ultimately showcase itself in poor light. Thus, forbearance is the best option.

Q7. 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?

Response:- As suggested by us in the foregoing paragraphs, there is urgent need to advise BARC to establish, operate, adopt a scientifically acceptable methodology for measuring the television channel ratings instead of dealing with or tinkering with the idea of taking away the freedom and rights of distribution platforms and broadcasters for placing their channels on the landing page. This exercise of having a genuine and correct depiction of the TV channel rating has to be and should be a standalone exercise with only agencies like BARC getting involved into it along with experts under the supervision of the Authority. The regulations cannot be introduced merely on the basis of some

apprehensions or perceived influence on ratings without there being any concrete evidence and empirical data to back such perception.

Q8. Please comment on the feasibility to implement user's 'last visited page' as landing page in distributors' network?

Response:- This question becomes redundant in view of our aforesaid suggestions and comments. Further, this cannot be done because of technical impediments as this will require that ECM and EMM be sent on all the transponders which have been taken by the DTH operators. Therefore, rather than opting for such option, the distribution platforms should be given full freedom within the acceptable parameters of law, rules and regulations. Interfering into their network systems will result in restriction of freedom to do trade and thus be violative of the fundamental rights and other provisions of the Constitution of India.

Q9. 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.

Response:- This question also becomes redundant in the light of our comments and suggestions in the foregoing paragraphs. As such we are of the considered view that the landing page should not be used to place TV channels not having TRP rating or should not be used only to provide platform specific information. In any case, the recent advisory issued by the Hon'ble Ministry of Information and Broadcasting to BARC to discontinue the adoption of landing channel for the purpose of television audience measurement/television channels rating has already settled this issue and thus no question arises of putting any further restriction/bar on the distribution platform in any manner whatsoever.

Q10. Any other suggestions/comments related to the issue under consideration?

Response:- Since MIB has already issued the required advisory to BARC and also in view of clear position brought out by us in the foregoing paragraphs through our comments, it would be apt to drop any further continuation of the captioned Consultation Process and the issue should be left to forbearance.