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Consultation Paper on Issues related to Placing of Television Channel on Landing

Page

In response to Telecom Regulatory Authority of India's (TRAI) consultation paper on issues related to placing of television channel on landing page, dated 3rd April, 2018, our comments are stated hereunder.

You may kindly note that below comments are without prejudice to our rights and contentions, including any ongoing or future litigations. We reserve our rights to modify or change our submissions, submission of further comments or counter comments to clarify our position on the issues under this consultation paper.

Our in principle submissions with respect to the issues under consultation by TRAI are as follows:

1. Section 11(1)(b)(ii) of the TRAI Act, specifically lists out the powers of TRAI to issue regulations. The powers of the TRAI under Section 11 of the TRAI Act contemplates only the power to determine the terms and conditions of inter-connectivity between the service providers, which is a function of the Authority.

Under the present Consultation paper TRAI proposes to carry out an action that is beyond the objects of TRAI Act, as provided in the preamble of the Act, i.e. "an act to provide for the establishment of the Telecom Regulatory Authority of India and the Telecom Disputes Settlement and Appellate Tribunal to regulate the telecommunication services, adjudicate disputes, dispose of appeals and *to protect the interests of service providers and consumers of the telecom sector, to promote and ensure orderly growth of telecom sector and for matter connected therewith or incidental thereto.*".

The prohibition of placement of the registered TV channel on the landing channel is against the orderly growth of the sector, especially because, (i) the consumer at the time of switching on the channel has pre-decided as to the content he desires to watch; (ii) it is unclear how such practice is discriminatory in nature and/or anti-consumer; (iii) placement as a concept exists in the industry and substantially all the

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broadcasters execute placement/carriage agreements to place their channels at better LCN and packages, TRAI has all the records and information in this regard. The TRAI has no power to regulate such agreements nor has it till date regulated such agreements; (iv) the landing channel service is offered by the distribution platform for better viewing experience of the consumer and thus, has nothing to do with the inter-connectivity between two service providers and (v) lastly, how does TRAI justify that the viewing experience is being hampered by having channels on landing page.

2. We feel that TRAI must firstly cross the hurdle that it has the jurisdiction to do what it intends to do. In fact, what TRAI intends to do is to direct Broadcasting Audience Research Council ('BARC') to change the methodology of rating, which TRAI is not authorized to do under the Act. In this regard, it is necessary to bring to the knowledge of TRAI, which TRAI must be aware of, that Ministry of Information and Broadcasting ('MIB') has by way of an advisory, issued to BARC has asked BARC to stop rating channels, which are available on landing page. This shows that TRAI intends to carry the same very function by issuing this consultation paper.

3. The proposed action of regulating or disallowing landing page is violative of Article 14, 19(1)(a) and 19(1)(g) of the Constitution of India as it interferes with the freedom to carry on business, and places those channels which are not available on landing page on a different footing than channels which are available, without any rationale behind the same nor does the consultation paper answer this fact as to how does TRAI intend to create a classification which has no intelligible differentia whatsoever with the purpose sought to be achieved by TRAI. The purpose of the entire exercise as is clear from the acts of MIB is to have a different rating system, and to achieve that, TRAI has come out with the present consultation paper. It needs to be pointed that currently, the guidelines issued by MIB for rating of television channels do not prohibit rating for channels available on landing page. It also needs to be kept in mind that placing the channels on landing page while maintaining the same genre, and single LCN is also not violative of any Regulation, or Tariff Order framed by TRAI, existing since 2012.

4. Furthermore, TRAI in the consultation paper has also failed to provide the reasoning for doing/conducting this exercise through the consultation paper.

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Our submissions on specific questions put forth by TRAI are as follows:

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.

TN Response: Placing a TV channel on landing page is marketing and placement offering of DPO. We do not agree that the same will have any effect on the TRP. Before TRAI ought to have proceeded, it was a paramount duty, and an obligation under the TRAI Act to have studied in detail the rating system prevalent in the country, the impact of the landing page channel on the television ratings from time to time, and then TRAI ought to have presented the same to the stakeholders, and hence, asked the questions posed by TRAI. TRAI is the regulatory authority, and it is assumed that it would be privy to the statistics, which must be presented to the stakeholders by TRAI. It is for the MIB to certify and provide a procedure for TV Ratings which, in fact, already exists under “Policy Guidelines for TV Rating Agencies in India” issued on 16.1.2014. It is clear that currently MIB has not sought any recommendation from TRAI in this regard, and if it has, then, the said letter seeking recommendations must be shared with the stakeholders.

It must be understood that consumer choice for viewing a TV channel is purely based on liking for the content available on a TV Channel’s programs; the same is neither driven nor influenced by any TRP ratings. There is no survey or study quoted in the consultation paper neither has such a survey been undertaken by TRAI to establish that the consumer views a channel based in TRP ratings, rather it is the other way round, TRP is influenced by consumer choice. The TRP of channels fluctuate on the basis of the telecast of important programs like an interview with a senior politician, popular celebrity, a debate conducted on a sensitive topic, telecast of important matches as well as on specific events like day on which election results or budget are declared, on death of a celebrity/ popular personality etc. It is clear from the above, that television ratings are increased only due to the nature of content.

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Marketing and promotion activities like making a channel available on landing page, placing the same on a higher LCN will only have the effect of creating awareness and not in any way force the viewer to view a certain channel.

Therefore, we assert that landing page will not affect TRP ratings of TV channels. For instance, if a viewer in Bangalore has switched on his TV with a pre-determined choice to watch a Kannada news channel, he will not continue to watch a Hindi or a Punjabi news channel if it is placed on landing page. Even a kid who switches on the TV has a pre-determined choice to watch a particular channel and he/she immediately goes to that channel. Further if the viewer is undecided, he will have a tendency to surf the channels and there are no chances that he will stay on the landing page, unless it is the channel which he wishes to watch due to his choice. It is never a case that the subscriber stays on the landing page channel, unless interested in the program being shown.

TRP depends on the duration for which the subscriber stays on a channel. The subscriber on switching on TV immediately goes to the channel of choice.

Arriving on any conclusion on the effect of landing page on TRP based on assumptions will prove to be fatal to the growth potential of the industry. This will also curb the stakeholder's ability to market their product and will be detrimental for the overall development of the sector.

It must be noted that there are specific metered TVs whose readings are recorded, and not every household. BARC does not cover all TV homes in the country and especially not all the homes which have subscribed services of the DPOs on whose platforms the channels are available on landing page. BARC's readings are based on a sample base. Permitting a channel to be placed on landing channel will not lead to contravention of extant TRAI regulations on dual LCN or genre. Since there are no extant regulations issued by TRAI and a channel can be placed on landing page, while being within its respective genre and on a single LCN.

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In our view, BARC's Policy Guidelines for TV Rating Agencies in India reproduced in the consultation paper are adequate to ensure that TRP is not affected by landing channel. We must note in this regard that a viewer switches to the channel of choice almost immediately. The viewer either remembers favorite channel's LCN or browses through the EPG to explore TV channels, the current regulatory requirements of channels in EPG being as per genre and language make browsing simple and quick for the consumer, it is unlikely that a person will not change to the channel of choice almost immediately. TRAI's assumption that in rural area the TV sets are left switched on while there are long and frequent power cuts is unfounded and misplaced.

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

TN Response: Landing Page as a concept is well defined and understood. The channel that opens on the switching on the STB is a landing page. Hence, it need not be defined.

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.

TN Response: Yes certainly, framework for placing TV channels on landing page will affect the present business model of distributors. This will put additional restriction on DPOs while dealing with landing pages. The businesses cannot and should not be subject to arbitrary restrictions founded on wrong notions as it curbs freedom to do business and amounts to unreasonable restrictions in carrying any business.

It is for the distributors to answer this question however, the availability of the landing page channel is in accordance with the current regulations and provides a freedom for the DPOs to choose their business model. Any restriction will be unreasonable and violative of Article 14, 19(1)(a) and 19(1)(g) of the Constitution of India.

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Furthermore, how a channel appears on the platform of the distributor of TV Channel should be solely left to the choice of the two stakeholders i.e. the broadcaster and the distributor of TV Channel, as the same is self-regulated by the market forces, and does not affect the consumer as alleged.

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.

TN Response: The question whether landing page is a natural choice of consumers while viewing TV channels is hypothetical as no present technology can automatically open the page a viewer wishes to watch when he switches on the TV. With the development of technology such as home assistant by Google or similar offering of Amazon, for instance, it may be possible in future for the viewer to be able to give a command to home assistant which is integrated with the STB to directly go to the channel he wishes to watch.

Landing page is a marketing/ promotional offering of the DPO. If the same is disallowed, it will be a restriction on freedom to do business. Allowing the DPO to promote a channel on landing page does not affect the rights of the viewer/consumer in any manner. Landing page does not affect the quality of service offered to the consumer, rather it is informative.

Channel placed on landing page might not be a natural choice of the viewers, but this is irrelevant and does not affect the TV rating of channels. Landing page is just a promotional and advertising tool used by brands to promote their product.

It is our submission that this question is misplaced, as technologically when a set top box is switched on , it has to land on some channel, either a marketing channel of the DPO or otherwise.

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Hence, even if the landing page is barred as is sought to be done, still the channel which will be available on the landing page, will not be a natural choice of the consumer.

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.

TN Response: The availability of a TV channel on landing page does not increase TRP ratings. Refer to our Answer to Question 1 above. Broadcasters have a right to do business. Any business in today's age of technology would naturally be keen to promote its offering using the technology available, therefore, broadcasters are accepting the offering of the DPO for marketing and promotion of TV channels by making the same available as landing LCN. As long as the it is technologically possible to comply with the extant regulatory requirements which require a channel to have a single LCN and be available in the EPG within its genre, while being available on the landing LCN, TRAI should not curb the freedom to do business and innovation and development in means of promotion / marketing.

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

TN Response: Putting the channel on landing page is similar to broadcasters and MSOs executing agreements for placing the channels in better placements/LCNs, the same is not illegal or prohibited. It purely works on the market dynamics and should be left to market forces and competition.

Going by TRAI's logic that landing page has a preferential placement, placement of TV channel in the EPG on preferred LCN is also wrong e.g. channel nos. such as 111, 222, 333, 444, 555, 666, 777, 888, 999 are also preferentially placed or the first channel of every genre is also a preferentially placed, or placing of one genre prior to

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another genre is also wrong, sub dividing the genre language wise and say placing of Hindi channels over English channels is also wrong and so on, as each of the listed marketing practice do influence viewer's chances of staying on the channel so placed.

We recommend that TRAI does not regulate the landing LCN and the current Policy Guidelines for TV Rating Agencies in India are well equipped to ensure that the TRP is not affected by making a channel a landing channel.

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?

TN Response: Landing page is similar to the first advertisement page of the News Paper which is used for marketing and promotion of the channel. Since the landing page does not influence TRP, there is no question of making any changes in the measurement methodology. We recommend that TRAI does not regulate the landing LCN and the current Policy Guidelines for TV Rating Agencies in India and the measurement methodology itself takes care of non-influence of TV ratings by having inbuilt mechanisms to filter out the abnormal data or viewing pattern behavior of the consumer. Since BARC has entered into commercial contracts with its subscribers, any change in the methodology should be done only after due consultation process with them.

This explains that TV rating is not affected by placing the channel on landing page. It is just a tech tool offered by the DPO to promote Broadcaster's offering.

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

TN Response: It must be noted that not all DPOs show a TV channel which are rated by BARC on landing page, in some cases landing page consist of a marketing channel of the DPO.

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It is the sole prerogative of the DPO to decide the landing channel, since he has heavily invested in building the required infrastructure. For example- In all reputed hotel chains, the hotel uses the landing page as a means to promote the property and its services. By any stretch of imagination, can we think of putting restrictions on such usage and by what contentions?

We do not recommend regulation of landing page and the same violates the rights to do business.

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.

TN Response: As stated earlier, there is no intelligible differentia to differentiate between a TRP and non-TRP channel. It is wrong premise to assume that the viewership is affected by TRP ratings. The viewer has very clear choices and watches channels as per his preferences and also has tendency to surf. Hence the landing page has no effect on the viewership or TRP. We recommend that TRAI does not regulate the landing page offering and the current measurement methodology adopted by BARC for TV ratings are well equipped to ensure that the TRP is not affected by making a channel a landing channel. The market dynamics and competition should be allowed to reign this.

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

TN Response: We would draw TRAI's attention to the fact that the notion that landing page influences TRP is incorrect and based on assumptions that a viewer watches landing page irrespective of his choice. Most of the viewers before switching on the TV have a pre-determined choice. It is a recorded and well established fact that most viewers view a very limited number of channels of their choice, irrespective of what is being carried on the landing page.

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TRAI should not mix and confuse multiple LCN / Dual LCN / Channel not in its genre with the established marketing practice of landing page. Landing page is a well-accepted and widely used offering from DPOs since the inception of DTH services in India in 2002.

TRAI should refrain from conclusions based on presumptions with respect to viewer behavior such that of viewer does not switch to the channel of choice or stays involuntarily on a particular channel. If a viewer opens STB multiple times a day, he/she will also be an informed viewer and will have pre-defined choice to watch a particular channel, he/ she will not watch whatever is shown to him/ her on the landing page and will switch to the channel of his/her choice immediately.

The assumption that placing TV channel on landing page increases TV channel's ratings is incorrect and not backed by any independent data.

We urge TRAI to not curb the freedom to do business and innovation and development in means of promotion / marketing, since it is not affecting the viewer's viewing experience and there are no considerable complaints received from the viewers on the channels available on landing pages.