

**Response to the Consultation Paper on Regulatory Framework for Over-The-Top  
(OTT) Communication Services**

We thank you for giving the stakeholders an opportunity to share our views on the subject matter under consultation. Having gone through the Consultation Paper in question, we are of the view that the definition as per TRAI Consultation Paper 2015 needs to be relooked into. We believe, that each type of OTT App viz. (i) messaging and voice services (communication services); (ii) Application ecosystems (mainly non-real time), linked to social networks, e-commerce; and (iii) Video/audio content; should have different regulatory parameters. Video/audio content should be treated at par with regulations which are governing the content being exploited via linear platforms including IPTV, DTH, Cable and HITS.

Our views are also based on the understanding that the definition of TSPs includes ISPs.

**Q1.** Which service(s) when provided by the OTT service provider(s) should be regarded as the same or similar to service(s) being provided by the TSPs. Please list all such OTT services with descriptions comparing it with services being provided by TSPs?

**Response:** No Comments

**Q2.** Should substitutability be treated as the primary criterion for comparison of regulatory or licensing norms applicable to TSPs and OTT service providers? Please suggest factors or aspects, with justification, which should be considered to identify and discover the extent of substitutability?

**Response:** Yes. We are of the view that substitutability should be treated as one of the primary criterion for comparison of regulatory or licensing norms applicable to TSPs and OTT service providers. Currently, none of the OTT services requires to fulfil a pre-licensing condition nor are regulated in the manner that “Service Providers” including TSPs are mandated to follow. This has resulted into a non-level playing field for other service providers providing similar kind of services. All service providers providing similar services, regardless of whether they are traditional or OTT, should be regulated by common provisions.

**Q3.** Whether regulatory or licensing imbalance is impacting infusion of investments in the telecom networks especially required from time to time for network capacity expansions and

technology upgradations? If yes, how OTT service providers may participate in infusing investment in the telecom networks? Please justify your answer with reasons.

**Response:** Yes. We are of the view that it is impacting infusion of fresh investments in technology upgradations and expansions. Currently, the TSPs/ISPs and other content providers are being strictly regulated which has a direct impact on the revenues earned. Whereas, OTT service providers who do not have any mandated regulations being implemented on them permits them to freely manage their revenue mechanisms. Further, it is suggested that OTT service providers should be required to pay a distribution fee to the TSPs based on data usage. This should help TSPs/ISPs generate additional revenues so as to continuously upgrade and expand to give the customer a better experience.

**Q4.** Would inter-operability among OTT services and also inter-operability of their services with TSPs services promote competition and benefit the users? What measures may be taken, if any, to promote such competition? Please justify your answer with reasons.

**Response:** Yes. We are of the opinion that relationship between OTT service providers and the TSPs / ISPs / other OTT Service providers should have defined criteria. Any TSP/ISP / OTT service provider should be able to offer the services of any OTT service provider on a non-discriminatory basis, if they meet the defined criteria. This would promote adequate competition.

**Q5.** Are there issues related to lawful interception of OTT communication that are required to be resolved in the interest of national security or any other safeguards that need to be instituted? Should the responsibilities of OTT service providers and TSPs be separated? Please provide suggestions with justifications.

**Response:** Yes. As already suggested above we are of the view that each type of OTT App should have different parameters of regulating usage of such respective OTT App. It may also be considered by the Regulator to have all OTT Apps desirous of providing their services within the territorial jurisdiction of India to be mandatorily registered in India. In addition, the operating systems i.e. Android, iOS and Windows, etc. should also mandatorily have registrations in India. In the event of any national security concerns these operating systems shall be easily accessible by our government. This will also lead to defining separate responsibilities for OTT service providers and TSPs/ISPs.

**Q6.** Should there be provisions for emergency services to be made accessible via OTT platforms at par with the requirements prescribed for telecom service providers? Please provide suggestions with justification.

**Response:** Yes. Additional permissions from user may be taken at the time of installation of the App in the interest of public safety.

**Q7.** Is there an issue of non-level playing field between OTT providers and TSPs providing same or similar services? In case the answer is yes, should any regulatory or licensing norms be made applicable to OTT service providers to make it a level playing field? List all such regulation(s) and license(s), with justifications.

**Response:** Yes. We have expressed above our views on the same. Regulations currently governing content, tariffs, advertisement such as The Cable Television Networks Regulations Act, TRAI Act, TRAI Regulation on tariff and telecommunication, Regulations listed by MIB for licensing.

**Q8.** In case, any regulation or licensing condition is suggested to made applicable to OTT service providers in response to Q.7 then whether such regulations or licensing conditions are required to be reviewed or redefined in context of OTT services or these may be applicable in the present form itself? If review or redefinition is suggested then propose or suggest the changes needed with justifications.

**Response:**

**Q9.** Are there any other issues that you would like to bring to the attention of the Authority?

**Response:** The Authority has circulated a consultation paper dated 12.11.2018 on Regulatory Framework for Over-the-Top (OTT) communication services. The scope of the Consultation Paper is restricted to the Regulatory and Economic issues pertaining to OTT services as can be regarded the same or similar to the services provided by TSPs.

It is submitted that the Authority should issue a wider consultation paper with regard to other OTT services as well, more particularly those providing visual content and their effect vis-à-vis Distribution Platform Operators (DPOs).

That as per the terms and conditions of the permission of downlinking issued to the Broadcaster(s) by the Ministry of Information and Broadcasting, the Broadcaster can provide

Satellite TV channel signal reception decoders to only MSOs/Cable operators registered under Cable TV Networks (Regulation) Act, 1995 or to DTH operators registered under DTH guidelines issued by Government of India. Thus, it is apparent that the permission for downlinking restricts the Broadcasters from providing its channel(s) to an entity other than the ones specified in its license/permission. Various Broadcasters/ third parties have launched their OTT Platform(s)/ Application(s) wherein they are providing linear transmission of Satellite TV channels of various Broadcasters, in clear violation of the downlinking license/ permission. The Authority should ask the Broadcasters to disclose the mechanism under which they are currently providing such regulated linear services to non-linear and unregulated platforms.

The availability of satellite channels on OTT Platform(s)/ Application(s) is having a severe negative impact on the DPOs. The fundamental basis of the Regulatory framework (Interconnect Regulations, 2004 or Interconnect Regulations, 2012 or the Interconnect Regulations, 2017) for DPOs is the principle of reasonableness, non-discrimination and parity which are required to be followed by the Broadcasters. However, when it comes to OTT Platform(s)/ Application(s), the same channel(s) are being made available directly to consumer(s) either for free or at a much lower price than what is being demanded from DPOs. This is creating a non-level playing field between the OTT Platform(s)/ Application(s) and DPOs. The end consumer being serviced by the DPOs and OTT Platform(s)/ Application(s) are the same, and the customers are demanding lower rates from the DPOs for the content of the Broadcaster, on the premise that the same is being made available at a lower rate through OTT Platform(s)/ Application(s). Therefore, there is an urgent need for the Authority to look into the matter.

In addition to the aforesaid, there is another connected issue which arises due to the OTT Platform(s)/ Application(s) being run by the Broadcasters either directly or through the affiliates/ subsidiaries/ sister concerns. The Broadcasters through their OTT Platform(s)/ Application(s) are providing linear channels as well as on demand content of their pay channels either for free or for a negligible subscription amount. With the advent of technology, a customer no longer requires a Set-Top-Box (STB) for viewing content on his/ her television. The customer has the option of using Smart TVs which can directly access the OTT Platform(s)/ Application(s) being provided by the Broadcaster. The customer also has the option of using dongles/ directly screen-casting from his mobile phone, whereby the content on the OTT Platform(s)/ Application(s) can be viewed directly on the television. In such a

situation, customers are no longer keen to subscribe to services from DPOs, as the OTT Platform(s)/ Application(s) are a better value proposition and the DPOs cannot compete with the OTT Platform(s)/ Application(s) as the pricing of individual channels is left to the discretion of the Broadcaster.

Furthermore, under the Interconnect Regulations, 2017 and the Tariff Order, 2017 the pricing of channels has been left completely to the discretion of the Broadcaster and in such a situation, it would be in the best interest of the Broadcaster to promote its OTT Platform(s)/ Application(s), instead of its channels as it does not have to share any revenue with any other party for distributing/ disseminating its content/ channel through the OTT Platform(s)/ Application(s) owned by them.

Some Broadcasters are of the opinion that OTT is nothing but an IPTV platform, the only difference being that subscribers of an IPTV platform for viewing would require a CPE, whereas subscribers of an OTT Platform would need an internet connection in addition to a viewing device which is equivalent to a CPE. For the sake of arguments, if we do believe it to be true, then in that event it is amply clear that the OTT Apps do need to be regulated and so should the service providers of such OTT Apps like an IPTV Operator is currently being since the existing regulatory and licensing framework, requires IPTV Operators to obtain a License from the Central Government and are also governed by the Interconnect Regulations and Tariff Orders issued by the Authority.

We, therefore, are of the view that it needs to be clarified whether IPTV and OTT are two separate platforms or an extension of the other. The rights acquired by the respective Broadcasters depends on (i) the mode of transmission i.e. linear and non-linear transmissions, and (ii) the distribution platform. Content being re-transmitted on OTT Platform(s)/ Application(s) cannot be so transmitted, if the rights granted by the copyright holder is limited to IPTV and vice-versa.

It is submitted that the Authority should urgently look into the matter and ensure that the Broadcaster(s) duly comply with their License conditions and also ensure a level playing field for DPOs vis-à-vis OTT Platform(s)/ Application(s).