

Comments on introducing a definition of "International Traffic"

By email

On May 02, 2023, the Telecom Regulatory Authority of India ("TRAI") released a Consultation Paper on introducing a definition of *International Traffic* ("Paper"). The Paper proposes amending existing license agreements to include the following definition: "***International traffic is the international long-distance traffic originating in one country and terminating in another country, where one of the countries is India.***" As part of the pre-legislative consultation process to determine the legal and commercial implications of defining *international traffic* (in reference to communications transmitted from overseas to recipients in India), TRAI has invited comments on the Paper from stakeholders. We welcome the opportunity to provide our views on the Paper and participate in the legislation building process. **Our comments are set out in the table below.**

Question No.	Subject Matter	Comments
Question 1	<i>Whether it would be appropriate to define the term 'international traffic' in the telecommunication service license agreements as 'the international long-distance traffic originating in one country and terminating in another country, where one of the countries is India'? Kindly provide your response with a detailed justification.</i>	<p>The introduction of a definition for <i>international traffic</i> under existing licensing agreements will be helpful and may curb evasion of fees and charges.</p> <p>Please also consider clarifying that the intent of that the proposed introduction is limited to standardise pricing of international messages. While it is clear that the intent is to not expand the regulatory purview, it should not be construed as an inclusion of ancillary service providers related to communication under the ambit of telecom licensing.</p> <p>a. We understand that the proposed definition is being introduced to ensure uniformity in treatment of messages sent from outside India. Presently, as per the Telecommunication Interconnection Usage Charges Regulation, 2003, termination charges are applicable to domestic traffic; termination charges are the charges paid by the 'originator' (i.e., telecom service provider of the sender) to the receiver (i.e., network in which the receiver is located)¹. However, messages routed through international traffic are under "forbearance" i.e., charges levied by telecom service providers as per market practice. The proposed definition of 'international message' will prevent discrepancy in the approach opted by access service providers and unified messaging service providers for application of charges for facilitation of international messages.</p>

¹ Introduced by 10th and 11th Amendment of the Telecom IUC Regulations (Schedule IV); details of charges applied are under the explanatory memorandum of the 11th Amendment (Point 21 on Page 50).

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		<p>b. We note, in addition, that it is commonplace for businesses to engage third parties for setting up communication channels to interface with their consumers (such as software service providers, telemarketers, messaging aggregators, etc.) As such, the 'chain' of a message includes entities apart from the sender, recipient, international long-distance network operators and relevant access service providers. In light of the numerous entities involved in assisting businesses for circulating their commercial communications (promotional, marketing, transactional, etc.) from overseas to consumers in India, it would be prudent to clarify that the extant licensing regime is not expanded by the proposed definition.</p> <p>c. Simply put, the entities that shall have to align their operations in accordance with the definition of international messages are entities licensed by the Department of Telecommunications ("DoT")_for provision of telecom services (such as unified access service providers, unified messaging service providers, international long distance network operators, etc.). However, technology service providers that form part of the ecosystem of commercial communications should (continue to) fall outside the purview of mandatory licensing since the role of these service provider's is limited to assisting businesses in accessing communication infrastructure and services provided by DoT-licensed entities. For instance, various businesses offer application programming interface(s) for businesses to integrate communication services (provided by licensed entities) onto their existing platforms or software kits to implement a peer-to-peer messaging customer support feature.</p> <p>d. Technology service providers ultimately do not roll out infrastructure, and to the extent that they need to use telecom resources (e.g., Internet access), they would pay and obtain them from licensed entities. Technology service providers should therefore not be subject to prior licensing requirements. Any regulation that increases the cost of doing business by having to obtain prior approvals, appoint additional officers, open local offices, etc., will lead to a disincentive for Indian startups and global businesses.</p>

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		e. On a related note, it may be worth exploring whether the distinction between international and domestic messages is meaningful at all, and if it should be rescinded given that international messages do not use any <i>additional</i> telecom resources apart from the extant infrastructure <i>per se</i> . Consequently, this may encourage other entities to participate in messaging services (viz., influence path / generate / facilitation / aggregation, etc.), and thereby grow the market further. In-turn, the competitive environment may lead to moderation of pricing offered by the service providers and such benefits may be passed onto the consumer in the form of affordable pricing.

We hope these comments are helpful. We are thankful for the opportunity to engage with TRAI in this consultation.

Please feel free to reach out to us for any assistance required in respect of enhancing the transparency across the telecommunication sector in India.

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