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To: "Akhilesh Kumar Trivedi" <advmn@tra.gov.in>

Sent: Saturday, August 12, 2023 2:29:54 AM

Subject: Responses to the questions list provided by telecom regulatory authority of india(trai)

To, the secretary telecom regulatory authority of india (.mahanagar doorsancher bhawan.jawaharlal nehru marg.New Delhi - 110002)

In response to the question list provided by the (tra). I SWAPAN DAS proprietor. Office Address- is sukantapally tarapukur agarpara Kolkata - 700109 west Bengal, is pleased to submit the requested response. Kindly find the attached document containing the comprehensive answers to the each question. If you have further inquiries or require additional information, please feel free to reach out to me. I remain at your disposal for any clarification needed. Thank you for your attention to this matter, and I look forward to review of the provided responses. Regard

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Issues for consultation:

1) *What should be the definition of over-the-top (OTT) services? Kindly provide a detailed response with justification*.

Ans:- Definition -- OTTs can be content, a service or an application that is provided to the end user bypassing cable broadcast and satellite television mechanism directly over the public Internet using telecom infrastructure or Internet infrastructure.

Over-the-top (OTT) services or applications that use existing networks such as the Internet and cellular networks to provide a viewer access to video or streaming media, voice or messages, or other types of content. OTT services are delivered "over the top" of the Internet, in most cases without a network operator being involved. Some examples of OTT services are Netflix, Amazon Prime, Disney+ Hotstar, Zee5, SonyLiv, Jio Cinema, Skype, WhatsApp, Signal, Telegram, Spotify etc...

OTT services can be categorised into three groups: multichannel video programming distributors (MVPDs) and online video distributors (OVDs) and OTT Communication services. MVPDs are services that offer access to live streams of linear specialty channels, such as DirecTV Stream, IPTv & Other companies are available across the world like FuboTV, Sling TV, Hulu + Live TV, and YouTube TV. OVDs are services that offer video programming by means of the Internet or other IP-based transmission path, such as Netflix, Amazon Prime Video, Disney+ Hotstar, Zee5, SonyLiv, Jio Cinema etc.

The definition of OTT services is based on the following technical features:

- They bypass cable, broadcast, and satellite television platforms using existing licensed Internet and/or Cellular networks that have traditionally acted as controllers or distributors of such content.
- They offer a variety of content types, such as video, voice, messages, music, etc.
- They offer seamless communication services using the networks of Telecom or ISP infrastructure.

2) *What could be the reasonable classification of OTT services based on an intelligible differentia? Please provide a list of the categories of OTT services based on such classification. Kindly provide a detailed response with justification*.

Ans:-

One possible way to classify OTT services is based on the type of content they offer and the mode of delivery they use. Based on this criterion we can identify the following categories of OTT services:

- OTT video services: These are services that offer access to film and television content, either on demand or live, via the Internet. Some examples of OTT video services are Netflix, Amazon Prime Video, Disney+, Hotstar, Zee5, SonyLIV, IP TV etc. (But the same contents are provided at different price structures for CATV TV subscriber, TRAI need to confirm unified price structure for all the platforms either it's from OTT or CATV).
- OTT audio services: These are services that offer access to music, podcasts, radio, or other audio content, either on demand or live audio content, via the Internet. Some examples of OTT audio services are Spotify, Apple Music, Gaana, JioSaavn, etc. (TRAI need to confirm unified price structure for all the platforms either it's from OTT or CATV).
- OTT Communication services: -- These services (VOIP) provide real time person to person Telecommunication services, data transfer, messaging including voice messages, audio-visual sharing like licensed Telecom service providers . But these are provided to the user as application carried over the internet using internet infrastructure of TSPs or ISPs.

3) *What should be the definition of OTT communication services? Please provide a list of features which may comprehensively characterize OTT communication services. Kindly provide a detailed response with justification* .

Ans:-

OTT communication services are services that provide real time person-to-person telecommunication services over the internet, bypassing the regulatory mechanism of traditional network operators, but using their internet infrastructure. Some popular examples of these include messaging platforms like Whatsapp, Telegram, Duo, Google Meet, Signal etc. using internet protocol to transfer data packets independently using different layer and these features that may comprehensively characterise OTT communication services.

4) *What could be the reasonable classification of OTT communication services based on an intelligible differentia ? Please provide a list of the categories of OTT communication services based on such classification. Kindly provide a detailed response with justification*.

Ans: Classification of OTT Communication services---

- a)They use the internet protocol (IP), with different layer to transmit data packets, instead of licensed formal dedicated phone lines or cellular networks such as WhatsApp, Signal, Telegram, GoogleMeet, Duo etc.
- b)They are independent of the underlying network service provider, and do not require any contractual or regulatory relationship with them.

c) They offer value-added services such as voice and video calls, text and multimedia messages, group chats, file sharing, social media integration, etc. even with end-to-end encryption.

d) They are accessible via various devices such as smartphones, tablets, computers, smart TVs, etc. that have internet connectivity and compatible applications.

They are required to be regulated differently from the traditional licensed Telecom and/or ISP network operators, depending on the jurisdiction and the type of service they provide.

According to the European Electronic Communications Code (EECC), OTT communications services are defined as so-called number-independent interpersonal communications services which in turn represent a subgroup of interpersonal and, thus, also electronic communications services. The United States Federal Communications Commission (FCC) categorizes the OTT services into two groups: multichannel video programming distributors (MVPDs); and online video distributors (OVDs). OTT communication services must be distinguished from content-related services. They are characterised by: Data transmission via the Internet, Number-independence, Interactive and interpersonal communication, and Communication between a finite numbers of people.

5) *Please provide your views on the following aspects of OTT communication services vis-à-vis licensed telecommunication services in India*:

- (a) regulatory aspects;
- (b) economic aspects;
- (c) security aspects;
- (d) privacy aspects;
- (e) safety aspects;
- (f) quality of service aspects;
- (g) consumer grievance redressal aspects; and
- (h) any other aspects (please specify).

Kindly provide a detailed response with justification.

Ans:-

The fundamental difference between the OTT service providers and the TSPs is in the ownership of the network, and the concomitant responsibilities for maintaining and upgrading that network to meet quality of service (QoS) standards.

The Department of Telecommunications (DoT), vide a reference letter dated 3rd March 2016, sought the recommendations of the Telecom Regulatory Authority of India (the Authority) on Net Neutrality and

services such as WhatsApp, Telegram, Google Meet, Duo etc. to be regulated like licensed Telecom operators and OTT television channel broadcasts such as Disney Hotstar, Zee5, Sony Liv, Amazon Prime, Jio Cinema 3rd party OTT services for linear channel to be telecast under the DAS regime and OTT provider should follow the same rules as for CATV system, Live Tv should be same price for OTT platform as well as Cable Tv platform.

7) *In case it is decided to bring OTT communication services under a licensing/ regulatory framework, what licensing/ regulatory framework(s) would be appropriate for the various classes of OTT communication services as envisaged in the question number 4 above? Specifically, what should be the provisions in the licensing/ regulatory framework(s) for OTT Communication services in respect of the following aspects*:

- (a) lawful interception;
- (b) privacy and security;
- (c) emergency services;
- (d) unsolicited commercial communication;
- (e) customer verification;
- (f) quality of service;
- (g) consumer grievance redressal;
- (h) eligibility conditions;
- (i) financial conditions (such as application processing fee, entry fee, license fee, bank guarantees etc.); and
- (j) any other aspects (please specify).

Ans:-

a) The Telecom Regulatory Authority of India (TRAI) had published a consultation paper on 12 November 2018 for the creation of a regulatory framework for over-the-top (OTT) communication services. The paper raised various issues for comments and counter-comments from stakeholders. Licensing OTT service providers as communications service providers (CSPs) enabling them to have proper interconnection with other service providers and those must be put under licensing regime like any other Telecom service providers in India at the same time ensure QoS to the end customer was one of the recommendations, we also recommending all OTTs which broadcast Tv entertainment contents such as Amazon, Netflix, Disney Hotstar, Zee5, Sony Liv, Jio Cinema etc. should be under the TRAI DAS regime regulation and liner TV channel pricing should be unified for all platforms.

b) As of now, there is no specific regulatory framework for OTT communication services in India. The Telecom Regulatory Authority of India (TRAI) has issued several consultation papers on this issue since

to be able to provide telecom services in India. We strongly recommend the draft Telecommunication Bill, 2022 to be implemented as soon as possible.

These OTTs must be put under the same system like formal licensed telecom players where all fees necessary to be paid in India to be able to run their show. Moreover, all entertainment contents, television channels must be put at par just like any fees levied with the linear channels currently broadcast in Indian cable tv systems.

8) *Whether there is a need for a collaborative framework between OTT communication service providers and the licensed telecommunication service providers? If yes, what should be the provisions of such a collaborative framework? Kindly provide a detailed response with justification*.

Ans:-

Yes, collaborative framework is required for OTT communication services as because for example, an user tries to call a person via whatsapp or messenger who(suppose to be receiver) has a key pad laced mobile phone which can not be downloaded with WhatsApp or messenger then the caller will not be able to connect and complete the call. If the collaborative framework exists the caller can connect the man irrespective of the network or device the supposed to be receiver uses without any hiccup.

For OTT Communication services providers provisions should be applied as similar as it applies to the collaborative framework currently in place for the currently licensed formal telecom service providers.

We strongly recommend policy should be uniform for all platforms. For OTT Communication service providers the policy to be followed as per with currently licensed telecom service providers and for OTT channel broadcasters it must be as per DAS regime and CATV present policy manner.

9) *What could be the potential challenges arising out of the collaborative framework between OTT communication service providers and the licensed telecommunication service providers? How will it impact the aspects of net neutrality, consumer access and consumer choice etc.? What measures can be taken to address such challenges? Kindly provide a detailed response with justification.*

Ans:-

The practical challenge in applying the test is that there are several instances where OTTs are providing multiple services, thereby resulting in multiple functionalities which may or may not be substitutable to the services provided by a TSP, making it difficult to identify or isolate the core functionality and ancillary functions of OTTs. The Broadband India Forum has said that concerns raised over a lack of level-playing field for telecom service providers and OTT communication services overlook the fact that OTTs cannot acquire spectrum, own network, control infrastructure access and instead interconnect using public network.

In fact the young age consumers will prefer to use OTT communication instead of using current telecom network service as because take the example of whatsapp where one can call other number, can send single as well as group messages, can send photos, videos to single user as well as group, can send broadcast messages to multiple users at one go. It is too versatile in comparison with currently licensed

telecom service providers provided services. These challenges can be tackled with well thought formula and with proper well laid mechanism.

For OTTs like Disney, Amazon, Netflix, Hotstar, Zee5, Sony Liv, Jio Cinema etc. contents pricing and regulations to be followed should be common for all platforms and uniform policy in terms of piracy and customer pricing.

10) *What are the technical challenges in selective banning of specific OTT services and websites in specific regions of the country for a specific period? Please elaborate your response and suggest technical solutions to mitigate the challenges* ?

Ans:-

According to a consultation paper by the Indian government, there are several technical challenges in region wise selective banning of specific OTT services and websites for a specific period. The paper has asked stakeholders about possible technical challenges in the selective banning of specific OTT services. To develop a regulatory framework for selective banning of OTT services under the Suspension Rules is one of the challenges. The classes of OTT services that would be covered under selective banning is another challenge. The need to ban any specific websites apart from the OTT services is also a challenge.

OTT services hosted on cloud are difficult to ban selectively since they operate from multiple locations in multiple countries and continuously shift from one service to the other. Websites operating with fixed URLs can be banned easily. Keeping in mind the basic need for financial services, health, education and the essential other services if any system mechanism is able to ban selectively other activities of OTTs like Facebook, YouTube, WhatsApp, Telegram, Instagram etc. that will be a great relief for mankind. I think Indians felt that need considerably during the Abrogation of Article 370 in Kashmir and very recently in Manipur crisis.

For OTT Communication services checks and balance of policy, proper technology adaptation and their proper initiation and implementation must be applied. In those cases political ramifications rather than technical issues must be kept in mind while implementation, *if we take the latest experience of the situation arose when Article 370 abrogated in Kashmir and recently the Manipur crisis*.

We recommend DAS regime policy should be implemented in OTT tv entertainment services.

11) *Whether there is a need to put in place a regulatory framework for selective banning of OTT services under the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017 or any other law, in force? Please provide a detailed response with justification*.

Ans:-

OTT services hosted on cloud are difficult to ban selectively since they operate from multiple locations in multiple countries and continuously shift from one service to the other. Websites operating with fixed URLs can be banned easily. Keeping in mind the basic need for financial services, health, education and the essential other services if any system mechanism is able to ban selectively other activities of OTTs like Facebook, YouTube, WhatsApp, Telegram, Instagram etc. that will be a great relief for mankind. I think Indians felt that need considerably during the Abrogation of Article 370 in Kashmir and very recently in Manipur crisis.

For OTT Communication services checks and balance of policy, proper technology adaptation and their proper initiation and implementation must be applied. In those cases political ramifications rather than technical issues must be kept in mind while implementation, if we take the latest experience of the situation arose when Article 370 abrogated in Kashmir and recently the Manipur crisis.

12) *In case it is decided to put in place a regulatory framework for selective banning of OTT services in the country* --

(a) *Which class(es) of OTT services should be covered under selective banning of OTT services? Please provide a detailed response with justification and illustrations*.

(b) *What should be the provisions and mechanism for such a regulatory framework? Kindly provide a detailed response with justification*.

Ans:-

a) The OTT services by which one can connect or communicate a large number of people at a time by way of sending messages, videos, pictures, audio, flash messages and /or in the form of broadcast messages such as WhatsApp, Telegram, Signal, Facebook, Messenger, YouTube and /or other OTTapps must be put under selective banning system in case of emergency.

b) In India I think ample legal provisions are present there to tackle with this hurdle. Way of Technological mechanism to make the regulatory policy implemented is necessary to explore.

13) *Whether there is a need to selectively ban specific websites apart from OTT services to meet the purposes*? *If yes, which class(es) of websites should be included for this purpose? Kindly provide a detailed response with justification*.

Ans:--

In the cases of emergency in any region in India any type of shut down or selective banning of internet service as a whole or partly can have significant ramifications for the economy of the region as well as for the country as it disrupts financial services such as banks, ecommerce industry, various service industries, health care services, educational services, jobs etc. So for these reasons selective banning of specifically selected OTTs, websites which may be used by terrorists, anti national and stateless elements to spread trouble, spreading rumours in the particular region is preferable rather than total internet ban to mitigate the nefarious design of anarchist or trouble makers.

14) *Are there any other relevant issues or suggestions related to regulatory mechanism for OTT communication services, and selective banning of OTT services? Please provide a detailed explanation and justification for any such concerns or suggestions*.

Ans:-

As of now, there is no specific regulatory framework for OTT communication services in India. TRAI has issued several consultation papers on this issue since 2015, but has not made any final recommendations or regulations. The regulator has commenced the process to frame a regulatory mechanism for OTT communication apps such as WhatsApp, Telegram, YouTube, messenger, Instagram and content broadcasting apps such as Disney Hotstar, Zee5, Sony Liv, Jio Cinema, Amazon Prime, Netflix etc. The regulator will also deliberate on selective banning of OTT services if necessary for particular purposes.

The OTT communication apps should be placed under the regulatory regime as per the same which are applicable for the currently licensed telecom service providers.

The OTT apps broadcasting entertainment contents in parallel over the linear tv channels must be controlled and placed in the pricing mechanism which the linear cable tv channels compelled to abide by as of now.

other related aspects such as economic, security and privacy issues, and regulatory framework for OTT services similar to services provided by Telecom Service Providers (TSPs), etc.

COAI has said that OTTs providing telecom services similar to Telcos such as voice/video calling and messaging within the meaning of telecom bill should be defined clearly, and the same regulatory and security obligations to be met by them as done by TSPs for providing similar services.

a) The Telecom Regulatory Authority of India (TRAI) has released a Consultation Paper on the Regulatory Framework for Over-the-Top (OTT) Communication Services (OTT-CP). The OTT-CP is the latest in a series of pre-regulatory initiatives of TRAI pertaining to OTT services since 2015. The Cellular Operators Association of India (COAI) has urged the government to bring over-the-top (OTT) service providers such as WhatsApp under the licensing regime and defer net neutrality rules on telecom operators till the time same service, same rules are applied on the applications. COAI has also made a strong pitch for OTT communication services to directly compensate Telcos for data traffic they are driving onto the networks, as it advocated a licensing and light-touch regulation framework for such services. The proposal suggests that OTT communication services in India should acquire a license and comply with the same set of rules governing telecom players. These rules encompass various aspects such as quality of service and security measures.

Accordingly TRAI should regulate OTT services like Disney Hotstar, Zee5, Sony Liv, Jio Cinema for liner channel to be telecast under the DAS regime and OTT provider should follow the same rules as like DAS for CATV system.

b) OTT communication services are not presently regulated by the Ministry of Communications in India and do not contribute to the exchequer in the form of taxes, levies, license fees etc. as they are not presently regulated by the Ministry of Communications. The Cellular Operators Association of India (COAI) has urged the government to bring over-the-top (OTT) service providers such as WhatsApp, Disney Hotstar, Zee5, Sony Liv, Jio Cinema under the licensing regime and defer net neutrality rules on telecom operators till the time 'same service, same rules' are applied on the applications. COAI has also made a strong pitch for OTT communication services to directly compensate Telcos for data traffic they are driving onto the networks. Accordingly TRAI should regulate OTT services like Disney Hotstar, Zee5, Sony Liv, Jio Cinema for liner channel to be telecast under the DAS regime and OTT provider should follow the same rules as like DAS for CATV system.

c) The Cellular Operators Association of India (COAI) has urged the government to bring over-the-top (OTT) service providers such as WhatsApp under the licensing regime and defer net neutrality rules on telecom operators till the time 'same service, same rules' are applied on the applications. However, as per BIF, OTT services, including OTT communication services, are clearly differentiated and can be distinguished from the definition of telegraph as provided in the Telegraph Act. "Thus, licensing under Indian Telegraph Act or its replacement, does not apply to OTTs. Serious security concerns are there as OTT service are not regulated till date. All regulatory measures which apply to the licensed Telecom services and ISPs must be applied to the OTT platforms.

d) The Telecom Regulatory Authority of India (TRAI) has sought recommendations on Net Neutrality and other related aspects such as economic, security and privacy issues, and regulatory framework for OTT services similar to services provided by Telecom Service Providers (TSPs), etc. According to the TRAI, OTT services, including OTT communication services, are clearly differentiated and can be distinguished from

enabling them to have proper interconnection with other service providers and at the same time ensure QoS to the end customer but we recommend to create a regulatory framework that is distinct from the existing licensing regime for telecom service providers (TSPs) but still provides for some form of regulation.

f) OTT communication services are not licensed communication service in India. According to the Telecom Regulatory Authority of India (TRAI), OTT services are defined as applications and services that are accessible over the internet and deliver audio, video, and other media content. They are not licensed under the Indian Telegraph Act or its replacement but we are demanding to TRAI to regulate it under the Indian Telegraph Act. The quality of service (QoS) for OTT communication services is not regulated by TRAI. However, TRAI has issued recommendations on net neutrality and other related aspects such as economic, security and privacy issues, and regulatory framework for OTT services similar to services provided by Telecom Service Providers (TSPs). We are agreed with TRAI recommendation

g) The new guidelines issued by the government of India require OTT platforms to have a self-regulating body, headed by retired Supreme Court or High Court judge or very eminent person in this category. The guidelines also mandate that there should be a grievance redressal system in OTT platforms and digital portals. OTT platforms are required to appoint a Grievance Redressal Officer based in India who shall be responsible for the redressal of grievances received by it. The officer shall take a decision on every grievance received by it within 15 days which we are also recommended the same.

h) The Telecom Regulatory Authority of India (TRAI) has considered two possibilities for regulating OTT services in India. One is licensing OTT service providers as communications service providers (CSPs) enabling them to have proper interconnection with other service providers and at the same time ensure QoS to the end customer. The other is to regulate OTT services through a self-regulatory framework. The draft Telecommunication Bill, 2022 proposes that OTT telecommunication services may be subject to the same licensing conditions as TSPs. Under the extant framework, TSPs have to be issued the Unified Access Service Licence (UASL) for them to be able to provide telecom services in India. We also recommend the same unified regulation for Amazon, Netflix, Disney Hotstar, Zee5, Sony Liv, Jio Cinema 3rd party OTT services for linear channel to be telecast under the DAS regime and OTT providers must follow the same rules as for CATV system, Live Tv should be same price for OTT platform as well as Cable Tv platform.

All the OTT platforms operating in Indian networks or which are accessible in India must place their total technical systems such as servers and other accessories required to operate and control the service must be put in Indian territory under Indian jurisdiction to be eligible to make their services operational in India.

i) The Telecom Regulatory Authority of India (TRAI) has been considering the regulation of OTT services in India since 2015. According to TRAI, the aim of OTT regulation should be to restore regulatory balance. TRAI considered two possibilities: Licensing OTT service providers as communications service providers (CSPs) enabling them to have proper interconnection with other service providers and at the same time ensure QoS to the end customer. In 2018, TRAI issued a consultation paper on the residual issue, i.e., Regulatory Framework for Over-the-top (OTT) communication services, and raised various issues for comments and counter-comments from stakeholders. The draft Telecommunication Bill, 2022 proposes that OTT telecommunication services may be subject to the same licensing conditions as TSPs. Under the current framework, TSPs have to be issued the Unified Access Service Licence (UASL) for them

2015, but has not made any final recommendations or regulations. However, one of the recommendations made by TRAI is to license OTT service providers as communications service providers (CSPs) enabling them to have proper interconnection with other service providers and at the same time ensure QoS to the end customer. We strongly recommend privacy and security suggestive rules in India, the licensing/regulatory framework(s) for OTT Communication services should have provisions for the following aspects:

- 1) Data protection.
- 2) Privacy Security of networks and systems.
- 3) Lawful Interception and monitoring of communications and access to data.
- 4) Consumer protection.

C) OTT stands for Over-The-Top. It bypasses the traditional operator's network to deliver audio, video, and other media over the Internet. They do not have any technology affiliations with network operators for providing such services. As per the TRAI consultation paper on "Regulatory Framework for Over-the-top (OTT) communication Services" dated 12th November 2018, the following are the various classes of OTT communication services:

Messaging Services

Voice Call Services

Video Call Services

Audio Streaming Services

Video Streaming Services

The consultation paper also mentions that the regulatory framework for OTT communication services should be designed in such a way that it does not hamper innovation and growth of the sector. It should also ensure that there is no discrimination between TSPs and OTT service providers. Regarding emergency services, OTT communication services should be required to provide access to emergency services. The regulatory framework should also ensure that OTT communication services are interoperable with emergency services provided by TSPs.

d) As of now, there is no specific regulatory framework for OTT communication services in India. The Telecom Regulatory Authority of India (TRAI) has issued several consultation papers on this issue since 2015, but has not made any final recommendations or regulations. However, TRAI has considered two possibilities: Licensing OTT service providers as communications service providers (CSPs) enabling them to have proper interconnection with other service providers and at the same time ensure QoS to the end customer. We are not sure about the provisions in the licensing/ regulatory framework(s) for OTT Communication services in respect of the following aspects for unsolicited commercial communication recommended policy proposal in India. We strongly urge to the TRAI to implement "unsolicited commercial communication control policy proposal in India"

e) The Telecom Regulatory Authority of India (TRAI) has considered two possibilities for regulating OTT services in India. One is licensing OTT service providers as communications service providers (CSPs)