



CENTRE FOR COMMUNICATION GOVERNANCE AT NATIONAL LAW UNIVERSITY, DELHI

BRIEF COMMENTS ON THE CONSULTATION PAPER ON REGULATORY FRAMEWORK FOR OVER-THE-TOP (OTT) COMMUNICATION SERVICES

We welcome the opportunity to comment on the Telecom Regulatory Authority of India's Consultation Paper. The policy discussions on issues surrounding network neutrality have been ongoing for over three years. We acknowledge and thank TRAI for its efforts on examining various issues relating to net neutrality and for outlining its core principles, and as a result India taking a lead position in the world for an open and non-discriminatory Internet.

We affirm the necessity of extending Internet access to the entire population in the interests of diversity of content and viewership. However, as recognized by the Indian Government at various global forums¹, we believe that the Internet is a public access good. It is a universal platform made possible by the usage of spectrum and the right to way facilitated by government, and can therefore only be used for the purpose of furthering general public good, and must exclude any commercial considerations, including private interests in deciding upon its usage. Spectrum, a national resource, is owned by the

¹ Government of India's initial submission to Global Multistakeholder Meeting on the Future of Internet Governance ¶ 1 (April 23-24, 2014), available at <http://content.netmundial.br/files/138.pdf>; Statement by Mr. Santosh Jha, Director General, Ministry of External Affairs, at the First Session of the Review by the UN General Assembly on the implementation of the outcomes of the World Summit on Information Society in New York, ¶ 8 (July 1, 2015), available at: [https://www.pminewyork.org/adminpart/uploadpdf/74416WSISstmtnt on July 1, 2015.pdf](https://www.pminewyork.org/adminpart/uploadpdf/74416WSISstmtnt%20on%20July%201,%202015.pdf).

people of India, and managed under the stewardship of the government. Therefore, we believe that no entity other than the people of India can be allowed to influence decisions on its usage and management.

The current consultation paper at different places discusses regulating certain OTTs as one of the options. Our current comments are restricted to only this specific issue, and we hope to file detailed counter comments.

As we have repeatedly pointed out in our submissions and comments to the authority, currently there is no basis for implementing a licensing regime for OTT services. We would again like to highlight that several kinds of online content providers would not fall within the scope of the Telegraph Act, and the statute, as it currently exists cannot therefore be used to create a licensing regime to regulate them.

All the regulatory power emerging from the Telegraph Act, 1885 pertains to the licensing and regulation of telegraphs in India. Section 4 of the Indian Telegraph Act provides the Central government with a power to license telegraphs (which include telecommunication services) in India. Section 3(1)(AA) of the Indian Telegraph Act defines 'Telegraph' as "telephone or any other instrument, appliance, material or apparatus used or capable of use for transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature by wire, visual or other electromagnetic emissions, radio waves or Hertzian waves, galvanic, electric optical or magnetic means." Therefore the statute cannot be used to regulate online content that does not emerge from such a telegraph. This is what distinguishes online content from the Value Added Services (VAS) provided by telecommunications companies – the latter are provided by Indian telegraphs and can therefore be regulated.