

महानगर टेलीफोन निगम लि०

(भारत सरकार का उद्यम)

Mahanagar Telephone Nigam Ltd.

(A Government of India Enterprise)

CIN: L32101DL1986GOI023501



MTNL/RA/TRAI CP on OTT Comm. Services/2018
Dated 07.01.2019

To,

The Advisor (QoS)
TRAI, New Delhi

Sub. : TRAI Consultation dated 12.11.2018 on "Regulatory Framework for Over-the-top communication services".

TRAI issued a consultation paper on 12.11.2018 on the aforesaid subject and asked the various stakeholders to comment on the issues involved in the consultation paper. In this reference the following comments are submitted for consideration:

Q. 1. 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.

MTNL COMMENTS: All the communication services, for which incumbent TSPs have been authorized under their licenses should be considered for the purpose. On the least, the services which are the main revenue source of operators should be regarded as the same or similar to service(s) being provided by the TSPs. For this purpose, Voice over IP (VoIP) for voice calling and video chatting services, Instant Messaging services (chat applications eg. Whatsapp, Facebook Messenger etc.) and Video and Audio Streaming services may be considered. The OTT services comparable to the services of TSPs are as follows:

Services provided by OTT players	Services being provided by TSPs
Voice over IP (VoIP) for voice calling	Regular Voice calls

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आप हमारे साथ हिन्दी में भी पत्राचार कर सकते हैं।

Video chatting services	Video Calls
Instant Messaging services	SMS /MMS service
Video and Audio Streaming services	IPTV services

Q. 2. 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.

MTNL COMMENTS: TRAI should not limit the scope of consideration vide the term “Substitutability”, and all the communication services authorized to TSPs under their license should be considered under the present context.

Further, the “Substitutability” should not be considered as prime criterion for comparison as in case of TSPs huge investment is required to roll out a network as compared to investment required for development of OTT application for similar service.

However, even if “substitutability” be treated as the primary criterion for comparison of regulatory or licensing norms applicable to TSPs and OTT service providers, Considering the security aspect of the user / mobile network / Nation, it is of utmost importance that all the OTT players running their applications over a TSPs network in the country should be brought under the ambit of license and regulation.

Q. 3. 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.

MTNL COMMENTS: Since the advent of OTT communication services, the revenue of TSPs in those segments has been significantly decreased. Besides, the increase in data traffic due to use of such OTT services by customers of TSPs, capital requirements for capacity expansions and technology up gradations to support required speed and volume of data usage is required. It is another relevant fact that the data tariffs have got remarkably reduced for reason of matching the predatory pricing by some TSPs, thereby effecting negative returns on investments by TSPs in their networks.

Undoubtedly, there exists an imbalance in the regulatory environment qua the operation of OTT players. India is a big market and in the absence of regulatory provisions i.r.o. OTT applications / service provisioning / Pricing etc, different measures / strategies are being followed by Indian TSPs to manage the business challenges being imposed by OTT players. Considering the volume of traffic generated within the country due to these OTT applications / services, they should be considered as significant players, not only affecting business of authorized TSPs but affecting the subscribers interest also. The Govt. therefore, should formulate guidelines protecting and balancing the interest of all stakeholders. The OTT players offering their services to Indian Telecom users utilizing Indian TSPs networks may be made to follow the regulations / Laws being made by the Govt. for their operation in the country to create a level playing field in communication services market.

Though the customer is already paying for the usage of mobile data as per their subscribed plan, however, OTT players are not paying anything neither to any authority nor to any TSP for interconnection & carriage of the traffic despite huge revenue being earned by them through advertisement, subscription charges, bundling with Handset manufacturers, in-app purchases & selling certain features through users license. OTT players should pay for use of the TSPs network over and above data charges paid by consumers. The applicable charges may be based on bandwidth consumption by the OTT application / Services without any product / service differentiation. In order to give headway & put no obstacles to start up, Bandwidth usage upto certain limit can be provided free by TSP , while OTT applications which are in demand , it is essential to have a revenue share mode to compensate infrastructure cost , spectrum fee, license fee and other corporate taxes borne by TSP. But, to effect any such provisions and have revenue sharing arrangements with TSPs, the OTTSPs are required to registered and be put under regulatory/licensing provisions.

Q. 4. 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.

MTNL COMMENTS: Though there could be enormous benefits of inter-operability among OTT services and also inter-operability of their services with TSPs services, which may be in all dimensions including:

1. device/OS interoperability (BBM, iMessage).
2. Application interoperability (Whatsapp, Viber).
3. Interoperability among feature phones and non-IP-based devices.

But the inter-operability will be beneficial only for new operators using IP based network technology.

Q. 5. 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.

MTNL COMMENTS: To address the security concerns with regard to OTT players providing communication services, they must be brought into licensing regime wherein following provisions may be made:

- a) Real time content monitoring by LEA's for the traffic moving in & out of India.
- b) The OTT players should also comply with the security conditions complied by a TSP.
- c) In view of huge volume of data traffic / consumption in India, OTT players must be asked to put their contents / Servers in India for Incoming & Outgoing traffic to /from India.
- d) Maintain and share on demand, data records /logs of communications, to be preserved for certain defined period.
- e) Maintain and share the address books of adversaries on court orders.
- f) OTTs may be required to share the decoded and readable content to LEAs in real time as in the past government/LEAs have been struggling in getting the decoded content.

Further, the responsibilities of OTTSP & TSP shall be clearly distinguished as per their role in service provisioning.

Q. 6. 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.

MTNL COMMENTS: All TSPs are required to provide independently or through mutually agreed commercial arrangements with other TSPs all public utility services as well as emergency services, at the terms of agreements among TSPs for such services. Nowadays, many customers use OTT platforms regularly. It will be better if provision is made for emergency services to be made accessible via OTT platforms at par with the requirements prescribed for telecom service providers, at the same commercial terms prevailing among TSPs.

Q. 7. 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.

MTNL COMMENTS: Same as in Q.3 above.

Further, In case of Voice Over Internet Protocol (VoIP) OTT communication services, there exists a regulatory arbitrage, wherein such services also bypass the existing licensing and regulatory regime, thereby creating a non-level playing field between TSPs and OTT providers both competing for the same service provision. This aspect is under deliberation in other countries as well. Hence, regulatory or licensing norms should be made applicable to OTT service providers to make it a level playing field.

Q. 8. 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.

MTNL COMMENTS: Though the services provided by TSPs and OTTSPs are similar communication services, however the service area for OTTSP being not limited to the country, the same can't be equated at par in many aspects.

However, for service provisioning within national jurisdiction, it is suggested that both entities should be treated at par in terms of regulatory/licensing provisions pertaining to privacy/security issues. However, issues related to QoS, revenue sharing, and other commercial issues should be left over to be decided by market forces.

Q. 9. Are there any other issues that you would like to bring to the attention of the Authority?

MTNL COMMENTS: No


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