Response to Telecom Regulatory Authority of India's Consultation Paper on 'Review of Terms and Conditions for registration of Other Service Providers (OSPs)'

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1. Introduction

1.1 Microsoft Corporation (India) Private Limited ("**Microsoft**"/ "**we**/ "**our**"/ "**us**") would like to congratulate Telecom Regulatory Authority of India ("**TRAI**") for drawing up an extremely comprehensive consultation paper on '*Review of Terms and Conditions for registration of Other Service Providers (OSPs)*' ("**CP**"). We have read the CP with great interest and are grateful for being provided an opportunity to present views in respect of multiple issues that plague the legal and regulatory framework relating to '*other service providers*' ("**OSP**") in India, by way of this much awaited and needed consultation process.

1.2 **Origin of the '*other service provider*'("*OSP*") regime and changes in regulatory landscape in India**

1.2.1 The Department of Telecommunications, Government of India ("**DoT**") introduced a category of registration known as '*other service provider*' or OSP in the year 2000 pursuant to the New Telecom Policy, 1999 ("**NTP 1999**"), which spoke of a specific registration for entities that provide services such as call centres, business process outsourcing ("**BPO**") and information technology enabled services ("**ITeS**").

1.2.2 We understand that the object of this registration was primarily three fold, viz. (a) to maintain a statistical record of the number of OSPs, (b) to ensure that OSPs do not infringe on the jurisdiction of licensed telecommunication service providers ("**TSP**") that have been granted a license under Section 4 of the Indian Telegraph Act, 1885 ("**Telegraph Act**") by the DoT, and (c) to provide special dispensation to the sector[1]. However, such a registration requirement in is non-existent in most other countries and in many ways is unique to India only.

1.2.3 While we understand that a record of OSPs is necessary to be maintained for statistical purposes, the DoT has not shed any light on what it means that OSPs should not infringe the jurisdiction of licensed TSPs in India. It is not clear whether this refers to toll by-pass or concerns relating to security, viz. monitoring and interception of traffic, or anything else that DoT has in mind. In our view, this should be clearly spelt out because most of the provisions in the *'terms and conditions – Other Service Provider Category'* dated 5 August 2008 (as amended) ("**OSP Guidelines**") are not in sync with these requirements and go much beyond the requirements. Further, as far as the objective of providing special dispensation is concerned, we humbly submit that hardly any dispensation or benefit has trickled down to OSPs, compared to non-OSPs due to OSP Guidelines.

1.2.4 At the time, when the OSP regime was first introduced, public switched telephone network ("**PSTN**") services were extremely expensive and toll by pass was a significant concern for DoT and TSPs. However, nearly two decades later, the

[1] See office memorandum issued by the DoT on 2 June 2008 ("**OM**")

scenario has drastically changed – telecom tariffs have bottomed down and toll by-pass concerns have subsided to a great extent. '*Voice over internet protocol*' ("**VoIP**") is now an acceptable and widely used medium of communication. We would like to clarify that we are not advocating that there should not be any checks and balances on toll by-pass considering the present regulatory regime, but only suggesting that the checks and regulations should be commensurate with the present-day world requirements and not go overboard. In our view, the present OSP Guidelines need a major re-work to suit the requirements of today's world.

1.2.5 In many ways, OSP Guidelines limit adoption/ implementation of new technological solutions because of the way that they are structured. As a result, over the course of time, the legal and regulatory regime relating to OSPs has acquired a draconian character and has lost track of one of the primary purposes why this category of registration was introduced in the first place, i.e. to provide dispensation to the sector (refer to paragraph 1.2.2 above).

1.2.6 The OSP Guidelines have failed to keep up with changing trends in the industry. These terms and conditions have resulted in hurdles for the adoption of new age technologies, which are instrumental in achieving efficiency, both in terms of technology and cost. On the other hand, other countries, such as Philippines, have a comparatively liberal approach to regulation which is causing several companies to consider shifting their operations out of India.

1.3 **Impact on Microsoft**

1.3.1 The legal and regulatory framework relating to OSPs impacts Microsoft in more ways than one, due to the multiple roles it plays in the ecosystem relating to OSPs. Microsoft is an OSP itself, owing to its expansive customer support presence and research and development setup in India. However, it also plays a major role as a technology provider to other OSPs, where it provides cutting edge solutions for facilitating operations. Since it wears many hats, Microsoft is in a position to appreciate the myriad challenges and obstacles faced by OSPs as well as technology providers and original equipment manufacturers ("**OEM**") because of the terms and conditions relating to OSPs.

1.3.2 In the past decade, the world has witnessed superlative innovation in the information technology and communications sector. As also noted by TRAI in the CP, companies have discontinued use of physical infrastructure and have adopted cloud-based means to run their operations, which have proved to be efficient in many ways. Microsoft is at the forefront of developing new age, cloud-based solutions that have considerably decreased the dependency on on-premises equipment and have allowed enterprises to minimise costs and centralise their operations. Such solutions are slated to transform the way business is conducted in the future. However, due

to limitations in the existing framework pertaining to OSPs, many such solutions are incapable of being implemented and used to their maximum potential.

1.3.3 As a part of this response, we aim to highlight some of the pitfalls in the extant legal and regulatory framework relating to OSPs. In doing so, we have (a) highlighted the importance of OSPs for India (refer to paragraph 2 below), (b) set out our general observations on the present legal and regulatory framework pertaining to OSPs (refer to paragraph 3 below) and (c) discussed why the present regulatory approach requires a thorough reconsideration going forward (refer to paragraph 4 below). Lastly, we have provided responses to the issues for consultation raised by TRAI (refer to paragraph 5 below). We sincerely hope that TRAI will take note of our concerns as well as our suggestions/ feedback to overcome these challenges and provide suitable recommendation to DoT which will help flourish IT/ITeS business in India.

1.4 Summary of Microsoft's proposed changes to the OSP framework

1.4.1 Presently, the legal and regulatory framework relating to OSPs has reached a tipping point where it is overly complex and tending towards micro-management. In our view, this is mainly because DoT has formulated, on a piecemeal basis, a rather granular framework, which aims to cater to every possible permutation and combination rather than creating a framework with overarching Principles (refer to paragraph 1.4.3 below) and then permitting the industry to flourish so long as those Principles are not thwarted. Thus, Microsoft respectfully suggests an entirely new framework.

1.4.2 Ideally speaking, we believe that the requirement to obtain an OSP registration for an entity providing Application Services, must undergo a reconsideration. In our view, a written intimation to DoT by companies engaged in providing Application Services should suffice as that would ensure that a statistical record is maintained. It must be noted that BPOs and other ITeS companies are simply *users* of telecom resources, just like any other company or household in India. There are several other entities which consume significant telecom resources provided by licensed TSPs in India and therefore, there is no justification for singling out OSPs and imposing registration requirements only on such entities. As noted above, this approach would enable the government to effectively gather and track statistics on this critical industry in India, while simultaneously eliminating the barriers and complexity of the current OSP system and thereby enhancing the BPO industry in India. Moreover, all security, privacy and other similar concerns can be addressed through the regulation of telecom services in the regular course, i.e. just as they are ensured when telecom services are used by any other entity or person in India. In other words, the role of TSPs that provide such telecom resources, should become more prominent and DoT can adopt a relatively more '*hands-off*' approach.

1.4.3 However, in case in it may not be entirely possible to dispense with the OSP regime altogether, as an alternative to the approach described in paragraph 1.4.2 above, Microsoft suggests that the current legal and regulatory framework relating to OSPs requires a substantial overhaul to eliminate complexities and facilitate a BPO/ITeS industry that will continue to grow and flourish in India. To create a simpler and more flexible system, we humbly suggest that three high-level principles ("**Principles**") are prescribed by DoT. So long as a particular activity or technology does not conflict with these three Principles, it should be permitted. In other words, the role of DoT should be confined to defining these Principles and the OSP should have discretion to ensure compliance with these Principles. The TSP that provides telecom resources at the OSP centre can test whether these Principles are being complied by the OSP, just as it does with respect to any other user of telecom resources, thereby minimising the role played by DoT currently.

1.5 **OSP Principles**

1.5.1 Without prejudice to our observations in paragraph 1.4.2 above, in our view, the new OSP framework (refer to paragraph 1.4.3 above), if retained, should be based on the following Principles:

(a) **Principle 1:** *To ensure a healthy and growing BPO business sector India*: Promote OSP use of cost effective and efficient communications capabilities that leverage cutting-edge technologies, including cloud-based services, within the permitted regulatory framework in India.

(b) **Principle 2:** *To protect the operations of licensed TSPs*: Ensure that OSP registrants are not using regulated communications capabilities provided by non-licensed TSPs/ service providers, and ensure that OSPs are not using technologies that enable prohibited toll bypass (while making it clear that Internet Telephony (refer to paragraph 3.2.1 (b) below) use is not an example of prohibited domestic toll bypass), to the extent the DoT believes that preventing toll bypass continues to be a legitimate objective in the first place.

(c) **Principle 3:** *Enabling verification of compliance with Principle 2*: Enable DoT/TERM Cells with flexible approaches to testing, monitoring and overseeing compliance with the new OSP framework, which is predominantly based on Principle 2.

1.6 **Further Key Changes and Clarifications**

1.6.1 Microsoft humbly proposes that the following amendments / clarifications are issued in respect of the OSP Guidelines:

(a) All references or requirements with respect to the physical location of an EAPBX (or other related "*equipment*") should be eliminated (refer to paragraph 3.2.1 (a) (vii) below). In 2019 and beyond, as companies across the globe move to services that are enabled by software in the cloud, any such reference is anarchic and detrimental to the growth of the BPO industry in India.

(b) The concept of "*monitoring*" should be modified from one that requires physical inspection or audit of equipment to one that needs nothing more than monitoring or testing of a service, including inspection of CDRs and other records that an OSP may be required to retain (refer to paragraph 5.20.2 and 5.20.3 below).

(c) OSP registrants should be specifically permitted to use Internet Telephony just as non-OSP users are permitted to do today (refer to paragraphs 3.2.1 (d) (iii) and (iv) below).

(d) The restrictions that cripple the use of a company's CUG for OSP and non-OSP activities should be removed (refer to paragraph 3.2.1 (e), 5.23.1 and 5.23.2 below). So long as a company is not flouting the Principles outlined in paragraph 4.4 below, use of the company's CUG must be enabled to ensure the first principle stated above is achieved.

(e) The site-by-site OSP registration requirement should be removed. It is unnecessarily expensive and complicated. A single registration, listing all sites so each relevant TERM Cell can appropriately oversee the site's compliance, is sufficient for achieving all of the Principles outlined herein (refer to paragraphs 3.2.2 (a) and 5.6.2 below).

2. Importance of ITeS sector in India and reason for urgent action

2.1 The importance of the BPO and ITeS sector in India cannot be undermined. India and its economy have grown rapidly over a short period of time to become a leading provider of outsourcing services at a global scale.

2.2 India presents itself as an attractive outsourcing destination based on a variety of factors, which include an abundant English-speaking work force having basic computer skills and low costs of establishment and operation. Leading corporations have set up their back offices in India, which has not only brought cost-efficiencies to them, it has also led to an exchange of knowhow and technical knowledge between India and that country.

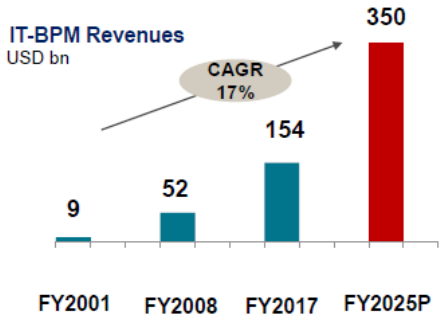


Figure 1 Revenue generated in the IT-BPM

2.3 The National Association of Software and Solution Companies ("**NASSCOM**") has projected a growth rate of around 9 per cent for the IT/BPO industry in 2018-19 in the country, as against 7.8 per cent in 2017-18.[2] India holds a very high market share in the global services outsourcing industry, which currently stands at approximately 56%.[3] According to India Brand Equity Foundation ("**IBEF**"), India accounts for 75 percent of the world's "*digital talent*", leading it to become the "*digital capabilities hub of the world*". Reports published by NASSCOM also suggest that revenues in the IT-BPM are estimated to grow to USD 350 Billion in the forthcoming years *(refer to figure 1)*.

2.4 According to reports published by NASSCOM, the IT-BPM sector provides direct employment to an estimated 3.9 million people *(refer to figure 2)*, which is expected to steadily rise to around 7 million by 2025.

2.5 Based on the above, it is safe to conclude that the OSP sector is a significant source of all-round employment and revenue generation for India.

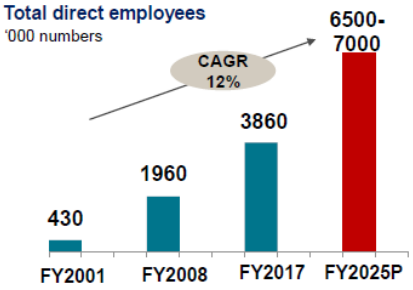


Figure 2 Total direct employment in the IT-BPM sector

2.6 In effect, the terms and conditions under the OSP Guidelines impose more restrictions on OSPs rather than creating an environment for them to thrive, leave aside any special dispensation for the sector, which was the objective. In many ways, OSPs are placed at a disadvantage when compared to other entities (i.e. non-OSPs) or even those setups that have not obtained OSP registration despite being engaged in rendition of '*Application Services*'.

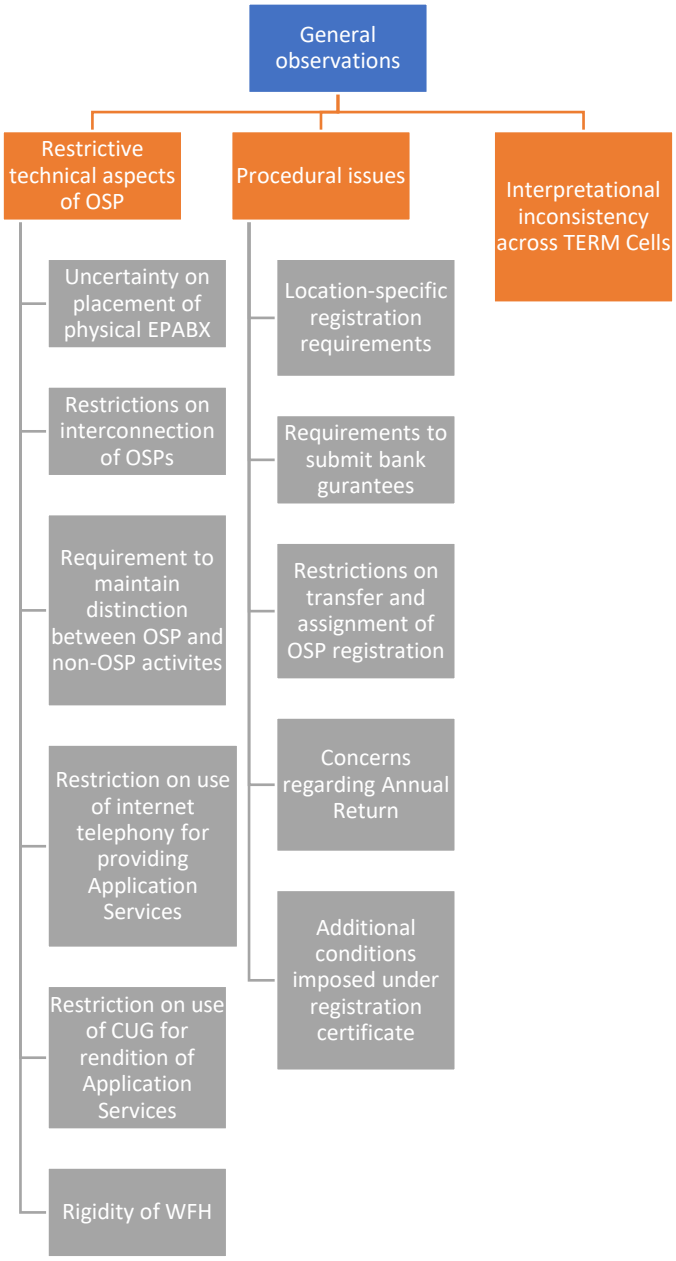
[2] See https://www.thehindubusinessline.com/info-tech/nasscom-pegs-growth-for-2018-19-at-7-9/article22804578.ece

[3] See https://www.ibef.org/download/IT-and-ITeS-March-2017.pdf

3. General observations

3.1 The present legal and regulatory regime relating to OSPs is not only exhaustive, but also exhausting for OSPs. Importantly, it is laced with provisions that have failed to keep pace with time. These provisions have in many ways, created barriers to adoption of new technologies and the ability of multinational companies to leverage their global infrastructure. In addition to the above, there are a host of challenges from a practical standpoint, that have added complexities to the OSP regime.

3.2 We endeavour to identify various concern areas and highlight the roadblocks and challenges that emanate from them. We have compartmentalized these concern areas into 3 broad categories, which are elaborated below:



3.2.1 **Restrictive technical aspects of OSP**

(a) Uncertainty on placement of physical Electronic Private Automatic Branch Exchange ("***EPABX***")

(i) The OSP Guidelines do not clearly specify the location of EPABX but state that unhindered access is required by DoT for checking and conducting tests on call manager/ EPABX. Based on such stipulations in the OSP Guidelines, Telecom Enforcement Resource and Monitoring cells of DoT ("**TERM Cells**") insist that a physical EPABX be placed at the OSP centre. It appears that this aids in carrying out inspections and tests to *inter alia* ensure that all routing restrictions, logical separation, tracing requirements are properly followed/implemented and details such as call detail records ("**CDR**"), usage data records ("**UDR**"), system logs ("**System Logs**"), etc. are available for a period of one (1) year.

(ii) Some TERM Cells have taken a pragmatic view where in case of only an *'International OSP*' ("**International OSP**")[4], they permit deployment of an EPABX outside India on a provisional/ temporary basis, as long as there is a receiver to obtain CDR and UDR on a '*real time basis*' at the OSP centre in India. However, such exemptions are few and far between and mostly constitute a divergence from the norm.

(iii) As a part of this CP, we note that TRAI has also acknowledged that OSPs can outsource the EPABX on a sharing basis in order to "*avail benefits of advancement in technology at economical cost*" at '*Hosted Contract Centres*' (refer to paragraphs 3.7 (e) and 3.8 of CP). Further, TRAI has noted that "*in a hosted PABX model the business simply connects IP phones, desktop and/or mobile soft phones to their network, which then connects via IP to the hosted provider who delivers all of the PABX features directly to the business from the cloud*" (refer to paragraph 3.9 of the CP) and referred to it as a "*virtual phone PABX system*" or "*Hosted PABX*" (refer to paragraph 3.11 of the CP).

[4] The OSP Guidelines envisage two types of OSP registrations, viz. '*Domestic OSP*' ("**Domestic OSP**") and International OSP. As the names suggest, Domestic OSP is required to be obtained where Application Services are provided to customers within the national boundary of India whereas International OSP is necessary where customers are located beyond the national boundary of India, i.e. in foreign countries.

(iv) Also, in a study paper[5] published by Telecommunications Engineering Centre ("**TEC**"), it has distinguished between various types of EPABX like traditional EPABX and cloud-based EPABX. Importantly, TEC has acknowledged cloud based EPABX systems and referred to them as '*hosted*' or '*virtual*' EPABX. Further, it states that with a hosted EPABX, the advanced functionalities of a traditional EPABX system are provided to the user through a hosted server.

(v) Therefore, in 2019 and beyond, the OSP guidelines should not address the physical location of the EPABX. Cloud based EPABX are within the contemplation of both TRAI and TEC, even though they are far from implementation on the ground. Many companies now offer cloud-based phone systems, or EPABX functionality. One such innovation is Microsoft's cloud-based phone system ("**CBPS**"), known as '*TEAMS'*. The functionality of CBPS is such that it permits enterprise customers of Microsoft to connect to an EPABX in the cloud. The CBPS provides traditional EPABX functionalities like auto attend (e.g. '*press 1 for existing reservation*', '*2 for new reservations*' etc.), call forwarding, call hold and call transfer; as well as some additional advanced features such as presence indicator (e.g. user is '*busy*', '*away*' or '*free*') and VoIP to VoIP calling within the customer's offices at various locations.

(vi) To connect to the CBPS, the customer uses telecom resources obtained from a TSP and an application developed by Microsoft, which is installed on her/ his laptop/IP phone/mobile phone/tablet. The predominant object of CBPS is to facilitate nomadic workforce so that they can connect to the CBPS, whether at home, at work, at a coffee shop. As a result, workers are not confined to the precincts of their office and can effectively work from any location that they wish. On the other hand, it is a cost-effective system for the employers also.

(vii) Therefore, it is imperative that the TERM Cells uniformly understand that OSP Guidelines do not specify – and should not specify -- the location of the OSP registrant's EPABX. There is no need to place any such restriction on the physical placement of the EPABX, particularly in today's marketplace where more efficient and effective tools can be obtained via the cloud. Moreover, there is no reason to require the site of the EPABX to, itself, be an OSP centre with an OSP registration. Such a requirement merely complicates doing business in India without any counter-balancing benefit.

(b) <u>Restrictions on interconnection of OSPs</u>

[5] Study Paper titled '*Communication Services in the Cloud Computing Environment*'

(i) Currently, the provisions of the OSP Guidelines place a host of restrictions on the interconnection of OSP centres. Domestic OSP centres are only allowed to interconnect with (A) Domestic OSP centres of the same entity or a group company of the entity, (B) a hotsite ("**Hotsite**")[6], (C) its '*point of presence*'("**PoP**")[7], (D) data centre of the client or (E) the EPABX placed at a centralised location[8]. Similarly, International OSP centres cannot interconnect with any other location except (A) an International OSP centre belonging to the same entity or its group company, (B) a Hotsite, (C) its PoP, (D) data centre of the client or (E) the EPABX placed at a centralised location. To make matters more complex, there is an absolute restriction on the interconnection between a Domestic OSP and International OSP.

(ii) These restrictions are not very relevant in the present-day scenario, where non-OSP locations of companies can interconnect to each other without any fetters. In our view, these restrictions have far-reaching ramifications as enumerated below:

(A) *Inability to leverage common telecom resources:* If an entity has a Domestic OSP centre and an International OSP centre at the same location, it is required to procure separate telecom resources for each setup and incur additional financial expenditure in doing so. Although there is a provision to share telecom resources under Option 2 for '*sharing of infrastructure*'[9] (limited to sharing of operator positions and EPABX only), there are additional requirements in the form of furnishing bank guarantees of inordinately high amounts. Taking separate telecom resources also results in very high operating costs for OSP centres. All of these costs and restrictions are imposed

[6] Under the OSP Guidelines, a Hotsite is a standby OSP centre of the same entity (i.e. who is registered as an OSP) that is ready to take on operations in the event of a disaster or failure.

[7] According to the OSP Guidelines, a PoP is the "*location where OSP places equipment to act as an extension of OSP Centre for collecting and carrying the telecom traffic related to Application Services*".

[8] Notably, as an extension of Option 2 (refer to foot note 9 below), the OSP Guidelines also envisage a model where the EPABX is placed physically at any centralized location (i.e. outside the OSP Centre) and it can be shared by OSP centres. This is referred as '*centralized or distributed architecture of PBX*' ("**Centralised EPABX Model**").

[9] OSP Guidelines sets out terms and conditions for sharing of infrastructure between an international OSP and domestic OSP centre. The sharing of infrastructure entails sharing of common agents between domestic and international OSP ("**Option 1**") and sharing of EPABX or call manager ("**Option 2**"). Distributed or Centralised EPABX architecture in which EPABX is deployed at central location and media gateways ("**Media Gateway**") at individual OSP centres is also an extension of Option 2. Further, non-OSP centre is permitted to share an EPABX with OSP entity Under Option 2 provided the logical partitioning is configured in the EPABX.

for no apparent reason – certainly none that appears to promote the DoT's OSP framework Principles.

(B) *Hindrance in effective adoption of Centralised EPABX Model:* Under the Centralised EPABX Model (refer to foot note 9), an OSP is permitted to make use of distributed architecture and share an EPABX placed at a centralised location ("**Centralised EPABX**") between OSP centres of the same entity or its group company. However, practically speaking, in many cases the EPABX is hosted at a third party location (such as a data centre) or another office location of the OSP which is not registered as an OSP centre. As such, due to the restriction on interconnection with a non-OSP centre (refer to paragraph 3.2.1 (b) (i) above), the adoption of the Centralised EPABX Model is hindered even though the same is expressly permitted under the OSP Guidelines. Many TERM Cells insist that the location where the Centralised EPABX is hosted should also be registered as an OSP centre due to this reason, however the same may not be in line with the OSP Guidelines since no Application Services are being provided there and no employees/ agents are working from such location.

(C) *Inability to use value added services ("**VAS**") like interactive voice response systems ("**IVRS**") to improve efficiency:* For the reason outlined above in paragraph 3.2.1 (b) (i) above, the use of VAS like IVRS systems is also hampered considering that such systems are also sometimes hosted at third party locations. Such systems are designed to make the process efficient and convenient for both the client and the OSP, however they are unable to use them due to these restrictions on interconnection.

(D) *Inability to connect to its own data centre*: One of the most glaring and ironic aspect is that due to these restrictions, an OSP is also unable to connect to its own data centre, as the same does not fall under any of the permitted interconnection set out in paragraph 3.2.1 (b) (i) above. This is a clear indication of the imbalance between OSP and non-OSP entities when it comes to interconnecting various office locations and the grave inconvenience faced by businesses.

(c) Requirement to maintain distinction between OSP and non-OSP activities

(i) The OSP Guidelines permit sharing of telecom bandwidth between OSP and other activities of the same company or its group companies. However, in such a case it is required to ensure logical separation between the telecom resources for OSP and telecom resources for '*other activities*' which we understand refers to non-OSP related activities.

(ii) Additionally, it is required to ensure that there is no voice or non-voice (i.e. data) traffic flow between OSP and non-OSP activities.

(iii) Fundamentally, it is not clear under OSP Guidelines as to how same telecom resources are expected to be logically separated. We have endeavoured to shed light into this rather perilous provision by way of an example. Consider a situation where an entity has procured an internet circuit from a TSP for internet browsing purposes, which can also be used for its OSP purposes as well as non-OSP activities. There is no provision or guidance which explains the technical steps in achieving logical separation between OSP and non-OSP for use of internet. If a company ends up using same internet circuit for both OSP and non-OSP purposes, will it lead to breach of OSP Guidelines? More importantly, what is the purpose of having to separate these resources? What harm is being addressed? Due to lack of clarity, generally separate circuits/telecom resources are procured for OSP purposes and non-OSP purposes, which requires significant financial investment.

(d) Restriction on use of internet and internet telephony ("***Internet Telephony***") for providing Application Services

(i) Based on a joint reading of the standard format of undertakings that OSPs are required to execute and terms and conditions set out in the registration certificate granted by DoT, it appears that internet cannot be used for inbound voice calls at an OSP centre and it can be conditionally permitted to be used for outbound calls subject to purchase of VoIP minutes or Internet Telephony from a TSP. The use of Internet Telephony is restricted inasmuch as outbound calls can only be made upon purchasing VoIP minutes (i.e. the Internet Telephony service) from a TSP. As far incoming calls are concerned, there is a complete restriction on inbound calling facility using public internet.

(ii) However, it is important to mention that this condition/ restriction does not expressly form part of the OSP Guidelines. Nevertheless, most TERM Cells are of the view that any connectivity based on public internet cannot be permitted for inbound calling facility. This mindset has hindered the adoption of several new age, cost sensitive modes of connectivity such as software-defined wide area network ("**SDWAN**"), IP-secured virtual private network ("**IPsec VPN**"), etc.

(iii) It is important to note that DoT adopted TRAI's Recommendations on Regulatory Framework for Internet Telephony ("**IT Recommendations**") in June 2018 by issuing a clarification that as a service, Internet Telephony is

untethered from the underlying access network. Internet Telephony refers to "*the carriage of voice signals using public internet*" in contrast to transmission over private network, such as MPLS or IPLC. With the issuance of IT Recommendations by TRAI, there is significant impetus for adoption of Internet Telephony as a service. The DoT has facilitated this adoption by introducing relevant amendments in the licenses granted by it.

(iv) Arguably, this restriction is bereft of any logical basis considering that any entity that is not registered as an OSP is able to use such technologies. Therefore, OSPs are in fact being placed in a comparatively disadvantageous position for no justifiable reason. Most TERM Cells have indicated that this is primarily for security concerns. However, this reasoning is not entirely sustainable in our view. The matter is aggravated further by the fact that there are various OTT service providers that are providing similar services, especially without holding any licenses granted by the DoT.

(e) Restriction on use of closed user group ("***CUG***") for rendition of Application Services

(i) According to the OSP Guidelines, the use of CUG is only permitted for internal communication (subject to certain terms and conditions) but not for rendition of Application Services. This is another draconian provision in the existing OSP Guidelines that has failed to keep up with changing trends.

(ii) In many cases, the parent company or group company of an OSP can also be its client. In scenarios where an OSP centre is used for '*captive'* purposes such as back-office operations and support, the communication between an OSP and its parent/ group entity is likely to be for a continuous basis. It is also commonplace that all subsidiaries of an entity communicate with each other using CUG. Therefore, the restriction to use CUG for rendition of Application Services, seems out of place, furthers no stated goal or objective of the DoT, and necessary carve outs need to be introduced.

(f) Rigidity of work from home ("***WFH***")

(i) The OSP Guidelines envisage the concept of '*extended agent position*' or WFH. However, the process of availing this option is not very straightforward. The OSP is required to make an application to DoT after obtaining an OSP registration and also furnish a bank guarantee as a part of the process. *Inter alia*, the OSP must ensure that interconnection between home of the agents and OSP centre is permitted only through virtual private network ("**VPN**") provided by a licensed TSP in India ("**TSP VPN**") which has pre-defined location i.e. home of the agent and OSP centre as VPN end user sites.

(ii) In other words, public internet cannot be used for connecting an extended agent position to the OSP centre. The requirement to only use TSP VPN is extremely anarchic. TSP VPN is not a very cost-efficient proposition and to procure it for every employee that intends to use WFH facility, is a very expensive prospect for a company. Consequently, several Internet Telephony based tools cannot be used by OSPs.

(iii) Equally outdated is the requirement that the extended agent must operate out of a pre-defined location. This runs against the very essence of modern-day working style, where it is not necessary for an employee or agent to be confined to the precincts of their office or any location for that matter. It must be appreciated that in the present day, OSPs do not only comprise of call centres but also a host of companies providing ITeS services. Such functions can be performed from any premises and therefore the requirement for a pre-defined location is not reasonable.

3.2.2 **Procedural issues**

(a) Location-specific registration requirements

(i) According to the OSP Guidelines, an OSP is required to obtain an OSP registration in respect of *each* location from where it provides Application Services. In many cases, the operations of an OSP span across the country at several locations in various States. Due to such requirements, it becomes increasingly cumbersome to plan and commence operations.

(ii) The requirement to obtain a separate OSP registration in respect of each location is unnecessarily complex and expensive and warrants a serious reconsideration. The objectives and concerns of the DoT can be easily sub-served even in cases where a single registration is obtained by an entity, and a list of locations from where the entity provides Application Services is appended to the registration certificate. As and when required, the said list can be updated. The relevant TERM Cell, i.e. in whose jurisdiction a particular site/ location falls, can carry out checks to ensure compliance with the OSP Guidelines.

(b) Requirements to submit bank guarantees

(i) There are a number of provisions in the OSP Guidelines which require an OSP to furnish security deposits in the form of bank guarantees, in case the OSP wants to avail any additional facility, such as sharing of infrastructure or WFH

facility. These requirements require a thorough reconsideration based on the following reasons:

(A) *Unnecessarily high amounts*: The cost of setting up an OSP centre is an expensive proposition in the first place, considering the IT and telecom infrastructure that is required to be installed. The salaries and payments made to the employees and agents also need to be taken into consideration. To add to this, the OSP Guidelines require bank guarantees of inappropriately high amounts to be furnished for availing facilities such as sharing of infrastructure, WFH, Centralised EPABX model, etc. which range from INR 50,00,000 (Indian Rupees fifty lakhs) to INR 1,00,00,000 (Indian Rupees one crore) for each location. Effectively, the cost of compliance dwarfs the cost proposed to be saved by sharing of infrastructure.

(B) *Location specific requirement*: Not only is the amount of the security deposit disproportionately high, the issue is accentuated by the fact that such security deposit is required to be furnished in respect of *each* location from where the OSP avails an additional facility such as sharing of infrastructure or WFH. This considerably enlarges the financial investment required by an entity and may also impact their implementation schedules.

(C) *Inordinate delay in refund of bank guarantees:* The time taken by DoT to return the bank guarantees in the event of surrender of the OSP registration is inordinately long and cumbersome for the OSP. This causes a lot of unnecessary hardship and agony, even when the registration has been surrendered.

(c) Concerns regarding '*annual return*' ("***Annual Return***")

(i) Each OSP is required to submit details relating to its operations in the preceding financial year, as a part of its Annual Return. This must be furnished within 6 months from the completion of the financial year and must reflect details of the activities of the previous financial year and the status of their continuing the OSP operation. The main object of this exercise is to ensure that only those OSPs that have continuing business operations must be added on the list of '*Active OSPs*'. Further, we understand that the Annual Returns are currently required to be submitted through physical means.

(ii) In addition to the activities carried out at the OSP centre, the OSP must also divulge details relating to its revenue. In our view, the requirement to disclose the revenue is not relevant for achieving the objective of filing the Annual

Return, viz. to ensure that activities are being carried out at the OSP centre and that it remains active (refer to paragraph 3.2.2 (d) (i) above).

(d) Additional conditions imposed on the OSP

(i) As noted in paragraph 3.2.1 (d) (i) above, the restriction on use of internet in case of voice is not permitted according to the OM and standard form of undertakings sought by the DoT as a part of the application process. Importantly, these restrictions do not expressly form part of the OSP Guidelines (refer to paragraph 3.2.1 (d) (ii) above).

(ii) The registration certificate issued to an OSP also comprises of terms and conditions that are in addition to those prescribed under the OSP Guidelines. For instance, the OSP Guidelines provide that the network diagram must be submitted "*at the time of applying for the registration"*. However, we understand that the terms and conditions set out in the registration certificate prescribe that network diagram needs to be submitted within 3 months from the grant of the registration. Further, it is provided under the OSP Guidelines that "any change in the network is also required to be *intimated immediately by the OSP without delay*". However, the terms and conditions under the registration certificate set out that the same must be done within 15 days.

(iii) Such type of inconsistencies lead to an environment of uncertainty. It must be noted that such uncertainty does not benefit the OSP or the DoT.

3.2.3 **Interpretational inconsistency across various TERM Cells**

(a) Even though DoT has initiated an online and purportedly paperless process for registration of OSPs, the process of registration of OSPs continues to be decentralised and therefore under the control of respective TERM Cells. However, this has also led to lack of consistency and uniformity across TERM Cells as far as interpretation and timelines are concerned.

(b) Different TERM Cells have different ways of interpreting the terms and conditions set out under the OSP Guidelines and resultantly, some TERM Cells are relatively stringent compared to others. Since there is no standard operating procedure or explanatory statement accompanying the OSP Guidelines, a lot is left to the subjective interpretation of the concerned officer at the respective TERM Cell.

(c) Due to this inconsistency, certain entities may be placed at a disadvantage in comparison to others if the OSP centre falls within the jurisdiction of a TERM Cell

that is relatively more conservative. There is a dire need to eliminate this inconsistency to create a level playing field.

(d) As a workaround, we believe that it would be immensely helpful to OSPs and other stakeholders in the ecosystem if there is an explanatory memorandum accompanying the OSP Guidelines that sheds light on the intent and rationale behind each provision. This will introduce some consistency across TERM Cells and also bring in an element of predictability as far as OSPs are concerned. The DoT may also consider issuing responses to frequently asked questions ("**FAQs**") on a regular basis.

4. Proposed outlook on OSP Guidelines

4.1 According to the *Doing Business* Report, 2019 published by the World Bank, one of the "*objective* (of the exercise of assigning rankings) *is to encourage regulation that is efficient, transparent and easy to implement so that businesses can thrive and promote economic and social progress*". In order to encourage innovation and investment, new paradigms in regulation are required, which are transparent and effective, and which do not impose unnecessary controls that are counterproductive in the longer run.

4.2 Presently, the legal framework relating to OSPs has reached a tipping point where it is over regulated. This is likely to finally culminate in burdening the very sector the Government of India sought to support and encourage. As a result, the overly burdensome regulation may cause entities to contemplate moving operations outside of India to other countries that have comparatively liberal regulations.

4.3 In our view, this is mainly because DoT has attempted to formulate a rather granular framework, which aims to cater to every possible permutation and combination. It has been established time and again that a regulation or legislation cannot address each eventuality. Regulations and legislations that aim to govern granular aspects of operations, particularly in a piecemeal fashion over time, often culminate in over regulation – which is precisely what has happened with the OSP framework.

4.4 Perhaps this is the opportune moment to reconsider this approach and to reinvent the framework relating to OSPs, which will bring benefits to all stakeholders involved in the ecosystem. Ideally, the extant framework should be done away with in its entirety (refer to paragraph 1.4.2 above) and merely a written intimation to the DoT should be sufficient, considering that the lines between OSPs and non-OSPs are gradually blurring in the present day. This will allow the government to maintain statistical information about the BPO business in India. Ultimately, OSPs are '*users'* of telecom resources, like any other entity, and therefore compliance with telecom regulatory principles can be ensured for OSPs, just as they are for any other '*user*' of telecom resources. Such an approach would free the industry to adopt the latest technologies, enhance their businesses and grow. There is no justification for continuing an OSP framework that imposes any restrictions or requirements on call centres and other BPOs in India.

4.5 Should the TRAI nonetheless continue to believe that the present regulatory framework of registration must continue it should definitely be replaced with a new, much-altered one. This new regulatory framework should only comprise of a set of key Principles set out in paragraph 1.5.1 (a) to (c) above, which are reflective of the objectives of the OSP registration, without the requirement to deep dive into each independent aspect as long as the Principle is not breached or infringed. Moreover, compliance with the Principles by an OSP can be tested by the TSP providing telecom resources at the OSP centre.

4.6 As long as compliance is ensured with the Principles encapsulated in paragraphs 1.5.1 (a) to (c) above, we believe that it would address the main concerns raised by DoT and there would be no requirement to stipulate granular terms and conditions. Further, in case DoT deems that it is necessary to stipulate additional terms and conditions/ Principles, such terms and conditions/ Principles should be tested against the following parameters:

4.6.1 Is the induction of the term/ condition necessary for compliance with the Principles enshrined in paragraphs 1.5.1 (a) to (c) above?

4.6.2 Will the induction of the proposed term/ condition culminate in any unintended consequences for OSPs and create hurdles for doing business in India?

4.6.3 Is it possible to re-write the Principles in such a manner, so as to cover the new requirement?

4.7 In our opinion, such an approach will lead to balancing the interests of DoT as well as other stakeholders in the OSP ecosystem. It will also encourage investment and growth in the sector and facilitation of adoption of new technologies and modes of connectivity.

4.8 In addition to the above, we submit that the current distinction between a Domestic OSP and International OSP (refer to foot note 4), which is drawn on the basis of customers located within and outside the national boundary of India, respectively, is not required. It is a major challenge to ascertain which type of OSP registration will be applicable in a particular scenario. This is mainly because it is not clear whether this demarcation is based on the physical location of the end customer or that of the contracting entity of the enterprise customer for the OSP centre. For example, it is possible that an OSP in India has entered into a contract with a client incorporated in the US, but some end customers are located in India also. It is not clear as to which type of OSP registration (domestic or international) will be applicable in this case. If both are required, then two PoPs will be required and separate infrastructure will have to be maintained for both the customers, which is not necessarily required if the Principles set out in paragraph 4.4 are adhered by the OSP entity.

5. Responses to TRAI's issues for consultation

Please note that our responses below to TRAI's issues for consultation are without prejudice to our submissions and observations set out in paragraphs 1 to 4 above, and are being provided for the sake of completeness of our response and because they are intrinsic to the consultation process. For clarity, our responses below should not be construed as superseding our submissions and comments in paragraphs 1 to 4 above.

5.1 **Please provide your views on the definition of the Application Service in context of OSP. Whether, the Application Services which are purely based on data/ internet should be covered under Application Service for the purpose of defining OSP.**

5.1.1 The definition of Application Services is extremely critical as it helps OSPs in determining whether the OSP Guidelines will be applicable on them or not. In our view, the definition of Application Services under the OSP Guidelines is very wide and comprises of several elements. Consequently, it leads to significant ambiguity amongst OSPs with regard to applicability.

5.1.2 Notably, the definition of Application Services also includes "*any other ITeS*", however the OSP Guidelines do not define the term or provide any guidance on which activities are covered within its ambit. In the present-day scenario, it is difficult to find any service which may not be categorised in the bracket of ITeS, which makes the situation all the more complex.

5.1.3 We concur with TRAI's suggestion that Application Services that are purely based on data/ internet should be specifically carved out from the scope of the OSP Guidelines, considering that concerns relating to infringement of TSP's jurisdiction are negated in this case. Since DoT's main concern is that there should be no toll by-pass (refer to paragraphs 1.5.1 (a) to (c) above), we believe that such concerns would not arise where services are based entirely on data/ internet. This will also aid in focusing attention on enterprises that use large bandwidth for voice calls.

5.1.4 Presently, there is also lack of clarity on provisioning of Application Services using data transmission only, e.g. through emails and chat. This is primarily because the OSP Guidelines do not draw any distinction between voice and data traffic as far as the requirement to maintain CDR and UDR, respectively, is concerned. This adds a layer of complexities when applications such as messaging, emails and chats are used in the rendition of Application Services. Since many multinational companies use centralised infrastructure globally for such services and services do not pass through the EPABX or call manager in the traditional sense, it is not very common for records relating to such services to be maintained at the OSP centre. In our view, voice and data traffic cannot be painted with the same brush. While it is understandable that in the case of voice, there would be concerns relating to toll by-pass which have necessitated these requirements, there are no such concerns in respect of data.

5.1.5 In addition to the above, we would humbly like to submit that in many cases, Application Services are provided by an OSP to itself or its holding or subsidiary company, i.e. for '*captive'* purposes. In our view, the definition of Application Services should carve out an exception for captive services. To aid in determining whether a company is a holding company or subsidiary company or not, the definition under the Companies Act, 2013[10] can be adopted.

5.2 **Whether registration of OSP should be continued or any other regulatory framework should be adopted for OSPs so that the purpose of registration specified by government is met. Please furnish your views with justification.**

5.2.1 In our view, the current regulatory framework relating to OSPs requires a major overhaul and a new regulatory framework must be introduced. As noted in paragraph 1.4.2 above, we believe that the requirement to obtain a registration must be done away with in its entirety, and merely an intimation to DoT can suffice. OSPs are users of telecom resources, just like any other user, and therefore should not be subject to an additional layer of terms and conditions, especially when there are several non-OSPs that consume considerable telecom resources. However, in case in TRAI's view it may not be possible to dispense with the existing regime altogether, we alternatively submit that the new framework should only set out the Principles (refer to paragraph 1.5.1 above), which should form the focal point of all regulation.

5.2.2 The present approach adopted by DoT has not proven to be very fruitful inasmuch as a very detailed set of terms and conditions, which aim to cover granular aspects in relation to an OSP centre, have culminated in complex and unnecessary regulation. To make matters worse, the OSP Guidelines have not been updated on a regular basis, leading to a situation where adoption of new technologies is stifled. We have delved on this aspect in greater detail in paragraphs 1.5.1, 4.4 and 4.5 above.

5.2.3 A more streamlined definition of Application Services, in line with the discussion in paragraph 5.1.3 above, may be suitably incorporated in the new regulatory framework.

5.3 **What should be the period of validity of OSP registration? Further, what should be validity period for the renewal of OSP registration?**

[10] According to the Companies Act, 2013 ("**Companies Act**"), a 'holding company' "*in relation to one or more other companies, means a company of which such companies are subsidiary companies*". Further, 'subsidiary company' is defined under the Companies Act as "*a company in which the holding company— (i) controls the composition of the Board of Directors; or (ii) exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies: Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed*."

5.3.1 The period of validity of the OSP registration which is currently prescribed is appropriate in our view. However, the period of the renewal should also be extended to 20 years as well.

5.4 **Do you agree that the documents listed above are adequate to meet the information requirements for OSP registration? If not, please state the documents which should be added or removed along with justification for the same.**

5.4.1 In our view, the process of making an application for obtaining an OSP registration must be simplified. We understand that the primary intent for submitting the documents is that DoT should be able to verify the details submitted by the applicant. We believe that this purpose can be served by submitting the certificate of incorporation (which is issued by the Registrar of Companies and certifies that the entity which is applying for the OSP registration is in validly existing) and the network diagram (which depicts the network configuration at the OSP centre and is certified by the TSPs providing telecom resources at the OSP centre). The other documents, viz. memorandum of association, articles of association, a note on the nature of business, etc. are not entirely necessary because (a) other users of telecom resources (i.e. non-OSPs) are not required to submit such documents to DoT directly, and (b) the submission of these documents does not serve the Principles set out in paragraph 1.5.1 above nor do they serve the DoT's current stated objectives (refer to paragraph 1.2.2 above).

5.4.2 Without prejudice to our submission that the requirement to obtain an OSP registration must be done away with (refer to paragraph 1.4.2 above), in case the requirement to obtain an OSP registration continues to subsist, as far as the current requirement to submit board resolution/ notarised power of attorney in favour of the authorised signatory is concerned, we submit that under the recently introduced paperless application process on www.saralsanchar.gov.in ("**Saral Sanchar**"), only digitally signed documents are required to be submitted. The digital signatures are issued in the name of the authorised signatory and the company, which will address DoT's concern relating to authority of the person filing the application on behalf of an OSP. Additionally, there are other safeguards available under law. Therefore, the requirement to submit board resolution/ notarised power of attorney will also not be necessary, in our view.

5.5 **Do you agree with the fee of Rs. 1000/- for registration of each OSP centre. If not, please suggest suitable fee with justification.**

5.5.1 Without prejudice to our submission that the requirement to obtain an OSP registration must be done away with (refer to paragraph 1.4.2 above), if the requirement to obtain an OSP registration is continued, in our view, the application processing fee of INR 1,000 (Indian Rupees one thousand) is appropriate and does

not require a reconsideration. However, we would like to point out that many times, the administrative processes and time taken by organisations to arrange for the fee payment may actually involve costs higher than the amount of the processing fee itself.

5.6 **Do you agree with the existing procedure of OSP registration for single/ multiple OSP centres? If not, please suggest suitable changes with justification.**

5.6.1 In our view, the current requirement to obtain a registration is required to be replaced with an intimation requirement (refer to paragraph 1.4.2 above). However, for the purpose of providing our responses to this issue of consultation, in the scenario that the requirement to obtain an OSP registration subsists going forward, we believe that the current procedure of OSP registration for multiple OSP centres needs to be reconsidered and further streamlined. According to the current practice, an OSP can setup more centres by submitting a copy of the registration certificate for the first location and a copy of the certificate of incorporation, as long as there is no change in the status of documents and application is made within one year. We believe that this dispensation should be granted without any time limits, as the period of one year does not serve any notable purpose.

5.6.2 Further, at present, an OSP is required to provide the registration number of the first OSP centre in the application for the second OSP centre. This can be an arduous process when multiple OSP centres are proposed to be set up simultaneously. To overcome this situation, we propose that OSPs are only required to obtain a single OSP registration, which lists all sites/ location from it provides Application Services. This will enable the relevant TERM Cell to oversee compliance with OSP Guidelines at a particular site/ location.

5.7 **Do you agree with the existing provisions of determination of dormant OSPs and cancellation of their registration? If not, please suggest suitable changes with justification.**

5.7.1 We understand that it is important for DoT to keep a track on how many OSPs are carrying out operations. The filing of Annual Returns helps in determining the number of '*active OSPs*' to considerable degree. However, we strongly advocate that this process is also migrated from physical means to online means to facilitate compliance by OSPs.

5.7.2 Further, we note that the Annual Return seeks certain details that are not directly relevant for this purpose (refer to paragraph 3.2.2 (d) (ii) above). Without prejudice to our submission that the requirement to obtain an OSP registration must be done away with (refer to paragraph 1.4.2 above), in our view, the OSP must not be required to disclose its revenue details as a part of the Annual Return as there is no direct nexus with the end objective.

5.7.3 More importantly, since an OSP registration is not a license under Section 4 of the Telegraph Act and license fees based on revenue are not payable, this requirement is not necessary since the DoT is not required to verify the revenue generated by the entity. On the other hand, several OSPs (which are not listed companies) are required to make their records public, which compromises their confidentiality.

5.8 **Do you agree with the terms and conditions related to network diagram and network resources in the OSP guidelines? If not, please suggest suitable changes with justification.**

5.8.1 The current requirement to submit an attested network diagram is excessive and not entirely necessary in the present day and age. It must be noted that several other entities (i.e. non-OSPs) that consume significant telecom resources are also allowed to carry out operations without the requirement to submit network diagrams directly to DoT. It is essential to create a level playing field and therefore in our view, this requirement must be discontinued.

5.8.2 Without prejudice to our submission that the requirement to obtain an OSP registration must be done away with (refer to paragraph 1.4.2 above) and our submission in paragraph 5.81 above, we would like to submit that in many cases, TSPs refuse to attest network diagrams unless the OSP has been granted a registration number/ certificate by DoT and until they have inspected the connectivity at the OSP centre. We understand that this is primarily because the TSPs are bound by the terms and conditions of their licenses, which state that they must not allow their services to be used for rendition of the Application Services unless they have satisfied themselves of the bona fide use of such services and have ensured that the entity is registered as an OSP with DoT. However, due to the requirement to submit the network diagram along with the application for OSP registration, it leads to a chicken and egg scenario.

5.8.3 With respect to the requirement to segregate telecom resources for OSP and non-OSP purposes, we would humbly like to submit that this requirement is not at all relevant in the present day. As noted in paragraph 2.4.2 above, there are multiple challenges as far as this requirement is concerned. The prime concern here is that there is no guidance provided under the OSP Guidelines or otherwise on how the telecom resources need to be logically separated or why they need to be separated.

5.8.4 It is also not clear as to why there cannot be interconnection between a Domestic OSP and an International OSP centre. Entities that are not registered as OSPs are not subject to such restrictions, so it just appears as if OSPs are being singled out. Therefore, in our view, interconnection between Domestic OSP and International OSP must be permitted.

5.9 **Do you agree with the provisions of internet connectivity to OSP mentioned in the OSP guidelines? If not, please suggest suitable changes with justification.**

5.9.1 We appreciate that the terms and conditions relating to internet connectivity for OSPs set out under the OSP Guidelines, i.e. that OSPs must use IP addresses that are registered in the name of an Indian entity and must be traceable to a physical address (location) in India, are necessary from the standpoint of security. Internet connectivity and IP addresses pertaining to any location *outside* India is likely to cause security concerns and therefore may not be permitted

5.9.2 However, we do not concur with the requirement that each OSP centre must have independent internet connectivity. In the present-day scenario, several entities are contemplating obtaining internet connectivity at the centralised location such as at a data centre and thereafter connecting each of its OSP centres to such locations. TRAI has also acknowledged this in paragraph 4.33 of the CP. In our humble opinion, this would not be possible under the present terms and conditions relating to internet connectivity. Therefore, in our view, the condition that each OSP centre must obtain telecom resources like internet connectivity for every independent OSP centre needs to be done away with as long as it is being procured from a TSP in India.

5.10 **Do you agree with the provisions related to Hot Sites for disaster management mentioned in the OSP guidelines? If not, please suggest suitable changes with justification.**

5.10.1 In our view, the provisions relating to Hotsites are somewhat flawed. Under the OSP Guidelines, a Hotsite is a standby OSP centre of the same entity (i.e. one that is registered as an OSP) that is ready to take on operations in the event of a disaster or failure. In essence, it is a business continuity measure.

5.10.2 Considering that the prime purpose of a Hotsite is that of business continuity, we believe that the requirement to register it as an OSP centre is an unnecessary requirement, which is not consistent with the objective of the OSP Guidelines. In our view, a requirement to intimate the DoT in case operations are proposed to be shifted to a Hotsite will suffice, given that in any case, the Hotsite may only be used for a short period.

5.10.3 Further, according to the definition of Hotsites under the OSP Guidelines, the location can also belong to a third party. This leads to an element of inconsistency as an OSP is not allowed to interconnect with a third-party location in any other circumstances. In any case, we are of the view that there should not be any restrictions on interconnection (refer to paragraph 3.2.1 (b) (ii) above).

5.11 **Do you agree with the provisions of logical separation of PSTN and PLMN network resources with that of leased line/ VPN resources for domestic OSP mentioned in the OSP guidelines? If not, please suggest suitable changes with justification.**

5.11.1 We understand that interconnection between public and private network is a major concern from the DoT's perspective due to the possibility of prohibited toll by-pass, and thus it is a condition restricting the same also forms part of the '*Unified License*' ("**UL**") and some other licenses granted by DoT under Section 4 of the Telegraph Act. Therefore, this is a much broader issue and part of a larger debate.

5.11.2 In our view, this restriction should no longer be part of the telecom framework in India as PSTN tariffs have plummeted, Internet Telephony over third-party networks has been permitted, and most of the communication is IP-based now. Therefore, this prohibition may not be required any more. However, we do not think that an amendment to the OSP Guidelines will be possible unless these restrictions are removed from the UL.

5.12 **Do you agree with the provisions of PSTN connectivity/ interconnection of International OSP mentioned in the OSP guidelines? If not, please suggest suitable changes with justification.**

5.12.1 We do not believe that there should be any restriction on the use of PSTN by International OSPs. The restriction on use of PSTN at an International OSP centre was introduced in order to prevent a scenario where private networks (such as MPLS and IPLC) are interconnected with PSTN in order to cause toll by pass. At that time, the primary mode of communication between international clients and an International OSP centre in India was mainly through IPLC and MPLS. However, with passage of time, toll for PSTN has bottomed down and use of international toll-free numbers have increased. In the present day, this restriction on the use of PSTN has no basis.

5.12.2 Besides, entities that are not OSPs can freely interact with persons located outside of India using PSTN. There is no reason why International OSPs alone should be subject to this restriction.

5.13 **Please provide your views as to how the compliance of terms and conditions may be ensured including security compliance in case the OSP centre and other resources (data centre, PABX, telecom resources) of OSP are at different locations.**

5.13.1 We note that TRAI has commented that the OSP Guidelines were initially issued while taking into consideration that the EPABX and other infrastructure would be placed at the OSP centre only. As a result, access to facilities was relatively easy. However, in cases where EPABX/ telecom resources are placed outside the OSP centre, TRAI believes that "*inspection of such infrastructure to check compliance of terms and conditions of OSP registration would be difficult".* We humbly do not concur with this observation.

5.13.2 In our view, even if the OSP registration is not continued (refer to paragraph 1.4.2 above), compliance with terms and conditions can be ensured at all locations in the same manner as it is being ensured in respect of non-OSPs, i.e. by examination of

records such as CDRs, UDRs and System Logs by the relevant TSP. In our view, the requirement to physically test or inspect EPABX is not relevant in the present-day scenario, especially where cloud based solutions (such as CBPS) are being widely adopted. In the alternative, we have set out Principles (refer to paragraph 1.5.1 above) that encapsulate major concerns raised by DoT on a frequent basis. If these principles are being ensured at an OSP centre, we believe that other restraints and conditions are not warranted.

5.14 **Please provide your views whether extended OSP of existing registered OSP may be allowed without any additional telecom resource. If yes, then what should be the geographical limitation for the extended OSP centre; same building/ same campus/ same city?**

5.14.1 TRAI has correctly noted that in the present day, several entities are contemplating that telecom resources of an existing OSP centre are used at the new OSP centre, without any requirement to install new telecom resources at the latter location. There are a variety of reasons why entities are looking to explore such options. Most entities want to use centralised infrastructure as it leads to efficient utilisation of resources.

5.14.2 Therefore, we agree with the suggestion that a new OSP centre should be permitted to use telecom resources of an existing OSP centre. As far as the geographical limitation for the extended OSP centre is concerned, we humbly submit that there should not be any geographical limitations because non-OSPs are not subject to such restrictions. Without prejudice to our submission that the requirement to obtain an OSP registration must be done away with (refer to paragraph 1.4.2 above), we believe that as long as the Principles outlined in paragraph 1.5.1 above are satisfied, there should not be any geographical limitations as far as location of the extended OSP centre is concerned.

5.15 **Please provide your views as to how the compliance of terms and conditions may be ensured including security compliance in case of the extended OSP centre.**

5.15.1 As noted above, we believe that OSPs are being placed at a disadvantage compared to non-OSPs, despite the fact that both categories of users consume considerable telecom resources in the present day. Therefore, there should not be any specific procedure to ensure compliance in respect of OSPs alone and compliance can be verified as it is done in the case of all users of telecom resources, by the relevant TSP.

5.15.2 Without prejudice to our submission that the requirement to obtain an OSP registration must be done away with (refer to paragraph 1.4.2 above) and our submission in paragraph 5.15.1 above, in our view, to ensure compliance with terms and conditions, the OSP centre at which the telecom resources are procured can be inspected by the DoT. This will enable DoT/ TERM Cell to verify whether the general Principles (refer to paragraph 1.5.1 above) are being complied or not.

5.16 **Do you agree with the provisions of general conditions for sharing of infrastructure between International OSP and Domestic OSP mentioned in the OSP guidelines? If not, please suggest suitable changes with justification.**

5.16.1 As far as the general conditions for sharing of infrastructure between International OSP and Domestic OSP under the OSP Guidelines are concerned, we believe that they create an unnecessary burden on OSPs, for the following reasons:

(a) The requirement to setup a call centre with at least 50 seats is without any basis. An OSP should be permitted to share infrastructure irrespective of its size and capacity.

(b) Considering that the OSP registration is valid for a period of twenty (20) years, we humbly submit that there is no justifiable basis for prescribing a 3-year validity for the permission of sharing of infrastructure. This is because in most cases, an OSP will be required to use the sharing of infrastructure facility for the entire duration of its OSP registration.

(c) To add to this, the permission for sharing of infrastructure can only be further renewed for a maximum period of 3 years only. In other words, the permission of sharing of infrastructure is only granted for a maximum of 6 years whereas the OSP registration is granted for a period of 20 years. It is unclear what the OSP is required to do for the remainder of the registration period.

(d) The amounts of bank guarantee prescribed for availing the permission are disproportionately high. In many cases, the cost of availing the facility outweighs the cost that is proposed to be saved by the OSP by sharing the infrastructure. We request you to refer to paragraph 3.2.2 (b) above for a detailed discussion on this aspect.

5.16.2 In view of the discussion in paragraph 5.16.1 above, we believe that there should not be any conditions or additional requirements for sharing of infrastructure between International OSP and Domestic OSP, especially because similar restrictions are not placed on non-OSPs. Without prejudice to the foregoing submission, in case the requirement to obtain an OSP registration is continued, there should not be any additional requirements for sharing of infrastructure between International OSP and Domestic OSP as long as the Principles laid down in paragraph 1.5.1 above are satisfied. Further, in our view, there should not be any distinction between an International OSP and Domestic OSP in the first place (refer to paragraph 4.8 above).

5.17 **Do you agree with the provisions of Technical Conditions under option -1 & 2 for sharing of infrastructure between International OSP and Domestic OSP mentioned in the OSP guidelines? If not, please suggest suitable changes with justification.**

5.17.1 As noted in paragraph 5.16.2 above, in our view the general terms and conditions with respect to sharing of infrastructure should not be applicable. Accordingly, we believe that the technical conditions for Option 1 and Option 2 (refer to foot note 10), which form an additional layer of conditions, should also not be required to be complied.

5.17.2 Specifically, as far as the requirement to submit a certificate of the vendor (stating that software is capable of logically bifurcating the infrastructure in two or three (as applicable) different environments) under Option 2 is concerned, we humbly submit that this step must be done away with for the following reasons:

(a) In many cases, it is possible that the OSP may have implemented the logical partitioning itself and a third-party vendor may not be involved in implementation of logical partitioning of the infrastructure. Under these circumstances, the OSP should not be precluded from availing this facility merely because it cannot submit an undertaking from a third-party service provider.

(b) Even in other cases, an undertaking provided by the OSP itself can suffice as the DoT will in any event be able to verify whether or not the infrastructure is logically partitioned, during an inspection. If, it is subsequently found that the OSP had provided a false undertaking, then appropriate action can be taken against the OSP in any case.

5.18 **In case of distributed network of OSP, please comment about the geographical limit i.e. city, LSA, country, if any, should be imposed. In case, no geographical limit is imposed, the provisions required to be ensure compliance of security conditions and avoid infringement to scope of authorized TSPs.**

5.18.1 Undoubtedly, the Centralised EPABX Model has been instrumental in enabling OSPs to make efficient use of infrastructure placed at a central location. However, there are several conditions that need to be fulfilled before the Centralised EPABX Model can be availed. Some of these conditions, for example include the requirement to install Media Gateways at each OSP centre, resulting in OSP to undertake significant commercial investment.

5.18.2 To respond to the question raised by TRAI, we believe that no geographical limits should be imposed in case of the Centralised EPABX model, considering that there are no similar restrictions on non-OSPs. Accordingly, we are of the view that the OSP registration should no longer be a requirement (refer to paragraph 1.4.2 above). Without prejudice to the foregoing submission, in case the requirement to obtain an OSP registration is continued, in our view, placing geographical limits serve no tangible purpose and in fact cause unnecessary hardship to the OSP. In many cases, an entity having OSP centres across India may wish to adopt the Centralised EPABX Model. If geographical limits are imposed, this will become difficult.

5.18.3 We believe that even if geographical limits are not imposed, it will not have an impact on the OSP's capability to comply with the security conditions, for the following reasons:

(a) If an OSP centre located in a particular LSA is using the Centralised EPABX Model, the compliance can be checked by the relevant TERM Cell in whose jurisdiction such OSP centre is located. This has been noted by TRAI as well in paragraph 4.43 (d) of the CP.

(b) The TERM Cell in whose jurisdiction the Centralised EPABX is placed can be provided unhindered access to the location/ premises where the Centralised EPABX is hosted, in order to carry out periodic checks. This has also been noted by TRAI in paragraph 4.43 (e) of the CP.

5.18.4 We would like to reiterate that these restrictions place an unfair burden on OSPs because non-OSPs do not have to face such restrictions. Accordingly, these terms and conditions should not be applicable. Without prejudice to the foregoing submission, in case the requirement to obtain an OSP registration is continued, we believe that as long as the Principles set out in paragraph 1.5.1 above are met, we do not believe that further conditions or limitations should be imposed.

5.19 **Do you agree with the provisions including of logical partitioning mentioned in the OSP guidelines for distributed architecture of EPABX? If not, please suggest suitable changes with justification.**

5.19.1 We understand that the primary reason for this requirement is to prevent toll by-pass, but importantly, these concerns are equally imminent in the case of other users of significant telecom resources as well. Therefore, there is no justifiable basis for only subjecting OSPs to such requirements. Without prejudice to the foregoing submission, in case the requirement to obtain an OSP registration is continued, in our view, there are means to prevent this in modern day EPABXs (such as CBPS), where it is possible to introduce appropriate settings and configurations to ensure that no unauthorised call flows are taking place. Further, in such cases, the requirement for physical inspection may not arise considering that testing of configurations and call routing restrictions can be undertaken through other equipment placed at the OSP centre itself. Therefore, we believe that necessary modifications must be introduced to facilitate adoption of such technologies.

5.20 **Do you agree with the monitoring provisions of mentioned in the OSP guidelines for distributed architecture of EPABX? If not, please suggest suitable changes with justification.**

5.20.1 Without prejudice to our submission that the requirement to obtain an OSP registration is not required in the present day (refer to paragraph 1.4.2 above), in case the requirement to obtain an OSP registration is continued, we understand that

the DoT's requirement, as far as monitoring of Centralised EPABX Model is concerned, is twofold.

(a) Firstly, the DoT should have unhindered access to the premises where the Centralised EPABX is hosted and to the OSP centres where the facility is being availed.

(b) Secondly, the DoT should be provided facilities to inter alia "*the routing/ partitioning table/ CDRs and to check "call trace in the EPABX for extensions".*

5.20.2 With respect to the first objective (refer to paragraph 5.20.1 (a) above) – access to the premises where the EPABX is located –is no longer justified in a cloud environment. Accessing a data centre, hosted by an entity unrelated to the OSP holder, simply is not necessary to monitor the OSP's use of the EPABX. The DoT can fulfil its monitoring obligations by accessing the OSP's site, running test calls, and checking CDRs and other records the OSP retains. Physical access to a server that is merely hosting software or to CBPS is not necessary to fulfil the DoT's objectives in the OSP Guidelines.

5.20.3 For these same reasons, there is no justification in requiring the physical site of the EPABX to obtain an OSP registration. Such a requirement would be excessively misconceived because, in many cases, the equipment is hosted in a third-party data centre that is not providing any Application Services.

5.21 **Please comment on the scope of services under CCSP/HCCSP, checks required / conditions imposed on the CCSP/ HCCSP including regulating under any license/ registration so that the full potential of the technology available could be exploited for both domestic and international OSP, and there is no infringement of the scope of services of authorized TSPs.**

5.21.1 At the outset, it is important to point out that there are several models pursuant to which services can be provided by CCSP/ HCCSP and therefore a broad-brush approach will not be appropriate. Since the requirement to register as an OSP is in many ways unique to India (refer to paragraph 1.2.2 above), it is important that going forward, a light touch regulatory approach is adopted.

5.21.2 In our view, there should not be any requirement for CCSP/ HCCSP to register or obtain a license from the DoT, merely because they provide services to OSPs. As a matter of fact, we believe that it no longer necessary to obtain an OSP registration in the first place (refer to paragraph 1.4.2 above). This would be a back-door attempt to regulate the cloud while achieving no discernible objective. Moreover, this would create an irreparable situation of disparity and discrimination, as CCSP/ HCCSP can freely provide services to non-OSPs.

5.21.3 We note that TRAI has remarked that in the case of a cloud-based EPABX, calling is done through a conferencing bridge, which will fall within the ambit of the access service ("**AS**") authorisation UL granted by DoT under Section 4 of the Telegraph Act (refer to paragraph 3.12 of the CP). We respectfully submit that this is not an accurate inference, for the following reasons:

(a) It is not necessary that conferencing will take place in all cases where a cloud-based EPABX (such as CBPS) is being used. It is possible that that only the signalling in respect of the call, as opposed to the media, will be transmitted to the cloud-based EPABX. Therefore, it would be incorrect to suggest that calls are being 'conferenced' on the EPABX.

(b) The functionality of a cloud-based EPABX remains identical to a physical EPABX. If calling through a cloud-based EPABX is termed as calling through a conferencing bridge, a similar interpretation should be applicable in case of physical EPABX as well. However, there is no requirement to obtain an AS authorisation under the UL in that case.

(c) Interestingly, TRAI has itself noted that "*the PABX is owned and operated by the enterprise rather than the telecom service provider*" (refer to paragraph 3.7 (e) of the CP), meaning that entities other than TSPs can own and operate EPABXs. Moreover, this indicates that an EPABX provider is not engaged in a function that is within the sole domain of the TSP.

5.21.4 Without prejudice to our submissions in paragraph 5.21.1 above, in our view, if the Principles outlined in paragraph 1.5.1 above are followed, the major concerns of DoT can be put to rest. As long as these Principles are fulfilled, we believe that CCSPs and HCCSPs should be permitted to provide services to OSPs without the requirement to obtain any license or registration from DoT. This will also allow OSPs to make efficient use of resources and infrastructure, which is currently limited due to the restrictions in the existing OSP Guidelines.

5.22 **Please provide your comments on monitoring of compliance in case interconnection of data and voice path is allowed for domestic operations.**

5.22.1 We note that the primary concern of DoT is that there should not be any interconnection between public and private networks (refer to paragraph 1.5.1 (b) above) to protect against prohibited toll bypass. Accordingly, if there is no improper traffic flow between PSTN and leased line, we believe that the same EPABX can be used. It is important to note that these concerns are equally applicable in the case of non-OSPs as well, as they also use telecom resources in considerable quantities in the present day.

5.22.2 We respectfully submit that this aspect can be verified by TSPs in the same manner that they do so currently, i.e. by conducting physical inspection of customer premises. As such, we believe that this concern can be easily buttressed and DoT's involvement is no longer necessary.

5.23 **Do you agree with the provisions for use of CUG for internal communications of OSP as mentioned in the OSP guidelines? If not, please suggest suitable changes with justification.**

5.23.1 Before providing our comments in respect of this issue, we would like to highlight another issue relating to CUG under the OSP Guidelines. According to the OSP Guidelines, the use of CUG is only permitted for internal communication (subject to certain terms and conditions) but not for rendition of Application Services (refer to paragraph 3.2.2 (e) above).

5.23.2 As noted in paragraph 3.2.2 (e) (ii) above, it is possible that an OSP provides Application Services to its holding or subsidiary company. It is not justified that an OSP is required to establish a separate network and procure additional telecom resources so that it can provide Application Services to its own parent/ group entity, as a deviation from its existing CUG network that is being used by all other subsidiaries globally. Many internet telephony-based tools cannot be used by OSPs due to this reason.

5.23.3 The terms and conditions for use of CUG for internal communication are not relevant in our view, considering that non-OSPs are not subject to such restrictions in the present-day scenario. It is essential to create a level playing field and provide dispensation to OSPs, which was the original intent of introducing the OSP regime in the first place (refer to paragraph 1.2.2 above)

5.24 **Do you agree with the monitoring provisions for use of CUG for internal communications of OSP mentioned in the OSP guidelines? If not, please suggest suitable changes with justification.**

5.24.1 In the interest of brevity, we request you to refer to our comments in paragraph 5.23.3 above as they will be applicable in this case also.

5.25 **Do you agree with the provisions of 'Work from Home' mentioned in the OSP guidelines? If not, please suggest suitable changes with justification.**

5.25.1 The current provisions relating to WFH under the OSP Guidelines perhaps embody its draconian character most conspicuously. We do not agree with the provisions relating to WFH under the OSP Guidelines for the following reasons:

(a) The requirement to use TSP VPN is extremely prohibitive in terms of cost. It is unreasonable for an OSP to procure TSP VPN connectivity (refer to paragraph 3.2.2

(f) (i) above) for each employee that intends to use the WFH facility. Moreover, the requirement is at odds with IT Recommendations and steps taken by DoT to enable proliferation of Internet Telephony throughout India, over third-party networks (refer to paragraph 3.2.1 (b) (iii) above). There is no justification for placing this prohibition on OSPs when non-OSP users are free to use Internet Telephony over their public internet connections.

(b) The requirement to use the WFH facility from a pre-defined location is extremely archaic and also inconsistent with the concept of WFH. In our view, WFH can be undertaken from any location and there is no need to only undertake it from a prescribed location.

(c) The bank guarantee prescribed for availing this facility is disproportionately high and very prohibitive in nature.

5.25.2 We believe that the these are the main reasons why only a limited number of entities have applied for this facility so far, despite the fact that this provision has existed under the OSP Guidelines for a considerable period of time. In our view, the requirements currently prescribed by DoT should be relaxed. This will automatically lead to proliferation of WFH among OSPs. Further, if internet based connectivity is allowed to be used instead of only TSP VPN, it will also allow for internet telephony tools to be put to use by the OSPs, in a manner similar to non-OSPs who can use them freely.

5.26 **Whether domestic operations by International OSPs for serving their customers in India may be allowed? If yes, please suggest suitable terms and conditions to ensure that the scope of authorized TSP is not infringed and security requirements are met.**

5.26.1 Without prejudice to our submission that the OSP registration should not be continued in the first place (refer to paragraph 1.4.2 above), in case the requirement to obtain an OSP registration is continued, we would like to submit that in the present day, there is no need to draw a distinction between Domestic OSP and International OSP (refer to paragraph 4.8 above) as the lines between the two are gradually diminishing. The TRAI has also noted that several International OSPs are requesting for permission to provide Application Services to their customers/ clients within India (refer to paragraph 4.53 of the CP).

5.26.2 Due to the current set of terms and conditions in the OSP Guidelines, this is only possible if calls relating to domestic customers/ clients of an International OSP are also routed through the foreign PoP. This will require the customer/ client to dial an international toll free number or an international number after affixing the relevant prefixes[11].

[11] To dial an international long-distance call, a prefix of '00' is required to be added. This prefix is followed by country code, area code and then number of the called subscriber.

5.26.3 In view of our submissions in paragraph 5.26.1 above, there should not be any fetters in this regard. As an alternative, we believe that as long as the Principles set out in paragraph 1.5.1 above are being complied, there should be no restrictions on International OSPs to serve their customers within India. In any case, the volume of instances where an International OSP provides services within India are likely to be few and far between, and therefore it would be unreasonable to burden an OSP to obtain both types of registrations.

5.27 **Whether use of EPABX at foreign location in case of International OSPs may be allowed? If yes, please suggest suitable terms and conditions to ensure that the scope of authorized TSP is not infringed and security requirements are met.**

5.27.1 Without prejudice to our submission that the requirement to obtain an OSP registration should not continue going forward (refer to paragraph 1.4.2 above), we concur with TRAI's views in this regard (refer to paragraphs 4.56 to 4.58 of the CP) and therefore do not have any further comments. In the event that the requirement to obtain an OSP registration is continued, we humbly submit that International OSPs should be permitted to use EPABX at a foreign location as long as compliance with the Principles set out in paragraph 1.5.1 can be ensured.

5.28 **Do you agree with the Security Conditions mentioned in the Chapter V of the OSP guidelines? If not, please suggest suitable changes with justification.**

5.28.1 Without prejudice to our submission that the requirement to obtain an OSP registration should not continue going forward (refer to paragraph 1.4.2 above), we recognise that terms and conditions set out under Chapter V of the OSP Guidelines are necessary from a national security point of view and will also be necessary to ensure compliance with the Principles outlined in paragraph 1.5.1 above. Therefore, we do not have any further comments on this issue.

5.29 **Do you agree with the provisions of penalty mentioned in the OSP guidelines? If not, please suggest suitable changes with justification.**

5.29.1 Without prejudice to our submission that the requirement to obtain an OSP registration should not continue going forward (refer to paragraph 1.4.2 above), we are of the view that the present penalty framework set out in the OSP Guidelines is excessively skewed against OSPs. However, it is particularly harsh in cases where the OSP has availed additional facilities, such as sharing of infrastructure or WFH, and furnished bank guarantees in the form of security deposits. According to the existing penalty provisions, a contravention of the terms and conditions can lead to

encashment of the bank guarantee[12] as well as cancellation of the registration. In other words, the DoT has multiple remedies against the OSPs

5.29.2 In view of paragraph 5.29.1 above, we believe that the current penalty scheme under the OSP Guidelines needs a thorough reconsideration before it is incorporated in the new regulatory framework, unless the requirement to obtain a registration is dispensed with altogether. In our view, cumulative remedies should not be available to the DoT in case of default on part of the OSP. It is trite that the quantum of penalty has to be proportionate to the default committed, however, due to the widely worded provisions in the OSP Guidelines, the DoT has limitless rights without any accountability.

5.29.3 In addition to the above, imbalanced penalty provisions may also impact confidence of foreign entities (such as Microsoft) that are contemplating investing in India, especially in the OSP centre. This factor is also likely to push foreign investors away from India, which cannot be a favourable scenario for India's economy by any means. This result is wholly at odds with India's stated desire to provide special dispensation for OSPs. On the contrary, like so many other terms and conditions in the OSP Guidelines, this penalty provision throws up a roadblock to OSP operations.

5.30 **Whether OSP to OSP interconnectivity (not belonging to same company/ LLP/ group of companies) providing similar services should be allowed? If yes, should it be allowed between domestic OSPs only or between international and domestic OSPs also.**

5.30.1 Without prejudice to our submission that the requirement to obtain an OSP registration should not continue going forward (refer to paragraph 1.4.2 above), we believe that there should not be any bifurcation between International OSP and Domestic OSP (refer to paragraph 4.8 above). Also, the restrictions on interconnection cause more problems than it aims to solve (refer to paragraph 3.2.1 (b) (iii) above).

5.30.2 With respect to interconnectivity between two OSPs not belonging to the same entity or group companies of each other, we humbly submit that the same should also be permitted because similar restrictions are not present in the case of non-OSPs. The focus should be on removing impediments to creating a level playing field. Alternatively, we also believe that as long as the Principles (refer to paragraph 1.5.1 above) are complied, there is no justifiable basis for such restrictions. As rightly noted by TRAI, this will *inter alia* enable a scenario where an OSP can subcontract a part of the activities to another third party OSP (refer to paragraph 4.63 of the CP).

[12] It is important to point out that the format of the bank guarantee is prescribed by the DoT and is also lopsided against the OSP. Further, the OSP is not permitted to make any changes to the standard format of the bank guarantee.

5.31 **In case OSP interconnectivity is allowed, what safeguards should be provisioned to prevent infringement upon the scope of licensed TSPs.**

5.31.1 The OSP regime was introduced with a view to ensure *inter alia* that the jurisdiction of TSPs is not infringed (refer to paragraph 1.2.2 above). However, no guidance has been provided on this aspect and therefore it is not clear if DoT's main concern is from a toll-bypass or security standpoint (refer to paragraph 1.2.3 above) or another issue. Nevertheless, multiple safeguards have been incorporated in the existing regulatory framework relating to OSPs to protect the interest of TSPs. It is important to mention that similar issues are likely to crop up in case of non-OSPs as well and therefore, the basis for this discrimination is not entirely clear.

5.31.2 In view of paragraph 5.31.1 above, we believe that the requirement to obtain an OSP registration should not be continued. Without prejudice to the foregoing submission, in case the requirement to obtain an OSP registration subsists going forward, in our view, if the Principles outlined in paragraph 1.5.1 are imbibed in the new regulatory framework, it would be sufficient to address these concerns and the requirement to provide additional safeguards will not arise.

5.32 **Do you agree with the miscellaneous provisions mentioned in the Chapter VI of the OSP guidelines? If not, please suggest suitable changes with justification.**

5.32.1 We do not have any comments to offer in respect of this issue.

5.33 **What provisions in the terms and conditions of OSP registration may be made to ensure OSPs to adhere to the provisions of the TCCCPR, 2018.**

5.33.1 In our view, there is no need to incorporate terms and conditions in the OSP Guidelines or any other terms and conditions relating to OSPs to ensure that OSPs adhere to provisions of TCCCPR, 2018. The TCCCPR, 2018 is a separate framework and would cover OSPs wherever the roles of an OSP coincide with the role of a telemarketer. Incorporating provisions relating to TCCCPR, 2018 in the terms and conditions relating to OSPs will tantamount to overregulation.

5.34 **Stakeholders may also provide their comments on any other issue relevant to the present consultation.**

5.34.1 We would like to express our gratitude to TRAI for conducting this very important and much-needed consultation process, which provides a pedestal to voice our concerns in respect of the framework relating to OSPs. In addition to our comments set out above and without prejudice to our submissions in paragraph 1 to 4 above, we would like to make the following submissions:

(a) There are a plethora of terms which have been used but not defined under the existing OSP Guidelines. This has led to considerable ambiguity both in terms of interpretation and enforcement and has severely impacted all stakeholders and it would be extremely beneficial if these terms are defined or if some guidance is provided in respect of them. Some of these terms are set out below:

(i) *ITeS*: The definition of Application Services also includes "*any other ITeS*", however the OSP Guidelines do not define the term or provide any guidance on which activities are covered within its ambit. In the present-day scenario, it is difficult to find any service which may not be categorised in the bracket of ITeS, which makes the situation all the more complex. Microsoft respectfully suggests that this vague, undefined term be deleted from the definition.

(ii) *CDR, UDR and System Logs*: While some cue can be taken from the definitions of these terms in general parlance (in the telecommunications and IT industry), the fact that these terms have been used, but not defined under the OSP Guidelines leads to considerable ambiguity. At present, in the absence of definitions and guidance, it is difficult to determine the constituents of CDR, UDR and System Logs which are required by DoT. Further, different TERM Cells prescribe different requirements. As a consequence, if the necessary ingredients are not clearly known, compliance with the requirements will always remain a contentious issue. Definitions should be narrow, clear and enumerate only what is necessary to achieve the Principles outlined in paragraph 1.5.1 above.

(iii) *Network diagram:* The lack of sufficient guidance on the information that is required to be depicted in a network diagram has contributed to a great deal of uncertainty in this regard. As a result, at the time of making an application for OSP registration, an OSP may be required to furnish several versions of the network diagram before it is finally accepted by the TERM Cell.

(b) Recently, the process for filing an application has migrated to a purportedly paperless, digital-signature based portal known as Saral Sanchar. There is no denying that while the process of registration has been simplified to a great extent (especially as far as the requirement to submit physical documents is concerned), several aspects have been left unaddressed. In other words, contrary to expectation, this had led to more complication than simplification in many ways. These loopholes are identified below:

(i) *Uncertainty regarding attestation of documents*: The User Manual on Saral Sanchar sets out that in a bit to make the process entirely paperless, all supporting documents can be submitted after they have been digitally signed by the authorised signatory. In contrast, the OSP Guidelines continue to state that the documents must be signed, stamped and certified by a director,

company secretary or statutory auditor of the company or a public notary. In other words, albeit the requirement to submit physical copies of documents has been done away with, a two-step process is still required to be undertaken.

(ii) *Physical submission of applications for sharing of infrastructure, using CUG for internal communication and WFH facility (each, "***Additional Facility***"):* Despite the fact that the application process for OSP registration has been made entirely paperless through Saral Sanchar, physical applications are still required to be made to the relevant TERM Cell for obtaining permissions for an Additional Facility. Since each TERM Cell has its own procedure in this regard, there is no uniformity or consistency. To make matters worse, there are no specific application forms for obtaining permission for an Additional Facility and more often than not, TERM Cells require OSPs to submit the physical application form for registration as OSP (which comprises of separate sections for applying for any Additional Facility). Along with this, in addition to the specific documents required for obtaining permission for that particular Additional Facility, all supporting documents for obtaining an OSP registration are required to be submitted in physical form along with payment of application processing fee. Notably, this is the same application form which is sought to have been replaced by Saral Sanchar.

(iii) *Physical submission of undertakings:* In some cases, certain TERM Cells request for additional undertakings and letters to be provided in physical form, before grant of the registration certificate. This is also a deviation from the entirely paperless process that DoT has sought to introduce by way of Saral Sanchar.

(iv) *Lack of uniformity in turnaround times:* In the absence of any standard operating procedure, there is no consistency in the time that is taken by TERM Cells in scrutinising the submitted online application or issuing the registration certificate. Therefore, different TERM Cells may have different time lines. In a scenario where an entity is contemplating to commence operations across various cities simultaneously, this can be a serious cause for concern.

(v) *Inordinate delay in refund of bank guarantees:* As noted in paragraph 3.2.2 (b) (i) (C) above, the time taken by DoT in returning bank guarantees, which were earlier submitted by the OSP, even after the OSP has surrendered the registration is extremely long. This causes undue agony and difficulties to the OSP and therefore the process should be made expeditious.

5.34.2 We believe that there is an urgent requirement to address the pitfalls identified above, failing which OSPs will continue to be burdened with unnecessary over-regulation. Many of these challenges can be overcome by eliminating the site-by-site registration requirements. In the process, it is India's reputation as an outsourcing hub that stands to lose the most. It is imperative for India to formulate its regulations in a manner that balances the interests of the DoT and the industry.

The aim here should be to make policies to support and further assist the industry rather than making it strenuous for them to exist in India.

5.34.3 In addition to introducing a new, simplified framework for OSPs, we humbly submit the following measures may be considered to introduce an element of consistency and predictability, which will be beneficial for all stakeholders in the OSP ecosystem:

(a) *Issuance of a standard operating procedure for TERM Cells*: Since the process of registering OSPs is decentralised, it has provided a lot of room for subjective interpretation to TERM Cells. This leads to each TERM Cell adopting a different interpretation to the OSP Guidelines (refer to paragraph 3.2.3 above). To provide uniformity, it is necessary that a standard operating procedure that provides explanations, insights, relevant factors, etc. to TERM Cells, is issued. In turn, this will ensure that each TERM Cell adopts similar interpretation.

(b) *Regular training and sensitisation of TERM Cells*: TERM Cells of DoT need to be sensitised on a regular basis so as to ensure that they are abreast with latest trends and technologies. This can be facilitated by organising interactions between heads of TERM Cell and members of the industry from time to time.

(c) *Assessing requirements to amend OSP Guidelines on a continuing basis*: Lastly, the most critical aspect in maintaining an effective regulatory regime for OSPs is to continuously assess the requirement to amend OSP Guidelines. The last amendment to the OSP Guidelines were carried out in 2016 and many developments have taken place from a technological standpoint since then. Going forward, it will be necessary to identify loopholes and hurdles proactively, which can be aided by interaction with the industry to understand their concerns (refer to paragraph 5.34.3 (b) above).

(d) *Permitting that which is not prohibited:* Rather than waiting for changes to OSP Guidelines to permit the use of new technologies, the DoT should clarify that the TERM Cells should approve any new proposals – even those using new technologies and new architectures – so long as the proposal does not violate the Principles outlined in paragraph 1.5.1 and 4.4 above. In other words, if the proposal (i) furthers the BPO industry in India; (ii) does not enable prohibited toll bypass; and (iii) does not preclude DoT's ability to monitor and enforce compliance, the proposal should be permitted. The BPO industry should not be placed on hold each time a new capability emerges, while awaiting the creation of a new formal guideline/ direction by DoT, which expressly permits it.

5.34.4 The recently released National Digital Communications Policy, 2018 ("**NDCP**") also recognises that there are lacunas and gaps in the present regulatory framework for OSPs and there is a need to simplify the terms, including restrictions on interconnectivity and therefore this is an opportune time to re-look OSP Guidelines and start afresh.