

Feedback on Telecom Regulatory Authority of India (TRAI) Consultation Paper on Regulating Converged Digital Technologies and Services – Enabling Convergence of Carriage of Broadcasting and Telecommunication Services

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SUMMARY OF RECOMMENDATIONS

- 1. There is no need of a converged code or regulator. The current frameworks for telecommunications and broadcasting are working efficiently.***
- 2. Regulation of carriage and content should continue to be separate, as the skill sets required for the two are significantly different. Content should not be regulated as part of the convergence framework, if any.***
- 3. A coordination mechanism should be established where all institutions/ bodies collaborate for introducing standards, testing and certification.***
- 4. Licensing regime should be designed (a) using an activity-led and risk-based approach (b) that ensures obligations on an activity are proportionate to the harms and risks associated with it (c) whilst keeping in mind the need to avoid regulatory overlaps.***
- 5. Internet-based services must be distinguished from telecommunication services. They should not be covered under telecom licenses as they are already governed under the Information Technology (IT) Act for their relevant obligations like Law Enforcement Authority (LEA) assistance (curbing fake news & security risks) or consumer protection.***
- 6. Cloud service providers (CSPs) should be regulated by the Ministry of Electronics and Information Technology (MeitY). CSPs in India should not be subject to regulation by the DoT or the TRAI, directly or indirectly.***

INTRODUCTION

The nasscom welcomes the opportunity to submit our response to the Consultation Paper on “Regulating Converged Digital Technologies and Services – Enabling Convergence of Carriage of Broadcasting and Telecommunication services” (**Consultation Paper/CP**) released by the TRAI in January 2023.¹

At the outset, we want to acknowledge that the CP is highly informative and provides a detailed description of the regulatory and administrative framework of the telecommunication and broadcasting sector in India. Further, the CP extensively covers the evolving technological changes in both the sectors respectively.

SECTION I - GENERAL RECOMMENDATIONS

1. There is no need of a converged code or regulator, but better co-ordination.

The current legislative framework where carriage and content are regulated under two different legislations, is working efficiently and requires no intervention.

The CP has listed several problem statements.ⁱⁱ **However, the CP does not provide sufficient reasons or evidence to substantiate the above hypothesis, like specific harms or market failure caused by the extant framework. Neither the CP lists the possible benefits of a converged ecosystem.**ⁱⁱⁱ

The concerns highlighted in the CP are implementation and process issues that can be addressed through administrative changes. For example, a key gap identified by the TRAI is lack of effective coordination mechanisms between existing regulators, ministries, and departments. This can be addressed administratively.

The Ministry of Information Broadcasting (**MIB**) has clearly stated in its letter to TRAI that the current regulatory framework for broadcasting is adequate. MIB has also averred that it is already in the process of amending Cable Television Networks (Regulation) Act, 1995 (**CTN Act**) to bring all the different broadcasting carriage platforms under its ambit, to holistically address all institutional, regulatory, and legal aspects of broadcasting services under a unified Act.^{iv}

The CP itself states that there could be different approaches to achieve the **convergence of the telecommunication and broadcasting framework and one of them could be creation of a converged statutory code.**^v We reiterate that based on the feedback received from the industry, there appears no need to create a converged legal, regulatory, or licensing framework.

Therefore, to maintain this distinction of licensing framework between telecom and broadcasting, we suggest that the current administrative authority overseeing the licensing and statutory frameworks be kept separate as below (See section II, Response to Question 1 for details):

Table 1: Current Regulatory Framework as given in Table 2.1 of the TRAI CP^{vi}

Services	Authorisation Type	Authorisation Granted under	Authorisation granted by	Spectrum granted by
Telecommunication services	License	Indian Telegraph Act, 1885	DoT	DoT
Broadcasting services	Permission	Guidelines for Up linking and downlinking of TV channels	MIB	DoT/DoS
Direct to Home (DTH)	License	Indian Telegraph Act, 1885	MIB	DoT/DoS
Cable TV	Registration	The Cable Television Network (Regulation) Act, 1995	MIB	---

2. Telecom and broadcasting should be regulated separately.

The CP notes that telecommunications and broadcasting services have historically been based on different technologies with separate markets; and have therefore had different regulatory and licensing frameworks:

- Telecommunication provides for a private two-way communication between specific people,
- Broadcasting's primary function has been to provide one-way communication to many unspecified people.

Given this, the focus of regulations targeted at both these services has been distinct. The telecommunications markets being governed by network access and other technical issues, and broadcasting regulations being more directed towards content regulation.

While discussing the convergence in the media and telecom business, the CP has talked about tendency for services to merge into one offering/ bundling.^{vii} To this extent, it argues the next step in a converged era would be to converge the licensing framework for broadcasting and telecommunications. To do so, broadcasting licenses can be made as authorisations under the Unified License framework, which can be provided by the relevant ministry that oversees the provision of the relevant service.

The CP also identifies that this would require converging at a statute level to come up with a single unified code/act which comprehensively covers all communication services, such as traditional telecom services, broadcasting and TV services, OTT communication/ broadcasting services, amongst others.

The CP however fails to clarify how bundling of different services (such as TV, broadband and voice) into one offering by a single service provider can be considered as '**convergence of services**'. **Bundling of different services, while it allows a service provider to provide it as a bundled offering, does not change the nature of each bundled service, which remains distinct. Such distinct services, even as part of the bundle, continue to retain their inherent nature and be governed under their respective licensing and regulatory frameworks.**

Similarly, the CP gives the example of "*integrated delivery, via a single delivery channel, of voice and other services, through a single network infrastructure that handles and distributes multiple types of media*" to explain network convergence. However, the networks for broadcasting and telecommunication services remain distinct, even if the services are available in a bundled offering for consumers.

The CP itself notes that technologies "*are being developed to enable convergence of broadcast and unicast infrastructure...*" (*emphasis added*). It cites Direct-to-Mobile, 5G Broadcast, and satellite networks for broadcast and telecom services as examples of this, but **what it describes are systems that could theoretically support convergence, rather than actual convergence taking place.**

Nasscom in its [feedback](#), on the draft Indian Telecommunication Bill, 2022 has recommended to exclude broadcasting services from the Bill, since broadcasting is already primarily governed under the CTN Act and the TRAI Act.^{viii}

Therefore, we recommended that, to avoid risking the disturbance of the well-defined division of responsibilities between carriage and content aspects of broadcasting regulation. The current structure should continue, wherein the telecommunication framework regulates the carriage side of broadcasting as a subset of the activity of providing infrastructure or facilities.

3. Content should not be regulated as part of the convergence framework, if any.

The CP states that regulation of content in the converged era is becoming extremely difficult, and therefore needs detailed examination and consultation. It discusses how content is regulated under different statutes and by different regulators leading to fragmented approach.^{ix} It thus may require a complete overhaul where a converged regulator regulates carriage and content.

The inclusion of converging content regulation goes beyond the scope of DoT's reference letter to TRAI on the subject matter, which forms the basis of the CP. **DoT's reference is limited to "convergence of carriage of broadcasting and telecommunication services". However, the CP analyses the regulatory framework for content for OTT (news and non-news), radio, TV (news and non-news), films and print and concludes that the current framework needs a complete overhaul.** This is not aligned with the proposition that content regulation is different from carriage regulation. Unlike carriage regulation, content regulation deals with freedom of speech and expression as guaranteed by Article 19(1)(a) of the Indian Constitution, subject to restrictions under Article 19(2).

The approach taken in the CP is also not aligned with **TRAI's own recommendations** titled '*Issues relating to Convergence and Competition in Broadcasting and Telecommunications*'^x in 2006, which recommended that the regulation of carriage and content should be separated, as the skill sets required for the two are significantly different.^{xi} The present CP does not explain what has led to the change in position from the previous recommendations.

The MIB adopted a similar view in its response to the DoT and TRAI on the issue in its letter dated 4 October 2022, which echoes the TRAI's 2006 recommendations.^{xii} It states that the existing mechanisms for content regulation are effective, and there is no need to disturb established practices. Instead, business processes can be re-engineered such that there is ease and convenience of doing business for these entities. The premise for such distinction and separation of the regulatory frameworks for content and carriage holds true in even today's digitalised carriage ecosystem.

Moreover, the principles for regulating content across different platforms are different for theatres, TV, and OTT because of fundamental differences in how content is consumed via these platforms. For example, content shown in theatres is being publicly exhibited, viewed by a wide range of viewers at the same time, and hence is governed by the Cinematograph Act, 1952. Television broadcast, by comparison, is relatively private and is characterised as co-viewing with schedule programs (*push content*) and hence governed by the CTN Act.

OTT on the other hand, is characterised with private viewing in India with consumers making informed choice (*pull content*) about every content that they watch, and hence content OTT is governed by the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (**Intermediary Guidelines**) including the certification process for identification of content and calibration of access.

The viewer's ability to exercise choice in how they view the content, or indeed whether they view it at all, factors into the potential risks of providing content via a particular platform. Therefore, a converged or "one size fits all" framework for content regulation cannot be applied for all platforms.

Given the distinct objectives of telecommunication & broadcasting regulatory framework, we submit their regulation should continue to be separate.

In the event there is a convergence framework, such unified act must clearly segregate the principles for the regulation of content from that of carriage. It must avoid using licensing/registration/permission conditions to impose content regulations, particularly those that restrict freedom of speech and expression and a copyright holder's ability to monetise content as per copyright principles.

4. Internet-based services must be distinguished from telecommunication services.

While discussing the convergence between the IT sector and telecom and broadcasting sectors, the CP discusses the wide adoption of IT infrastructure by TSPs themselves, as well as the use of services offered by IT enabled Service (ITeS) Providers by end customers. It states that telecommunication services are now delivered through a mixture of the infrastructure deployed by ITeS providers and TSPs. To this extent, it emphasises on the need to further expand the definition of "telecommunication services" to bring ITeS within its ambit with a probability of licensing.

Nasscom has consistently submitted in its [feedback](#), like to DoT on the "draft Indian Telecommunication Bill, 2022" that there are differences between telecom services and internet-based services and the regulatory framework must be informed by a layered approach.^{xiii}

The inclusion of all internet-based services within the ambit of telecom services does not:
(i) acknowledge the natural progression of the technological changes in the internet domain; or
(ii) recognise the technical distinction between the 'application' and 'network' layer.^{xiv}

Today, these technical developments/attributes can be found in any service using information technology. For e.g., all software, e-governance, financial or payment services.

Further, it is well-recognised, in existing policy, that different 'layers' of the Internet are construed separately and constituting different markets for physical infrastructure, networks, applications, and content.^{xv} Given this distinction, digital services require specialised legislation like the IT Act, 2000 (which is currently being revamped to the proposed **Digital India Act**) and a separate regulatory framework distinct from the regulatory principles that govern and regulate telecommunication services.

We recommend that the licensing regime should be designed (1) using an activity-led and risk-based approach (2) that ensures obligations on an activity are proportionate to the harms and risks associated with it (3) whilst keeping in mind the need to avoid regulatory overlaps.

Therefore, internet-based applications like OTT communication services should be exempted from telecom licenses as they are already governed under the IT Act for their

relevant obligations like LEA assistance (curbing fake news & security risks) or consumer protection.

In the next section, we have given our comments to the specific questions raised in the CP.

SECTION II - SPECIFIC RECOMMENDATIONS TO THE ISSUES FOR CONSULTATION

Q1. Whether the present laws are adequate to deal with convergence of carriage of broadcasting services and telecommunication services? If yes, please explain how?

OR

Whether the existing laws need to be amended to bring in synergies amongst different acts to deal with convergence of carriage of broadcasting services and telecommunication services? If yes, please explain with reasons and what amendments are required?

OR

Whether there is a need for having a comprehensive/converged legal framework (separate Comprehensive Code) to deal with convergence of carriage of broadcasting services and telecommunication services? If yes, provide details of the suggested comprehensive code.

Response [Also, refer section on General Recommendations – Recommendation no 2 & 3]:

The extant statutory and regulatory framework (**see, Table1**) adequately ensures that stakeholders are suitably regulated.

As noted in the CP, there are currently various laws governing these services at the statutory level.^{xvi} The TRAI's role as a common regulator for carriage of both services has also been recognised by the MIB in the past^{xvii}. It recognised that convergence of technology had already taken place over the past decade and that both the MIB and the TRAI had been effective at dealing with challenges arising out of such convergence.^{xviii}

Further, there is already a convergence of some statutes and institutional frameworks relating to carriage of broadcasting and telecom services, like the same regulator (TRAI), adjudicator (Telecom Disputes Settlement Appellate Tribunal - TDSAT), and spectrum administrator (DOT/WPC). The IT Act and the Intermediary Guidelines are applicable to the carriage of broadcasting and telecommunication services. Therefore, the existing framework is adequate to deal with any future convergence.

Further, the MIB has mentioned that regulatory convergence is being achieved by creating a single platform in the form of '[Broadcast Seva Portal](#)' on which all the stakeholders / ministries / departments are being integrated as a single window for all licensing /permissions / reporting requirements etc.

Considering the above, a converged framework for carriage of telecommunications and broadcasting sectors is not presently required as existing laws are suitably placed to deal with issues arising out of convergence and doing so may hamper growth in these sectors. Collaboration is already being ensured through the Broadcast Seva Portal.

Q2. Whether the present regime of separate licenses and distinct administrative establishments under different ministries for processing and taking decisions on

licensing issues, are able to adequately handle convergence of carriage of broadcasting services and telecommunication services?

If yes, please explain how?

If no, what should be the suggested alternative licensing and administrative framework/architecture/establishment that facilitates the orderly growth of telecom and broadcasting sectors while handling challenges being posed by convergence? Please provide details.

Response:

Owing to the distinct nature of telecommunication and broadcasting services (*as highlighted above*), the licensing framework, including the administrative establishments overseeing the respective licensing and statutory frameworks for these services must be kept separate.

Each administrative establishment, under each Ministry, has a unique mandate and purpose. As mentioned above, there are several laws governing specific parts of the ecosystem, which then feed into different regulators (including the DoT, TRAI, and MIB).^{xix}

Together, they form a comprehensive regulatory ecosystem for the carriage of telecom and broadcasting services in India. Creating a new regulatory dispensation without clear objectives may create an uncertain operating environment and reduce ease of doing business in India.

It is important to note that unlike some foreign jurisdictions which have unified regulators dealing with all aspects relating to a specific sector, India has traditionally followed an approach where specialised institutions manage administrative affairs of certain aspects across various sectors.^{xx}

Moreover, the CP does not identify any specific gaps or issues that need to be addressed in the current framework or any point to any market failures or harms. Therefore, the present approach where separate regulators handle certain aspects of different sectors remains the most effective approach in the Indian context.

We recommend avoiding risking the disturbance of the well-defined division of responsibilities between carriage and content aspects of broadcasting regulation.

- Q3. How various institutional establishment dealing with –
- (a) Standardization, testing and certification.
 - (b) Training and Skilling.
 - (c) Research & Development; and
 - (d) Promotion of industries

under different ministries can be synergized effectively to serve in the converged era. Please provide institution wise details along with justification.

Response:

At present, there are multiple agencies providing for standardisation, testing and certifications in telecom, broadcasting, and IT sector (for instance, the Telecommunications Engineering Centre being responsible for standardization, testing, certification in telecom and related IT

equipment; the MeitY Standardisation Testing and Quality Certification Directorate; the Bureau of Indian Standards under the Ministry of Consumer Affairs, and so on).

This is an area where the Government should think of convergence as it may be beneficial to have a single agency specify standards, conduct testing, and issue certifications. This will also avoid multiple agencies specifying different standards and requirements for the same technology.

It would be useful for different authorities to collaborate in the form of project teams, working groups, or task forces on areas of common interest, to bring together their respective expertise and perspectives to solve situations, while not having to merge the entities themselves. Examples of this approach include the [UK's Digital Regulation Cooperation Forum](#), which brings together the data protection authority, the telecom regulator, the competition regulator and financial regulator, and engages on an ongoing basis with stakeholders across society.^{xxi}

We recommended that a coordination mechanism should be established where all institutions/ bodies are integrated and collaborate for introducing standards, testing and certification. This would be in line with ease of doing business initiative and lead to improved consistency, efficiency, certainty, and quality offered across the sectors and industries.

Q4. What steps are required to be taken for establishing a unified policy framework and spectrum management regime for the carriage of broadcasting services and telecommunication services? Kindly provide details with justification.

Response:

The extant policy framework and spectrum management regime sufficiently addresses the carriage of services in both the telecom and the broadcasting sectors. Rather than establishing an entirely new framework, a balanced and market led approach to spectrum allocation is critical to achieving efficiency. The focus should be on strengthening platforms that are already in place for obtaining processes/ approvals pertaining to allocation of spectrum in a time bound manner through better coordination among different Government department. For instance, the [Saral Sanchar Portal](#) established by the DoT simplifies the process for frequency allocation through the WPC. This is already integrated with Broadcast Seva Portal of the MIB for administrative allocation of satellite spectrum.^{xxii}

Since telecommunication and broadcasting services are distinct services, the spectrum management principles that apply should also be distinct. Fundamentally, satellite spectrum used for broadcasting services allows multiple satellite service providers to operate in the same geographic area. On the other hand, telecom services offered over terrestrial spectrum blocks frequency band in such a way that it can only be used by a single operator and cannot be shared. **Due to this critical difference satellite spectrum is never exclusively assigned as opposed to terrestrial spectrum.** This has been the prevailing standard for the allocation of satellite spectrum in India and worldwide.

We recommend that the current process of administrative allocation of satellite spectrum for broadcasting services and auction for telecommunication services should continue and would be in line with international practices.

Q5. Beyond restructuring of legal, licensing, and regulatory frameworks of carriage of broadcasting services and telecommunication services, whether other issues also

need to be addressed for reaping the benefits of convergence holistically? What other issues would need addressing? Please provide full details with suggested changes, if any.

Response:

In our [submission](#) to DoT on the draft Telecommunications Bill, we had recommended an activity cum risk based approach regarding telecom licensing regime (refer section on General Recommendations, Recommendation no 4).

OTT Communication services

As discussed in the section on **General Recommendations**, internet-based applications like OTT communication services, should be looked at through the lens of activity led and risk-based approach.

To reiterate our above stated position, we can also refer to the global position. For instance, EU follows a **graded approach**, where an ‘**electronic communication service**’ is limited to three sub-categories:

1. services for conveyance of signals
2. internet access services
3. ‘interpersonal communication services’ (a technology-neutral definition that captures both traditional voice telephony and SMS, and similar OTT-based voice and messaging, but excludes, via statutory criteria, broadcasting, value-added, or other online services).

The last category is further sub-divided divided into number-dependent and number-independent services to ensure even more precision in regulation.^{xxiii}

The CP seems to have assumed that all digital services are largely similar, and indistinct from telecom services (and therefore should be regulated similarly with telecom services). It is pertinent to note that, most online services, sometimes referred to as ‘OTTs’, are in addition to, and not in substitution of, traditional telecommunications services, as they do not require spectrum and numbering resources. Also, as stated above (Also, see General Recommendation no 3 & 4), they are regulated. Besides, the proposed Digital India Act is intended to overhaul the existing regulatory framework.

Therefore, OTT communication services should be exempted from telecom licenses as they are already governed under the IT Act for their relevant obligations.

Cloud Service Providers

In 2019, nasscom in its [feedback](#) on the TRAI Consultation Paper on Cloud Services has recommended that CSPs in India should not be subject to regulation by the DoT or the TRAI, directly or indirectly.^{xxiv}

Reiterating the above position, we submit that cloud services should be distinguished from the telecommunication services as:

- TSPs provide non-discriminatory access to public network of computers by owning and operating infrastructure, whereas;
- cloud services do not perform such public function or access to public resources. Cloud services are information services for businesses and individuals that build on a cloud platform, and include servers, storage, software, platforms etc.

Therefore, it is incorrect that there is a 'blurring of boundaries' between the 'telecom space' and the 'cloud space' and services are substitutable. Telecommunications and cloud computing services exist in completely different network layers (telecommunications at the network layer and cloud computing at the application layer).

The CP assumes that CSPs are currently not regulated in India and would therefore need to be brought in the TRAI's jurisdiction. Presently, CSPs are regulated in India through laws on data privacy and security [i.e., the IT Act and regulations issued thereunder such as the Intermediary Guidelines, the [recent directions](#) issued by the Indian Computer Emergency Response Team – CERT-IN (like, maintenance of ICT logs and customer records.)], consumer protection laws (i.e., the Consumer Protection Act, 2019 and rules issued thereunder), and various other regulations released by sectoral regulators like the Reserve Bank of India (**RBI**) and the Insurance and Regulatory Development Authority of India (**IRDAI**).^{xxv}

Additionally, MeitY oversees the empanelment of CSPs as government-approved service providers under the '[MeghRaj](#)' initiative for government related procurement of cloud services, with associated compliance. Such compliance by CSPs is verified through a rigorous audit.^{xxvi} As per the [Allocation of Business Rules, 1961](#), MeitY has jurisdiction over (i) policy making for the IT sector and the internet (barring licensing of service providers); and (ii) promoting IT and ITeS.^{xxvii} Thus, CSPs should be regulated by MeitY.

It is also relevant to note that other jurisdictions cited by the TRAI in the CP for the purpose of convergence, such as United States (**U.S.**), United Kingdom (**UK**), Australia, EU, Singapore etc., CSPs are regulated through legislation on data protection^{xxviii}, cybersecurity^{xxix} and consumer protection^{xxx}, rather than through regulations designed for TSPs.

Therefore, we recommend that CSPs in India should be regulated by MeitY. and not be subject to regulation by DoT or TRAI, directly or indirectly.

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Endnotes

ⁱ See, Telecom Regulatory Authority of India, '[Regulating Converged Digital Technologies and Services - Enabling Convergence of Carriage of Broadcasting and Telecommunication services](#)', (January 2023).

ⁱⁱ See, Telecom Regulatory Authority of India, '[Regulating Converged Digital Technologies and Services - Enabling Convergence of Carriage of Broadcasting and Telecommunication services](#)', (January 2023), Para 1.13 and Para 1.15.

ⁱⁱⁱ See, Telecom Regulatory Authority of India, '[Regulating Converged Digital Technologies and Services - Enabling Convergence of Carriage of Broadcasting and Telecommunication services](#)', (January 2023), Para 1.13, Para 1.25 and Para 1.51

^{iv} See, Telecom Regulatory Authority of India, '[Regulating Converged Digital Technologies and Services - Enabling Convergence of Carriage of Broadcasting and Telecommunication services](#)', (January 2023), MBI letter to TRAI dated October 04, 2022 - Views of MIB on DOT Reference, Annexure III, page 142-143.

^v See, Telecom Regulatory Authority of India, '[Regulating Converged Digital Technologies and Services - Enabling Convergence of Carriage of Broadcasting and Telecommunication services](#)', (January 2023), Para 2.51, page 77-78.

^{vi} See, Telecom Regulatory Authority of India, '[Regulating Converged Digital Technologies and Services - Enabling Convergence of Carriage of Broadcasting and Telecommunication services](#)', (January 2023), Table 2.1, Para 2.2, page 47.

^{vii} See, Telecom Regulatory Authority of India, '[Regulating Converged Digital Technologies and Services - Enabling Convergence of Carriage of Broadcasting and Telecommunication services](#)', (January 2023), Para 1.3ii.

^{viii} See, [nasscom response to draft Telecommunications Bill](#).

In other jurisdictions, there are separate laws for broadcasting. We recognised that, under extant policy, there are carriage-related aspects governed under extant laws. For example, the DOT requires some permissions and imposes requirements for the purposes of distribution and transmission (in other words, the carriage of signals used in broadcasting), such for the use of spectrum or for up linking and downlinking, or operating cable or satellite-based networks.

^{ix} Different legislations are Information Technology Act, 2000, the Cable Television Networks (Regulation) Act, 1995, and the Cinematograph Act, 1952, whereas different authorities are MeitY, MIB, and the Central Board for Film Certification.

^x See, Telecom Regulatory Authority of India, '[Recommendations on Issues Relating to Convergence and Competition in Broadcasting and Telecommunication](#)' (2006).

^{xi} The recommendations stated that regulation of carriage is primarily concerned with technical and economic aspects/repercussions of policies. Whereas content regulation considers the impact of content on sensibilities, morals, and value system of the society. Artistic and creative persons from the fields of fine arts, drama, films may be more suited for content regulation than technocrats or economists.

^{xii} See, Telecom Regulatory Authority of India, '[Regulating Converged Digital Technologies and Services - Enabling Convergence of Carriage of Broadcasting and Telecommunication services](#)', (January 2023), MBI letter to TRAI dated October 04, 2022 - Views of MIB on DOT Reference, Annexure III, page 142-143.

^{xiii} **Telecommunication services** are services provided by TSPs and include fixed and mobile telephone services (including internet connectivity), carrier services, call management services, private network services and data transmission services. TSPs provide these services through a license granted by the Government under the

Indian Telegraph Act, 1885, which confers to them an exclusive right to acquire natural resources like telecommunication spectrum, the right to obtain telecom numbering resources, and the right of way to set up infrastructure. TSPs also have access to a Public Switched Telephone Network (**PSTN**) (or switched or non-switched networks in the case of mobile services) for the transmission of voice, data, and video to and from national and international destinations, and hence their service is primarily concerned with the transmission of voice and data.

Internet-based services or digital services, on the other hand, are services that are provided over the internet. Digital services include OTT communication and messaging services, OTT video streaming services, digital news, search services, navigation services, ride hailing services, dating services, delivery logistics services, etc., delivered over the internet. **On the supply side**, new data networks, digital computing tools, and internet platforms enable service providers to digitalise their services and transform their modes of delivery. **On the demand side**, internet platforms and digital technology reduce transaction costs and allow access to a variety of goods and services. They also provide convenience and the ability to customise services.

^{xiv} The TRAI has in multiple papers, such as its Recommendations on 'Regulatory framework for Internet Telephony' dated October 24, 2017, acknowledged the separation of the network layer and the service layer.

^{xv} See, UNCTAD, [Information Economy Report: the Development Perspective](#), chapter 7, (2006); See, DOT, [NDCP](#), Paragraph 2.1(b)(v), (2018); See, TRAI, [Recommendations on Enabling Unbundling of Different Layers Through Differential Licensing](#), (2021).

^{xvi} See, Telecom Regulatory Authority of India, '[Regulating Converged Digital Technologies and Services - Enabling Convergence of Carriage of Broadcasting and Telecommunication services](#)', (January 2023) Para 1.39. See laws, like, the Indian Telegraph Act, 1885; the Indian Wireless Telegraphy Act, 1933; the IT Act, 2000 (**IT Act**); the Cable Television Networks (Regulation) Act, 1995, the Prasar Bharati (Broadcasting Corporation of India) Act, 1990.

^{xvii} See, Telecom Regulatory Authority of India, '[Regulating Converged Digital Technologies and Services - Enabling Convergence of Carriage of Broadcasting and Telecommunication services](#)', (January 2023), MBI letter to TRAI dated October 04, 2022 - Views of MIB on DOT Reference, Annexure III, page 142-143.

^{xviii} See, Telecom Regulatory Authority of India, '[Regulating Converged Digital Technologies and Services - Enabling Convergence of Carriage of Broadcasting and Telecommunication services](#)', (January 2023), MBI letter to TRAI dated October 04, 2022 - Views of MIB on DOT Reference, Annexure III, page 142-143.

^{xix} For content, the Cinematograph Act, 1952 and the Press and Registration of Books Act, 1867, as well as the IT Act, 2000 and the rules framed thereunder, among others, cover the field. DoT deals with issues relating to communications which include voice, video, and data communication, while MIB deals with information and broadcasting technologies; MeitY considers issues related to electronics and information technology.

^{xx} For instance, there are separate ministries for Communication, Information & Broadcasting, and Electronics & Information Technology and in the different responsibilities they have been allocated/entrusted with.

^{xxi} See, ITI's Feedback dated January 26, 2023 to the Consultation Paper Telecom Regulatory Authority of India, '[Regulating Converged Digital Technologies and Services - Enabling Convergence of Carriage of Broadcasting and Telecommunication services](#)', (January 2023)

^{xxii} See, Telecom Regulatory Authority of India, '[Regulating Converged Digital Technologies and Services - Enabling Convergence of Carriage of Broadcasting and Telecommunication services](#)', (January 2023), MBI letter to TRAI dated October 04, 2022 - Views of MIB on DOT Reference, Annexure III, page 142-143.

^{xxiii} See, Article 2(4), [the European Electronic Communications Code](#), (2018).

^{xxiv} See, nasscom, [Response to TRAI Consultation Paper on Cloud Services](#) (2019).

^{xxv} See, Ministry of Electronics and Information Technology (MeitY) Indian Computer Emergency Response Team (CERT-In), Directions under sub-section (6) of section 70B of the Information Technology Act, 2000 relating to information security practices, procedure, prevention, response and reporting of cyber incidents for Safe & Trusted Internet, (April 28, 2022).

The RBI and the IRDAI have released IT outsourcing guidelines, which will cover CSPs within their ambit.

See, RBI, [Draft Master Direction on Outsourcing of Information Technology \(IT\) Services](#) (June, 2022).

See, IRDAI, [IRDA, Outsourcing of Activities by Indian Insurers Regulations, 2017](#).

^{xxvi} See, Ministry of Electronics and Information Technology, [GI Cloud Initiative \(MeghRaj\)](#).

^{xxvii} See, Ministry of Electronics and Information Technology, [The Allocation of Business Rules Pertaining to Ministry of Electronics and Information Technology](#).

^{xxviii} For instance, in the U.S., CSPs are subject to state legislations on data protection, such as the [California Consumer Privacy Act](#). Similarly, in Singapore, CSPs must comply with the [Personal Data Protection Act](#). In Australia, they must comply with the [Privacy Act, 1988](#) and the [Australian Privacy Principles](#). In the EU, CSPs are subject to the [General Data Protection Regulation](#).

^{xxix} For example, see the Australian Cyber Security Centre, [Cloud Security Guidance](#). Similarly, see, Singapore's [Guide To Securing Personal Data In Electronic Medium](#), Personal Data Protection Commission (2017) under the Personal Data Protection Act. In the EU, CSPs are also subject to the [Cybersecurity Act, 2019](#). And in the UK, the [Network and Information Systems Regulations, 2018](#).

^{xxx} For instance, CSPs must comply with the [Australian Consumer Law](#).