



Response to TRAI Consultation Paper
on Review of Terms and Conditions
For Registration of Other Service
Providers (OSPs)

May 2019

RESPONSE TO
TRAI CONSULTATION PAPER
ON
REVIEW OF TERMS AND CONDITIONS
FOR
REGISTRATION OF OTHER SERVICE PROVIDERS (OSPs)

As the largest trade association of the Indian IT-BPM industry, we appreciate the opportunity to provide our comments on this important issue which has had a wide ranging impact on the Indian software /technology companies as well as the outsourcing industry.

Our recommendation is that the OSP registration and the related terms and conditions should be abolished. We have provided detailed justification in support of our recommendation. Given this, we have not done a question wise response suggesting incremental improvements in the existing OSP regime. Instead we have highlighted the practical challenges that are faced during the implementation of the OSP Regulations. These issues are arranged in a chapter-wise order based on subject matter being discussed.

Context

The National Telecom Policy of 1999 under the aegis of which the Terms and Conditions for registration of Other Service Providers ('**OSP Regulations**' / '**OSP Regime**') were first introduced is now 20 years old. Given the rapid pace of technological change the National Telecom Policy itself has been reviewed several times with the latest National Telecom Policy having been replaced by a more modern National Digital Communications Policy, 2018 ('**NDCP**').

The Preamble of the NDCP in fact recognises, "Given the sector's capital-intensive nature the Policy aims to attract long-term, high quality and sustainable investments. To serve this objective, the Policy further aims to pursue regulatory reforms to ensure that the regulatory structures and processes remain relevant, transparent, accountable and forward-looking. Additionally, the Policy aims to remove regulatory barriers and reduce the regulatory burden that hampers investments, innovation and consumer interest."

In line with this goal, we believe that the time is ripe to reassess the necessity of the OSP Regulations in light of the various technological, business and regulatory advancements that have happened since the OSP Regulations were first introduced. A good starting position for this exercise would be to understand the objectives which were sought to be achieved by the OSP Regulations.

The Consultation Paper ('**CP**') notes that the fundamental purpose of the OSP Regulations (which was introduced through the National Telecom Policy of 1999) was to ensure the following:

- (i) Special dispensation provided to the then nascent Business Process Outsourcing ('**BPO**') sector.
- (ii) Collection of statistical information.
- (iii) Prevention of infringement into the jurisdiction of telecom service providers ('**TSPs**').

NASSCOM's comments

We have discussed below the relevance of each of the objectives OSP Regulations in 2019.

1. Providing special dispensation to the BPM Industry:

The OSP Regulations when introduced were a means for BPO units, which required large amounts of telecom resources to obtain what was then a scarce and expensive resource. Given the scarcity and price of bandwidth, such a regulation was required to enable genuine users to obtain resources to conduct legitimate businesses. However, we've come a long way since the time when people had to queue up for telephone registrations and reached a space where we not only have an abundance in terms of choices of TSPs but also enjoy one of the lowest telecom tariffs in the world.

Thus, the objective of enabling access to telecom resources has been achieved and the need for a registration regime to enable access to such services is no longer relevant.

Furthermore, given the nascence of the services industry as a whole, these regulations were also seen as a means to facilitate the growth of innovative services such as tele-banking, tele-medicine, e-commerce, tele-trading etc. which were at a stage of infancy in 1999.

In 2019 we believe that this regulation has served this purpose by promoting the services sector and ensuring that services contribute one of the largest components to our economy along with the growth of some of the most innovative start-ups in the services space.

Special dispensation to the BPM sector today therefore does not need to be in the form of an OSP Registration, rather it could be in the form of simplifying the setting up and carrying on of business in India which would allow start-ups and entrepreneurs in providing world class services based out of India.

2. Statistical Information

The requirement / need for statistical information alone should not justify the imposition of a mandatory registration regime with strict compliance conditions. The Government of India has numerous alternate means by which it can obtain statistical information on BPMs. For instance, annual returns required to be filed under the Companies Act, 2013 and various other filings made by companies could serve to provide the requisite statistical information. In addition, exports of BPM services can also be tracked through the software-export (SOFTEX) forms, Import Export Codes (IEC), etc. which are filed with the Reserve Bank of India ("RBI"). This is another source that the Department of Telecom ("DoT") can use for statistical information.

In addition, the DoT can also require TSPs to submit to it the list of bulk telecom resource users. This would indicate the number of enterprises using telecom resources as well as usage patterns allowing the DoT to corroborate the data made available to it from other sources.

As highlighted above, there are several alternate ways in which the same information may be submitted / obtained, obviating the need for the imposition of the OSP regime.

3. Ensuring activities of OSPs do not infringe upon jurisdiction of licensed TSPs

The objective of the OSP regime is to ensure that (a) OSPs do not encroach upon the jurisdiction of licensed entities and (b) there is no leakage of revenue for the Government.

The worry at the time when the OSP Regulations were introduced was that OSPs may encroach into the jurisdiction of licensed entities by providing connectivity themselves which is otherwise the prerogative of a licensed entity. Such connectivity would be motivated by the possibility of diverting expensive international calls by using data connectivity as opposed to using the traditional public switched telephone network (PSTN) route which would result in revenue loss for telecom operators and in turn the government. Therefore, there was a need to ensure that the jurisdiction of TSPs is protected and that OSPs do not use the resources of TSPs to offer their own services / use means other than traditional resources which were allocated for particular purposes.

This no longer remains a real concern in today's day and age where almost all telecom traffic is now carried on the Internet (including voice traffic through Voice over Internet Protocol (VoIP), or Voice over LTE (VoLTE)). As applications have shifted from voice to data, the marginal cost of voice telecom traffic over data has become negligible. Therefore, segregating voice and data traffic is no longer relevant. In fact, it is also time that the DoT relooks at its restriction on IP and PSTN connectivity since this restriction does not exist in most parts of the world.

The current market realities when looked at alongside the NDCP where the DoT has laid out that 'the objective of revenue maximisation will be replaced by the objective of universal coverage' makes it clear that this is no longer a pressing issue.

The OSP regime was also used by the DoT as a tool to monitor activities of OSPs from a security perspective. Given that national security remains paramount, we believe that if the DoT is desirous of being able to monitor the activities of enterprise customers, it can be done by various other means resulting in a lower burden for both DoT and industry. One way this has been done successfully is where the regulator puts the onus on the licensed entities to ensure compliance. For example, RBI has designated certain banks as Authorised Dealer Banks who have been given the onus to ensure compliance with the RBI Regulations.

Similarly, the Hon'ble Authority itself has already operationalised such a regime in terms of the Telecom Consumer Commercial Communications Preference Regulations, 2018 ('TCCCPR') where the obligations have been imposed on the operators and the implementation of such obligations viz. the customers / end users has been left to the operators to determine as they deem fit in the form of Codes of Practice.

Therefore, we believe that the DoT can, through TSPs, ensure that the enterprise customers do not violate telecom licensing norms. In fact, the Unified License already imposes several obligations on TSPs regarding bulk telecom connections including the following:

"39.22 (i) Utmost vigilance should be exercised in providing bulk connections for a single user as well as for a single location. Provision of 10 or more connections may be taken as bulk connections for this purpose. Special verification of bonafide should be carried out for providing such bulk connections. Information about bulk connections shall be forwarded to respective Telecom Enforcement, Resource & Monitoring Cell and any other officer authorized by Licensor from time to time as well as all Security Agencies on monthly basis. (emphasis supplied)

39.22 (ii) The call detail records for outgoing calls made by customers should be analyzed for the subscribers making large number of outgoing calls day and night and to the various telephone numbers. Normally, no incoming call is observed in such cases. This can be done by running special program for this purpose. The service provider should devise appropriate fraud management and prevention programme and fix threshold levels of average per day usage in minutes of the telephone connection; all telephone connections crossing the threshold of usage should be checked for bonafide use. A record of check must be maintained which may be verified by Licensor any time. The list/details of suspected subscribers should be informed to the respective TERM Cell of DoT and any other officer authorized by Licensor from time to time. (emphasis supplied)

39.22 (iii) Active support must be extended by the service providers to the respective TERM cells of DoT for detection of clandestine / illegal telecommunications facilities..... (emphasis supplied)

39.22 (iv) Bulk users premises should be inspected by the service providers at regular intervals for satisfying themselves about bonafide use of such facilities. A record of such inspection should be maintained and preserved for minimum one year, for inspection / verification by the licensing authority or a designated officer of the authority. (emphasis supplied)

39.22 (v) Leased circuits should also be checked/ inspected at regular intervals for their bonafide use and to detect any misuse."

From the above, it is clear that, TSPs are already obligated to ensure that there is no abuse of telecom resources. In fact, the OSP Regulations have resulted in a unique situation where the user of telecom resources is required to discharge heavy compliance obligations which are also being undertaken by telecom companies. Imposing the same compliance on both TSPs and bulk consumers of telecom resources results in a case of imposing double compliance.

Recommendation: The OSP registration should, therefore, be abolished and the DoT can ensure compliance with its objectives indirectly, i.e. through TSPs. This is our main suggestion to this CP.

The above view is not based merely on the fact that the objectives of the OSP Regulations are no longer relevant, but also that simplifying the regulatory framework for the IT / BPM industry will be extremely beneficial for the country. Over the last few years, India has been competing with other countries for investments to establish outsourcing centres / outsourcing of IT contracts. There are several countries today that allow interconnection of IP/PSTN traffic akin to the OSP Regulations. Businesses established in other jurisdictions avoid the compliance costs and take special efforts to prevent IP/PSTN mixing as per OSP Regulations. Eliminating the OSP Regulations will, therefore, give a fillip to the ease of doing business for the IT/ITeS sector in India. The IT - BPM industry in India not only provides the highest employment in the private sector but is also an industry that has made a phenomenal contribution to India's GDP, exports, employment, infrastructure and global visibility. Thus, there is need for intervention by the Government to focus on ensuring that we retain our competitive advantage compared to other jurisdictions.

Given our overall approach towards suggesting that the OSP regime should be done away with, we have not done a question wise response suggesting incremental improvements in the existing OSP regime. Instead we have highlighted the practical challenges that are faced during the implementation of the OSP Regulations. These issues are arranged in a chapter-wise order based on subject matter being discussed.

1 General Terms and Eligibility

- 1.1 The definitions of the terms 'Application Services' and 'Telecom Resources' are too broad and vague resulting in huge difficulty in terms of identifying what these terms apply to. The term, 'telecom resource', is defined in manner that can technically refer to any form of telecom connectivity taken for any business purposes. Similarly, the term, 'Application Services', only provides examples of the kind of services that may get included and does not provide an exhaustive list, in fact it also has a catch all phrase 'Other IT Enabled Services' to possibly cover any services provided using the internet.
- 1.2 The DoT has not provided any specific guidance on the interpretation of these terms. This has created a wide divergence of views among the 34 TERM Cells. This creates a lot of uncertainty for investors when they are trying to assess India as a jurisdiction to invest in for delivery of IT/ITeS services. Ultimately, it is left upon the local TERM Cell to take a decision on whether or not an OSP registration is required, resulting in multiplicity of views for the same business by different TERM Cells.
- 1.3 Currently, the OSP Regulations do not provide any guidance on whether the OSP Regulations are also applicable to internal activities. For instance, a software company with a development centre seating 100 programmers, but just 3 customer support staff manning telephone lines for their own customers may also technically get covered under this definition. It is, however, not clear whether such a centre would also be required to obtain OSP registration since it is not in the business of providing call centre services. Increasingly, businesses are looking to build and increase efficiencies by pooling together resources, for example, as an entity providing services internally to its affiliate entities or to their parent companies as captive centres. Such services do not appear to justify the imposition of the OSP Regulations. However, there is no clarity on this point.
- 1.4 India is poised to become a global hub for captive outsourcing. There are a large number of Global Capability Centres (GCCs) set up by large companies to leverage global talent and strengthen their in-house technology and business capabilities in India for serving their own affiliates or group companies. However, the vague definition of Application Services has meant that such centres may also be caught within the realm of the OSP Regulations. This will increase compliance costs for GCCs in India and affect the country's competitive edge in attracting companies to invest in India.
- 1.5 Any proposal to increase the scope of the OSP regime to include data /internet based services would mean that potentially many more enterprise customers would unnecessarily be required to comply with the OSP regime.

2 Documentation and Financials

- 2.1 TSPs have some of the most stringent KYC requirements. Given the fact that enterprise customers already provide significant amount of information in the form of KYC details to TSPs, the need for submitting a separate set of documents to the TERM Cell at the time of the OSP registration does not achieve any purpose. Similarly, the requirement for providing annual returns to the TERM Cell is also outdated. Such activities require huge allocation of time and personnel. Not only is the registration process cumbersome in terms of requiring pages to be certified, it also results in huge investments in time

and consulting/legal fees to draw up all the necessary documents including network diagrams for filing with the Authority.

- 2.2 Instead of requiring a duplication of compliance, the DoT can simply seek all the necessary information from the TSPs. In addition, the Ministry of Corporate Affairs and other regulators anyway require necessary information to be provided to them for the incorporation of an entity, annual financial accounts etc. The same information can also be made available to the DoT as well.
- 2.3 The need for a bank guarantee for sharing of infrastructure is regressive, resulting in huge problems for businesses, especially for startups. Such a heavy bank guarantee requirement has meant that startups either block valuable working capital or remain non-compliant. Such high investments in working capital can make or break the future of startups.

3 Technical Conditions

- 3.1 In terms of the conditions pertaining to internet connectivity, today large corporations typically route their internet connectivity through specified locations, which are sometimes located abroad. This is done for cybersecurity purposes and for efficient use of internet bandwidth. Unfortunately, the requirement to obtain internet connectivity at each OSP site does not allow for this. Instead, this requirement creates additional points of entry into corporate network, affecting cybersecurity and wastage of spare bandwidth in different locations.
- 3.2 Archaic requirements imposed on work from home provision, including a prohibitively expensive bank guarantee affect employee productivity. With improved internet connectivity, it is possible for staff to be remotely available to perform their functions. Remote working is also encouraged in the amended Maternity Benefits Act, 1961. Such a facility should be encouraged instead of restricted by imposing restrictions in terms of technology (such as PPVPN etc.) requiring fixed locations and imposing stringent financial conditions.
- 3.3 The restriction on interconnectivity of PSTN and IP traffic is resulting in difficulty of implementing global solutions and causing inefficiency. In an age where voice traffic is being transferred via IP packets (VoLTE) and 5G's impending arrival, the distinction between voice and data is increasingly becoming redundant, thus this restriction on logical separation does not make sense today. Businesses should be allowed to use the kind of technology that they deem fit.
- 3.4 Preventing interconnectivity between international and domestic OSPs prevents the efficient use of facilities and telecom resources. There should be no restriction on using the same OSP centre for both domestic and international operations as it would help achieve economies of scale.
- 3.5 In terms of EPABX, there are several restrictions in the OSP Regulations which prevent Indian OSPs from efficiently designing their networks. Typically, corporations prefer to have a centralised EPABX architecture and system across offices around the world. The mandatory requirement of a domestic EPABX creates difficulty in setting up a globalised setup. The requirement for creating dedicated EPABX infrastructure for India can not only increase overall costs but may also lead to wastage of spare capacity in global EPABXs.

3.6 Restrictions on interconnecting OSP Centers among group companies and affiliates also create unnecessary hurdles in serving clients for IT/ITeS businesses and also prevent the efficient use of telecom infrastructure. In addition, innovative collaborative business models are also deterred. For instance, if multiple independent OSPs want to serve a single large client as a consortium, that is not currently possible due to restrictions in interconnectivity of different centers.

3.7 The OSP Regulations were drafted at time when cloud computing was non-existent. However, now cloud computing platforms provide a flexible, economical platform for startups in the IT/ITeS space to scale operations. By mandating the kind of technology to be used, the OSP Regulations have not been able to keep up with changing technologies and have restricted the application of newer technologies.

4 Security Conditions

4.1 TSPs have the necessary tools and skills to monitor their networks for misuse and they are also required to do so under the terms of their license. They are the best equipped to monitor OSP networks for security issues and take the necessary precautions. Therefore, there is no need to burden the OSPs with additional compliances on the security front.

4.2 It is impossible for an OSP to take all necessary means to prevent the spread of objectionable, obscene, unauthorised content etc. unless the OSP is generating the content on its own. In addition, this requirement could run contrary to Section 79 of the Information Technology Act, 2000 where the OSP cannot be held responsible for content in relation to which it is an intermediary and such content is merely passing through the OSP's network and has not been created by the OSP.

4.3 The Security Conditions of the OSP Regulations are unnecessarily vague as they merely refer to 'security agencies' without being specific. Since there are several law enforcement and security agencies in the country such as State Police, Central Reserve Police, military, Ministry of Home, intelligence agencies etc., it is unclear which agency is empowered under the OSP Regulations.

5 Penalty Provisions

5.1 Under the OSP Regulations, for the breach of the regulations, the TERM Cell has the right to terminate the registration as well as forfeit the bank guarantee provided by the OSPs. The OSP Regulations do not provide for specific clear penalties for smaller violations. This has the potential to lead to disproportionate punishment on the part of the OSP and subjectivity in terms of consequence of non-compliance.

5.2 While the OSP Regulations provides for penalties for breach of the OSP Regulations, the OSP Regulations are not clear on the penalty for non-compliance with the registration requirement. This has the potential to create a situation where several entities providing Application Services can continue to do so without any deterrent, but at the same time, compliant businesses who obtain the OSP Registration are required to abide by compliance requirements.

6 Miscellaneous Provisions

- 6.1 There is no specialised dispute resolution mechanism under the OSP Regulations for settlement of disputes between the TERM Cell and the OSP Registrant. Currently, the OSP Regulations provide for a single arbitrator to be appointed by the DoT itself in the event of dispute between the parties. This has meant that the grounds of appeal / challenge any decision is limited. However, other telecom licensees have the right to approach the Telecom Disputes Settlement and Appellate Tribunal (TDSAT) against any decision of the DoT; this remedy is not available to OSP Registrants.
- 6.2 OSP Regulations create hurdles in mergers and acquisitions since approval is required from the TERM Cell for the transfer of an OSP registration. A requirement to seek approval merely for the continued use of telecom infrastructure under a different management is practically very time consuming.
- 6.3 CCSP/HCCSP have enabled self-service systems that enable privacy and convenience for enterprises communicating with their customers. The ease of deployment and efficiency of these systems allows for reduction of costs and increase in convenience and quality of service delivery. As these enterprises/services already rely upon TSP's for providing their services and required to enter into TRAI/DoT compliant agreements with the TSP's, hence there is no need for a separate registration of CCSP/HCCSP's under a separate regulatory regime.