TCL/RA/TRAI-CP-OTT/2019/1

January 07, 2019

Shri. Asit Kadayan,
Advisor (QoS),
Telecom Regulatory Authority of India (TRAI),
Mahanagar Door Sanchar Bhawan,
J.L. Nehru Marg, (Old Minto Road)
New Delhi - 110002, India

Sub: TCL Response to TRAI Consultation Paper on Regulatory Framework for Over-The-Top (OTT) communication Services dated November 12, 2018

Dear Sir,

Kindly find attached herewith Tata Communications Ltd. response on the TRAI Consultation Paper dated November 12, 2018 on "Regulatory Framework for Over-The-Top (OTT) communication Services".

It is requested that the same may kindly be taken on record.

With kind regards,
For Tata Communications Ltd.

(Praveen Sharma)
Authorized Signatory

Encl: a/a.

TATA COMMUNICATIONS

Tata Communications Limited
VSB Bangla Sahib Road New Delhi 110 001 India
Tel +91 11 6650 1111 6650 1234 Fax +91 11 6650 1121 Website: www.tatacommunications.com
Regd Office: VSB, Mahatma Gandhi Road, Fort, Mumbai 400 001 India
CIN No.: L64200MH1986PLC039266

TCL Response to the issues raised in the TRAI Consultation Paper on Regulatory Framework for Over-The-Top (OTT) communication Services dated November 12, 2018

Q.1 **Which service(s) when provided by the OTT service provider(s) should be regarded as the same or similar to service(s) being provided by the TSPs. Please list all such OTT services with descriptions comparing it with services being provided by TSPs.**

TCL Response:

The Consultation Paper on Regulatory Framework for OTT services issued by TRAI in 2015 defined "OTT provider" as a service provider which offers Information and Communication Technology (ICT) services, but neither operates a network nor leases network capacity from a network operator. In our view, OTTs who provide a replacement service to the services offered by TSPs should be regarded as same to the services offered under a telecom license in India. Few such example of OTTs are mentioned below. Their services are comparable to internet telephony service provided by ISP licensed service providers in India. Internet telephony service is also same as OTT service since for providing internet telephony service, it is not necessary that the ISP provides its own internet connectivity to the end customer.

i. Skype: Providing VoIP service along with multi-channel services which includes white boarding and video.
ii. WhatsApp: Providing messaging, group messaging along with VoIP services.
iii. Viber: Providing VoIP serves both on net and off net mode of communications
iv. IMO: Providing voice and video on net services.
v. Facebook Messenger: Providing messaging and group messaging services.

On broader terms we see many apps providing ON net Voice/Video and conferencing services to their registered users.

It is further seen that many OTT providers are directly interconnecting with ISPs and other non-ISP entities and providing them with access to Internet based content; this is equivalent to the OTT playing the role of a backbone ISP albeit without the necessary licenses of ISP, ILD & Gateway Approval. Such OTTs are also connecting at some of informal internet exchanges operating in India with Indian ISPs, other foreign telecom operators and non-ISP entities at such informal exchanges in India. The existing regulatory framework does not allow for such direct interconnections among OTTs, Indian ISPs, foreign telecom operators and other non-telecom entities which bypass the licensing and taxation regimes of the country and are posing threat to national security as well. Such interconnection/internet peering services are comparable to internet access

service provided by licensed ISP service providers in India. The legality of such arrangements by OTTs needs to be examined as this may result in some traffic going unmonitored and also pilferage of revenue to exchequer since in ordinary situation this peering would have been sold as an Internet Leased Line Service /Internet Access Service by one of the licensed ISP operator with international gateway to such other ISPs and other entities.

In addition, few OTT players have started announcing network connectivity service offerings in selected markets. These services are similar in nature as provided by TSPs in India for connecting a customer's location to OTTs Data Center locations either via a direct or virtual connectivity. In future, when these services are extended in India by these OTTs, they shall be required to be reviewed under existing regulatory and other compliances requirements, currently applicable to all licensed TSPs in India.

Q.2 **Should substitutability be treated as the primary criterion for comparison of regulatory or licensing norms applicable to TSPs and OTT service providers? Please suggest factors or aspects, with justification, which should be considered to identify and discover the extent of substitutability.**

TCL Response:

We strongly suggest substitutability should be treated as primary criterion for comparison of regulatory or licensing norms applicable to TSPs and OTT Service Providers. TSPs today invest in network and many other equipment for providing Voice, Video , Data and Internet Access Services for Indian customers.. All Indian license holders have to invest in legal intercept modules, URL filtering platform and other compliances under their licenses other than network infrastructure. All this infrastructure primarily is invested for providing communication services for various users as well as other entities (enterprise, OTTs, CDNs, ISPs etc). On other hand OTTs use this infrastructure and provide similar services to end users as well as other entities. Though they claim that they provide these services free of cost, but they actually earn revenues using the model called "registered users and advertising" whereby making huge amount of profit. Most of the OTTs who provide communication services are large companies and have been listed in global stock markets and make huge profit while on other hand they do not share any revenues to either the Government of India or with the licensed infrastructure providers in India. On the other hand, it is also major security threat to the National Security of India along with potential bypass of the tax regime of the country. Also it is impossible to identify if any anti-national or terrorism activity is getting planned or executed because of the nature and the way OTTs provide the telecommunication services.

Q.3 **Whether regulatory or licensing imbalance is impacting infusion of investments in the telecom networks especially required from time to time for network capacity expansions and technology upgradations? If yes, how OTT service providers may participate in infusing investment in the telecom networks? Please justify your answer with reasons.**

TCL Response:

OTTs as mentioned in DOT committee report infuse the requirement of data consumption and licensed operators do get benefitted from increase in the data consumption, however the important point is in the imbalance in revenues generated by an OTT player and a licensed operator who invests upfront for the telecom network infrastructure. One must give advantage to OTT players as they are the driving force for innovation, but the point is this innovation if not brought under correct regulation are really dangerous for social and economy viability of a society like India. In recent past, we have seen few cases such as misuse of personal data by an OTT or misuse of OTT platforms by anti-social organizations.

In TCL's view, the regulatory framework should force OTTs to invest in telecom infrastructure as partners and then only they should be allowed to roll out services in India. These recommendations are mainly for the OTTs who offer real time communication services.

For OTTs providing real time domestic calling services (local and national) on IP protocol should be considered equivalent to a TSP providing such services and should have obligations similar to the TSP to invest in the growth of network infrastructure of the country either directly or in partnership with TSPs along with other License conditions currently imposed on TSPs. They should also be ensuring that all traffic originating and terminating within India should remain within the country and not traverse via any international routes.

Other OTTs like gaming, content broadcast, content distribution etc. of data through internet peering /interconnection should be brought under the ambit of ISP / UL license and OTTs should have the same obligations of license compliance as that of other ISP operators so as to create a level playing field.

Participants of real time communication OTTs in telecom space of India can bring about the change in adoption of new technologies much faster and in long term will be beneficial for all parties including OTT players, TSPs and Government of India.

Q.4 **Would inter-operability among OTT services and also inter-operability of their services with TSPs services promote competition and benefit the users? What measures may be taken, if any, to promote such competition? Please justify your answer with reasons.**

TCL Response:

Inter-operability amongst OTTs can only happens when the Government of India takes a stand on PUBLIC E.164 Number Mapping (ENUM) standard services in India. It uses special DNS record types to translate a telephone number into a Uniform Resource Identifier or IP address that can be used in Internet communications. ENUM base services will allow all the real time communications OTTs to share their SIP registry database with Indian regulator, thus getting the OTT players at the same level of TSPs. This also helps in the database of Indian users to remain in India and which cannot be used for any other illegal activity by OTTs.

In this way TSPs will be encouraged to invest more in their infrastructure as they see better ROI on investment. This may also lead for OTTs to invest in research and development in India which will be another great advantage.

Q.5 **Are there issues related to lawful interception of OTT communication that are required to be resolved in the interest of national security or any other safeguards that need to be instituted? Should the responsibilities of OTT service providers and TSPs be separated? Please provide suggestions with justifications.**

TCL Response:

The responsibility of national security should be equal to both the TSPs and OTTs providing the real time communication services and no compromise should be allowed in national security. TSPs in India have rightfully put the national security first in their business but that is not true for OTT players where most of the OTTs providing real time communication services do not have their company or any liabilities in India. For them every user of India is just a registered user which is a means of revenues for them.

As suggested earlier, all the OTTs who wants to provide the real time communication services in India should oblige to the Indian regulation which any licensed TSP complies and the best way to bring both on same page it to consider the Public E-NUM services.

OTT players providing services like internet peering/interconnection should be brought under the ambit of ISP/UL License and they should have the same obligations of license compliance such as revenue share, tax compliance, security compliances, lawful intercept and URL blocking, NATTING, CAF & KYC norms, surprise premise visit, data

privacy and security, roll-out obligations and other compliances as under ISP /UL license to create a level playing field. Current interconnection/internet peering of OTTs with non-gateway license ISPs, informal internet exchanges and foreign telecom operators has very high chances of traffic going unmonitored to end user in India posing a serious national security threat as well as pilferage of revenue to Govt. exchequer.

In addition, all OTTs providing domestic real-time communication services should be obligated to ensure that all data pertaining to Indian consumers remain within the boundaries of India. This will require data residency laws to be applicable on such OTTs.

Q.6 **Should there be provisions for emergency services to be made accessible via OTT platforms at par with the requirements prescribed for telecom service providers? Please provide suggestions with justification.**

TCL Response:

Emergency services are very essential part of any telecommunications network's obligations across the world.

If we recognize real time communication OTTs as license entities in India, then they should provide emergency services as well. In fact, OTTs by their nature of service with multi-channel communication like twitter, Facebook, WhatsApp can provide enhance version of emergency services which a traditional TSP cannot provide.

Q.7 **Is there an issue of non-level playing field between OTT providers and TSPs providing same or similar services? In case the answer is yes, should any regulatory or licensing norms be made applicable to OTT service providers to make it a level playing field? List all such regulation(s) and license(s), with justifications.**

TCL Response:

TCL believes that there is an issue of non-level playing field between OTT providers and TSPs providing the same services for which they have applied for license from government of India.

TCL also believes that OTT should be mandated with following obligations keeping in view of national security issues and level playing field if they are providing services in India region:

- Lawful Interception obligations: Section 69 of the IT Act gives the power to the Government to intercept, monitor or decrypt any computer resource. This

provision also lays down a penalty of imprisonment up to seven years for an intermediary who does not assist the government in interception or monitoring. Further Section 69B also empowers the Central Government to monitor and collect traffic data or information through any computer resource for cyber security. This Obligation will force OTTs offering real time communication services to create infrastructure in India thereby protecting the security interest of India.

- Takedown obligations: Section 69A of the IT Act empowers the Central Government to issue directions to any intermediary for blocking for public access of any information in any computer resource. The provision also prescribes a punishment of imprisonment up to seven years for any intermediary who fails to comply with the direction issued under it. This obligation will ensure that OTTs evolve themselves to use their services for social benefit and not otherwise. We have seen example of terrorist luring innocent citizens by using OTT social media app and any such activity impacts the integrity of our country.

- Privacy and cyber-security obligation: Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information), 2011 requires every service provider to outline a detailed privacy policy that is applicable to all users, this articulates nature of data collected, type of data that is collected and for what purpose including retention and further use. Additionally, India has consumer protection laws, financial regulations, competition law that ensures different aspects of user interest is protected. For example, as per section 43A of IT (Amendment) Act, 2008, only Sensitive Personal Data or Information (SPDI) is to be protected using "Reasonable Security Practices" by" Body Corporates". Further, Section 72 A of the IT Act provides for adequate punishment for disclosure of information in breach of lawful contract. This obligation will help in preventing OTTs who gather individual information to be sold for their benefit without the consent of the individual. In today's scenario OTT treats their consumer like an object which can be encashed at their will. This will bring required discipline in OTT behavior benefiting Indian consumer at large.

- Other OTTs services like internet peering/interconnection should be brought under the ambit of ISP / UL license and OTTs should have the same obligations of license compliance, revenue share, tax compliance, security compliances lawful intercept URL blocking, NATTING, roll out obligations and other compliances as prescribed under ISP /UL license to create a level playing field.

Q.8 **In case, any regulation or licensing condition is suggested to made applicable to OTT service providers in response to Q.7 then whether such regulations or licensing conditions are required to be reviewed or redefined in context of OTT services or these may be applicable in the present form itself? If review or redefinition is suggested then propose or suggest the changes needed with justifications.**

TCL Response:

TCL believes that the way these obligations are drafted today should be extended to OTTs providing real time communications and internet peering/interconnections. However, if DOT decides to have Public ENUM infrastructure to bring OTTs in to same level playing field then it is required to define the scope of service and obligation under such service and can be treated as another service under UL license. Internet peering by OTTs should be brought under ambit of ISP/UL license with same compliance requirement as that of ISPs as stated in previous sections above. In addition, if OTT players start offering other network connectivity service, offerings that are similar in nature as provided by TSPs in India for connecting a customer's location to OTTs data center locations either via direct or a virtual connectivity then such services should also be required to be reviewed under existing regulatory and other compliance requirement currently applicable to TSPs.

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

TCL Response:

As on today we have not seen any methodology where an OTT can provide QoS while providing real time communications. QoS has been a challenge when a communication gets originated from internet. We feel Authority should address this issue and look at the larger views of the OTTs app with QOS so that this can bring in a new way of communication while it is used for enterprise applications.

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