

Annexure: TRAI Consultation Paper on Privacy, Security, and Ownership of Data in the Telecom Sector

USISPF Counter-Comments

Introduction

USISPF would like to take this opportunity to thank the Telecom Regulatory Authority of India ('**TRAI**') for providing us the opportunity to provide counter-comments to the Consultation Paper on "Privacy, Security, and Ownership of Data in the Telecom Sector" ('**Consultation Paper**'). We have had the opportunity to review the comments provided by various stakeholders in the telecommunications ecosystem, and offer our brief comments as follows:

The emergence of the digital economy has driven unprecedented levels of job creation, entrepreneurship, innovation, and foreign investment in India. Today, India is seen as a leading start-up and technology hub with much potential to grow further. The Government has been proactive in fostering this revolution through path breaking initiatives such as Make in India, and Digital India – aimed at boosting manufacturing, connectivity, digital literacy, and e-governance. Alongside, the government has made the improvement of India's ease of doing business a key priority.

A primary reason for the growth of the internet and other digital services has been the ease with which information can flow across borders to consumers around the world. More than a feature of the internet, cross-border flows are an integral part of its success. In fact, Indian companies have benefitted significantly from this free-flow of data with India's largest IT companies deriving significant revenues from markets abroad. These channels would not exist if India had in place a framework which prohibited the cross-border flow of data by mandating localisation of data.

In the feedback received by TRAI in response to the Consultation Paper, entities including leading Indian and foreign technology companies, industry associations, non-profit entities, and civil society representatives have highlighted the benefits of cross-border data flows and cautioned against the harmful effects of any form of localisation or other measure which interferes with free cross-border flow of data. Concerns raised by various stakeholders include that: Disruptions to cross border flows would impact innovation, economic competitiveness, and availability of technology and services to Indian users; and Localisation will harm India's economy and has the potential to result in a negative effect to its GDP.

Certain stakeholders have also commented on the need to extend TSP-like regulatory requirements to OTT constituents of the ecosystem. On this issue, TRAI must be guided by the principle of regulating in a manner that permits innovation to continue to thrive in India. Enacting licensing or other regulatory requirements for OTT service providers would only act to set up new barriers to business in India, and slow down the pace of innovative forces. Arguments by certain TSPs calling for 'same service same rules' are also misconceived given the inherent structural differences between telecommunications service providers – such as access to spectrum, ability to interconnect with PSTN – and OTT players.

Lastly, we submit that the issue of OTT regulation is outside the scope of the present TRAI Consultation. TRAI's queries only relate to regulatory parity as far as data protection norms are concerned.