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**Mr. Akhilesh Kumar Trivedi,
Advisor (Networks, Spectrum and Licensing),
Telecom Regulatory Authority of India,
New Delhi, India**

Subject: CCAOI's Counter Comments on the TRAI Consultation Paper on 'Framework for Service Authorisations to be Granted Under the Telecommunications Act, 2023'

Dear Sir,

Greetings for CCAOI!

CCAOI thank Telecom Regulatory Authority of India (TRAI) for providing us the opportunity to submit our comments on the consultation paper on '[Framework for Service Authorisations to be Granted Under the Telecommunications Act, 2023](#)' (hereinafter referred to as "CP").

CCAOI is a trust engaged in capacity building, research and advocacy mostly in India especially related to Internet and digital policies, representing the interest of different stakeholders of the Internet ecosystem in India, including connected and unconnected users.

We submit that while the CP is well intended, however it might potentially raise new concerns, especially for bringing OTTs under the ambit of telecom regulations and regulating them in the same manner as TSPs.

Please find enclosed our submission on the CP.

Thanking you and looking forward to favourable consideration of our suggestions.
With Regards,

Amrita Choudhury
Director CCAOI
amritachoudhury@ccaoi.in

CCAOI's Counter Comments on TRAI's Consultation Paper on Framework for Service Authorisations to be Granted Under the Telecommunications Act, 2023

The Telecom Regulatory Authority of India (TRAI) issued a consultation paper on July 11, 2024 titled "Framework for Service Authorisations to be Granted Under the Telecommunications Act, 2023. TRAI has raised the question of whether new authorizations or sub-categories of authorizations are needed under the Telecom Act, 2023. According to India's telecom regulations, any company or individual providing telecommunication services (such as calling, messaging, or internet access) must obtain a specific authorization. **TSPs have interpreted the questions in the current TRAI consultation as potentially opening the door to regulating over-the-top (OTT) communication services, while this is not the case. In reality, OTT services are not mentioned anywhere in the consultation paper.**

The discussion around authorizations is focused on different issues, specifically the lack of telecom authorization at the district level and concerns regarding virtual network operators (VNOs). The question was not raised in the context of OTT services.

In response to the question on authorisation, major TSPs have advocated for an authorization regime for OTT communication services. Some of the key points from TSPs' responses include:

1. **Regulatory Inclusion:** TSPs argue that OTT communication services should be brought under the same regulatory framework as traditional telecom services, citing the need for fair competition and adherence to the "same service, same rules" principle.
2. **Market Fairness:** TSPs believe that OTTs enjoy an unfair advantage by not bearing the regulatory and financial burdens, such as licensing fees and spectrum charges, which TSPs must shoulder. Including OTTs in the authorization regime would level the playing field.
3. **Security and Consumer Protection:** TSPs emphasise that an authorization framework for OTT services would address national security concerns, ensure data privacy, and protect consumer interests.
4. **Economic Impact:** The rise of OTT services has significantly impacted traditional telecom revenue streams, particularly in long-distance voice services, prompting TSPs to seek financial contributions from OTTs to the national exchequer.

In summary, **TSPs are pushing for OTT communication services to be regulated under the Telecommunications Act, 2023, to ensure fairness, security, and economic equity.**

In view of the above, **we hereby make the following submissions to counter comment on the comments/feedback provided by the TSPs:**

1. **OTTs and Inclusion under Telecom Act, 2023:** While OTT platforms were part of the draft bill, the final Act does not regulate OTT service providers. Therefore, it was never the Government's aim to regulate OTTs under the Telecom Act, 2023.

Additionally, during the introduction of the Telecom Act in Parliament, Shri Ashwini Vaishnaw, the then Telecom Minister, explicitly stated that "OTT has been regulated by the IT Act of 2000 and continues to be governed by the IT Act. The new telecom bill passed by Parliament does not address OTT services." This clarification is consistent with the Allocation of Business Rules, 1961, which delineate that the Ministry of Communication and the Department of Telecommunications (DoT) are responsible for policies related to "telegraphs, telephones, wireless, etc." In contrast, the Ministry of Electronics oversees regulations pertaining to internet services, including OTT communication services, under the Information Technology Act, 2000 (IT Act).

Reliance Jio, COAI, Vodafone have argued in their feedback to the CP that OTTs have emphasised on enforcing the "same service, same rules" principle on OTT services. The enforcement of this principle is flawed because **OTTs are fundamentally dependent on telecom infrastructure to function**. These internet-based applications rely on the networks and infrastructure established by telecom companies to reach their users, and without this foundation, OTTs cannot operate. Additionally, **telecom companies hold exclusive rights to critical resources like spectrum, interconnection, right of way, and unique numbering systems, which OTTs do not possess**. Therefore, **OTT services and telecom services are complementary, not identical, with both supporting each other's growth and neither able to exist independently**.

Some stakeholders have argued that OTT service providers should bear similar regulatory burdens as TSPs because they are perceived to have a "free ride" on the telecom infrastructure established by TSPs. However, this view overlooks the fact **that OTT service providers do not "free ride" on TSPs. In reality, OTT services contribute to the revenue streams of TSPs. This contribution arises from the increased number of users gaining internet access and the corresponding rise in demand for online content**.

- 2. Authorisation and Application of Financial Terms:** TSPs have argued that to ensure fair competition and address potential biases, OTT communication services should be included under the authorization/licensing regime. Additionally, the same financial terms, conditions, and format for the Adjusted Gross Revenue (AGR) statement should be applied to OTTs as they are for TSPs.

We would like to state that the **services offered by TSPs and OTT platforms are fundamentally different and not interchangeable**. TSPs are regulated under the Unified Licence framework, which imposes strict requirements due to their exclusive rights to network infrastructure, a situation not applicable to OTT services. Since OTT platforms do not access these exclusive resources, applying the same regulatory framework to them would be inappropriate.

Additionally, licensing requirements are necessary primarily for regulating scarce resources like spectrum and network infrastructure, which does not pertain to OTT services. Subjecting OTT providers to such a framework could undermine net neutrality by imposing burdensome regulations that stifle the growth of smaller OTT services and create significant entry barriers in the market.

- 3. Competitive Parity:** COAI, Airtel, Vodafone and Jio have argued that Over-the-Top (OTT) services are perfect substitutes for voice and video calls and compete directly with Telecommunications Service Providers (TSPs) by offering similar core functionalities for real-time communication. Unlike TSPs, OTTs do not incur charges such as entry fees, licence fees, Spectrum Usage Charges (SUC), or bank guarantees, nor are they subject to tariff regulations. However, OTT services depend on TSP infrastructure to deliver their offerings.

The **notion OTT communications apps are direct substitutes for traditional TSPs is misleading**. Many users lack access to smart devices and therefore cannot use OTT apps, highlighting a critical difference. OTTs depend on TSP infrastructure for internet access, which is essential for their operation. TSPs control the broadband access infrastructure, making them gatekeepers to the internet and, by extension, to OTT services. While TSPs face limited consumer choices and potential switching costs, OTTs operate in a highly competitive market where switching between apps is easy and often free. OTT apps are also not subject to the same regulatory framework as TSPs, which includes exclusive rights such as spectrum acquisition and infrastructure deployment.

Furthermore, **OTT apps offer a broad range of functionalities beyond traditional communication services**, such as gaming, social media, and financial transactions, which do not fit neatly into conventional telecom categories. For instance, messaging features in apps like PayTM or Call of Duty are part of a broader service rather than standalone communication tools. This diversity reflects the expansive consumer value OTTs provide, which extends beyond the traditional scope of TSP services. OTT applications, while leveraging TSP networks, contribute significantly to consumer surplus and global GDP, demonstrating their substantial economic impact. Regulating OTTs under the same framework as TSPs could lead to unnecessary disruptions and uncertainties in the software industry, as OTTs operate on a different layer and market dynamics compared to TSPs.

- 4. Security, Privacy and Consumer Protection:** Airtel and Vodafone argue that security, privacy, and consumer protection measures should be applied consistently across all forms of interpersonal communication, including both person-to-person (P2P) and business interactions. They propose that implementing an authorization regime for OTT services would allow the government to analyze OTT traffic data and address cybersecurity threats more effectively, as current oversight is limited compared to TSPs, which are monitored by law enforcement agencies. Additionally, they highlight a disparity in privacy protections, noting that while TSPs have stringent checks and balances for consumer data, OTTs lack equivalent regulations. They also advocate for stronger consumer protection measures for OTT services, including enhanced user authentication processes and fraud prevention, to ensure greater security and trust for consumers.

We would like to submit that **OTTs are already regulated for the above factors by a broad array of Union laws**, including the Information Technology Act, 2000, the Consumer Protection Act, 2019, the Indian Penal Code, the Copyright Act, 1957, and

the Indian Penal Code, 1860. Additionally, they must comply with the recently enacted Digital Personal Data Protection Act, 2023 (DPDP Act). Given this extensive regulatory framework, any further regulation should be integrated horizontally within the existing structures of the IT Act and the DPDP Act, rather than creating entirely new regulatory requirements. This approach acknowledges the complexity and bundled nature of OTT services while ensuring that additional regulations are consistent with the current legal landscape.

5. **Foreign Regulations on OTT:** Airtel and Vodafone have argued that the EU, Singapore, Trinidad and Tobago, Turkey, and Zimbabwe already regulate OTTs or plan to.

We would like to submit that while regulators and policymakers globally intend to regulate OTTs, they recognize that OTT communication apps differ fundamentally from traditional network-based services. The EU has applied lighter regulation to OTTs. Similarly, Australia's ACCC has found no need for equivalent regulatory treatment for OTT and traditional voice services, noting limited substitution due to technical differences and highlighting the positive, pro-competitive impact of OTT services. Singapore similarly differentiates between types of communications services, and South Africa, under the Electronic Communications Act, 2005, also prescribes different categories of licences but does not regulate video OTT services.

Globally, there is a cautious approach toward extending telecom regulations to online apps, with some recommending deregulation of traditional services. For example, European governments and Nordic regulatory authorities have advised against automatically extending telecom regulations to online apps and suggested simplifying existing regulations for traditional services. In practice, regulators are reconsidering existing frameworks in light of technological advancements. Hong Kong's Commerce and Economic Development Bureau has reviewed its broadcasting regulations to remove outdated requirements without extending them to online apps. Likewise, Australia and the US have updated their media regulations to better reflect the current digital media landscape, with reforms aimed at enhancing the sustainability and competitiveness of traditional media sectors while acknowledging the evolving role of digital platforms.