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Re: Comments on Consultation Paper on “Regulating Converged Digital Technologies and Services - Enabling Convergence of Carriage of Broadcasting and Telecommunications Services”

To Advisor Sharma:

The Computer & Communications Industry Association (CCIA)¹ submits the following comments to the Telecom Regulatory Authority of India (TRAI) regarding the Consultation Paper on “*Regulating Converged Digital Technologies and Services - Enabling Convergence of Carriage of Broadcasting and Telecommunications Services*”.² CCIA appreciates the opportunity to provide its views in this consultation.

As an initial matter, CCIA appreciates the continued work of the Government of India to develop forward thinking regulatory frameworks for the development of communications and new technologies to enable growth in the digital economy. CCIA encourages policymakers to continue to consult with all relevant stakeholders as this ambitious agenda progresses to ensure regulatory coherence and provide direction on how new frameworks intend to interact with other proposed digital measures in upcoming months. These comments detail concerns regarding proposed reworking on existing regulatory frameworks that, if enacted, could present significant compliance burdens and challenges to businesses operating in India.

I. Response to Q1: The present laws are adequate to deal with convergence of carriage of broadcasting and telecommunications services.

In response to questions posed in the consultation,³ CCIA supports the position that current laws are sufficient to handle the convergence of broadcasting and telecommunication services,

¹ CCIA is an international, not-for-profit trade association representing a broad cross section of communications and technology firms. For more than 50 years, CCIA has promoted open markets, open systems, and open networks. CCIA members employ more than 1.6 million workers, invest more than \$100 billion in research and development, and contribute trillions of dollars in productivity to the global economy. For more, visit www.ccianet.org.

² Available at <https://www.trai.gov.in/consultation-paper-regulating-converged-digital-technologies-and-services-enabling-convergence>.

³ Q1: Whether the present laws are adequate to deal with convergence of carriage of broadcasting services and telecommunication services? If yes, please explain how? 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? 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.

and that no compelling need to establish new regulatory obligations or authorities has been clearly articulated. In case there are any shortcomings or gaps in the existing laws, CCIA notes that sectoral reforms across Indian regulators and policymakers are already underway and are being discussed among relevant stakeholders. Therefore, any significant changes or a comprehensive legal code to address the convergence of telecommunications and broadcasting services is not required.

a. Convergence of regulatory frameworks is not the only solution to effective regulation.

Overhauling of regulatory frameworks should be undertaken only after conducting a detailed cost-benefit analysis of such overhaul. Bringing in a comprehensive code or undertaking a convergence of regulators/regulatory functions by themselves are unlikely to have a significant bearing on introducing efficiency in the regulatory system, and may have substantial unintended consequences.

Instead of aiming for convergence or unification of regulations, a successful regulatory system should bear in mind the following as underlying principles:

- ensuring simplicity and clarity with which the objectives of the regulations are laid out;
- ensuring that the rules are written accurately and consistently in accordance with their overall objective;
- encouraging skill development of regulators and regulatory authorities/agencies by creating collaboration and knowledge exchanges between them, the industry and regulators in other jurisdictions;
- ensuring that only the minimum regulations necessary to meet regulatory objectives are prescribed;
- introducing mechanisms to further reduce regulation to encourage the entry of new market-players and foster competition to provide greater choice to users; and
- ensuring robust coordination amongst all ministries and regulators involved in the enforcement of the rules.

b. Recognition of sectoral reforms already in the process.

The Central Government has taken progressive steps towards formulating principle-based reforms to address various issues affecting different sectors of the digitally-driven Indian economy. In this regard, CCIA notes TRAI's views (as expressed in the Consultation Paper) that there are challenges posed by converged technologies and the existing disparate framework to regulate them. However, in our view, the Central Government-led sectoral reforms that are underway (now at advanced stages of discussion) are likely to assist in addressing the issues flagged by TRAI (such as the lack of regulation for new and emerging technologies).

These sectoral reforms are unfolding in the following ways:

- Different legislations enacted for the purposes of regulating the same technology are being consolidated. Important examples of this process include: (a) the draft Indian Telecommunications Bill, 2022 (“Telecom Bill”) positioned to replace the pre-existing laws in the telecommunications sector⁴; (b) as understood from the letter sent by the Ministry of Information and Broadcasting (MIB) to the TRAI (and from publicly available information), the MIB is likely to bring in unified legislation to comprehensively regulate all broadcasting services.
- Existing legislative frameworks may be replaced with new legislation for effective regulation of new services or technologies (such as OTT communication services). While the TRAI in the Consultation Paper refers to a converged statute/framework for new age technologies like OTT communication services, CCIA notes that the Telecom Bill is already working towards regulating such OTT communication services.⁵
- Further, industry understands that the Central Government is in the process of replacing the two-decades old Information Technology Act, 2000 with a new proposal likely to be called the Digital India Act (“DIA”). In this regard, industry also understands that the DIA will likely include provisions to regulate stakeholders in the IT and the Information Technology enabled Service sector (“ITeS”) [such as, cloud service providers (“CSPs”)], as well as new and emerging technologies, and introduce sector-specific regulations (such as blockchain, metaverse, artificial intelligence, augmented reality/virtual reality, etc.).

As these measures are developed, extensive stakeholder consultations are critical to balance interests. Given this, it may not be beneficial for the TRAI to bring in parallel reform(s) over and above those already being undertaken by the Central Government. Parallel attempts at sectoral reforms may cause business uncertainty and loss of valuable public time and resources spent by stakeholders in engaging with draft legislation and participating in consultations for these draft frameworks.

The Consultation Paper omits significant details related to a converged framework, including how the comprehensive code may be enforced and how these existing frameworks may be harmonized (including the features/structure of the regulator and the kind of roles/functions it may perform).

⁴ Indian Telegraph Act, 1885 along with the Indian Wireless Telegraphy Act, 1933 etc.

⁵ CCIA provided comments to the DoT detailing views on the draft Telecom Act. Available at <https://ccianet.org/library/comments-on-indian-draft-telecom-bill-2022/>.

The Consultation Paper only peripherally discusses implementation aspects of a converged regulator/framework. To the extent that such crucial details (the structure, functioning and operation) of the converged framework are missing in the Consultation Paper, it would be difficult to thoroughly undertake a cost-benefit analysis of the regulatory structure being proposed.

c. Global regulatory approaches are not aligned towards “convergence”.

The Consultation Paper suggests that India should consider global regulatory approaches, which in TRAI’s view are advancing towards convergence of regulatory frameworks for broadcasting and telecommunication services. TRAI has also mentioned that there is an international trend towards the convergence of regulatory frameworks for broadcasting and telecommunication services.

However, there is no global consensus on the convergence of regulations/regulators as the most effective approach. OTT services have been brought within the purview of telecom or broadcasting regulations through the adoption of light-touch regulations (for example, in the European Electronic Communications Code). It is true that a ‘converged’ regulator like the Federal Communications Commission (“FCC”), *inter alia*, regulates providers of telecommunication and broadcasting services. But even converged regulators are often further segregated internally into departments based on the technologies under the domain of regulation of the respective departments, and on the specific regulatory goals they are tasked with addressing (such as spectrum management or public service responsibilities specific to particular services.)

In conclusion, there are different factors that are considered by each country before deciding which regulatory approach to adopt. Pre-existing sectoral regulatory challenges cannot be simply resolved by bringing in a comprehensive code enforced by a unified regulator. Instead, the focus should be solely on creating effective and efficient regulations/regulators to facilitate the healthy and orderly growth of the telecommunications and broadcasting sector through responsive and effective regulatory frameworks.

d. Regulatory convergence is not possible for all aspects/functions.

The Competition Commission of India (“CCI”) is a noteworthy example of a regulator whose specialized functions (of dealing with antitrust issues) cut across various sectors, and as such, may be difficult to bring it under a converged framework. In fact, the CCI has had jurisdictional conflicts with other sectoral regulators, such as the TRAI, and has required the intervention of the Supreme Court (“SC”) for the resolution of such conflicts.⁶ Notably, the SC, in one instance,

⁶ *Competition Commission of India v. Bharti Airtel Limited and Ors.*, Civil Appeal No(s). 11843 of 2018 & Ors. (Arising Out of SLP (C) No. 35574 of 2017 & Ors.), Supreme Court of India, December 05, 2018 available at <https://indiankanoon.org/doc/130504148/>, at ¶90 (“The conclusion of the aforesaid

emphasized the important role of each sectoral regulator and for them to have the independence to carry out their specialized functions.

The introduction of a unified regulator and comprehensive legal code will likely cause significant jurisdictional overlaps with the ambit of specialized regulators like the CCI, which will require resolution by constitutional courts and bake in a lot of regulatory uncertainty into the system. In the context of the recommendation of a converged regulator, it remains untested whether a nodal regulator and its sub-regulators will: (a) operate harmoniously in coordination with each other; or (b) whether the existence of multiple such regulators will give way to the emergence of a new kind of jurisdictional conflict.

Such overlaps may give rise to uncertainty in the industry and business environment, with the resulting lack of clarity having a detrimental impact on the industry at large. Given the potential danger of jurisdictional conflict due to a converged regulatory framework, convergence should be avoided in the interest of protecting the interest of every stakeholder in each specific sector. It is our considered view that having separate, though complementary, legislative frameworks could allow regulators to focus on the nuances of each sector-specific issue, which a converged legislation may not achieve.

e. Unique characteristics of convergence technology and competition in the market.

In CCIA's view, it is important to accurately take into account the nuances of technology in framing regulatory responses. In other words, the regulation of converged technologies must not depend on the service or use-case being offered by a service provider. Instead, it should be solely determined by the technology being employed/implemented. This is important as regulation that is use-case specific (and which often plays out as excessive regulation) can ultimately hinder the ability of the public to access services across diverse and competitive platforms but also have the unintended consequence of stifling innovation and impeding commercial growth in novel and upcoming technologies, ultimately leading to a reduction in competition within the market. For example, many SMS, chat, and Voice-over-Internet-Protocol (VoIP) functionalities would never have been offered if the device makers or suppliers had to first obtain a license, under the theory that such services were substitutable for traditional, regulated voice services.

Therefore, for regulators to frame regulatory responses towards new and emerging technologies, we believe that the emphasis should be on ensuring that consumers are the primary recipients of these new and emerging technologies (through technology-based and not use case-based regulation).

discussion is to give primacy to the respective objections of the two regulators under the two Acts. At the same time, since the matter pertains to the telecom sector which is specifically regulated by the TRAI Act, balance is maintained by permitting TRAI in the first instance to deal with and decide the jurisdictional aspects which can be more competently handled by it.”).

f. Note on scope of the Consultation Paper.

The Department of Telecommunications had issued a limited term of reference to the TRAI, and had, as such, sought the views of the TRAI only on *inter alia* the carriage of broadcasting services and telecommunication services and related issues (like licensing, spectrum management). However, as observed from the Consultation Paper, the TRAI appears to also consider issues like the co-regulation of carriage and content in broadcasting as well as issues related to the Information Technology sector (“IT”). In relation to the suggestion that carriage and content could be subject to co-regulation, there are the following challenges.

First, content regulation is foundationally different from carriage regulation as the former requires expertise in different subject matters (as opposed to carriage regulation). Content regulation, as such, needs a holistic and multi-layered regulatory approach as presently being undertaken by the Ministry of Information and Broadcasting (“MIB”) and agencies thereunder taking into account creativity and cultural contexts, etc. Second, there are certain other issues (such as those related to intellectual property rights) which are dealt with under completely separate legislative frameworks. It may be difficult to bring such aspects under the ambit of a comprehensive all-encompassing code.

In light of these issues, CCIA requests the TRAI to not undertake an examination of issues related to content and its regulation. The existing regime adequately addresses any challenges/issues and does not require a re-examination.

II. Response to Q2: 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.

In response to the questions posed in the consultation,⁷ the present regime of separate licenses and distinct administrative establishments under different ministries for processing and taking decisions on licensing issues is a better policy option. This is because the problems highlighted by the TRAI in this regard are, as such, limited to complications in business processes – and such complications alone, in our view, do not necessitate bringing in an alternative licensing and administrative framework. Further, convergence alone would not solve the existing or present issues in the business processes – instead, the regulatory focus should be on creating mechanisms for adequate coordination in the decision-making process and laying down clear rules of business/operation.

⁷ 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?

a. The value of preserving standard operating procedures and practices.

The issues highlighted by the TRAI in relation to the licensing regime for the carriage of telecommunication and broadcasting services are largely due to the complications that stakeholders face in obtaining licenses/permission and registrations from the various ministries. In this regard, the DoT and the MIB (and the agencies responsible for issuing licenses) have not only evolved institutional sectoral expertise over time – but also, established standard operating practices and procedures for efficiently carrying out their functions in critical and sensitive sectors like the telecommunication and broadcasting sector. In addition, we understand that once the proposed sectoral reforms (such as the Telecom Bill) are finalized, the administrative functions (under the DoT, for example, the process of auctioning and assignment of spectrum bands) would likely be further rationalized. Therefore, CCIA does not think that the complications in the issuance of licenses, grants of authorizations alone require overhauling of the present licensing regime and associated administrative framework.

b. Strengthening and simplifying the National Single Window System.

CCIA understands that the National Single Window System (NSWS) is likely to integrate all licenses and authorizations issued by relevant Central Government departments including the DoT. Instead of bringing in large-scale structural reforms, TRAI should consider different policy alternatives. These suggestions listed below would help in maintaining the jurisdiction of sectoral regulators while assisting in creating a harmonized and integrated system for issuances of licenses.

In this regard, CCIA recommends:

- A complete integration of all licenses on the NSWS, such as those presently being applied/obtained through portals operated by the MIB and the DoT respectively.
- Implementing stringent timelines for each ministry/department/agency concerned to process the applications for licenses/authorizations/permissions.
- The resolution of outstanding issues in the process of issuing licenses, including those arising out of coordination problems between ministries and departments. An institutional mechanism should be established with members or representatives having relevant subject matter expertise.
- Establishment of a robust forum for ministries and departments to consistently engage with relevant stakeholders. A forum should also be created for government departments to engage with stakeholders on a continuing basis.

III. Response to Q3: Potential options that TRAI may consider to create further synergies and a robust mechanism for coordination between institutional establishments.

In response to the question posed in the consultation,⁸ the following policy and regulatory options may be considered by the TRAI in order to create further synergies and a robust mechanism for coordination between institutional establishments.

a. Standardization, testing and certification.

The Consultation Paper highlights that convergence of technologies presents a challenge for the standardization, testing and certification framework as it requires complying with multiple standards put in place by various agencies. Currently, the standardization, testing, and certification process for telecom and related IT equipment in India is overseen by several agencies across different ministries, including the Bureau of Indian Standards and the Telecommunication Engineering Centre. This administrative structure creates the possibility of a converged technology needing to comply with multiple standards and certification requirements.

CCIA recommends focusing on enabling each agency to utilize and build upon their core expertise in the process of standardization, testing, and certification.

This approach would potentially limit overlaps between the different agencies and ensure the proper harmonization of their functions. Moreover, for all new standards being considered, the relevant agency should consider consulting with relevant stakeholders to determine whether there are industry practices that can be adopted and formalized. This is significant as industry practices are typically evolved after considering all issues holistically and comprehensively including the technicalities of the technology in question, the overall interest of users, and how the service can be delivered most effectively.

b. Training and skilling.

The Consultation Paper highlights the need to create synergies between different training and skilling institutions operating under the DoT and MIB. In this respect, CCIA notes that the Union Ministry of Skill Development and Entrepreneurship has produced reports that recommend upskilling the workforce to align with changing technical requirements in the telecommunications and media and entertainment sectors.⁹ To achieve this goal, reports

⁸ 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.

⁹ These reports are titled 'Human Resources and Skill Requirements in the Telecommunications Sector' and 'Human Resources and Skill Requirements in the Media and Entertainment Sector', and are available at <https://smartnet.niua.org/sites/default/files/resources/telecommunications.pdf> and <https://skillsip.nsdindia.org/sites/default/files/kps-document/Media-Entertainment.pdf>.

suggest there is a need to develop public-private partnership models for jointly preparing training modules, enabling infrastructure sharing and the use of modern innovation technologies.

c. Research & Development.

Relevant coordinating departments/ministries should be required to institute public-private partnership models/frameworks between public research institutions and the private sector at large. This will enable research institutions, particularly in the public sector, to have access to adequate financial resources to undertake research, testing, certification, roll-out and marketing of technologies.

d. Promotion of industries.

For effectively and functionally creating synergies towards the promotion of industries, and promotion of new and emerging technologies, CCIA recommends the creation of cohort-based regulatory sandboxes – in an opt-in model which may be jointly managed by the MIB and the DoT. This could serve as a significant addition to the existing schemes and initiatives mentioned in the Consultation Paper (such as the Software Technology Parks of India, Telecom Equipment and Services Export Promotion Council, etc.).

Such a regulatory sandbox would be consistent with: (a) regulatory approaches adopted for sectors, such as the fintech sector by the Reserve Bank of India and the Securities Exchange Board of India; and (b) global trends and developments, as evidenced from the proposed draft of the Artificial Intelligence Act in the European Union which has a regulatory sandbox for artificial intelligence, and the regulatory sandbox for new and emerging technologies created by the Communication, Space and Technology Commission of Saudi Arabia.

In addition, such an initiative would also be important to the internet ecosystem as a whole in the following ways:

- facilitate collection of empirical evidence on benefits, risks and implication of emerging technology;
- enable regulators to take a holistic view of regulatory changes which will promote innovation and contain any risks;
- improve the industry's understanding of new technologies and promote its integration into mainstream practices; and
- expedite the pace of innovation and technology adoption.

IV. Response to Q4: Recommendations towards a unified policy framework and spectrum management regime for the carriage of broadcasting services and telecommunication services.

As a general comment in response to the question posed in the consultation,¹⁰ given the fast pace of development in broadcasting and telecommunications, a one-size-fits-all policy may not be a suitable approach. Each issue should be evaluated individually based on the costs and benefits for all stakeholders involved. This would allow for a more thorough analysis of technological advancements and help evolve a more precise regulatory response.

In this context, CCIA notes that the draft Telecom Bill permits the Central Government to assign spectrum through various means and methods that it may prescribe for itself. Additionally, the government under the draft Telecom Bill has the authority to exempt specific uses within defined frequencies and parameters from regulatory requirements, if it deems it necessary in the public interest.

Although there may be hesitance in allocating natural resources like spectrum bands, a light-touch framework (such as delicensing) for less valuable bands could be a critical policy step. Such an approach would benefit entities without the financial means to participate in open market auctions and enable them to deploy innovative technologies while also helping reduce the digital divide, fostering competition in the market and enhancing broadband penetration in the interest of users.

V. Response to Q5: Additional issues to address regarding benefits of convergence holistically.

The IT and ITeS sector — which covers the CSPs within its ambit — has been referred to in the Consultation Paper as having ‘significant convergence and increasing at a rapid pace’. However, industry notes that there is a reform process already underway under the proposed draft DIA, which would likely subject the IT and ITeS sector to supervision and regulation. Further, we note the DIA, in addition to such sectors, is also slated to address issues such as intermediary liability or criminal penalties for online offenses. In relation to intermediaries specifically, the DIA is likely to introduce category-wide classifications based on the services as well as introduce a regulator which will have the power to impose penalties for those who violate the DIA.

In response to the question posed in the consultation,¹¹ CCIA notes that: (i) the DIA proposes to create a new regulatory framework for the internet and digital ecosystem and will likely cover

¹⁰ 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?

¹¹ 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?



all relevant issues; and (ii) the Central Government will likely be undertaking widespread stakeholder consultations – and such consultations will pave the way for industry to communicate their issues as well as the Central Government to consider possible solutions by way of incorporating them in the DIA.