

From: akaushik@usibc.com
To: "Sanjeev Kumar Sharma" <advbbpa@traf.gov.in>
Cc: "V Raghunandan" <secretary@traf.gov.in>, "SanjayKumar" <jtadv-bbpa@traf.gov.in>
Sent: Monday, April 10, 2023 5:31:11 PM
Subject: Re: USIBC Submission on the Consultation Paper on Regulating Converged Digital Technologies and Services

Dear Sir,

Kindly ignore the previous email. Please consider this attachment as our submission for counter comments.

Regards,
Aditya

From: Kaushik, Aditya <akaushik@usibc.com>
Date: Monday, 10 April 2023 at 2:41 PM
To: advbbpa@traf.gov.in <advbbpa@traf.gov.in>
Cc: secretary@traf.gov.in <secretary@traf.gov.in>, jtadv-bbpa@traf.gov.in <jtadv-bbpa@traf.gov.in>, Mitra, Shreerupa <SMitra@USChamber.com>, Slater, Alexander <aslater@usibc.com>, Gullish, Jacob <jgullish@usibc.com>, Surya Sameer Kumar Guduru <SGuduru@USIBC.com>
Subject: USIBC Submission on the Consultation Paper on Regulating Converged Digital Technologies and Services

Dear Sir,

Hope you are well.

I am writing to you regarding the ***Consultation Paper on Regulating Converged Digital Technologies and Services - Enabling Convergence of Carriage of Broadcasting and Telecommunication services***. On behalf of members of USIBC, we thank you for the opportunity to engage with TRAI. We appreciate you and your team for drafting a well-written paper. **We write today to provide detailed feedback on the consultation paper.**

USIBC is a trusted partner to both the U.S. and Indian governments and has a long history of working productively with the Government of India on digital policy. Within this context of cooperation and shared purpose, please find USIBC's detailed submission attached (**23022023 TRAI Convergence_Final.pdf**).

Thank you again for engaging with us and we look forward to joining future conversations around convergence and promoting India's digital economy.

Warm Regards,
Aditya K. Kaushik
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**U.S.-India
Business Council**

April 10, 2023

Shri Sanjeev Kumar Sharma
Advisor (Broadband and Policy Analysis)
Telecom Regulatory Authority of India (TRAI)
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New Delhi 110 002

Re: USIBC comments on the Consultation Paper on Regulating Converged Digital Technologies and Services – Enabling Convergence of Carriage of Broadcasting and Telecommunication Services (CP or Paper)

Dear Sir,

Since our inception in 1975, the U.S.-India Business Council (USIBC) has tirelessly promoted an inclusive bilateral trade environment between India and the United States and consistently advocates for a strong, strategic bilateral relationship in support of entrepreneurship, job creation and economic growth. Among other things, we engage in stakeholder dialogues to ensure that India's economic growth flourishes based on light-touch regulation and international best practices. USIBC is an integral part of the U.S. Chamber of Commerce, the world's largest business advocacy organization, operating in over fifty countries to promote free enterprise and advance trade and investment. USIBC represents some two hundred companies of every size from multiple sectors based in India, the U.S., and other like-minded nations.

USIBC members include broadcasters, telecom operators, equipment manufacturers, systems integrations, and companies reliant on secure, trusted, and efficient global communications networks. Our members also include e-commerce, sharing economy, and other digital enterprises, as well as the technology service providers and product producers that support and enable India's rapidly expanding digital economy and telecom manufacturing sectors. In short, USIBC encourages a broad set of digital policies that encourage bilateral trade and commerce, thereby creating a transparent and attractive investment environment, and the general ease of doing business.

USIBC has a long history of working with TRAI and hosted your Secretary at our India Ideas Summit last September. We have engaged the current Chair, Members, and staff in support of telecommunications policy, regulations, and the development of the sector, including around fraud prevention, 5G spectrum auctions and implementation, satellite communications, and other critical and strategic technologies. USIBC is also U.S. co-chair of the U.S.-India Information and Communications Technology Working Group (ICTWG), we also develop strategies for long-term, multi-stakeholder bilateral cooperation in the digital space.

We appreciate the opportunity to provide comments on the Consultation Paper on Regulating Converged Digital Technologies and Services – Enabling Convergence of Carriage of Broadcasting and Telecommunication Services (CP or Paper).

Convergence in broadcasting and telecoms carriage has increased over the last decade and enhances seamless access for consumer consumers and businesses alike. This integration facilitates India's digital transformation, and fosters access to state-of-the-art technology, products, and services. The underlying infrastructure promotes innovation of both carriage and content services that brings the vision of *Digital India* to reality. Within this context, USIBC offers the following comments, summarized below and with additional detail in the appendices.

1. Complex and technical topics require thorough consultation and an extended time to evaluate proposals.

TRAI raises important and relevant questions in the consultation paper, which require more than 60 days to understand, assess, and respond to, particularly for stakeholders such as USIBC that provide input reflecting a broad and diverse membership. Responses to these questions require stakeholders to evaluate the current carriage regulatory frameworks for broadcasting and telecom services, adequacy of the current administrative set up, current and best international practices, and feasibility of replicating best practices in the Indian context. We do appreciate TRAI's extensions, but **such exercises require time and resources, and we request that TRAI give stakeholders at least six months to properly assess the proposals and respond.**

2. An India-specific approach should assess unintended consequences of convergence.

India's technology regulation landscape is complex and fragmented, posing challenges to promote and adopt technological convergence. The transition to a converged, cross-product, cross-platform, and cross-sectional framework requires significant coordination among regulators, and might cause significant disruption to the operational continuity of industry. **Convergence at this stage of India's digital transformation journey would be necessarily complex with potentially adverse unintended consequences.**

For example, the Ministry of Information and Broadcasting (MIB) regulates content, and the Ministry of Electronics and Information Technology (MeitY) regulates information technology (IT) and IT-enabled services. The draft Digital Data Protection Bill (DPDP) and the proposed Digital India Act (DIA) propose separate regulators which also have responsibility for aspects of digital regulation. It is unclear how a converged regulator will operate in this scenario. In fact, a converged regulator would require massive changes in allocation of duties, responsibilities, and resources. **Thus, we request that TRAI undertake a holistic market study and technical evaluation of new technologies before moving forward with any plans to establish a converged regulator.**

3. Converged policy must balance traditional telecommunications, broadcasting services, and over the top (OTTs) services that utilize those networks.

USIBC represents telcos, broadcasters, and OTT providers, and see these segments as complementary. **We seek policies that drive broad-based innovation and growth in the digital economy, and which promote investment, network development, and consumer utility.**

4. Reduce regulations and taxes on network operators rather than add them for OTTs.

Streamlining regulatory burdens on licensed Telecommunications Services Providers (TSPs), Internet Service Providers (ISPs), and others will enhance competition. Examples include reducing unnecessary regulations, reducing taxes, lowering barriers to entry into for new segments, and promoting investment in new network infrastructure. **By promoting competition, regulators may be able to address potential market concentration and stimulate innovation in the telecommunications, broadcasting, internet, and content segments.**

TRAI also cites international examples where communications regulators have authority over networks and content, but Paper also states that no other jurisdictions require licensing of OTT media service providers. **Thus, TRAI's attempt to impose regulation or licensing requirement on content service providers would be *ultra vires* the legislative intent and contrary to TRAI's previously stated position that it does not deal with content.**

5. Recognize the symbiotic relationship between network operators and technology companies vis-à-vis delivering investments to bolster network capacity.

Consumers using OTT services contribute to the investment in networks, data centers, and peering and content delivery infrastructure at the edges of the network. Some digital service providers also directly invest in strategic and secure subsea cables that connect global internet traffic,¹ and therefore provide networks with high-speed content delivery, resilience, and capacity. This cooperation also includes design, network architecture and network management services to seek to reduce network costs. For instance, a 2022 report estimates digital companies invested \$883 billion on internet infrastructure from 2011 to 2021.² Thus, as TRAI seeks to assess convergence issues, it should take into about these types of ancillary investments and network benefits. **USIBC suggests that these ancillary investments and network benefits be integrated into TRAI's consideration of convergence issues.**

6. Additional cloud services regulation is unnecessary and undesirable at this time.

Cloud service providers (CSPs) are already regulated under India law, and per India's National Digital Communications Policy, 2018 (NDCP) should not be treated on par with TSPs. The Consultation Paper assumes similarities between TSPs and CSPs, but these providers own and operate very different types of networks and provide distinctive services to customers. TSPs are facility-based infrastructure that provide connectivity whereas CSPs and their customers purpose connectivity and overlay information services on top of the telecommunications layer. Most international jurisdictions also regulate these markets differently, with additional details of international practices included in Appendix I.

For the reasons outlined above, USIBC recommends that TRAI exercise restraint before recommending regulatory convergence. There is a need for inter-departmental consultations involving the multiple

¹ A REUTERS SPECIAL REPORT: U.S. and China wage war beneath the waves – over internet cables, Joe Brock, March 24, 2023, ([link](#))

² The impact of tech companies' network investment on the economics of broadband ISPs, by David Abecassis, Michael Kende, Shahan Osman, October 2022, analysys mason ([link](#))



ministers to develop a cohesive and predictable policy regime that continues to enable India's thriving technology sector. Additional details are provided in the appendices.

Meanwhile, we also request the opportunity to meet with you to discuss this consultation and ask that we be included in any deliberations on the subject, both formal and informal. Should your office have any questions, my colleague and USIBC Director of Digital Economy Aditya K. Kaushik, akaushik@usibc.com, would be happy to address them. USIBC is committed to enhancing commerce and investment between India and the United States and is grateful that our submission will be given due consideration.

Warm regards,

A handwritten signature in blue ink, appearing to read "Jay Gullish".

Jay Gullish
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Appendix 1

Detailed General Comments

TRAI does not have the authority to regulate content.

While TRAI cites international examples where communications regulators have authority over networks and content, Chapter 4 of the Consultation Paper itself underscores that no other jurisdictions require licensing of OTT media service providers. Chapter 4 clearly notes that all jurisdictions have content regulation regimes which regulate the kind/ nature of content being disseminated over the internet.

In this regard, USIBC underscores that MIB has guidelines and rules to regulate content of online publishers via The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (Digital Media Ethics Code) was brought into force on 25th February 2021. Since then, in compliance of the rules enforced therein, OTT media services have set up grievance redressal mechanisms and also self-regulatory bodies at the industry level. In fact, the Nariman Committee has also observed and advised that content regulation of media should occur through such self-regulatory bodies and not through statutory mandates. It is pertinent to mention that the Digital Media Ethics Code is completely in line with the Nariman Committee's recommendations as it has set up grievance redressal mechanisms at the service provider level and at industry level.

Importantly, the Digital Media Ethics Code also clearly brings out the role of TRAI, MIB and MeitY in their respective jurisdictions. TRAI's jurisdiction is over the pipelines or the infrastructure over which the content is made available. Whereas content is the video streaming/OTT media service itself, which is beyond the jurisdiction of TRAI. TRAI is empowered to look at the carriage aspects, i.e., the means of dissemination of information, whereas the MIB and MeitY are empowered to look at the content aspects such as information, media, video, film, etc. being transmitted through the various means of dissemination. Between the MIB and MeitY, there is no confusion regarding the scope of their jurisdictions – MIB oversees the publishers of content whereas MeitY oversees the intermediaries involved in the creative ecosystem.

Thus, not only is the creative ecosystem functioning well under the aegis of the MIB, any objective of removing alleged confusions between multiple Ministries and enabling ease of doing business is being achieved by single window portal and doesn't require convergence at legislative level. In line with the above view of the MIB, TRAI has also repeatedly stated in various Consultation Papers, and before various courts, that it does not regulate content and that it is not possible for TRAI to fix price of content due to the very nature of content being dynamic. TRAI has categorically admitted before the Hon'ble Supreme Court that it does not regulate content, i.e., the films and TV shows shown on TV Channels (*Star India Pvt. Ltd. vs. Department of Industrial Policy & Promotion & Ors., (2019) 2 SCC 104 @ para 36*). TRAI has also categorically stated that it cannot price content due to its dynamic nature. In this regard, TRAI's most recent *Consultation Paper on Issues related to New Regulatory Framework for Broadcasting and Cable services* dated 07th May 2022 is relevant:

While framing the new regulatory framework 2017, the Authority noted that it is impractical to determine the price of a television channel. In this regard the Authority observed that generally a channel consists

of number of the programs. The cost of the production of different programs varies based on the actors, setup cost, script, copy rights, and other miscellaneous factors. Various programs on a given channel also get changed frequently based on their Television Rating Points (TRP) and advertisement potential. Hence, determining the cost of production of a program on a television channel at all times is an extremely difficult process, perhaps almost impossible to derive through a fixed mathematical/statistical model. Moreover, such determination of price would be dynamic in nature and may vary with change in programs in a channel and programs on television channels change dynamically. Accordingly, the Authority in the Tariff Order 2017 did not prescribe any ceiling on the prices of channels and left it to the broadcasters to decide the prices of their channels.

Accordingly, it is submitted that what holds true for pricing of programmes on TV channels is ever more dynamic and variable when it comes to content created and made available through other means of dissemination, particularly the Internet. Importantly, the intention of the Legislature to establish TRAI was to regulate the carriage service providers and not the content service providers. Thus, TRAI's attempt to impose regulation or licensing requirement on content service providers would be *ultra vires* the legislative intent and contrary to TRAI's previous stated position that it does not deal with content.

A converged regulator would require massive changes in allocation of duties, responsibilities, and resources.

The CP does not provide evidence for why such a change is necessary. The suggestion of a converged regulator is disproportionate to the objectives that TRAI seeks to achieve. MIB regulates content and MeitY regulates IT and IT-enabled services. The draft Digital Data Protection Bill (DPDP) and the proposed Digital India Act (DIA) propose separate regulators who may also step into digital regulation. It is unclear how a converged regulator will operate in this scenario. It will lead to policy uncertainty. Rather, USIBC suggests that the concerns highlighted in the CP are implementation and process issues that can be addressed through administrative changes. For example, one such concern is effective coordination mechanisms between existing regulators which could surely be accomplished short a massive overhaul outlined in the Paper.

In fact, present laws are adequate to address telecom and broadcasting convergence. Technologies such as direct-to-mobile (D2M) and 5G broadcast are in nascent stages, and thus regulatory changes are premature, and the CP does not demonstrate the need to overhaul regulation. The TRAI should undertake a holistic market study and technical evaluation of these technologies and their feasibility in India before looking at a regulatory framework. The international practices TRAI relies on clearly show a departure in the principles followed for content vs. carriage regulation and telecom vs. broadcasting vs. digital.

Internationally, most jurisdictions regulate cloud service differently than publicly-switched networks.

The CP assumes similarities between TSPs and cloud service providers (CSPs), but most international jurisdictions treat these services differently in part because TSPs are facilities-based providers of non-discriminatory access to public network whereas CSPs provide private services. CSPs have no control over access to the internet or the network layer, and they store and process information. In turn, CSPs rely on TSP networks to link users. Therefore, it is incorrect that there is a 'blurring of boundaries' between the 'telecom space' and the 'cloud space' (paragraph 1.27). In fact, the National Digital Communications



Policy, 2018 (NDCP) recognised this distinction and rejected the idea of converged regulation for different network layers. This distinction, moreover, is recognized by many global telecoms regulators as cited by TRAI in the Paper. While the Paper highlights countries like the United States, United Kingdom (UK), Australia, European Union (EU), Singapore, etc. as models of convergence, in most of these countries, cloud services are regulated differently from telecom services. In the EU, UK and France, cloud services are recognized as 'digital services' that enable access to a scalable pool of computing resources. The different regulatory treatment arises from the architectural and structural differences between CSPs and TSPs.

In other jurisdictions, like the EU, Singapore, and Australia, CSPs are subject to best practices guidelines and codes of conduct issued by authorities. Cloud services are also subject to sectoral regulations, in addition to cloud-specific certification and standards schemes. To the extent that any 'network cloudification' occurs (paragraph 3.70), the particular network technical functions that may in time be run in the cloud (for example, firewalls, load balancers, routers, network address translation, IP address management) are not core telecommunications service and therefore, there is no need for "demarcating and assigning responsibilities between cloud and telecommunication service providers" (paragraph 3.70).

Indian CSPs are already regulated under existing India laws so the Paper is incorrect when it suggests that cloud computing operates in an 'unregulated domain' (paragraph 1.27) that needs to be brought within the TRAI's regulatory jurisdiction. CSPs are subject to comprehensive regulation under both existing general and sector-specific laws and regulation, including in the areas of security (Information Technology Act, 2000), consumer protection (Indian Contract Act, 1872; Consumer Protection Act, 2019) and proposed privacy legislation (draft DPDP, 2022). MeitY also provides guidelines and requirements for cloud services for empanelment. Regulators like the Reserve Bank of India (RBI) and the Insurance and Regulatory Development Authority of India (IRDAI), also issue IT outsourcing guidelines to ensure that sector specific requirements and expectations continue to be met by regulated entities when they outsource IT, including when they adopt cloud. Recently MeitY's Computer Emergency Response Team (CERT-In) also introduced guidelines for CSPs including maintenance of logs, customer records. Existing regulations also allow access by law enforcement agencies in a streamlined manner, that may arise from a national security perspective. Further, the network infrastructure through which cloud services are accessed by customers is already regulated by DoT for the TSPs.

Further, MeitY governs empanelment of cloud service providers as government-approved service providers under its 'MeghRaj' cloud computing initiative. In order to be considered for empanelment, providers must adhere to several standards, including on information security and personal identifiable information. The industry received considerable tailwinds from the pandemic, and India is poised to become a data hub for the world. Any additional regulatory burden will have the unfortunate consequence of stymying innovation and investment into the sector.

Imposing telecommunications regulation or licensing requirements on cloud technology might jeopardise the potential benefits of innovation and new technologies, harm service availability and its adoption, in addition to the compliance and cost burdens on service providers. Hence, we recommend that the information technology enabled services (ITeS) sector (including cloud computing) is excluded from potential regulations under 'convergence of carriage' (as proposed in paragraph 3.72). Moreover, it will negatively impact businesses that depend on innovation and constantly evolving technologies and

create impediments in achieving the Government’s objectives in relation to *Digital India*. Cloud computing is enabling internet-based innovation for all types of businesses and industries across the economy. India’s data center industry, moreover, is estimated at \$5.6 billion dollars in 2022, and set to grow as capacity is increasing, with over 45 data centers coming up.³

The Paper’s treatment of role of 5G

Prominent experts in the field of internet law and policy have emphasized that 5G technology has the potential to significantly improve network performance, with lower latency and higher speeds across most applications. We note that the proliferation of capacity in 5G networks reduces the need for ISPs to differentiate between traffic types and that the increased flexibility and ease of creating specialized services enabled by 5G technology should not lead to the creation of a less open online world. Crucially, the development of specialized services that exploit the unique capabilities of 5G networks must be done in a consistent with the principles of net neutrality. In summary, while 5G technology presents opportunities for creating specialized services and improving network performance, TRAI must ensure that such developments do not lead to the creation of a framework that results in a less open internet.

³ 'Under the Lens: India's Data Centre Explosion', Anarock and Binswanger report, Aug 31, 2022, ([link](#))

Appendix 2

Inputs on specific questions

Question 1 Whether the present laws are adequate to deal with convergence of carriage of broadcasting services and telecommunication services? If yes, please explain how?

OR

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?

OR

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.

The existing legal and regulatory frameworks adequately cover the various digital markets, and consumers equality protection through the new consumer affairs regulation. As mentioned in the paper⁴, at the statutory level, there are already the Indian Telegraph Act 1885, the Indian Wireless Telegraphy Act (IWT Act) Information Technology Act (IT Act 2000), the Cable Television Networks (Regulation) Act, 1995 (CTNR Act), the Prasar Bharati (Broadcasting Corporation of India) Act, 1990, and on the regulation side, Telecom Regulatory Authority of India Act), 1997 (as amended) (TRAI Act). There are also other rules that govern content. The paper acknowledges⁵ that TRAI is already a unified regulator for regulating carriage of both telecom and broadcasting services, although its powers are limited compared to regulators in other countries.

The broadcasting and telecommunication sectors have the same regulator, i.e., TRAI, and their disputes are settled by the same body i.e., the Telecom Disputes Settlement and Appellate Tribunal (TDSAT). The TRAI and TDSAT are created by the TRAI Act. It is also important to note that the DoT's Standing Advisory Committee on Frequency Allocation (SACFA) provides spectrum clearances, and the DoT's Wireless Planning & Coordination wing (WPC) provides wireless operating licenses and allots spectrum to both telecom and broadcasting operators. There is already a convergence of some statutes and institutional frameworks relating to carriage of broadcasting and telecom services, like the same regulator, adjudicator, and spectrum administrator. The IT Act and the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 ("Intermediary Guidelines 2021") are applicable to the carriage of broadcasting and telecommunication services.

Even the Ministry of Information & Broadcasting (MIB) in its reply⁶ to the DoT's reference, cited TRAI's role as the common regulator for carriage of telecom and broadcasting services. TRAI was giving

⁴ Page 21, para 1.39 of the paper.

⁵ Page 24, para 1.48 of the paper.

⁶ Annexure III, page 142, para 3 of the paper.

recommendations *suo moto* or on the MIB's reference (on aspects such as carriage platforms, foreign investment provisions, license fees, digital terrestrial transmission, etc.). MIB flagged that convergence of technology had already happened to a great extent in the last decade, and TRAI along with MIB have successfully handled all the legal, policy, and regulatory requirements arising out of such changes. Further, the MIB mentioned that broadcasting is an important sector, which, owing to its sensitivity and impact, is a strategic sector that needs to be regulated. As such, multiple agencies, including the Ministry of Home Affairs (MHA), and the Department for the Promotion of Industry and Internal Trade (DPIIT), are involved in regulation. Shifting of licensing functions to another department, "will not serve any good but will only disturb the established practices". The MIB also mentioned that the regulatory convergence happening in the broadcasting sector was being achieved by creating a single platform in the form of 'Broadcast Seva Portal' on which all the stakeholders, ministries, departments, et al. are integrated as a single window for all licensing, permissions, and reporting requirements.

As such, there does not appear to be a need to modify, at this time, the legal, regulatory, or licensing framework.

Question 2: 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? Please provide details.

Each administrative establishment, under each Ministry, has a unique mandate and purpose. As mentioned above, there are several laws governing specific parts of the ecosystem, which then feed into different regulators (including the DoT, TRAI, Ministry of Space (MoS) and MIB). For content, the Cinematograph Act of 1952 and the Press and Registration of Books Act 1867, as well as the IT Act, 2000 and the rules framed thereunder, among others, cover the field. DoT deals with issues relating to communications which include voice, video, and data communication, while MIB deals with information and broadcasting technologies; MeitY considers issues related to electronics and information technology. Together, they form a comprehensive regulatory ecosystem for the carriage of telecom and broadcasting services in India. Creating a new regulatory dispensation would create a situation of confusion for operators and the internet ecosystem in India, an uncertain operating environment, and reduce ease of doing business in India.

The requirement of a license, approval, or authorization for provision of internet-based communication services runs contrary to TRAI's own observations in its recommendations on "Regulatory Framework for Over-The-Top (OTT) Communication Services". TRAI observed that a comprehensive regulatory framework for OTT services is not recommended beyond the existing laws and regulations. It was of the opinion that such regulation could be looked into afresh when more clarity emerges in international jurisdictions, particularly the study undertaken by the International Telecommunication Union (ITU). Between 2020 and 2023, there has been no change in this situation, international practices; and no change in ITU's approach. In fact, ITU has not specified any regulatory mechanism for OTT based services and has only encouraged voluntary commercial agreements between TSPs and OTT service providers. Additionally, TRAI also

recommended that no regulatory interventions are required in respect of issues related with privacy and security of OTT services.

We emphasize that bringing internet communication services within the regulatory ambit of DoT or another regulator would not only subject such services to onerous license terms and conditions, but would also include a levy of entry fees, license fees and registration fees. This will have a chilling effect on innovations and investments in the internet ecosystem.

As such, the permission-based regime should only extend to those services which traditionally qualify as ‘material resources’ and are under the ownership of the government – such as spectrum assignment. In addition, the government’s exclusive privilege to license certain resources must also differentiate between app-based services and network *services*. No further changes in the regulatory ecosystem are necessary at this time.

Licensing is usually required where resources are scarce and operators obtain something of value in turn for a license, such as spectrum (for mobile, television, or radio channels). When it comes to online services, there is a virtually infinite number of services that can be offered which do not require the allocation of such finite resources. As such, we do not believe that a licensing regime is appropriate for online applications and services. For services referred to as ‘Video OTT platforms’, such Internet applications and services have been essential for economic growth and other societal benefits, including choice, innovation and new uses for consumers and businesses. Apart from the fact that it would be impractical and beyond the capacity of any one regulator to license all OTT services, it is important to note that these services which are different from traditional, legacy broadcasting also elicit different user needs and different expectations. For example, for online video services with user generated content, consumers can choose proactively and precisely what they want, from multiple choices and sources, and to protect themselves through tools such as parental controls; this is a marked departure from traditional linear broadcast which gives different choices to viewers and controls the content shown to consumers.

Question 3: How various institutional establishment dealing with (a) Standardisation, 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. Please provide institution wise details along with justification.

As mentioned above, every institutional establishment within the larger digital ecosystem has a specific and unique role. Together, they form a cohesive and successful regulatory mechanism. It would be useful for different regulators to collaborate in the form of project teams, working groups, or task forces on areas of common interest, so as to bring together their respective expertise and perspectives to solve particular situations, while not having to merge the entities themselves. Examples of this approach include the UK’s Digital Regulation Cooperation Forum⁷, which brings together the data protection authority, the telecom regulator, and others, and engages on an ongoing basis with stakeholders across society.

⁷ The Digital Regulation Cooperation Forum, ([Link](#))

At present, there are multiple agencies providing for standardisation, testing and certifications in telecom, broadcasting and IT sector (for instance, the Telecommunications Engineering Centre under the DoT being responsible for standardization, testing, certification in telecom and related IT equipment; MeitY's Standardisation Testing and Quality Certification (STQC) Directorate which provides quality assurance services such as testing, calibration, information technology and e-governance, training and certification in the area of electronics and IT; and the Bureau of Indian Standards (BIS) under the Ministry of Consumer Affairs (MoCA), which notifies standards.

In a converged environment, USIBC supports measures that avoids duplication of standard setting, testing and certifications. Otherwise, multiple agencies may specify different standards and requirements for the same technology. Alternatively, the multiple institutions under different ministries relating to standardization, testing and certification should have some institutional mechanism to follow a collaborative approach.

Question 4: 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? Kindly provide details with justification?

There is no need for establishing a unified policy framework and spectrum management regime for the carriage of broadcasting services and telecommunication services. The current spectrum management regime adequately deals with carriage services offered in both broadcasting and telecom industry. The "Saral Sarchar Portal" established by DoT is a portal that simplifies the process for frequency allocation through the WPC. For the broadcasting sector, MIB has established a single platform for the broadcasting sector in the form of "Broadcast Seva Portal" which also integrates the DoT's "Saral Sarchar Portal" for administrative allocation of spectrum. Instead of introducing a new framework and spectrum management regime, we recommend that attempts should be made to strengthen this platform for all the processes/approvals pertaining to allocation of spectrum in a time bound manner through better coordination among different Government department.

As mentioned above, telecommunication and broadcasting services are distinct services, and, therefore, the spectrum management principles that apply to carriage of broadcasting services should be distinct from telecommunication services.

Question 5: 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? Kindly provide details with justification.

An all of the above, market-led approach to spectrum allocation is critical to achieving efficiency. The paper acknowledges⁸ that the DoT's WPC wing exercises the statutory functions of the central government, and issues licenses to establish, maintain, and operate wireless stations under the provisions of the Indian Telegraph Act, 1885. For the delivery of services for broadcasters, suitable approvals/licenses are issued by

⁸ Page 107, para 3.61 of the paper.

the MIB, and telecom service licenses are issued by the DoT. The expanded reference from DoT⁹ also refers only to the following:

- Amending the license regime to enable the convergence of carriage of broadcasting services and telecommunications services.
- Establishing a unified policy framework and spectrum management regime for the carriage of broadcasting services and telecommunications services.
- Restructuring of legal, licensing, and regulatory frameworks for reaping the benefits of convergence of carriage of broadcasting services and telecommunications services.
- Revising regulatory regime in respect of DTH and cable TV services holistically addressing all institutional, regulatory, and legal aspects.

As delineated in the sections above, we believe that the comprehensive policy framework in place now is the best and most effective way to regulate the digital ecosystem. This framework ensures that licenses are suitably issued, content is moderated, and the remit of each individual agency is suitably protected. That said, we do believe that regulators should prioritise the co-existence of lightly licensed and unlicensed models, with a sharing framework that is light on bureaucratic overheads.¹⁰

Question 6: 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? Please provide full details with suggested changes, if any.

The draft Indian Telecommunications Bill, 2022 (Telecom Bill) proposes a definition of “telecommunication services” includes OTT communication services, among other, extremely varied services. Further, the bill places exclusive privilege on the central government to issue a license to provide telecommunication services. In this proposed design, all OTT communications would require a license by the DoT.

There are fundamental reasons why OTT communications should remain outside of the licensing regime. OTT services are essentially different from traditional telecommunications services: OTT services do not have their own network and spectrum and is merely an application delivered through the internet. Even TRAI, in its Recommendations on Regulatory Framework for Over-the-Top (OTT) Communication Services,¹¹ had stated that it was “not an opportune moment to recommend a comprehensive regulatory framework for various aspects of services referred to as OTT services, beyond the extant laws and regulations prescribed presently.” TRAI stated that the matter may be looked into afresh when more clarity emerged

⁹ Annexure I, page 130 of the paper.

¹⁰ PTI, “Wi-Fi in unlicensed frequency bands can generate Rs. 12.7 lakh crore economic value: BIF”, *The Economic Times* ([Link](#))

¹¹ TRAI, Recommendations on Regulatory Framework for Over-the-Top (OTT) Communication Services ([Link](#)).

in international jurisdictions particularly the study undertaken by ITU.¹² Further, as mentioned above, there is sufficient regulatory coverage OTT services under existing laws, including the IT Act and the rules thereunder (including the Intermediary Guidelines).

Further, there is no price arbitrage. TSPs earn revenue for the OTT services provided on their network in the form of data and internet charges. In the IP-based network, the cost of voice calls is negligible. TSPs charge for broadband access, and voice calls are free, and therefore, there is no pricing arbitrage between voice calls via TSPs and internet-based calls.

¹² The economic impact of over-the-top (OTT) services is an area of study covered by Question 9/3 of ITU-T Study Group 3 ([Link](#)).