

USISPF thanks the Telecom Regulatory Authority of India (TRAI) for the opportunity to submit counter comments on the Consultation Paper on “[The Framework for Service Authorisations to be Granted Under the Telecommunications Act, 2023](#)”.

Section-I

Q17. Whether there is a need for introducing certain new authorisations or sub-categories of authorisations under the Telecommunications Act, 2023? If yes, -

- (a) For which type of services, new authorisations or sub-categories of authorisations should be introduced?**
- (b) What should be the respective scopes of such authorisations?**
- (c) What should be the respective service areas for such authorisations?**
- (d) What terms and conditions (general, technical, operational, Security, etc.) should be made applicable for such authorisations?**

Kindly provide a detailed response with justifications.

USISPF Response:

- A. Yes, a new sub-category of service authorization should be introduced under the main authorisation category of Satellite-based Telecommunication Service by the name of “***Citizen safety-related mobile satellite services***”.

A new type of satellite service (Emergency SoS) is emerging with recently introduced satellite features that provide end users with potentially life-saving communications when there is no mobile or Wi-Fi network available. In dire situations, if a user finds themselves in danger while out of range of a terrestrial (mobile/Wi-Fi) network, their device can initiate emergency communications over satellite. This service can also benefit in scenarios where public networks may go down due to natural disasters viz. floods, earthquakes, tsunamis, etc. where citizens can communicate using emergency communication services through satellite.

Comparison with Direct-to-Device using terrestrial mobile frequencies.

Safety-related mobile satellite services are inherently different from the emerging Direct-to-Device arrangements between mobile network operators and commercial satellite operators. Both services differ substantially in the use of spectrum, capabilities and commercial approaches.

- ***Spectrum:*** Direct-to-Device relies on the use of terrestrial IMT spectrum by satellites to extend mobile network coverage to areas that are uncovered by cellular towers. This new type of spectrum usage, emerging first in the United States under the FCC’s new *Supplemental Coverage from Space* rules, relies on administration-by-administration rule makings because the usage is inconsistent with the ITU’s Radio Regulations. Rules meant to govern Direct -to-Device usage of terrestrial Mobile spectrum are currently being developed by the ITU. By contrast, safety-related mobile satellite services rely on globally harmonized ITU allocations for Mobile Satellite Services (MSS) that operate under well-established rules.
- ***Capabilities:*** Direct-to-Device services using terrestrial mobile spectrum are not specific for safety or emergencies and seek to extend the same terrestrial mobile network capabilities, including voice and data, that end users are accustomed to on their mobile network. By contrast, safety-related MSS services are specialized features that provide peace of mind and critical communications for users that are out of range of a terrestrial network, regardless of their choice of mobile network. Safety-related MSS services provide only limited communications as a public service.

- *Commercial Approach:* Direct-to-Device using terrestrial mobile requires users to be subscribed to a specific mobile network operator that has an agreement with a satellite operator to receive these services. By contrast, safety-related mobile satellite services are not tied to a particular mobile network operator.
- B. The scope of this new sub-category should be “Public Telephony Service” and “Public Internet Service”.
- C. The Service area of the citizen safety-related mobile satellite service should be A.- National Level -Pan India.
- D. Terms & conditions for the sub-category of Citizen safety-related mobile satellite services may be as follows:
 - Satellite Spectrum allocations for citizen safety services in the L and S bands for device to satellite leg.
 - Nil or minimal administrative charges
 - Direct communication from one device to another device through satellite to be restricted. All communication from a device will be to the PSAPs through the Ground Station/Relay Centers ensuring communication from the device flows to and from the established public safety network points across the country for handling SOS communication.

Q. 23 In view of the provisions of the Telecommunications Act, 2023 and market developments, whether there is a need to make some changes in the respective scopes and terms and conditions associated with the following service authorisations, recently recommended by TRAI:

- (a) Digital Connectivity Infrastructure Provider (DCIP) Authorization (under Unified License)
- (b) IXP Authorization (under Unified License)
- (c) Content Delivery Network (CDN) Registration
- (d) Satellite Earth Station Gateway (SESG) License If yes, kindly provide a detailed response with justifications in respect of each of the above authorisations.

USISPF Response:

- (c) Content Delivery Network (CDN) Registration

Suggestions on the regulatory framework and mandatory registration for CDN's

Registration Process:

- CDNs play an important role in the development of the internet. CDNs enable improved performance, enhanced traffic management, localized traffic delivery, reduced bandwidth consumption, load balancing, and increased security. CDNs should not be subject to a mandatory registration process because:
 - Introducing a registration process in the absence of market failure will only create barriers to entry in an already competitive market: Given the low barriers to entry, the CDN market in India is competitive and continues to grow. In the TRAI Consultation Paper on the Regulatory Framework for Promoting Data Economy through Establishment of Data Centres, Content Delivery Networks, and Interconnect Exchanges in India, TRAI highlighted that India's CDN market will witness a growth of over 700 % between 2018 – 2027 (i.e., from USD 435.2 million in the year 2018 to USD 2846.8 million by 2027).
 - Providers of CDNs should be able to respond to evolving market needs: Introducing a registration process will adversely impact this. For instance, a registration process will contribute

to delays in launching / expanding products and services.

- CDNs are fundamentally different from telecommunication providers and should not be regulated similarly or subject to any registration/ licensing requirements.
- IXPs use CDNs to manage local traffic exchange. However, if interconnection in India were restricted to only registered networks, it would impede the ability to serve traffic locally resulting in a shift in traffic internationally.
- CDNs do not require a license to operate in other countries and TRAI should not set this precedent in India.

Operations in Tier 2 and Tier 3 Cities

CDNs should not be required to set up their infrastructure in Tier 2 and Tier 3 cities because:

- CDNs already work with several ISPs in different geographies to enhance the consumer experience.
- Rather than requiring CDN providers to set up infrastructure in Tier-2 and Tier-3 cities, it would be helpful to provide data center providers with incentives to expand their footprint in Tier-2 and Tier-3 cities.
- As per Recommendation 2.45 in TRAI Recommendations on the Regulatory Framework for Promoting Data Economy Through Establishment of Data Centres, Content Delivery Networks, and Interconnect Exchanges in India, TRAI has already recommended providing incentives to data centre providers to expand their footprint to cities where they have a scant presence. As noted by TRAI, data center providers typically focus on Tier-I cities due to several factors, including robust connectivity, uninterrupted power supply, and excellent local market access. Therefore, improving the data centre infrastructure in such cities will make the system favourable for setting up CDN networks in Tier 2 and Tier 3 cities.

Disclosure Agreements

- Disclosure of agreements between CDNs and Telecom Service Providers (TSPs) and Internet Service Providers (ISPs): Agreements between CDNs and TSPs / ISPs are confidential B2B contracts. As such, they should be governed by market forces alone, and should not be subject to any mandatory disclosure requirements.

Q28. What should be the broad framework including the specific terms and conditions that should be made applicable for captive authorisations, which are issued on a case-to-case basis? Kindly provide a detailed response with justifications.

USISPF Response:

Digital services have become an essential part of daily life worldwide. Governments are increasingly partnering with digital enterprises to extend their reach and enhance public welfare, while the integration of technologies like AI and IoT is driving a transformation in digital service delivery. However, this rapid evolution has led to a surge in computational demands, prompting multinational digital enterprises to rely on interconnected backend infrastructure, such as data centres and operational control centers (DCOCs), spread across various regions, including India.

To ensure the high performance and low latency required by advanced technologies, many digital enterprises have developed private, non-public DCOCs and enterprise networks, which were traditionally managed by licensed telecom service providers (TSPs). However, the growing demand for real-time services and advanced network architecture has led these enterprises to seek direct ownership and control over these backend systems.

Regulators in regions like Singapore, Japan, the USA, and the EU have recognized the potential for growth in this sector and have implemented flexible regulations, allowing digital enterprises to establish and manage their private networks. This regulatory environment has transformed these regions into global digital hubs. In contrast, India's Unified Licensing (UL) framework restricts non-licensed digital enterprises from owning or managing private networks. This restriction hampers ease of doing business, slows down the adoption of advanced technologies, and discourages foreign direct investment (FDI) in India's digital sector. With an estimated data center capacity of only 730 MWs in 2024, India lags significantly behind other regions in attracting data center investments, placing the country at a competitive disadvantage.

Furthermore, TSPs providing private networks in India are required to adhere to the same technical and security conditions as those applicable to public networks. These regulations, however, are out of date and misaligned with the needs of private enterprise networks, ultimately stifling technological advancement, investment, and innovation in India's digital ecosystem.

To address these challenges and enhance India's position as a digital leader, it is recommended that the Department of Telecommunications (DoT) consider providing exemptions under the Telecommunications Act 2023. Such exemptions would allow digital enterprises incorporated in India to own and manage private enterprise networks, aligning India's regulatory framework with global standards. This approach would boost the data center industry and support growth.

Question 30: Whether the provisions of any other Policy/ Act in the related sectors need to be considered while framing terms and conditions for the new authorisation regime? If yes, kindly provide a detailed response with justification.

USISPF Response:

- a. It is submitted that OTT Platforms are already governed under the IT Act.
- b. These OTT Platforms fall under the ambit of the term 'intermediary', as defined under Section 2(1)(w) of the IT Act. Not only has this position been reiterated in official Government guidance,¹ but it is also evident on account of the provisions of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 ("2021 IT Rules").² **Furthermore, the Telecom Disputes Settlement and Appellate Tribunal ("TDSAT") has also held that OTT Platforms are covered by 2021 IT Rules and not the Telecom Regulatory Authority of India ("TRAI").**³
- c. The IT Act sets out an extensive regime that is designed to govern intermediaries. This hinges on the 'safe harbour' construct under Section 79 of the IT Act, that essentially exempts intermediaries from liability for third-party content on their platforms, subject to the intermediary complying with the conditions enshrined in that section.
- d. The 2021 IT Rules have been framed in furtherance of Section 79 of the IT Act, and lay down detailed prescriptions that have to be adhered to by intermediaries in order to avail safe harbour protection. It should be noted that all the requirements of Section 79 of the Act and the 2021 IT Rules are squarely applicable to OTT Platforms on account of them being intermediaries. Furthermore, they may also be subjected to directions of the Central Government under Section 69A of the IT Act.

¹ Q No. 5, [FAQs on Digital Media Ethics Code.pdf \(mib.gov.in\)](#), Ministry of Information and Broadcasting.

² Rule 4(2) of the IT Rules is designed to specifically cover "significant social media intermediary providing services primarily in the nature of messaging".

³ *All India Digital Cable Federation v Star India Pvt Ltd*, Broadcasting Petition/217/2023, TDSAT; [OTT platforms are not governed by Trai but by IT rules, says TDSAT | Company News - Business Standard \(business-standard.com\)](#).

- e. It should be noted that the safe harbour regime has been designed keeping in mind the distinctive nature of intermediaries as facilitators of internet communications and information exchange. This requires a regulatory approach that is based not on licensing and pre-authorization but rather on the incentivization of non-arbitrariness, safety, responsibility, and legal compliance. This unique regulatory approach (that has also been adopted by other key jurisdictions including the US and the EU) has played a central role in maintaining internet neutrality and openness not just in India but world-wide.
- f. In light of this, the creation of a controlled licensing and pre-authorization regime for OTT's may have a vitiating effect on the internet ecosystem in India, as it may prevent the organic entry and operation of OTT Platforms in the Indian digital space. Given that a large number of OTT Platforms are start-ups or small sized, the effects of introduction of a pre-authorization regime on the Indian digital space may be compounded.
- g. Attention may also be drawn to the comments by Mr. Ashwini Vaishnaw, the Minister, Ministry of Electronics and Information Technology, who had stated on record that OTT Platforms would not be covered under the Telecom Act and would continue to be governed under the IT Act.⁴
- h. We therefore request the following –
 - (i) that an official clarification be issued by the Ministry of Communications that OTT Platforms are not covered under the ambit of the Telecom Act; and/ or,
 - (ii) that any further detailing of the meaning and scope of the term 'telecommunication services' under any rules/ subordinate legislation issued under the Telecom Act specifically exclude OTT Platforms from its ambit.

Question 35: Are there any other inputs/ suggestions relevant to the subject? Kindly provide a detailed response with justifications.

USISPF Response:

As highlighted in the responses provided to Q Nos. 4 and 30, respectively, the inclusion of OTT Platforms within the ambit of the Telecom Act may be problematic on two counts:

- (i) It may bring about considerable disruptions in the Indian internet communications ecosystem that will have implications not just for industry participants but also for end users and public stakeholders
 - (ii) It disregards the existing regulatory regime of safe harbour protection that has been created under the IT Act to specifically govern intermediaries such as OTT Platforms.
- a. In light of the above, the recommendations made in the responses to Q Nos. 4 and 30 are reiterated hereunder:
- (i) **Guidelines should set out the criteria for categorizing different types of violations based on the level of severity. Such criteria may be dependent on (a) the impact of the violation on the network integrity, security of the state or user safety; (b) whether the violation was negligent, intentional, or accidental; (c) frequency of the violation, etc.**
 - (ii) **The rulemaking power under Section 3(3) of the Telecom Act may be invoked to specifically exclude OTT Platforms from the authorization requirements under Section 3(1) of the Act**

⁴ [Telecom Bill 2023: Telecom Bill 2023: Why Facebook, Signal and 50 other OTT platforms have sent letter to communications minister - Times of India \(indiatimes.com\)](#); [OTT not under ambit of Telecom Bill: Ashwini Vaishnaw - The Economic Times \(indiatimes.com\)](#)

- (iii) An official clarification may be issued by the Ministry of Communications that OTT Platforms are not covered under the ambit of the Telecom Act.
- (iv) Any further detailing of the meaning and scope of the term 'telecommunication services' under any rules/ subordinate legislation issued under the Telecom Act may specifically exclude OTT Platforms from its ambit.

Section-II

Telcos on OTT Communication Services:

USISPF Response:

Stakeholder Comments:

Reliance Jio Infocomm Ltd. has advocated for the regulation of OTT communication services to "*ensure the same rules apply for identical or similar services.*" This viewpoint is echoed in the Cellular Operators Association of India's (COAI) submission under Q17. Vodafone Idea Limited has also expressed a similar stance. Additionally, Bharti Airtel Limited, in its response to Q17, emphasized that OTT communication services and traditional telecom services share similarities in "functionality" and "core utility." Consequently, it has called for the regulation of OTT communication services based on (a) the 'same service, same rules' principle, (b) the need to establish a level playing field, and (c) considerations of national security and consumer protection.

Counter Comments:

Fundamental Differences Between OTTs and TSPs:

- OTT communication services and telecom service providers (TSPs) operate on different layers: TSPs on the network layer, and OTTs on the application layer.
- TSPs control broadband/network infrastructure and provide internet access, while OTTs rely on this internet access to deliver digital services.

Regulatory Considerations:

- TSPs operate in a restricted market with specific rights and are subject to a stringent statutory framework in India, including the right of way to set up telecom infrastructure.
- OTTs should not be regulated under the Telecom Act, as the Act is primarily designed for traditional telecom services with their own complexities and nuances.

Service Offerings and Functional Differences:

- OTT services offer additional functionalities beyond traditional telecom services, such as group chat, voice notes, in-app content sharing, document sharing, live location sharing, and online payments.
- Users generally do not view OTTs and TSPs as providing the same or similar services and often use both simultaneously or exclusively rely on traditional services like SMS or voice calls.

International Perspective:

- Foreign jurisdictions, like the Australian Competition and Consumer Commission, have recognized the differences between OTTs and traditional voice services.

- The ACCC's Communications Sector Market Study (April 2018) concluded that there is no basis for requiring equivalent regulatory treatment of OTT and traditional voice services due to limited substitution and technical shortfalls in OTT services.

Free Riding Claims Unfounded:

- Some stakeholders argue that OTT service providers should bear similar regulatory burdens as TSPs because they supposedly "free ride" on the telecom infrastructure.
- However, OTT providers do not "free ride" as they contribute to TSPs' revenues by increasing internet access and driving demand for online content.

Supporting Statistics:

- TRAI's OTT Consultation Paper (CP) supports this view, highlighting that TSPs have gained new revenue sources from increased OTT usage and data consumption.
- The CP also shows improved figures in monthly wireless data usage, ARPU (Average Revenue Per User) for data consumption, and an expanding wireless internet subscriber base.
- A BEREC report titled "*BEREC preliminary assessment of the underlying assumptions of payments from large CAPs to ISPs*" (October 2022) supports this.
- It concluded that subscriber demand for content drives broadband access demand, and vice versa, with no evidence of free riding by OTT providers.

Stakeholder Comments:

Stakeholders such as Vodafone Idea and Bharti Airtel, in their responses to Q17, have expressed concerns that without subjecting OTT communication services to an authorization or licensing regime, these services will remain unmonitored, potentially obstructing law enforcement processes.

Counter Comments:

OTT Communication Services are already regulated

- OTT communication services are already subject to a variety of regulations, including being classified as 'intermediaries' under the IT Act and its associated rules.
- Concerns that these services operate without regulatory oversight are unfounded. In addition to complying with legal requirements, OTT communication services prioritize consumer welfare, which is crucial for maintaining their relevance in a highly competitive market.
- Regarding consumer protection, these services must adhere to grievance redressal mechanisms as outlined in existing frameworks, including the Intermediary Guidelines (IG) Rules. Under these rules, intermediaries are required to appoint a 'grievance officer,' make the officer's contact details publicly available on their platform, and resolve user complaints within specified timeframes. For example: The newly enacted Digital Personal Data Protection Act, 2023 ("DPDP Act") makes it clear that OTT service providers will be regulated Act as 'data fiduciaries' – once the same is notified. Under this law, OTT service providers will have extensive obligations related to data breach reporting, implementing robust security measures to protect personal data being processed, and so on. Similarly, even under the IT Act, intermediaries are subject to cyber security and national security requirements-pertaining to interception and content takedown.

Stakeholder Comments:

Vodafone Idea Limited has submitted that OTT services fall within the ambit of “telecommunication services” while responding to Q17. Bharti Airtel Limited has also stated that the definition of “telecommunication” under the Telecom Act has the space for “regulation” of OTT communication services under the Telecom Act.

We observe that in response to Q18 of the CP, Reliance Jio has suggested regulating OTT communication services, arguing that the definitions of "message" and "telecommunication service" under the Telecom Act are sufficiently broad to encompass "all forms of telecommunication services, including communication services provided over the top using platforms, servers, or switches hosted on the public internet..."

Counter Comments:

The Telecom Act does not apply to OTT communication services.

- At the outset, The Telecom Act was designed to update laws related to telecommunications, including the development, expansion, and operation of telecom services and networks, as well as the assignment of spectrum to enhance the ease of doing business in India, and establish a forward-looking, light-touch regulatory framework for traditional telecom services.
- When the Telecom Act was introduced, the then Telecom Minister, Shri Ashwini Vaishnaw, clarified that OTT services are regulated under the IT Act of 2000 and are not covered by the new Telecom Act.
- According to the Allocation of Business Rules, 1961, the Ministry of Communication/Department of Telecommunications (DoT) oversees policy matters related to "telegraphs, telephones, wireless," while the Ministry of Electronics is responsible for regulating internet-related matters, including OTT communication services, under the IT Act.
- Therefore, despite the definitions in the Telecom Act, the government’s policy intent should be respected.
- The Terms of Reference for the Consultation Paper (CP) issued by the DoT to TRAI focus solely on the authorization of telecommunication services, not on regulating OTT communication services.
- In view of the same, it is requested that TRAI refrain from addressing OTT regulation in its recommendations under this CP, as it falls outside the scope of the Terms of Reference.