

Q.1 Stakeholders are requested to give their comments on structure and contents of the proposed inputs for National Telecom Policy, 2018, clearly outlining the specifics along with justification.

Exotel Response:

The proposed structure is very well thought through. However, in this age of convergence where the networks have become technology and service neutral it is essential that we rename the National Telecom Policy 2018 as the National Communication Policy 2018. Communication being one of the primary reasons for the creation, evolution and the coming together of the telecom, internet, media, software and technology space; we believe that the title National Communication Policy 2018 will help in developing the right mindset and framework for implementing and surpassing the challenging goals of the new policy framework.

Q.2 Stakeholders may also suggest any other issue related to Policy Framework which stakeholders feel is important for growth of telecom sector, along with justification.

Exotel Response:

Some of the key issues that should be addressed in the Policy Framework document and that will help India become a world leader in the communication space are discussed below:

I. Specific regulatory regime for the OTT space

The Policy Framework should address the requirement of a specific regulatory regime for the OTT space. Our reasons for this suggestion are explained below:

Background on OTTs:

The communication sector comprises primarily of network service operators (“NSOs”) such as access service providers; over the top service providers (“OTTs”) a.k.a. application service providers (“ASPs”); and subscribers. OTTs provide content or communication based services over the network infrastructure of NSOs. The OTT industry can be divided into 2 categories, communication based OTTs (“communication based OTTs”) and non-communication based OTTs (“non-communication based OTTs”). Non-communication based OTTs are primarily content service providers. Some examples of non-communication based OTTs include platforms such as Wikipedia, Flipkart etc.. Communication based OTTs can be further divided into 2 categories. The *first category* is that of personal communication technology solution providers such as WhatsApp, Viber, Facebook etc. (“Personal Communication OTTs”) that provide internet telephony and messaging services (as of now free of cost in India); and the *second*



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category is that of enterprise communication technology solution providers (“Enterprise Communication OTTs”) that provide optimized communication technology solutions to businesses such as conferencing, IVR etc.. Currently, the Enterprise Communication OTTs are regulated to an extent by the Audiotex and Voicemail License (“Audiotex License”). The Audiotex License enables the Enterprise Communication OTTs to provision the services with the help of interconnection agreements with licensed network service operators (“NSOs”). It may be noted here that the Enterprise Communications OTTs have been acting from behind the scene as enablers of the start-up eco-system in India. They have also been seen to help several non-profit organizations in increasing their outreach. In one such use case a not-for-profit children’s book publisher with a mission to see ‘a book in every child’s hand’, ran a campaign, ‘Missed Call Do, Kahaani Suno’, through the platform of an Enterprise Communication OTT in order to ensure that every child gets a story simply through a missed call. The campaign transformed the telephone into a storyteller. Just by giving a missed call, the Enterprise Communication OTT platform made it possible for children to hear free audio stories of Bheema, Sringeri Srinivas, Veeru and other delightful characters in English, Hindi, Marathi, Kannada and Telugu. The Enterprise Communication OTTs are developing several innovative communication solutions/ use cases that are helping enterprises and other causes increase their outreach and productivity. Through their work, the Enterprise Communication OTTs have also become promising partners to the NSOs and are therefore together redefining the communication space in meaningful and impactful ways. In this regard, it may also be pertinent to note that Enterprise Communication OTTs have been reported to have contributed over Rs.100 crores per month to the NSOs revenue stream.

Creating a harmonious balance by developing a specific regulatory clarity for communication based OTTs

The future growth of the communication sector depends upon creating a harmonious balance between the legitimate needs of all the stakeholders (subscribers, NSOs and OTTs). In the last decade, we have experienced unprecedented innovation and growth in the OTT industry which has not only impacted the overall growth and advancement of the communication sector, but also all other sectors of the economy. However, in the OTT space, the communication based OTTs in India continue to face challenges posed by an incomplete regulatory framework. One would understand the difficulties of building a business in India in an environment that does not grant it clear legal recognition and regulatory clarity. Amidst this imminent problem, the home-grown OTT industry which primarily comprises of start-ups, finds obtaining investments a challenge and has to spend a lot of time, energy and money on handling concerns around regulatory issues.

Our understanding is that regulations are meant to be used as a means to foster growth, innovation and remove unnecessary impediments. In this light, while we move closer to defining the way forward for the communications industry in India through a new liberalization Policy Framework, we strongly feel that it is essential that a specific regulatory clarity be developed for communication based OTTs. We believe that such a regime will help maintain a harmonious balance in the communication sector which will add to its growth and development. It is also submitted that the time is ripe for such a



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regulatory intervention, failing which the spirit of innovation and industriousness in India will diminish, whereas externally funded initiatives will survive and thrive.

Building a Regulatory Regime for OTTs

OTT Rules under the IT Act

The ideal scenario would be recognizing the OTT industry/ application services through specific rules/regulations (“OTT rules”) that clearly state that such service providers do not require a license/ authorization for providing the services in India. We recognize that there may be concerns around national security, and therefore propose that the OTT rules should impose security obligations on the OTTs which are similar to those imposed on NSOs. The Information Technology Act (“IT Act”) provides for specific rules that regulate intermediaries (“Intermediary Guidelines”). These regulate the OTT industry also. Therefore, in our view notifying specific OTT rules under the IT Act would help create a clear and complete regulatory framework for OTTs in India. Such a regulatory framework will help address the concerns of all the stakeholders and national security.

Addressing the aftermath of the license raj – communication based OTT registration or authorization under the license regime

While standalone OTT rules would be the best case scenario. However, we as a country continue to cope with the aftermath of the license raj. The general mindset in our country continues to remain that if a business model/ technology service is not licensed or authorized or registered by the government, it is illegal. Therefore, the NTP 2018 should chart out a two phase road map for the communication based OTT's. In the first phase, the communication based OTTs could be brought under the umbrella of the Unified License regime through a specific authorization (this will also resonate with the idea of one nation and one license for all services) or the communication based OTTs, could be subject to a specific registration requirement under the proposed OTT rules; and, in the second phase such a requirement (license/ registration) should be done away with, thereby not requiring the OTTs to obtain any license or registration (The proposed OTT rules would be able to address all legitimate concerns). The second phase will also help add to the ‘ease of doing business in India’ objective.

Scope of services under the OTT Authorization or Registration

Convergence of voice, video and text etc. - Communication based OTTs should be allowed to use any technology to provide any kind of communication service (voice, video, text), internet telephony, messaging, data services, digital streaming, broadcasting (IPTV) or any new age communication based service which may be developed in the times to come.

All the communication based OTTs should be required to submit a service description at the time of obtaining the authorization/ registration, and as and when such an OTT intends to expand the scope of its services it should be required to intimate DOT.

In the event a communication based OTT plans to introduce a new technology service (which does not find a mention in the OTT authorization/ registration guidelines) it should be required



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to obtain the consent of DoT which should not be unreasonably withheld. In the event the regulator decides to withhold such a permission; it should be required to give a well - reasoned order based on principles of natural justice. Such a decision should be made in a time bound manner. TEC (along with a committee of leading technology and telecom academicians in India) should act as a facilitator in the decision making process of DoT with respect to any new technology service that a communication based OTT proposes to introduce in India.

Security requirements - National security in the context of OTT players:

From a security perspective, the communication based OTTs should be required to provide the regulator access to their applicable systems and be subject to the same security obligations as the NSOs. Currently, WhatsApp and similar communication solution providers continue to operate freely over the internet without any security obligations. Notifying specific rules that govern the security obligations of OTTs; and bringing communication based OTTs within the ambit of the unified license regime through an authorization, or requiring them to register will help address the prevailing security concerns over the use of such services.

Strategy to take India to the world stage - Encouraging Start Ups in the Telecom and Technology Space by creating a specific zone - “e-space”

In order to ensure that India remains relevant and ahead in the communication space it is important that the regulations should provide for a special telecom and technology innovation space (“e-space”). Start-ups that register in the e-space should be permitted to experiment and create network technologies and services in a licensing free environment. The proposed e-space will create a level playing field for the start-ups and give them an environment that is conducive for discovery, innovation and growth. The e-space will also address concerns around security and transparency. While all the start- ups may not turn into profitable business ventures. However, each start – up’s experience will contribute towards making India a thought leader in the technology and telecom space. The residents of the e-space could also be asked to contribute towards development projects for India.

The e-space will help India enter the world stage in the telecom and technology space. The e-space will also help provide data and information that will help India develop a future ready regulatory framework. Given the extent of talent that India has, the e-spaces would become the most sought after destination for foreign investment. This will also help fix the brain drain problem. The regulations around creation of e-spaces could also provide for a e-space fund which could be used to help the start-ups sustain themselves.

III. Doing away with the OSP registration

The scope and purpose of the OSP registration should be objectively evaluated under the new Policy Framework. As per our understanding, such an objective evaluation will lead to the removal of the requirement of obtaining an OSP registration.

However, if after such an evaluation, a decision is taken to continue the OSP registration, it is absolutely pertinent that the scope of services that fall within the ambit of the registration



requirement should be stated clearly. Current the OSP registration terms and conditions define an OSP as an Application Service Provider. Further, the OSP terms and conditions define Application Services as “*tele-banking, tele-medicine, tele-education, tele-trading, e-commerce, call centre, network operation center and other IT Enabled Services, by using Telecom Resources provided by Authorised Telecom Service Providers*”. However, the terms and conditions do not define IT Enabled Services. This results in a lot of uncertainty in terms of the scope and applicability of the OSP registration requirement. Also, the structure of the OSP terms and conditions is not conducive to innovation in the enterprise communication space and is standing in the way of building future ready use cases for the enterprises that are being unnecessarily subjected to the requirement of obtaining the OSP registration.

IV. Data Protection and Encryption Rules

The objectives of the New Policy Framework should also include:

(i) notification of a personal data protection regulation which gives the control of *personal information* back to the subscribers and builds within it a strict implementation strategy for such rules. The implementation of such rules can also be carried out through a technology platform which maybe developed under the public private partnership route.

The proposed personal data protection regulation should also categorically recognize *mobile phone numbers as sensitive personal data and information*; and

(ii) notification of rules governing encryption. India has been lacking for long on this account. It is time that uniform encryption rules are notified at the earliest.

V. Removal of Licenses

Bracketing of innovations and applications built on authorized secure telecom networks should be done away with. One of the missions of the New Policy Framework should be liberalization; and should lead us to a reduction/removal of licenses in the communication space in the next five years.

VI. Business friendly environment

One of the critical missions of the New Policy Framework should be to create a business-friendly environment in the communication space. A few points that flow out of this mission are discussed below:



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- (i) **Written clarification and response process:** With the announcement of the New Policy Framework, we foresee the notification of several new rules and regulations. Given the pace at which we are witnessing technological evolution, it is understandable that the rules, regulations and the license/ authorization/ registration terms and conditions that govern, and will govern the communication will remain work in progress. Experience with several new acts, rules and regulations across different sectors has shown repeatedly that between the letters of law there will be unanswered questions and the need for timely clarifications. Further, one of the greatest hurdles in the communication space has been the lack of regulatory clarity. Therefore, it is critical that the decision-making authorities such as DoT and TRAI create a committee which provides clear written clarifications and responses on regulatory issues and concerns impacting businesses in a time bound manner. Such written clarifications and responses should be straight forward and clear. The creation of such a committee will help India become a thought leader in the digital space.
- (ii) **Provision of a consolidated handbook of laws governing the communication space:** For a business to be compliant, it is essential that they should have easy access to the laws that govern their space. Unfortunately, in the communication space this has not been made possible so far. Something as critical as the telegraph rules are not available in the public domain. It is also pertinent to point out that the principal regulations, terms and conditions and rules available on the DoT and TRAI website do not reflect the amendments that are made through subsequent notifications. It would benefit the businesses greatly if all amendments are transposed into the principal regulations, rules and license terms and conditions. The requirement for updating the amendments into a single document is critical. The consolidated FDI circular is a good example for the communication space regulations as well. This will help the businesses become more compliant.

Further, in this digital era it is also reasonable to expect that a consolidated handbook of the laws governing the digital space should also be available for download free of cost. This handbook should also include all specifications, annexures and other documents referred to in the acts, rules, regulations, license terms and conditions etc. (such as the TEC specifications).
