BIF Counter-Comments to TRAI Consultation Paper on the Framework for Service Authorisations to be Granted Under the Telecommunications Act, 2023

Broadband India Forum welcomes the opportunity to present its counter comments based on the submissions that have emerged from the TRAI consultation on the Framework for Service Authorisations to be Granted Under the Telecommunications Act, 2023.
In our review of the comments, few stakeholders have inaccurate and misleading views on the following issues:

- Question 5 in Consultation Paper - Introduction of a Unified-Service Pan India Authorization
- Questions 5, 15 to 18 in Consultation Paper - Satellite Service
- Assignment of Spectrum
- Question 27 in Consultation Paper - Suggestions for PM-WANI
- Regulation of OTTs
- Question 23 in Consultation Paper - CDNs

In this counter comment, we are providing our responses, with reasons, to the arguments on the above-mentioned topics in the comments of such few stakeholders.

We submit that these counter comments should be considered in addition to the comments given earlier by us.

QUESTION 5 IN CONSULTATION PAPER REGARDING INTRODUCTION OF A UNIFIED SERVICES PAN INDIA AUTHORISATION

Comments of Few Stakeholders:

- A unified service authorisation at National Level for the provision of end-to-end telecommunication services would provide all telecommunication services under one Authorization with national service area, which is imperative to deliver synergies of scale and operations, to simplify financial management, eliminate discrepancies in the LSA-wise interpretation and implementation of license conditions, consistent interpretation of standards, make assessment of authorisation fee and SUC easier, reduce administrative burden and legal conflicts. At present there are multiple appellant authorities at Circle and regional levels which is difficult to efficiently coordinate and address disputes, such a unification would allow a single appellate authority to handle all disputes in an efficient manner. This proposition to be in line with the "One Nation – One License" Policy.

- The existing LSA wise Access Service Licenses create artificial borders in form of licensed service areas for the service providers who have Pan India services.
- The scope of such unified service should be comprehensive coverage of telecom services, including voice, data, and broadcasting.
- The concept of Unified Services Authorisation (National) for end-to-end telecom services is a step in the right direction, but there are many unanswered questions related to it. There is a need to identify and gather stakeholders 'inputs, and then have another round of consultations with a more final view on what the proposed unified authorisation framework would look like and how it would function.

Counter Comments by BIF:

1. The Telecommunications Act [Section 3(2)] states that "the Central Government may while making rules under sub-section (1), **provide for the different terms and conditions of authorisation for different types of telecommunication services**, telecommunication networks, or radio equipment."

2. The Unified License [Part II] **in its present form, provides for different terms and conditions for different types of authorizations under the respective Chapters.**

3. The comments provided by the stakeholders also state that there are **22 different types of services for which authorisations are given and there are 22 Licensed Service Areas (LSAs) for certain authorisations**.

4. Without prejudice to our submissions in the comments to the Consultation paper, we submit that the background note annexed with the DoT's reference dated 21.06.2024 mentions as follows:

*"**Currently the licensing and regulatory framework for different types of telecommunication services** is being governed as per the provisions of the Indian Telegraph Act, 1885. The extant licenses/registrations are as follows:*

(i) Access Service authorisation under Unified License (UL) and UL-Virtual Network Operator (UL-VNO)

(ii) Internet Service authorisation under UL and UL-VNO

(iii) National Long Distance (NLD) Service authorisation under UL and UL-VNO

(iv) International Long-Distance Service (ILD) Service authorisation under UL and UL- VNO

(v) Global Mobile Personal Communication by Satellite (GMPCS) Service authorisation under UL and UL-VNO

(vi) Public Mobile Radio Trunking Service (PMRTS) authorisation under UL and UL-VNO

(vii) Commercial VSAT CUG Service authorisation under UL and UL-VNO

(viii) Captive VSAT CUG authorisation (Standalone)

(ix) Audio Conferencing/ Audiotex/ Voice Mail Service authorisation under UL

(x) Machine to Machine (M2M) Service authorisation under UL and UL-VNO

(xi) M2M Service Provider registration

(xii) WPAN/WLAN Connectivity Providers Registration

(xiii) Resale of IPLC Service authorisation under UL-VNO

(xiv) Access Service Category-B authorisation under UL-VNO

(xv) CNPN Authorisation

(xvi) CMRTS Authorisation

(xvii) Rules for In-Flight and Maritime Connectivity (IFMC) permission

(xviii) IP-1 Registration

(xix) NOC for sale/rent of International Roaming SIM Cards

(xx) Mobile Number Portability (MNP) service license

(xxi) PM WANI service registration

(xxii) Captive Authorisations (on case-to-case basis)

5. **Different types of telecommunication services is therefore envisaged in Section 3 of the Telecommunications Act 2023.** The Central Government, while making rules, may prescribe different terms and conditions, including fees and

charges, of authorisation for different types of telecommunication services. The Act envisages distinct authorizations for different types of telecommunication services (Section 3). Each service must comply with specific terms, conditions, and fees, as prescribed by the Central Government.

6. Q5 in the Consultation Paper is as follows:

"In addition to the service-specific authorisations at service area level, whether there is a need for introducing a unified service authorisation at National level for the provision of end-to-end telecommunication services with Pan-India service area under the Telecommunications Act, 2023? Kindly justify your response."

Even in 2013, when a Unified License regime was introduced, different authorisations were issued for different types of services, considering their distinct nature. The Q5 acknowledges that service - specific authorisation is required at service area level. By no imagination the service - specific authorisation, which is in line with Section 3(2) of the Telecommunications Act 2023, can be forgone for national level.

7. The **creation of a unified authorisation at a pan India level would not constitute a type of telecommunication service by itself.**

8. It is pertinent to draw an **analogy between the different types of telecommunication services with different types of transport services** (e.g. aeroplane, passenger train, goods train bus, trucks of different kinds, taxis, cars, three-wheelers, bikes, e-rickshaws, cycles etc.). J**ust as different transport services require different licenses and area permits depending on their usage, size, and the nature of their operation, different telecommunications services (e.g., access services, NLD, ILD, Internet Access, IP-1, GMPCS, PM-WANI etc.) require different authorizations with specified terms and conditions relevant for them, each having specific but different licensed service area.** All these are different types of services and cannot be clubbed as unified services for any licensing purposes.

9. Different types of services require different terms and conditions and a single authorisation ignoring the different types of telecommunication services and ignoring different terms and conditions attached to each type of telecommunication services will be completely arbitrary and will greatly damage the regulatory framework. **It will be in violation of the framework given in Section 3(1) and Section 3(2) of the Telecommunications Act, 2023 and level playing field, which will be changed in favour of few and against others.**

10. The possibility of reducing the number of authorisations (which is one of the reference made by DoT), can be considered, if and only if, the nature of some of the respective services are same. In this regard TRAI has raised questions on combining of NLD and ILD authorisations, VSAT CUG with GMPCS authorisations , IP-1 with DCIP etc. on which there are divergent views given by stakeholders in their respective comments. In our view these named telecommunication services are distinct services (distinct scope and distinct terms and conditions) and, therefore, each must have different authorisation with respective terms and conditions in line with Section 3(2) of The Telecommunications Act, 2023. **If even such two services cannot be brought under one authorisation, there is no justification of unification of all communication services in one authorisation.**

11. The stakeholders, supporting this measure are seemingly d**riven by their individual commercial interests to reduce their regulatory burden and compliance costs at the cost of broader industry growth or consumer benefits. The larger motive seems to be reduction in competition.**

12. None of these stakeholders have taken into consideration the **adverse impact such a pan India unified service authorization is likely to have on smaller and niche service providers, who offer specific services in specific service areas.** This would essentially create a completely different category of '**Super Authorisation** 'in comparison to the service specific authorisations provided to operators in specific service areas at present. At first, it will combine different service authorisations into one giving an undue advantage in the market to such authorised entity over others who have specific service authorisations. Additionally, the market power of such an authorised entity will increase manifold by clubbing service area into PAN INDIA. When such an entity would be placed against a service provider, holding a single service authorisation in a specific service area or having a few individual service authorisations in one or more service areas, it would be impossible for the smaller player in comparison to offer its customers the services which a unified service pan India authorisation holder would be providing at the national level that too with 22 services combined as one under a 'Super Authorisation'. Hence, **a smaller player who till now was managing to compete in the given market will suffer due to this change in DEFINITION OF MARKET altogether.**

13. At present, separate authorizations for different services and circles, as under the extant regime has allowed for more specialized, region-specific players to enter the market. **A 'Super Authorisation', as proposed, would make it difficult for existing or new and smaller players to sustain/enter the market as it would need them to compete on a national level, which requires significant capital and resources.** Under the current framework, license holders can provide specialized or regional services, focusing on specific customer needs. A unified service pan India license is likely to favour larger operators with the ability to cover the entire country

under one service, potentially squeezing out smaller, regional players who can't scale their operations nationwide.

14. Hence, such a 'Super Authorisation 'would be **anti-competitive and would result in imposition of unnecessary regulatory burden for those service providers who only wish to provide a specific service or in a specific license area.** Instead of fostering a more competitive and diverse market, this move would actually **consolidate power within the hands of a few, undermining the intended benefits of liberalization and market expansion.** Such an authorization would enable the players dominating the market to solidify their stronghold on the market, **potentially stifling competition, lead to reduced innovation and disincentivize newer players from entering the market.**

15. **There is no market analysis or regulatory impact assessment to support the claim that such an authorization would lead to increased choices or improved services.** Hence, it would be an uneven playing field between telecom operators who hold this unified service pan India authorisation and those who hold service-specific licenses in different service areas.

16. As it is even though **VNO licenses were issued many years back, so far not a single MVNO has been able to launch Mobile VNO services. This is mainly because the existing mobile operators have not allowed any commercial arrangements to fructify.** Thus, the overall tendency of such operators in the country has been against fostering a competitive environment. The current proposal for a single nation-wide all Service Authorisation will stifle competition.

17. It is reiterated that to make any decision on whether or not a unified service authorisation at the national level for end-to-end telecommunication services with a Pan-India service area should be introduced, the Consultation Paper should have at least placed following aspects for consultation, i.e.,

- Market impact Analysis
- Monopoly concerns
- Service Coverage
- Affordability to Consumers
- Basic framework of telecommunication Act /authorisations and its objectives

None of these relevant aspects with respect to such introduction of an all-encompassing authorisation are dealt in the present Consultation Paper and such an omission is not in sync with the functions prescribed under Section 11 of TRAI Act.

18. Additionally, **the proposed Pan-India unified service authorisation would raise several key implementation and revenue related concerns.** For instance,

the location for interconnection would have to be determined, whether it will be centralized at a single national point or distributed across LSA or LDCA levels. Spectrum allocation practices would need review to decide whether they will remain LSA-specific or transition to a national weighted average rate, impacting SUC assessment and rights of parties in the auction or rights of prospective bidders in the past auctions. Compliance and reporting obligations would have to be reconsidered, whether they will continue to be LSA-specific or be streamlined and centralized at the DoT level; how would Gross Revenue (GR), Adjusted Gross Revenue (ApGR), and Adjusted Gross Revenue (AGR) for spectrum be calculated from overall pan India revenues and from all services to extant service level -wireless services.

19. For the reasons above, we submit that any such Unified Service Pan India Authorisation will not only disturb the level playing field for existing players, it will unduly enrich the players who will shift to this license at the cost of public and exchequer and will stifle competition in the sector and will be contrary to the provisions of Section3(1) and 3(2) of the Telecommunications Act 2023.

QUESTIONS 5, 15 TO 18 IN CONSULTATION PAPER REGARDING SATELLITE LICENSE (GMPCS) TO BE MERGED WITH ACCESS LICENSE

Comments of One Stakeholder:

One stakeholder has **suggested merger of the GMPCS authorization with the Access Service Authorisation**

Counter-Comments by BIF:

BIF is of the clear view that **Satellite Service Licenses or Authorisations are clearly distinct from Terrestrial Service Licenses or Authorisations for the following reasons:**

1. Satellite Services are delivered using different technologies,
2. Satellite Services are delivered to the end user in different ways than terrestrial services,
3. Satellite Services use CPEs or terminals which are distinct from those used by terrestrial means

BIF has also advocated in its comments to the Consultation Paper that not only is Satellite Services different from Terrestrial Services but within the category of Satellite Services , there should be clear distinction between the GMPCS and the Commercial VSAT CUG Authorisation as while the former permits voice, data, video and messaging with connectivity to PSTN/PLMN , the latter only permits point to point data connectivity in a CUG with no connectivity to PSTN/PLMN.

It is hereby strongly advocated that the GMPCS (Satellite) License/Authorisation should not be merged with the Access License for reasons mentioned above. It is ostensibly a back door method of the stakeholder to mislead the Government to get the process of spectrum assignment amended incorrectly and violates provisions of the Act including Schedule 1, Item 16 of the Telecom Act which has been passed by Parliament, has Presidential assent and also has been Gazette notified. **[Schedule 1, Item 16 of the Telecom Act clearly upholds that spectrum assignment/allocation of all satellite services (which includes GMPCS authorisations) to be done only through administrative manner.]**

ASSIGNMENT OF SPECTRUM

Comments of Few Stakeholders:

- Spectrum assignment should primarily be conducted through auctions. Administrative spectrum assignments should only be considered in exceptional cases, following a thorough self-speaking examination justifying the stipulated three conditions in section 4(5)(a) of the Act by both the Telecom Regulatory Authority of India (TRAI) and the Government. Such exceptions should be made for reasons of public interest, government function (except for provision of commercial service), or when auctioning is not feasible due to technical reasons.

  The terms and conditions for both auction-based and administrative spectrum assignments, including equitable charges, should be formulated only after considering TRAI's recommendations. **The Act includes certain spectrum use cases, based on ongoing adhoc policy of administrative assignment, and have included such use cases in the First Schedule. All such entries should be tested for compliance with subsections (i), (ii), and (iii) of section 4(5)(a) of the Act.**

  Parliament, while enacting the Indian Telecommunications Act, 2023, was conscious of the rapidly changing technological landscape. Consequently, provisions for the amendment of entries in the First Schedule have been included. **Specifically, Section 4(5)(a) and Section 57(1(a) of the Act allow for such amendments. Therefore, the existing entries in the First Schedule are not permanent and can be modified. In fact, all such entries are subject to review and amendment whenever the opportunity arises.**

- Further, suggestions have been made as regards refarming of the 6 GHz spectrum from satellite to IMT use.

Counter Comments by BIF:

1. All contentions related to spectrum assignment made by the stakeholders, not limited to the ones elaborated above, must not be considered as part of this consultation.

2. It is important to note that the Authority has very clearly mentioned in the Para 2.40 of the Consultation Paper as follows:

> "At this stage, it will be worthwhile to mention that Section 4(2) of the Telecommunications Act, 2023 provides that any person intending to use spectrum will require an assignment from the Central Government. In other words, in case an authorised entity requires spectrum for providing telecommunication services, it will have to obtain the right to use of spectrum separately. **This consultation paper deals with the issues related to authorisations for providing telecommunication services under Section 3(1) of the Telecommunications Act, 2023. <u>It does not deal with matters related to assignment and use of spectrum by the authorized entity</u>**."

3. Notwithstanding the fact that any discussion on spectrum is ultra-vires to the scope and purpose of this Consultation Paper, it must be mentioned that the 6GHz band is a globally harmonised band for delicensed use. More than 60 countries have already delicensed the lower 6GHz band (the lower chunk of 500MHz between 5925-6425 MHz). More than 13 countries have already opened the entire 6GHz band (full 1200 MHz) to be completely delicensed. Additionally, as regards the upper 6GHz band, in the recently concluded WRC-23 also, India vehemently opposed any identification of the upper 6GHz band for IMT in Region 3 (including India). In fact, India clearly opposed any move to put its name in the RR footnote identifying the upper 6GHz band for IMT. It also ensured that none of the other countries in Region 3 including China from putting their name in the RR footnote, thereby clearly signalling its intention in this regard. One of the prime reasons for the same was the presence of plethora of Satellite Services in this band and the lack of co-existence between the incumbent Satellite Services and the IMT services, as proven by studies. So, this talk about refarming of 6GHz to IMT is a deliberate & mischievous intent to disturb incumbent satellite services and harm competition as due to presence of number of satellite services viz. a) Earth Observation Satellites b) GRNSS (Navic Constellation) which is India's indigenously developed GPS Constellation and c) Due to existence of Commercial VSATs
, it is simply not possible for refarming of satellite to IMT as mentioned by a proponent.

4. The comments on Section 4(4) and 4(5)(a) of The Telecommunications Act and the First Schedule thereto, are misleading and against the provision of Act as well as the legislative intent. The stakeholder is making incorrect and baseless statement on the enactment and the underlying process i.e. '*<u>The Act includes certain spectrum use cases, based on ongoing adhoc policy</u> of administrative assignment*'.

5. The meaning and interpretation of Section 4(4) and 4(5)(a) of The Telecommunications Act, 2023 and the First Schedule thereto, has been completely changed in these comments of the respective stakeholder. As per these comments, spectrum assignment should primarily be conducted through auctions and administrative spectrum assignments should only be considered in exceptional cases, following a thorough self-speaking examination justifying the stipulated three conditions in Section 4(5)(a) of the Act by both the Telecom Regulatory Authority of India (TRAI) and the Government. Further, as per the comments everything in First Schedule can be modified.

Section 4(4) and Section 4(5)(a) & (b) of the Act are reproduced below:

"4 (4) The Central Government shall assign spectrum for telecommunication through auction **except for entries listed in the First Schedule for which assignment shall be done by administrative process.**
Explanation. —For the purposes of this sub-section, —
(a) "administrative process" means assignment of spectrum without holding an auction;
(b) "auction" means a bid process for assignment of spectrum.

(5) (a) The Central Government may, by notification, amend the First Schedule for assignment of spectrum—
(i) in order to serve public interest; or
(ii) in order to perform government function; or
(iii) **in cases where auction of spectrum is not the preferred mode of. assignment due to technical or economic reasons.**
(b) The notification referred to in clause (a) shall be laid before each House of Parliament.

6. A simple reading of Section4(4) of the Act indicates that for the entries listed in the First Schedule the assignment shall be done by administrative process. Hence, items mentioned in First Schedule have been specifically put there since administrative assignment is the only mode for those entries. For other cases spectrum can be assigned through auction.

7. It is incorrect and misleading to state that the Administrative spectrum assignments should only be considered in exceptional cases. **The First Schedule is mandating the entries for administrative assignment in Act and there is no scope of consideration left on this issue with anyone after the enforcement of the Telecommunications Act, 2023.**

8. The comment made that "**The Act includes certain spectrum use cases, based on ongoing adhoc policy of administrative assignment, and have included such**

use cases in the First Schedule" is, in simple words, alleging that the Act has incorrectly added certain entries in the First Schedule based on ad hoc policy of administrative assignment. This is not only an incorrect statement but it defeats the provisions related to administrative assignment of spectrum in the Act. In fact, the Act has provided a long pending solution by giving ample clarity by law that which entries can be assigned spectrum only by administrative assignment. The uncertainty earlier on certain entries has been duly addressed by the Act.

9. Coming to Section 4(5)(a) of the Act, the comments made by the stakeholder seem to be driven by commercial interests to the extent that everything has been misinterpreted in the favour of auctioning spectrum. A simple reading of Section 4(5)(a)(iii) , for example, is that the Central Government may, by notification, amend the First Schedule for assignment of spectrum **in cases where auction of spectrum is not the preferred mode of assignment due to technical or economic reasons. This provision will only apply to cases which are outside the ambit of First Schedule to the Act, and where, for technical and economic reasons, the auction is not preferred mode and so they will need to be added in the First Schedule. This subsection deals with cases other than in First Schedule, where, due to economic and technical reasons, auction may not be preferred mode.**

10. It is submitted that the wording of the subsection 4(5)(a)(iii) otherwise had to be different if the meaning as given the comments by the stakeholder was to be given, i.e. the subs clause (a)(iii) should have included the words 'administrative assignment' instead of 'auction of spectrum'.

11. Similarly, Section 4(5)(a)(ii) provides that **t**he Central Government may, by notification, amend the First Schedule for assignment of spectrum **in order to perform government functions. In such cases too, the respective entry will be added in the First Schedule as for government functions spectrum cannot be auctioned. In other words, it cannot be auctioned by the government to itself and hence, such cases will also be added to the First Schedule.**

12. Section 4(5)(a)(i) pertains to situation of 'in order to serve public interest', which again will generally mean moving away from auctions to administrative assignment. Most of the entries in the First Schedule to the Act are meant to serve public interest. Further Section 4(6) of the Act goes to the extent that the Central Government, if it determines that it is necessary in the public interest so to do, may exempt from the requirement of assignment under sub-section (2), in such manner as may be prescribed.

Hence, we submit that comments of the stakeholder relating to review of the First Schedule in order to provide for auctioning of spectrum are incorrect and misleading and driven only by commercial interests through wrong interpretations.

We reiterate that any arguments on assignment and use of spectrum by authorised entity must be ignored as these are outside the scope of the present consultation. This is without prejudice to our contentions that such arguments made by the stakeholder(s) are incorrect and deliberately misplaced for their individual commercial interests and are not in public interest.

QUESTION 27 IN CONSULTATION PAPER - SUGGESTIONS ON PM-WANI

Comments of a Few Stakeholders:

- With the advent of 5G services and the widespread availability of 4G services in the country, Wi-Fi initiatives like PM-WANI have lost whatever minimal relevance they initially had and should ideally be discontinued.

- Public Wi-Fi has become less relevant due to several factors, including the rapid expansion of 4G and 5G mobile networks, combined with the extremely low data rates offered by TSPs, which have made personal mobile data connections more accessible and reliable for most users. Additionally, they pointed out that affordable smartphones and low-cost data services provide convenience and security, reducing the reliance on public Wi-Fi, which often suffers from slow speeds and potential security risks.

- The increasing availability of fiber-to-home broadband connections in urban areas has diminished the need for public Wi-Fi hotspots, and that mobile devices remain the primary means by which internet access, including Wi-Fi, reaches rural areas.

Counter Comments by BIF:

1. Above statements in the comments of corresponding stakeholders reveal a clear bias of these stakeholders in favour of 4G/5G over fixed broadband and public Wi-Fi and do not accurately represent the socio-economic situation of the country which warrants the need for establishing and improving public Wi-Fi infrastructure, including PM-WANI.

2. The question in the consultation paper pertained to whether any modifications are required to be made in the existing PM-WANI framework to encourage the proliferation of Wi-Fi hotspots in the country. The question is based on the fact that the current PM-WANI framework is intended to encourage the proliferation of

Wi-Fi hotspots. However, instead of suggesting any such modifications, stakeholders have dismissed PM-WANI in the manner mentioned above.

3. The comment that Public Wi-Fi has become less relevant due to several factors, including the rapid expansion of 4G and 5G mobile networks, combined with the extremely low data rates offered by TSPs, which have made personal mobile data connections more accessible and reliable for most users are incorrect, misleading and driven commercial interest, as is explained below.

4. It is submitted that the mobile service in India are not affordable as claimed. There has been recent substantial increase in tariffs by all operators and the same has happened twice in recent years or so. The common man does not find the services affordable at all and has no other option. This along with poor quality of service can't be considered as reliable or accessible service.

5. While mobile internet connections are available, they often fall short in terms of speed, capacity and indoor coverage compared to fixed line broadband connections which are connected using Wi-Fi at home. Due to physical characteristics of any mobile technology, which get impacted by topology, number of users, propagation characteristics of spectrum, devices etc. and other quality of service issues, which otherwise should be in control of operators, the efficiency and productivity on mobile service cannot match fixed broad band on WiFi.

6. Wi-Fi is mainly used in urban areas, connecting homes, offices, and various devices for digital activities, entertainment, and more. **Latest advancements of Wi-Fi technology viz. Wi-Fi 6E (based on IEEE 802.11ax standard) & Wi-Fi 7 (based on IEEE 802.11be standard) offer extremely high speeds and bandwidth with ultra-low latencies. This is needed to complement cellular technologies viz. 4G and 5G, else the Broadband objectives of the country cannot be achieved. India is lagging behind other nations in Fixed Broadband (only 2.8% tele density instead of global average 14.6%), with 47.6% of population in India remains unconnected as against nearest comparison of China which has 23 .6% of its population as unconnected.**

7. **The Wi-Fi access has mostly been limited to homes and enterprises, with minimal growth in the number of Public Wi-Fi hotspots. Public Wi-Fi hotspots provided by Internet Service Providers (ISPs) are few. Affordability is another concern, as many households cannot afford regular Wi-Fi connections, further exacerbating the digital divide and impacting productivity.**

8. It may be noted that before the introduction of PM WANI Scheme, the cellular operators had agreed to provide at least 1 million Public WiFi hotspots, however, they hardly provided any Public WiFi hotspots, thus forcing the Regulator and the Government to look back to a democratised model of Public WiFi I.e. PM WANI. This itself delayed 2-3 years in Public WiFi rollouts.

9. **In absence of any effort by cellular operators and to bridge the digital divide, proliferation of Public Wi-Fi hotspots was re-initiated through the PM-WANI Public Wi-Fi program, which has the potential to become the growth engine of the country.** It is a program which will help modernize the digital infrastructure in areas which need it badly as they are unable to have the benefits of advanced cellular technologies viz. 5G. PM-WANI Public Wi-Fi Program aims to address these objectives by increasing access to broadband fiber connections for the common man through the democratization of Public Wi-Fi hotspots by providing the ordinary shopkeeper, the retailer, the kirana store owner, the mom and pop shops and the chaiwalla to set up their own independent service delivery points (PDOs) and source the fiber bandwidth from any service provider of their choice (ISP/ TSP/VNOs). The PDOs are not required to be licensed and are only required to be registered through their PDO Aggregator (PDOA). They can also resell bandwidth to nearby and neighbouring PDOs, thereby creating an inter-operable PDO cluster which provides seamless roaming within the cluster and beyond.

10. As mentioned earlier, the present telecom market dominated by cellular operators has not been conducive for the growth of Public Wi-Fi in India, given the focus of the mobile operators on deploying 4G and 5G mobile services prioritizing commercial gains from these services. Several factors contribute to this situation at present:

- **Broadband Tariffs for PDOs exorbitantly high: F**irstly, public Wi-Fi initiatives like PM-WANI rely on a broadband connection at the Public Data Office (PDO) level. Such connections can only be provided by a limited group of Telecom Service Providers (TSPs) and Tier 1 Internet Service Providers (ISPs), who are also the primary providers of fixed broadband and 4G/5G services. These TSPs/Tier-1 ISPs supply internet backhaul or access to the internet for PDOs and PDO Aggregators (PDOAs). However, these stakeholders have completely stifled the provision of broadband connections for public Wi-Fi by charging abnormally high tariffs for the internet backhaul, from PDOs like shopkeepers, tea shop owners, kirana stores, etc.. The tariffs for such broadband connections should be reasonable and in line with the actual costs (which are no more than the cost of retail broadband used at homes).

- **Operators do not provide for Usage Models, but drive only subscription based revenue models, thus depriving economically weak sections of public of Fixed Broadband:** Secondly, it is becoming increasingly apparent that despite the poor quality of 4G and 5G services and the limited coverage of fixed broadband, the operators in question are focused on enhancing their revenues by increasing retail subscriptions, which provide them with fixed revenues per subscriber. They resist selling bulk revenues to say a Tier -2/3 ISP or a PDOA/PDO at an affordable cost as they perceive this to be in direct competition to them. As a result, they do not support any schemes like public Wi-Fi that would enable the public to benefit from fixed broadband by paying small sums based on usage. This approach is depriving the common public the benefits of fixed broadband from Public WiFi. For this reason, we have sought regulated usage-based slab wise ceiling/capped tariffs for PDOs in PM-WANI, as the market has failed to take off despite 4 years of effort- a clear case of market failure.

- **Spectrum considered as the real estate, this approach is hindering Public WiFi growth**: It is alarming to see that spectrum is now being treated like real estate by powerful stakeholders. Any discussion of administrative spectrum assignment or delicensing of spectrum is outrightly dismissed by these stakeholders, reflecting a blatant disregard for global practices and the urgent needs of India. This approach threatens to stifle innovation, deepen the digital divide, and serve only the narrow interests of a few, as opposed to larger public good. The 6GHz spectrum, which is required for modern Wi-Fi 6E and Wi-Fi 7 technologies, needs to be unlicensed but these stakeholders want it to be auctioned. This is a clear attempt to monopolize a resource that should be unlicensed and accessible for public initiatives Similarly, other bands currently used by satellite and broadcasting are also being sought for auction. The moot question remains – is it truly in public interest to hand over all spectrum to a few stakeholders for decades, especially when technology is rapidly evolving, the digital divide remains significant, and coverage in rural and remote areas is poor? Whether all technologies- 4G/5G, Wi-Fi 6E, Wi-Fi 7 and WiFi 8, and satellite communications- are necessary, or whether exclusive focus on cellular technologies be sufficient. Cellular technologies has brought the country to a level of a 52% unique broadband subscribers and it seems unlikely to make any future dent in the digital divide and inclusivity and thereby, potentially widening the digital chasm.

11. PM-WANI and similar schemes have a critical role to play in opening up and democratizing the telecom sector. To ensure the success of such schemes, the public, small enterprises and small shopkeepers need adequate awareness and support from both the Regulator and the Government. They alone cannot overcome these artificial regulatory barriers and challenges they face.

COMMENTS OF SOME STAKEHOLDERS ON REGULATION OF OTT COMMUNICATION

Comments of a few stakeholders:

- One stakeholder, representing the cellular operators, has mentioned that as per their understanding, OTT Communication services are covered under the new Telecom Act as an access service.

- Another stakeholder has mentioned that the definition of "Message" and "Telecommunication Service" under the newly enacted Telecommunication Act, 2023 includes all form of telecommunication services including the communication services provided over the top (OTT) using the platform/ servers/ switches hosted in the public internet. The argument is that in order to ensure same rules for same or similar services, it is important to bring such Over the Top (OTT) communication service providers under Access Services authorisation.
- Similar comments have been given by two other stakeholders who are cellular operators and few other stakeholders.

Counter Comments by BIF:

1. All such statements by these few stakeholders are incorrect, and are motivated by their narrow commercial interests, and are devoid of any basis. Majority of stakeholders have not even mentioned this as an issue for discussion. The **TRAI CP also has no reference to this as these are not telecommunication services**.

2. It is important to note that the Telecommunications Act 2023 is an Act to amend and consolidate the law relating to development, expansion and operation of **telecommunication services and telecommunication networks**; assignment of spectrum; and for matters connected therewith or incidental thereto.

3. It is relevant to note the following provisions of the Act to understand how OTTs are not intended to be covered under the Act:
   - Section 3 (1) states that any person intending to—
     (a)provide **telecommunication services**;
     (b)establish, operate, maintain or expand telecommunication network; or
     (c)possess radio equipment,

shall obtain an authorisation from the Central Government, subject to such terms and conditions, including fees or charges, as may be prescribed.

- Section 2(p) states **"telecommunication" means transmission, emission or reception of any messages, by wire, radio, optical or other electro-**

magnetic systems, whether or not such messages have been subjected to rearrangement, computation or other processes by any means in the course of their transmission, emission or reception.

- Section 2(s) provides **"telecommunication network"** means a system or series of systems of telecommunication equipment or infrastructure, including terrestrial or satellite networks or submarine networks, or a combination of such networks, used or intended to be used for providing telecommunication services, but does not include such telecommunication equipment as notified by the Central Government.
- Section 2(t) provides **"telecommunication service"** means any **service for telecommunication**.
- Section 2(g) states **"message"** means any sign, signal, writing, text, image, sound, video, data stream, intelligence or information sent **through telecommunication**.

4. There is a service for telecommunication, which is defined as 'telecommunication service' in the Act. This service is for transmission, emission or reception of any messages, by wire, radio, optical or other electro-magnetic systems. Thus, the service for specific purposes (i.e. transmission, emission or reception of any messages) and by specific means (i.e.by wire, radio, optical or other electro-magnetic systems), is telecommunication service. Any service on or from or over telecommunication service cannot be telecommunication service.

5. Providing an access to Internet by enabling transmission, emission or reception of any messages by wire, radio, optical or other electro-magnetic systems is a service for telecommunication. Therefore, Access Providers or Internet Service Providers, who provide such access, will require authorisation under the Telecommunication Act, 2023. The Access Providers have tariffs for various services they want to offer like data, voice, sms, value added services. Internet Service Providers can only provide data services. However, in data services, Access Providers and Internet Service Providers are not permitted to differentiate between content in regard to tariffs (Prohibition of Discriminatory Tariffs for Data Services) and quality of service (Net Neutrality).

6. The Act's scope is for development, expansion and operation of telecommunication services and telecommunication networks; assignment of spectrum; and for matters connected therewith or incidental thereto. The provisions in the Act pertain to issues like radio waves, radio equipment, National Frequency Allocation Plan, spectrum, merger, demerger or acquisition or other forms of restructuring, telecommunication identifiers, assignment of spectrum, reframing and harmonisation of spectrum, right of way for telecommunication network, standards and protection of telecommunication networks, Digital Bharat Nidhi, innovation and technological development in telecommunication, protection of users, dispute resolution

mechanism, adjudication of certain contraventions, certification for operation of radio equipment on a vessel or aircraft, certification of amateur station provider and prohibition of use of equipment which blocks telecommunication, which can only be applicable to telecommunication service providers and not to anyone else like Internet Sites or APPs, including OTT.

7. In this context, the internet sites and APPs of all kinds, which include OTT, are not providing any access to Internet. Hence, internet sites or APPs, including their servers/platforms, are neither telecommunication nor telecommunication equipment nor telecommunication services nor telecommunication network.

8. We respectfully submit, if any other meaning is given, then all internet sites, APPs will come in ambit of telecommunication services, which will be absurd.

9. It is pertinent to mention that even the then Hon'ble Minister of Communication had issued a clear statement to the media on 23rd December 2023, clarifying that OTTs are not covered under the then Telecom Bill. Under the official Allocation of Business Rules, OTTs are regulated strictly by MeitY and under the extant IT Act. The Telecom Bill which had been passed earlier by the Parliament, received the Presidential assent and was Gazette Notified on 24th December 2023 to be termed as the Telecommunications Act 2023.

10. The confluence between telecom, broadcasting and IT sectors is seen in the Digital era but this confluence is not confined to these three sectors but sectors like banking, finance, commerce, health, gaming, manufacturing, service, food delivery, car rental etc. also have similar and respective role in such confluence in the Digital era. However, such confluence does not mean that these sectors are merging into one another. For instance, IT sector does not become broadcasting sector, nor does the broadcasting sector fall in ambit of telecom sector. Similarly, commerce will not be IT sector, and the banking sector does not become the technology sector. From the legislation perspective, there has to be a corresponding legislative framework for each sector. In other words, Telecommunication may be an enabler for IT Sector or vice versa but that does not mean that Telecommunication and IT sector are the same. The Telecommunications Act 2023 also does not envisage so.

11. In absence of any specific justification under the Telecommunication Act 2023, these stakeholders have mentioned issues like same service same rules and level playing field. In addition to the reasons above, the argument of "same service-same rules" and level playing field does not stand for the following reasons:

- As mentioned earlier, OTT Communication are not telecommunication services. Like any other Internet Sites and APP, OTT Communication is functioning over the telecommunication networks, which telecommunication networks are

providing service for telecommunication. Internet Sites and APP, including OTT Communication are themselves not providing service for telecommunication.

- It is submitted that these stakeholders, who are Access Service Providers, may be referring to their voice and sms service in respect of same service same rules argument. At the outset, it is submitted that voice and sms can be provided only by Access Service Providers. Even the Internet Service Provider cannot provide voice and sms, Internet Sites and APPs, including OTT can be used on a Internet Access Provider Network, who is only providing internet access and is not providing voice and sms. Hence, same service same rules is not applicable at all.

- Access Service Provider or Internet Service Providers provide access to the Internet and are virtually the gatekeepers to the internet as well as to the OTTs themselves. The OTTs cannot access the internet without telecommunication services provided by Access Service Provider or Internet Service Providers. A user of any App, including any OTT App, needs to necessarily be a subscriber of any licensed Access Service Provider or Internet Service Providers network but a subscriber of telecommunication service may or may not be a user of an OTT App.
- Telecom networks and any application (APPs), including OTT applications, operate in different layers of OSI model. Telecommunication happens in (network- telecommunication layer and while various applications (APPs) work in application layer respectively). Application layer is not part of telecommunication / telecommunication network.
- Access Service Providers, who provide of telecommunication services, are licensees who possess unique and exclusive characteristics and rights viz. right to access, right to obtain interference-free spectrum, right to provide telecommunication service, right to set up telecommunication network, right of interconnection, right of way, right to obtain unique numbering resources (i.e telecommunication identifiers). OTT communication services are Content Rich Interactive Applications and offer plethora of innovative services and applications for consumers. Further, these OTT services have no such unique rights and characteristics like Access Service Providers.
- Same service same rules can apply in case of where one service is an exact substitute of the other. Substitutability has to be complete and in both ways. Substitutability stands as an essential criterion in considering comparable regulations. Moreover, in determining substitutability, several considerations including whether the technologies are operating in the same layer; whether the functional services are comparable; comparison of the nature of devices; and likewise, will have to be accounted for. In the absence of cogent functional similarity, it is misleading to compare OTT Communication to traditional voice, data & messaging services provided by the TSPs.

- Thus, there is no question, whatsoever, of same service same rules between voice and SMS of Access Service Provider and Internet Sites and APP, including OTT Communication.

- The argument of level playing field is fundamentally flawed. Art.14 of the Constitution of India guarantees equal treatment only to persons who are equally situated. This is well-established in law and is well supported by precedents. OTTs and TSPs have vast and critical differences between them and are not equally positioned, as explained above. Therefore, they cannot be treated as equals. Moreover, unequals are also required to be treated unequally as established in *St. Stephen's College v. University of Delhi* [(1992) 1 SCC 568]. Importantly, equal treatment to unequals is infact a form of inequality. To put both categories at par is wholly unjustified, arbitrary, unconstitutional, being violative of Art.14 as held in *Onkar Lal Bajaj v. UoI [(*2003) 2 SCC 673]. This principle is further supported by Govt. *of AP v. Maharshi Publishers Pvt Ltd*.[(2003) 1 SCC 95]. These cases collectively affirm that treating fundamentally different entities as equals is a violation of the constitutional guarantee of equality.

We humbly submit that the comments of these stakeholder are driven by their commercial objectives and lack legal tenability. It has been abundantly clarified that OTT Communication are not telecommunication services, rather they are completely different and do not fall within the purview of Telecommunications Act 2023.

Q 23 COMMENTS OF STAKEHOLDERS ON REGULATION OF CDNS

Comments of a Few Stakeholders:

- There is a need for mandatory registration of CDNs to foster competition, drive down costs, improve service quality and ensure alignment with international best practices and evolving global standards for CDNs.

Counter Comments by BIF:

In line with the submission of BIF, it is submitted that any regulations and/or creating unnecessary barriers to entry, could disrupt the competitive dynamics and hinder the growth of CDNs. The CDN market is competitive, with numerous companies offering commercial CDN services at competitive prices, and providing innovative solutions which has benefited local content delivery to global audiences.

It is reiterated that CDNs should be kept outside the scope of registration as CDNs are fundamentally different from telecommunication providers. CDNs require: (i) appliances for computing and storage; and (ii) connectivity.

Depending on whether they build their own connectivity or not, CDNs are either a customer of telecommunications providers (for internet access) or a private network connected with telecommunications providers. As CDNs are not telecommunications providers, they should not be regulated as telecommunications providers or subject to any licensing requirements.

Further any mandatory registration for CDNs could cause delays in launch of new services and expansion of the existing ones and meeting the market demands. In other countries, CDNs do not require a registration/authorisation to operate and TRAI should not set any restrictive precedents which may hinder the growth of internet.