

MTNL/RA/TRAI CP-02 /2015
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To,

The Advisor (TD & QoS)
TRAI, New Delhi

Sub. : Comments on TRAI Consultation Paper on “Regulatory Framework for Over-the-Top(OTT) services”.

The TRAI issued above referred Consultation paper on 27.03.2015 on the aforesaid subject and asked the various stakeholders to comment on the issues involved in the consultation paper. In this regard the following is submitted for consideration.

In Telecommunication services, in previous developments stages the data and voice services were different domains, but with development of technology the two domains are no more separate, and even voice could be carried over data, through packet switching. Hence, in present scenario all type of information (voice, SMS, data) is being dealt through packet switching as data services. As network operators migrate to next generation networks, voice services will become software applications riding over the network. This fact has lead to the issue in discussion.

As the telecommunication sector is a technology centric sector, and with rapid introduction of new technologies, the TSPs need to upgrade the networks and require investments for implementation of latest technologies. This is continuous process to not only provide the subscribers, best quality services through upgraded technology, but also for survival in the highly competitive industry. In this sector with high obsolescence due to rapid technology up gradation, the recovery of investment has its own challenges in view of small time/window available for investment recovery.

The Internet (data) services in this aspect may be categorized as (i) communication services and (ii) non-communication services.

MTNL is of the view, that for regulatory/control purpose the non-communication services may be dealt under the purview of Information Technology Act'2000. The preamble of IT Act'2000 provides for:

- An Act to provide Legal Recognition for E-Commerce
- EDI transactions and Electronic communications
- alternatives to paper based methods of communication and storage of information.
- facilitate electronic filing of documents with the Government agencies.

For purpose of OTT communication services, MTNL's comments on the consultation paper are based on following principles:

1. OTT players should not be allowed to offer voice services in India till regulatory level playing field is established both in respect of network related issues and commercial aspects .
2. There should be licensing and regulatory framework for OTTs to operate in the country for ensuring:
 - (i) Subscriber interest and privacy
 - (ii) National Security concern
 - (iii) No leakage in Government revenue (spectrum fee, license fee, corporate taxes etc.),
 - (iv) enabling revenue sharing structure with TSPs to provide for investment in the sector.
3. MTNL strongly supports the concept of Net-Neutrality. Net Neutrality implies no blocking, no prioritization, no discrimination of any kind, no zero rating and no throttling of any content on a network. The “Digital India” vision of Gol may be imbibed in the telecom policies.
4. MTNL is of the view that for providing OTT services, TSPs robust infrastructure must be in place. Further the data growth due to OTT communication is not sufficient to compensate for (i) reduction in revenue from traditional services of TSPs and (ii) further expansion in infrastructure to support OTT services particularly in view of high spectrum cost, infra cost, different regulatory provisions like roll out obligations, security compliance etc. At the same time MTNL also favors the innovation and indigenous content development in telecommunication sector. Hence to balance both, it is suggested to put no obstacles to start up and bandwidth usage upto certain limit can be provided free by TSP , while for OTT applications which are in demand and

exceeds certain threshold limit (to be decided by regulator) , it may be made essential that OTT provider shall share revenue in the form of infrastructure cost to TSP.

5. To promote “make in India” program, it is suggested that all contents shared on OTT application should be maintained in servers installed in India only and open for oversight by security agencies to take care of national interest.
6. MTNL's comment is restricted to communication services only being provided by OTT players riding on TSP's data network.

Further question-wise comments are as submitted:

Question 1: Is it too early to establish a regulatory framework for OTT services, since internet penetration is still evolving, access speeds are generally low and there is limited coverage of high-speed broadband in the country? Or, should some beginning be made now with a regulatory framework that could be adapted to changes in the future? Please comment with justifications.

MTNL Comments: In our opinion, it is the correct time to make a beginning with a regulatory framework for OTT service / applications, as with the availability of smart phones & 3G services in almost all parts of India , the OTT applications / services are growing exponentially posing various challenges for TSPs, the regulator and Government agencies.

Question 2: Should the OTT players offering communication services (voice, messaging and video call services) through applications (resident either in the country or outside) be brought under the licensing regime? Please comment with justifications.

MTNL Comments: Considering the security aspect of the user / mobile network / Nation, it is of utmost importance that all the OTT players running their applications over a TSPs network in the country should be brought under the ambit of license and regulation. It is also required to ensure level playing field in communication services offered by various players to maintain level playing field vis-à-vis TSPs.

Question 3: Is the growth of OTT impacting the traditional revenue stream of TSPs? If so, is the increase in data revenues of the TSPs sufficient to compensate for this impact? Please comment with reasons.

MTNL Comment: Yes, the growth of OTT is definitely hampering the traditional revenue streams of a TSP. Due to availability of smart phones with enhanced features , rich applications etc , the customer aspirations are always high in terms of network coverage , QoS, Bandwidth availability etc.. This puts a lot of pressure on TSPs for continuous upgradation / expansion of

their network & services with huge CAPEX & OPEX involved in it . This pressure again increases when the price of spectrum owned by a TSP is considered. It is true that the data traffic has certainly increased due to such OTT applications / services, however, considering the CAPEX & OPEX involved in frequent network upgradation, Spectrum cost etc. the increase in data traffic is just insufficient to cope up the loss of revenue from traditional voice & messaging services by the TSP. TSP shall never be able to recover the cost of equipment , infrastructure & spectrum etc only on the basis of data revenue usage.

The situation is slowly becoming alarming for the Govt. as well, as the reduced revenue of a TSP in turn causes revenue loss to the Govt. in terms of % of AGR collected from the TSP for various services deployed & in a long run this shall result into reduced demand of spectrum put for any auction and thus the revenues of Gol will dry up in near future.

Question 4: Should the OTT players pay for use of the TSPs network over and above data charges paid by consumers? If yes, what pricing options can be adopted? Could such options include prices based on bandwidth consumption? Can prices be used as a means of product/service differentiation? Please comment with justifications.

MTNL Comments: Yes, customer is already paying for the usage of mobile data as per their subscribed plan, however, OTT players are not paying anything neither to any authority nor to any TSP for interconnection & carriage of the traffic despite huge revenue being earned by them through advertisement, subscription charges, bundling with Handset manufacturers, in-app purchases & selling certain features through users license. For having net neutrality, the pricing can be based on Bandwidth consumption by the OTT application / Services without any product / service differentiation. In order to give headway & put no obstacles to start up, Bandwidth usage upto certain limit can be provided free by TSP , while OTT applications which are in demand , it is essential to have a revenue share mode to compensate infrastructure cost , spectrum fee, license fee and other corporate taxes borne by TSP.

Question 5: Do you agree that imbalances exist in the regulatory environment in the operation of OTT players? If so, what should be the framework to address these issues? How can the prevailing laws and regulations be applied to OTT players (who operate in the virtual world) and compliance enforced? What could be the impact on the economy? Please comment with justifications.

MTNL Comment: Yes, there exists imbalance in the regulatory environment in the operation of OTT players. India is a big market and in the absence of regulatory provisions i.r.o. OTT applications / service provisioning / Pricing etc, various different measures / strategies are being followed by Indian TSPs to manage the business challenges being imposed by OTT players. Considering the volume of traffic generated within the country due to these OTT applications / services, no OTT player would like to discontinue its services in the country for the reason of compliance to some regulation / law of the land etc., protecting interest of various stakeholders like Customers, TSPs & OTT Players. Accordingly, Govt. may formulate some regulation / guidelines / laws for operation / service provisioning / pricing etc. & the OTT

players offering their services to Indian Telecom users utilizing Indian TSPs networks may be made to follow the regulations / Laws being made by the Govt. for their operation in the country to create a level playing field in communication services market.

Question 6: How should the security concerns be addressed with regard to OTT players providing communication services? What security conditions such as maintaining data records, logs etc. need to be mandated for such OTT players? And, how can compliance with these conditions be ensured if the applications of such OTT players reside outside the country? Please comment with justifications.

MTNL Comment: To address the security concerns with regard to OTT players providing communication services, they must be brought into licensing regime wherein following provisions may be made:

- a) Real time content monitoring by LEA's for the traffic moving in & out of India.
- b) The OTT players should also comply with the security conditions complied by a TSP.
- c) In view of huge volume of data traffic / consumption in India, OTT players must be asked to put their contents / Servers in India for Incoming & Outgoing traffic to /from India.
- d) maintain and share on demand, data records /logs of communications , to be preserved for certain defined period.
- e) maintain and share the address books of adversaries on court orders.
- f) OTTs be asked to share the decoded and readable content to LEAs in real time as in the past government/LEAs have been struggling in getting the decoded content.

Question 7: How should the OTT players offering app services ensure security, safety and privacy of the consumer? How should they ensure protection of consumer interest? Please comment with justifications.

MTNL Comment: The OTT services should be provided with the same level of standards of security, safety and privacy as that of any other business that operates in India. OTT players do need to ensure that user data is handled as securely as possible, and need to ensure that their information is not misused in any way, and all need to be as transparent in their activities as possible. The same may be ensured through licensing regime with following provisions:

- Standard encryption techniques may be used by the OTT players to avoid Hacking, Virus / Malware attacks. .
- No sharing of consumer data with any third party without approval of the user.
- No access to customer's personal data like Phone book / contact information, Photo gallery, Location etc without approval.

Question 8: In what manner can the proposals for a regulatory framework for OTTs in India draw from those of ETNO, referred to in para 4.23 or the best practices summarized in para 4.29? And, what practices should be proscribed by regulatory fiat? Please comment with justifications.

MTNL Comment: OTT player offering communication services should invariably be asked to put their contents / Servers only in India and should be asked to pay TSPs in the form of infrastructure cost, to ensure development of infrastructure.

Question 9: What are your views on net-neutrality in the Indian context? How should the various principles discussed in para 5.47 be dealt with? Please comment with justifications.

MTNL Comments: MTNL favors the principle of Net-Neutrality and oppose anti-consumer and anti-entrepreneurship approaches resulting any kind of differentiation/favor for product/services.

The ultimate aim should be to protect the interest of all the stakeholders including the TSPs who continuously invests huge sum of money for maintaining their network infrastructure & service provisioning including compliance various regulations / Laws / License conditions etc. We also feel that there should be no discrimination on the Internet among various OTT players. The OTT players may not be allowed to provide / offer Voice services unless level playing field is established both in form of network and commercials.

Question 10: What forms of discrimination or traffic management practices are reasonable and consistent with a pragmatic approach? What should or can be permitted? Please comment with justifications.

MTNL Comments: As discussed in the consultation paper following approaches may be adopted:

- Application agnostic congestion management (i.e. Congestion control at the edge of the network to slow down the transmission speed due to continuous packet loss)
- OTT players should not be allowed to offer voice services in India till regulatory level playing field is established both in respect of network related issues and commercial aspects .
- Sharing of revenue by OTT player(s) with the TSP whose bandwidth consumption exceeds a threshold limit.
- Blocking of unlawful & undesirable contents such as child abuse / Viruses / Spam / Inflammatory / offensive / disputed contents spreading some racial / religious contents.

Question 11: Should the TSPs be mandated to publish various traffic management techniques used for different OTT applications? Is this a sufficient condition to ensure transparency and a fair regulatory regime?

MTNL Comments: TSPs are already bounded by terms & conditions of various licenses / Regulatory provisions etc. and may not be further burdened by doing so. However, TSPs may be asked to submit undertaking on the matter, if required, and the regulator may cross check

on case to case basis if having some doubt on any TSP like the case of fulfillment of EMF radiation norms by TSPs .

Question 12: How should the conducive and balanced environment be created such that TSPs are able to invest in network infrastructure and CAPs are able to innovate and grow? Who should bear the network upgradation costs? Please comment with justifications.

MTNL Comments: As already commented, there should be no discrimination on the basis of application / services, however, Methodology as suggested under para 10 above may be adopted to take care of balanced approach. The infrastructure of TSPs is used by OTT service providers for offering their applications and if the business interest of an important limb of the industry (i.e. TSPs) is ignored, it may be detrimental to the sustainability & growth of economy in the long run.

Question 13: Should TSPs be allowed to implement non-price based discrimination of services? If so, under what circumstances are such practices acceptable? What restrictions, if any, need to be placed so that such measures are not abused? What measures should be adopted to ensure transparency to consumers? Please comment with justifications.

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Question 14: Is there a justification for allowing differential pricing for data access and OTT communication services? If so, what changes need to be brought about in the present tariff and regulatory framework for telecommunication services in the country? Please comment with justifications.

MTNL Comments: MTNL favors the principle of Net-Neutrality and oppose anti-consumer and anti-entrepreneurship approach resulting any kind of differentiation/favor for product/services. The balance approach mentioned under Question 10 may be adopted.

Question 15: Should OTT communication service players be treated as Bulk User of Telecom Services (BuTS)? How should the framework be structured to prevent any discrimination and protect stakeholder interest? Please comment with justification.

MTNL Comment: Please refer our reply at Question Number 10.

Question 16: What framework should be adopted to encourage India specific OTT apps? Please comment with justifications.

MTNL Comment: There should not be any discrimination between Indian and Other OTT Applications in terms of ease of access. However, in sync with "Make in India" approach of Indian Government, following approach may be adopted:

- (i) Contents / Servers to be located in India only if the usage exceeds certain threshold limit.

- (ii) Encourage Indian Content developers / OTT players. One of the ways may be to put enhanced threshold limit for them.
- (iii) Foreign content to be fixed.
- (iv) The Indian OTT players may be incentivize through liberal financial terms and taxation provisions.

Question 17: If the OTT communication service players are to be licensed, should they be categorized as ASP or CSP? If so, what should be the framework? Please comment with justifications.

MTNL Comment: They may be categorized as CSPs.

Question 18: Is there a need to regulate subscription charges for OTT communication services? Please comment with justifications.

MTNL Comment: As the OTT services works purely on demand-supply approach, hence presently, there is no need to regulate subscription charges for OTT communication services. However following the “Make in India” approach of Government in this sector, the indigenously developed OTT applications may be promoted & incentivized.

Question 19: What steps should be taken by the Government for regulation of non-communication OTT players? Please comment with justifications.

MTNL Comment: The Non-Communication OTT services may be dealt under the Information Technology Act’2000.

Question 20: Are there any other issues that have a bearing on the subject discussed?

MTNL Comment: No

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