



August 30, 2023

To,
Shri Akhilesh Kumar Trivedi,
Advisor (Networks, Spectrum and Licensing)
Telecom Regulatory Authority of India,
Jawahar Lal Nehru Marg, Old Minto Road,
New Delhi – 110002

Subject: Submission on consultation paper on 'Regulatory Mechanism for Over-The-Top (OTT) Communication Services, and Selective Banning of OTT Services' dated 07.07.2023

Dear Sir,

Please find enclosed comments of Tanla Platforms Private Limited on the above-mentioned consultation paper for your kind consideration.

Thanking you,

Yours Sincerely,

A handwritten signature in blue ink, appearing to read 'S. Santhosh Kumar' with a stylized flourish at the end.

Santhosh Kumar Posina,
Vice President-Regulatory,
Tanla Platforms Private Limited

Tanla Platform's Response to TRAI's consultation paper on 'Regulatory Mechanism for Over-The-Top (OTT) Communication Services, and Selective Banning of OTT Services'

At the outset, we'd like to express our appreciation to TRAI for revisiting this issue at such a pivotal moment.

As international regulatory bodies navigate the complexities of framing governance for OTT platforms, the challenge lies in harmonizing technological progress with regulatory oversight. This dual focus ensures that while innovation is nurtured the consumers are safeguarded too.

Tanla is privileged to be a part of this consultation journey. We are hopeful that our perspective will be useful for TRAI in crafting progressive regulations that cater to the evolving needs of the communications sector and its stakeholders.

Q1: What should be the definition of over-the-top (OTT) services? Kindly provide a detailed response with justification.

Telecommunication and broadcast services delivered over the internet, which do not need deployment of network infrastructure by the application provider, may be called as OTT services.

Q3: What should be the definition of OTT communication services? Please provide a list of features which may comprehensively characterize OTT communication services. Kindly provide a detailed response with justification.

We concur with the International Telecommunication Union (ITU)'s definition of OTT services, as cited by TRAI in the consultation paper:

“application accessed and delivered over the public Internet that may be a direct technical/ functional substitute for traditional international telecommunication services.”¹

We recommend that OTT communication services should be defined by the following characteristics:

- (1) They can potentially substitute for licensed telecommunication services,
- (2) The person initiating the interaction determines its recipient(s).

Justification

Not all services delivered over the internet are functionally equivalent to traditional telecom services like voice calls, video calls, and messaging. For instance, websites that publish information accessible at the user's discretion, broadcasting platforms, web-hosting services, gaming platforms, and unidirectional information services do not fall under the same category as conventional telecom services.

Given this, we recommend that the term should only apply to such internet-based services that serve as direct substitutes for traditional telecom offerings.

¹ Recommendation D.262 (05/2019) issued by Telecommunication Standardization Sector of International Telecommunication Union (ITU-T), available at <https://www.itu.int/rec/T-REC-D.262-201905-1>

Q4: What could be the reasonable classification of OTT communication services based on an intelligible differentia? Please provide a list of the categories of OTT communication services based on such classification. Kindly provide a detailed response with justification.

As cited by TRAI in the consultation paper, the European Union (EU) classifies interpersonal communication services into two categories, number-based and number-independent services, depending on whether they require the publicly assigned numbering resource (telephone number) to identify and initiate the communication. EU's classification applies to interpersonal communication services which could be either traditional telecommunication or IP-based services.

The interpretation of these two classes of interpersonal communication services is given by BEREC (The Body of European Regulators for Electronic Communications), as follows:

- “• *Number-based ICS (NB-ICS) which connect with the public telephone network;*
- *Number-independent ICS (NI-ICS) which do not connect to the public telephone network and are provided over the public internet, referred to in general as “over the top” (OTT).”²*

This distinction is not relevant in the Indian context given that regulations here prohibit communication carried over the internet from terminating on the public telephone network.

However, the idea can be borrowed to define OTT communication services in India into the following two classes:

Number-dependent services

Number-dependent OTT services use phone numbers for two purposes:

1. As identifiers for users to allow account creating on the OTT platform, and
2. For the initiator to determine the recipient(s) of the communication, and for both parties to identify each other.

Such services are direct substitutes for licensed person-to-person telecommunication services, such as WhatsApp, Signal, Telegram, Viber, or Hike.

Number-independent services

Number-independent OTT services could be defined as those where:

1. Telephone number is not mandatory for creation or continuation of user account, and
2. The initiator of the communication does not select the recipient on basis of their telephone number.

Such services also compete with traditional communication services but do not constitute a direct substitute. Examples include, Skype, Zoom, Slack, Microsoft Teams, Twitter Direct Messages, etc.

² (2021) *Draft Report on harmonised definitions for indicators regarding OTT services, relevant to electronic communications markets.* rep. BEREC. Available at: https://www.berec.europa.eu/sites/default/files/files/document_register_store/2021/3/BoR_%2821%29_33_Draft_Report_on_OTT_services_indicators_for_PC.pdf

Justification

For an OTT service to act as a substitute for licensed telecommunication services it is important for it to potentially have the same reach.

Services that are linked to the user's mobile number fit this criterion because they can grow to encompass a substantial number of the mobile users, once they achieve a critical mass. This phenomenon is known as the network effect³. This effect is easier to achieve for number-based OTT services because the cost of adoption by new users is virtually zero.

Therefore, number-based OTT telecommunication services need to be in a category by themselves.

Q6. Whether there is a need to bring OTT communication services under any licensing/regulatory framework to promote a competitive landscape for the benefit of consumers and service innovation? Kindly provide a detailed response with justification.

There is a need to bring OTT communication services under licencing/regulatory framework for the same reason that telecommunication services are regulated: to prevent harm to subscribers and to maintain public order.

We believe that there is adequate competition among telecom and OTT providers which is already leading to service innovation and overall growth of the communications ecosystem. However, there is a need for regulation that arises from the following factors related to safeguarding the users and the society:

Spam and Fraud due to Commercial communication: OTT communication services have started providing commercial communication services which allow businesses to contact their existing and potential customers. We know from the experience with licensed voice and text services that introduction of commercial communication brings substantial spam and fraud with it. This is true of India and most other jurisdictions in the world.

For precisely the same reasons that commercial communication over traditional voice and SMS are regulated, there is need to also regulate number-based OTT communication services. Furthermore, the regulatory regime that is applicable to commercial communication over traditional service must be directly applicable to such OTT communication services also.

National security and public order:

Communication services have the potential for misuse, which is why:

1. Setting up of the telegraph is licensed under the Telegraph Act.
2. There are legal obligations for licensed service providers to maintain confidentiality and integrity of person-to-person communication.
3. There is a legal obligation, in India and foreign jurisdictions, to support lawful interception, which is the obligation cast upon the service provider to assist law enforcement agencies in

³ Wikipedia contributors. "Network effect." *Wikipedia, The Free Encyclopedia*. Wikipedia, The Free Encyclopedia, 8 Aug. 2023. Web. 26 Aug. 2023.

obtaining the contents of text messages and voice calls, once a duly authorized and legally valid request for interception is received.

OTT communication services that substitute for traditional services are subject to same kind of misuse. Therefore, they must have the same legal obligation to assist law enforcement.

Interference in telcos ability to discharge their legal obligations:

Telcos are not allowed to deploy bulk encryption but end-to-end encryption by OTT apps with no provision for interception is exactly the same thing without telco control. This defeats telcos' ability to discharge their legal obligation.

Non-compliance or aversion to existing regulations:

It has also been evidenced lately that OTT communication services are increasingly becoming a leakage route for unscrupulous SMS telemarketers to unlawfully divert international SMS traffic. These messages which appear in the recipient's SMS inbox do not actually terminate on the telco network but are rather delivered over the internet through the messaging app. Besides being non-compliant to existing regulations for international SMS, this kind of diversion through OTT makes the subscriber vulnerable to harmful communication originating from outside the country. More importantly, the lost volumes also cause a loss to the exchequer.

Q7. In case it is decided to bring OTT communication services under a licensing/ regulatory framework, what licensing/ regulatory framework(s) would be appropriate for the various classes of OTT communication services as envisaged in the question number 4 above? Specifically, what should be the provisions in the licensing/ regulatory framework(s) for OTT Communication services in respect of the following aspects:

- (a) lawful interception;
- (b) privacy and security;
- (c) emergency services;
- (d) unsolicited commercial communication;
- (e) customer verification;
- (f) quality of service;
- (g) consumer grievance redressal;
- (h) eligibility conditions;
- (i) financial conditions (such as application processing fee, entry fee, license fee, bank guarantees etc.); and (j) any other aspects (please specify).

Kindly provide a detailed response in respect of each class of OTT communication services with justification.

Number-Dependent OTT Communication services

- (a) **lawful interception:** Should be subject to same obligation for lawful interception as the licenced telecommunication services. If identical obligation is not imposed on OTT communication services, the purpose of imposing such obligation on licensed service providers is completely lost because all communications that is illegal would seamlessly shift to the OTT channel.
- (b) **privacy and security:** The OTT platforms should be legally obligated to ensure privacy and security of all person-to-person (human) communication just the same as the licensed service providers.

- (c) **emergency services:** There need not be an obligation cast on the OTT service. They may be expected to offer it on their own, if there is a demand from the users.
- (d) **unsolicited commercial communication:** The OTT communication services that support commercial communication should be subject to the same regulatory requirements as the licensed telecom services under TCCCPR 2018. OTT platforms, once licensed, may be required to participate in the blockchain infrastructure deployed by telcos to scrub commercial traffic to prevent spam and scam.
- (e) **customer verification:** Number-dependent OTT services inherit the same KYC verification status as the licensed services. Therefore, this obligation need not be cast additionally upon such OTT services. For number independent OTT services, some KYC norms may be prescribed.
- (f) **quality of service:** The market for OTT communication services is a competitive one, and the quality of these services is dependent on the underlying data services provided by the access providers and the performance of the internet itself. Therefore, no QoS norms should be imposed on these services.
- (g) **consumer grievance redressal:** Not required for same reason as (f) above.
- (h) **eligibility conditions:** Applications which have at least 5 million users on the same or interoperable platforms in India must be subject to regulation.
- (i) **financial conditions (such as application processing fee, entry fee, license fee, bank guarantees etc.); and (j) any other aspects (please specify):** These should generally be lower than for the licensed services.

Number-independent OTT Communication services

- (a) These services may be potentially abused too. Therefore, they should be subject to obligation for lawful interception.
- (b) These services may serve niche categories, such as corporate communication, video conferencing or other supplementary use cases for a main service (Direct Messaging on Twitter), and the identity of the users may be unlinked to a phone number or other identifiers. Therefore, they should have the obligation to monitor communication in an automated manner to detect illegal activities and block the accounts or report them to the authorities.

Q8. Whether there is a need for a collaborative framework between OTT communication service providers and the licensed telecommunication service providers? If yes, what should be the provisions of such a collaborative framework? Kindly provide a detailed response with justification.

There is a need for OTT communication services to collaborate with licensed telecommunication services, particularly in combating illegal activities like phishing.

Fraud Prevention. Fraudsters often employ a multi-platform strategy, initiating contact with their target on one service and then transitioning to another to complete the fraudulent activity. Such

tactics are deliberately designed to evade detection by service providers and to hide evidence, making it challenging for any single operator to effectively counter the scammer. Therefore, a collaborative approach between OTT and telecom operators becomes essential.

By working together, these service providers can share critical information and insights, enabling them to better identify and thwart fraudulent activities. This collaboration would not only enhance the security and reliability of both types of services but also contribute to a safer digital environment for consumers.

Data sharing and ease of compliance: A collaborative framework could encourage interoperability and data sharing between different communication services. For instance, the existing blockchain infrastructure (under TCCCPR2018) can be leveraged by both telcos and OTT players to onboard entities who wish to make commercial messages and calls, and enforce the same set of rules. This shall further enable ease of compliance for lakhs of enterprises who use both telecom and OTT services for interacting with their customers.

Q9. What could be the potential challenges arising out of the collaborative framework between OTT communication service providers and the licensed telecommunication service providers? How will it impact the aspects of net neutrality, consumer access and consumer choice etc.? What measures can be taken to address such challenges? Kindly provide a detailed response with justification.

Net neutrality mandates that all data traffic should be treated equally by access providers. However, this principle does not imply that all data traffic is inherently legitimate or exempt from other legal frameworks, such as privacy laws.

Regulating OTT services does not inherently violate net neutrality, much like the regulation of other sectors like banking, insurance, healthcare, or real estate doesn't compromise it. The essence of net neutrality is compromised only when data traffic related to OTT communication is either unfairly prioritized or deprioritized compared to other types of data traffic by access providers.

In the context of proposed regulations, OTT services would still retain the right to hold access providers accountable for any violations of net neutrality principles and seek appropriate redress from the relevant authorities. Therefore, bringing OTT services under a regulatory framework can coexist with the principles of net neutrality.

Q11. Whether there is a need to put in place a regulatory framework for selective banning of OTT services under the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017 or any other law, in force? Please provide a detailed response with justification.

Selective banning of OTT services can be justified in the public interest or to fulfil other valid state objectives when no alternative options are available. A comprehensive regulatory framework is crucial for facilitating such selective bans, allowing authorities to respond promptly in cases of public emergencies or national security threats, without unnecessarily restricting citizens' access to their preferred communication channels.

In cases where selective banning proves insufficient for maintaining control, limiting access to only whitelisted sites or services may be a more effective measure. This approach is preferable to a complete internet shutdown or the suspension of all telecommunication services.

By allowing selective access to the internet, essential services such as law enforcement, emergency response, healthcare, and banking can remain operational, while access to the broader internet may be restricted. Similarly, in the interest of public order, it might be necessary to limit general telecommunication services while permitting access to essential ones.

Q12. In case it is decided to put in place a regulatory framework for selective banning of OTT services in the country,

(a) Which class(es) of OTT services should be covered under selective banning of OTT services? Please provide a detailed response with justification and illustrations.

The OTT services that might be considered for ban during emergencies would vary depending on the nature of the crisis and the objective of the authorities.

For example:

1. Social Media Platforms and OTT communication Apps (e.g., WhatsApp, Telegram, Skype)

- **Circumstances:** During civil unrest, terrorist attacks, or public riots.
- **Reasons:** To prevent the spread of misinformation, hate speech, or to disrupt the organization of harmful activities. And also to prevent encrypted communication among individuals who may pose a security risk.

2. Streaming Services (e.g., Netflix, Hulu)

- **Circumstances:** Natural disasters where bandwidth needs to be conserved for emergency services.
- **Reasons:** To ensure that critical communication infrastructure remains available.

4. OTT News Services

- **Circumstances:** During highly sensitive political events, or in the case of state emergencies.
- **Reasons:** To prevent deliberate misinformation being spread using dubious news websites, some of which may be hosted outside the country

6. Financial Services Apps

- **Circumstances:** Economic crises or cyber-attacks on financial institutions.
- **Reasons:** To prevent panic selling, fraud, or to protect the integrity of the financial system.

The banning or suspension of the must be subject to the following:

1. **Proportionality:** The type of service to be suspended should be directly related to the nature of the emergency and its suspension should be necessary. Authorities should aim for the least intrusive measures that effectively address the emergency.
2. **Public Interest:** Any suspension should be in the best interest of public safety and order.
3. **Legal Oversight:** There should be legal mechanisms for oversight and appeal to prevent abuse of power.

4. **Transparency and Accountability:** The reasons for the suspension should be transparently declared.
5. **Restoration Plans:** There should be a clear plan and timeline for restoring services once the emergency has passed.

(b) What should be the provisions and mechanism for such a regulatory framework? Kindly provide a detailed response with justification.

The regulatory framework for OTT services would need to be developed covering the following provision and/or mechanism.

Definitions

- Definition of Emergency Situations and the Objectives that are sought to be achieved in each case.

Scope of Suspension

- Classes of OTT services to be suspended.
- The criteria for determining scope of suspension in terms of time duration and geographic limits.

Authority and Oversight

- Designate the decision-making body, e.g., Emergency Response Team or the District Magistrate.
- Designate the approving authority, e.g., Home Secretary

Duration, Transparency and Appeal

- Limit on duration of suspension
- Public disclosure requirements
- Process for affected parties to appeal and the Authority to consider the appeal.

Restoration Plan

- Criteria for lifting suspension
- Requirements for communicating plan for restoration

Monitoring Compliance and Penalties

- Mechanism for ensuring compliance and penalties for non-compliance by OTT providers or access providers.
- Legal references for penalties