



IAMAI Counter Comments | TRAI Consultation Paper on ‘Review of the Telecom Commercial Communications Customer Preference Regulations, 2018’

Established in 2004, the Internet and Mobile Association of India (IAMAI) is a not-for-profit industry body representing the digital services industry with over 600 Indian and multinational corporations as its members, which include established companies in diverse sectors of the digital ecosystem as well as start-ups. We firmly believe that India’s digital industry is going to be a major driving force in the economic and social development of the country which includes job creation, innovation, contribution to the GDP, inclusion and empowerment of our citizens.

At the outset, we would like to thank the Telecom Regulatory Authority of India (“TRAI”) for providing us with the opportunity to submit our counter comments on the Consultation Paper on ‘Review of the Telecom Commercial Communications Customer Preference Regulations, 2018’ dated 28 August 2024 (“CP”). IAMAI extends its appreciation to the TRAI for undertaking an analysis of and seeking stakeholder inputs on revising the scope of the Telecom Commercial Communications Customer Preference Regulations, 2018 (amended from time to time) (“TCCCPR”).

Representations made by certain other organisations to the TRAI on its CP claim that a “significant quantum” of unsolicited commercial traffic has shifted to OTT communication platforms. Therefore, recent measures taken by TRAI to tackle spam communication may not bring the “desired results” if the TCCCPR is not extended to OTT communication platforms. It is also claimed that unlike telecom service providers (“TSPs”) who are subject to the TCCCPR, OTT communication platforms are not subject to obligations pertaining to (1) customer consent, (2) complaint resolution, (3) spam control (in terms of setting up infrastructure to counter the same), (4) telemarketer registration and scrubbing, and (5) financial disincentives or penalties. Submissions made by such organisations go on to request the creation of a ‘level playing field’ between TSPs and OTTs by holding OTTs under the same standards as that of TSPs with respect to spam communication.

IAMAI Counter Comments

On behalf of its members, IAMAI would like to put forth counter comments in response to the aforementioned arguments made in certain representations to TRAI on the CP. However, before we begin, we note that our members Airtel and Reliance Jio Infocomm Ltd do not agree with the views being submitted and have divergent views from those presented below.

1. Jurisdictional Concerns with Extending TCCCPR to OTTs

As noted above, certain stakeholders have sought (both expressly and impliedly) that the TCCCPR be extended to OTT services, especially OTT communication platforms. We appreciate the fact that this CP is part of TRAI’s endeavour to overhaul the framework in India on spam communication, when the same takes place using traditional telecom resources. That said, we would like to reiterate that the TCCCPR was issued in pursuance of the TRAI’s powers to carry out the provisions of the TRAI Act, 1997, including in relation to laying down the standards of quality of service to be provided by service providers to protect interest of the consumers of telecommunication services. The term ‘service provider’ has been defined to include a ‘licensee’, and the term ‘licensee’ is essentially an authorised entity providing telecommunication services under the Telecommunications Act, 2023 (“Telecom

Act”). Thus, only specific entities providing telecommunication services – such as TSPs – under the Telecom Act’s authorisation regime fall within the purview of the TRAI’s powers and functions.

Notably, even the TRAI, in the CP, does not delve into the issue of regulating OTTs under the TCCCPR regime, presumably, on account of the fact that OTTs are not subject to telecom laws. Notably, this view was also confirmed by the former Hon’ble Minister for Communications, Shri Ashwini Vaishnaw on the ground that such services are already regulated under laws such as the IT Act. The TRAI’s TCCCPR, whose objective is to curb unsolicited commercial communication made using telecom services, does not govern OTT services as well. Further, two Consultation Papers previously issued by the TRAI (in 2018 and 2023 respectively) also suggest that the regulator does not view OTT services as falling within the purview of the TCCCPR.

In light of the above, we request the TRAI to not delve into the issue of spam communication on OTT platforms, while issuing its recommendations under the CP as the Information Technology Act, 2000 (“IT Act”) and its rules and regulations already apply to OTTs with requisite compliances. In any case, it is worth noting that OTT communication platforms have implemented their own measures and policies to tackle spam communication and protect users against online fraud.

2. Anti-Spam Initiatives Undertaken by OTTs

As noted above, certain stakeholders have misleadingly claimed in their representations that – unlike TSPs – OTTs do not have to strictly adhere to or implement mechanisms relating to customer consent, complaint resolution, spam control (including in relation to bulk messaging), etc. We strongly disagree with this submission and would like to take this opportunity to highlight that even though OTTs are not (and should not be) regulated under the TCCCPR, existing efforts being implemented by OTT platforms as well obligations under the IT Act are sufficient to tackle spam on OTT platforms.

- a) **Customer consent:** OTT platforms generally prioritise the consent and preferences of their end-users. To this extent, they have also devised user-friendly and effective mechanisms to help users determine whether and for how long they would like to receive commercial communication. Additional obligations in this regard will follow soon upon notification of coming in force of relevant provisions of the Digital Personal Data Protection Act.
- b) **Spam control:** The IT Act regulates ‘intermediaries’ – including OTT communication platforms. An intermediary is required to comply with due diligence obligations under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (“IT Rules”). These include making reasonable efforts by both itself and to cause its end users not to upload / publish / share specific types of prohibited content. This includes content that either “deceives or misleads the addressee about the origin of the message, or knowingly and intentionally communicates any misinformation, information which is patently false and untrue, or misleading in nature” or that “violates any law currently in force”. We believe that such types of prohibited content can encompass spam / unsolicited commercial communications as well. More importantly, these categories can be relied on to tackle communication on the internet that is used to perpetrate financial frauds or cybercrimes – as aspect that few stakeholders have touched on in their submissions. In any case, OTTs have implemented their internal, yet efficacious, measures to tackle spam.
- c) **Complaint resolution:** Under the IT Rules, intermediaries are required to establish robust grievance redressal mechanisms (such as appointing a grievance officer and publishing their

details) and adhere to strict timelines for resolving complaints (such as acknowledging the same within 24 hours and redressing it within 15 days). This empowers users to report any violations vis-à-vis the prohibited categories of content, including where the same stemming from unsolicited commercial communication or if such communication is found to be fraudulent.

- d) **Telemarketer registration and scrubbing:** The widespread prevalence of unsolicited commercial communication being issued by telemarketers has been one of the focal points that the TRAI has repeatedly sought to curb. In fact, and more recently, the TRAI directed TSPs to migrate telemarketing calls starting with 140 series to an online DLT platform for better monitoring and control. We submit that leading OTTs already implement a host of measures to exercise control on spam and scam on their OTT platforms. Further, they allow users access to easy-to-implement mechanisms to block or report the same and also educate users (through in-app mechanisms) against spam and on how to implement the tools readily available with them.
- e) **Financial disincentives / penalties:** Claims that financial disincentives should be extended to OTTs on whose platform spam communication takes place are misleading and unwarranted. This is because unlike telecom services, spam on the respective OTT platform is actually a major disincentive for the OTT players that operate in an ecosystem with low entry barriers. This is because users can switch between competing applications within a matter of seconds, given the plethora of options available to them. It is not possible to do so easily in the telecom space (where there are limited options). Users can also multi-home OTTs but multi-homing telecom services is expensive and difficult to manage in the telecom space. Over and above this, to the extent OTTs implement anti-spam measures pursuant to their obligations under the IT Rules, it should be noted that there is disincentive enough for OTTs to ensure compliance with these measures.

3. Level Playing Field Arguments Unfounded

As noted above, certain industry stakeholders have argued for the creation of a “level playing field” when it comes to regulating TSPs and OTTs under regulations for curbing spam / commercial communication. They have also requested for OTTs to pay a share of their revenue to the Government. At the outset, regulation of OTT communication services under telecom laws has been a long-drawn demand of telecom service providers (“TSPs”) to create a “level playing field” between the two – however, this has now been clearly settled by the Government at the time of enacting the Telecom Act. Unfortunately, this demand has, once again, been raised in comments to this unrelated CP. We, therefore, would like to stress upon the fact that there are fundamental differences between the two types of services. They should not be regulated in a similar fashion or under the same set of laws. We have elaborated on this below.

- a) **Technical differences:** TSPs operate on the underlying network infrastructure that essentially enables the functioning of the internet, while OTT service providers operate on the application layer which functions on top of the network layer. Therefore, there is a clear distinction in the operational and technical and nature of OTT service providers and TSPs. Notably, TRAI has previously recognised this distinction in its ‘Recommendations on Regulatory Framework for Internet Telephony’ (2017) with respect to internet telephony services. Keeping in mind that OTT service providers and TSPs are fundamentally different, ‘same service, same rules’ cannot apply here.



- b) **Operational differences:** TSPs are spectrum controlling entities, with spectrum being a valuable natural resource. The licensing regime for TSPs is therefore crucial to ensure that this valuable public resource is distributed and used efficiently and in an appropriate manner. On the other hand, digital service providers, such as OTT service providers, do not enjoy these rights and privileges. It is, for this reason, that they are subject to a different set of laws together.

In all, we believe that OTT communication services should not be regulated under telecom laws, such as TCCCPR, especially given that the TCCCPR has been framed keeping in mind the quality-of-service aspects associated with traditional telecom services.