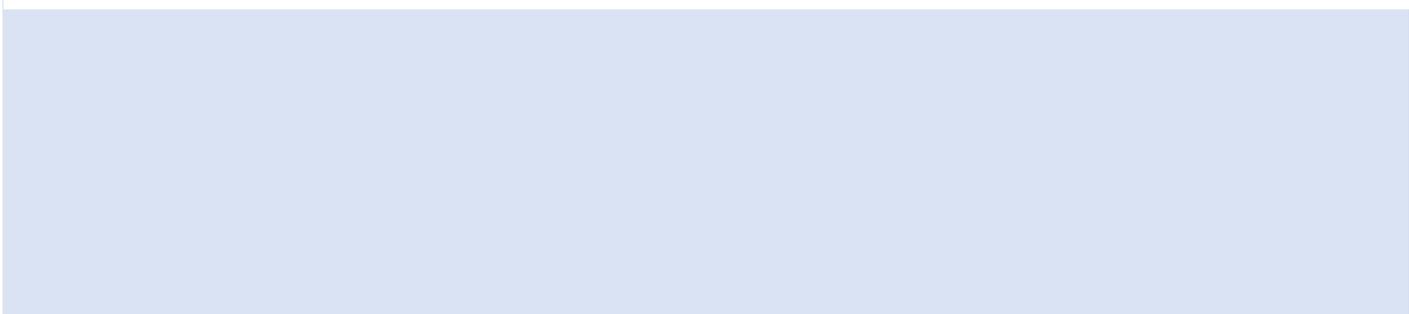




**Comments on Telecom Regulatory Authority of India's
Consultation Paper on 'Review of Terms and
Conditions for registration of Other Service Providers
(OSPs)'**



1. Introduction

1.1 The authors (“we”/ “us”/ “our”) would like to congratulate Telecom Regulatory Authority of India (“TRAI”) and Department of Telecom (“DoT”) in their endeavours to undertake review of the current framework applicable to other service providers (“OSP”). The depth in which the issues have been referred by DoT and covered with appropriate background by TRAI in the consultation paper on ‘Review of Terms and Conditions for registration of Other Service Providers (OSPs)’ (“CP”) is extremely commendable. We would like to convey our gratitude to TRAI for providing all stakeholders with an opportunity to provide comments on the issues set out in the CP.

2. The current OSP regime

2.1 Presently, the principal legal and regulatory framework applicable to OSPs is set out under the ‘terms and conditions – Other Service Provider Category’ dated 5 August 2008, as amended from time to time (“OSP Guidelines”). The development of the current OSP regime, which has culminated in the OSP Guidelines, can be traced back to the National Telecom Policy, 1999.

2.2 However, it has been argued that with time, the OSP regime has lost track of the main objectives for which the OSP registration was introduced, viz. (a) to maintain a statistical record, (b) to ensure that there is no infringement on the jurisdiction of telecom service providers (“TSP”) that have been granted a license by the DoT, and (c) to provide “dispensation” to the sector. In our experience with dealing with clients on such matters on a regular basis, we gather that OSPs are in fact subject to many more restrictions, which are not otherwise imposed on their counterparts in other sectors.

2.3 This is mainly because the current framework for OSPs is shrouded in outdated, rigid and ambiguous terms and conditions, which make it difficult for businesses to operate in the modern-day working style and to use resources efficiently. For example, (a) restrictions on interconnectivity of OSP centres, (b) indistinct and impractical provisions related to sharing of telecom resources and logical partitioning to be implemented with other purposes (i.e. non-OSP purposes), (c) unclear terms and conditions regarding placement of electronic private automatic branch exchange (“EPABX”), (d) prohibitive conditions for availing ‘work from home’ facility, etc. are some of the major concerns that are regularly faced by most our clients. Another aggravating factor is the inconsistency in interpretation of the OSP Guidelines between different Telecom Enforcement Resource and Monitoring cells (“TERM Cells”) of DoT.

2.4 As a result, in general, businesses find it immensely difficult to understand the exact compliance requirements and measures that need to be undertaken by them to remain compliant. Due to these reasons, many companies in the outsourcing industry are considering migrating to other countries that have comparatively liberal regulations in this regard. As a matter of fact, the requirement to obtain an OSP registration (or similar registration) is not prevalent in most other countries. The need of the hour is to drastically simplify the OSP Guidelines, or perhaps introduce a fresh set of guidelines that are based on certain core principles that are reflective of DoT’s main concerns.

- 2.5 It is important to make this course correction now because India is considered as the outsourcing hub of the world and the outsourcing industry is the one of the chief contributors to nation's economy. Therefore, it is important for Government to formulate guidelines in a manner so that balance is created between the interests of the Government and the industry. The intention should be to frame new policies with clear objectives to support the outsourcing industry rather than making it increasingly complex and overbearing for them.
- 2.6 In view of the background set out above, we have provided our comments on the specific issues highlighted in the CP and suggested desirable changes to the framework or processes, wherever applicable.

RESPONSES TO ISSUES HIGHLIGHTED IN TRAI'S CP

1. **Please provide your views on the definition of the Application Service in context of OSP. Whether, the Application Services which are purely based on data/ internet should be covered under Application Service for the purpose of defining OSP.**

1.1 Ambiguous definition of Application Service

- (a) In our view, the definition of Application Services in the OSP Guidelines is possibly the most important issue which needs to be clarified because it is basis which determines whether an entity requires an OSP registration or not.
- (b) We agree with the views of TRAI set out in the CP indicating that the definition of Application Services under the OSP Guidelines is very wide and has elements of vagueness. Specifically speaking, the definition of Application Services includes reference to "*other IT Enabled Services*" which leaves a room for interpretation to be adopted. Importantly, the OSP Guidelines neither define the term ITeS nor provide any criteria/ parameters for determining whether a particular kind of service may be categorised as ITeS, or not.
- (c) In our humble submission, the definition of ITES should be provided in the OSP Guidelines. In doing so, it must be ensured that it is specific and concise so that intending applicants may clearly determine whether services rendered by them falls within the ambit of Application Services under the OSP Guidelines, or not. Considering India is home to enormous number of information technology companies which provide information technology enabled services and it is unclear whether the objective of OSP Guidelines is to have all such companies registered as an OSP.
- (d) Additionally, the definition of Application Services also includes elements like e-commerce within its definition. However, it fails to clarify whether by virtue of

being an entity in the e-commerce sector, an OSP registration is required for such entity. It does not take into account the fact that e-commerce entities may outsource their customer services operations to a third party and in such a case an e-commerce entity may not require an OSP registration at all.

- (e) Further, the portal on which OSP applications are filed i.e. '*Saral Sanchar*' ("**Saral Sanchar**") also provides options such as e-publishing centre, contact centre etc. under '*type of activity*', which leads to additional confusion as these terms are not included in the definition of Application Services provided under the OSP Guidelines.

- 1.2 Exemptions for Application Services provided to group companies: In determining the applicability of the OSP Guidelines, another issue that needs to be highlighted is the fact that several entities in India provide Application Services internally i.e. to group companies/affiliates located in India or outside India. In our view, such entities should not be required to obtain an OSP registration and a carveout should be made. For this purpose, OSP Guidelines should also define the meaning of '*captive centre*' and which type of services will be deemed as captive.
- 1.3 Exemptions for data-based Application Services: We understand that the primary intent of the OSP Guidelines was to regulate services (that are based on extensive use of voice services e.g. call centres, tele-medicine, tele-trading, tele-banking, etc.). Therefore, we concur with TRAI's views and believe that Application Services that are purely based on data/ internet should not be covered under the Application Services. Practically speaking, the concerns of toll bypass is negated in case services are purely based on use of data or internet. As concerns pertaining to infringement of TSP's jurisdiction are not relevant in such cases, the focus of OSP registration should be shifted exclusively to those entities which use telecom resources for voice calls. Further, in today's world, the customer support services are provided by way of email, chat, value added services ("**VAS**") such as interactive voice response systems ("**IVRS**") and through use of artificial intelligence (**AI**). In some cases, there is no involvement of human element in AI based services and it would be travesty if such services are termed as Application Services.
- 1.4 Exemptions based on net-worth of the company, number of employees: We humbly submit that certain entities that are below a prescribed threshold in terms of net-worth and number of employees, can be granted an exemption from obtaining an OSP registration. For this purpose, the definition of net-worth can be adopted from the Companies Act, 2013, as has been done under other licenses granted by the DoT. This will be a breath of fresh air for many smaller players in the market, who have to spend considerable resources towards compliance.
- 1.5 To summarise, the Government must identify the type of services which would necessitate requirement of OSP registration. At the same time, we are hopeful that

amendments will be introduced to provide certain exemptions, which will ease compliance and create a level playing field between OSPs and non-OSP entities.

2. **Whether registration of OSP should be continued or any other regulatory framework should be adopted for OSPs so that the purpose of registration specified by government is met. Please furnish your views with justification.**

- 2.1 The current regulatory framework relating to OSP is outdated in many respects, and necessitates the urgency for a major overhaul. The National Digital Communications Policy of 2018 (“**NDCP**”) has identified that terms and conditions related to OSPs including definitions, compliance requirements and restrictions on interconnectivity needs to be improved. Therefore, it is amply clear that Government acknowledges the complex and ambiguous nature of OSP Guidelines and has set out an ‘*all-inclusive*’ objective to improve the terms and conditions pertaining to the OSPs.
- 2.2 Therefore, DoT must revisit the reasons why OSP Guidelines were introduced in first place (refer to paragraph 2.2 on page 1 above). Unfortunately, the current framework is not in line with these objectives as it is overtly complex. In an ideal scenario, statistical information can be collected by way of filling up a standard and simplified online form to intimate DoT once OSP operations have commenced.
- 2.3 The current OSP Guidelines does not provide any boost or dispensation to outsourcing/BPO sector and rather it places them under a burden of heavy compliances which often lead to significant investment of money as well as other resources.
- 2.4 As far as Government’s intent to ensure that jurisdiction of authorised TSPs is not breached, the rules should be same for an OSP customer and non-OSP customer. Practically, it should be left to the TSPs to determine if bona fide use of the telecom resource is being carried out given the terms of unified license already comprise of such provisions.
- 2.5 Therefore, there is a need to notify a simple and clear-cut framework to meet the objectives of DoT and at the same time allowing sufficient flexibility to applicants of OSP registration. In this regard, we would like to propose the following:
- (a) **Registration of OSPs is irrelevant and intimation itself should suffice:** Bearing in mind that OSP framework and process of registration which itself poses sufficient challenges and delay in commencement of operations, DoT may consider allowing OSPs to start operations without the need for a prior permission or a registration certificate. Alternatively, an intimation can be provided to DoT to ensure that a statistical record of the entity’s existence is maintained. In our view, this single step will be a boost for the applicant OSPs. Once the OSP has commenced operations, it should be permitted to provide

concise details over a web portal pertaining to OSP entity, type of OSP centre (domestic or international or both), location of OSP centre and telecom resources used for providing services. This basic information should suffice for DoT's purpose. In any event, the authorised TSP which is installing or deploying telecom resources is obligated to comply with regulatory requirements while provisioning services to customers and OSPs executing relevant documents, CAF, agreements or undertaking would allow sufficient comfort to the DoT, as it is the process followed by TSPs while dealing with any other customer/enterprise user. Therefore, the intimation requirement (rather than seeking a prior permission to commence operations) can address DoT's concerns. At the same time, it will be no less than a boon to the industry. *In our view, an intimation requirement in case of OSPs will be the best-case scenario as businesses will not have to await approvals prior to commencement of services. However, for sake of completeness, we have responded to specific issues raised by TRAI bearing in mind that amendments to OSP Guidelines is to be suggested and as such, our responses in this document is without prejudice to our observations (pertaining to intimation-based approach) for OSPs noted in this paragraph.*

- (b) **Extensive preparatory work before making application:** Due to the complexities involved in the OSP Guidelines, an entity is required to involve its IT/technical team, procurement, business and legal team to consolidate and finalise information, obtain attestation of documents and network diagram, before an application for an OSP registration can be made to DoT. Generally speaking, the companies take months to understand the requirements and to formalise information along with documents. The Government should provide for a simple approach of seeking extremely relevant information (refer to paragraph 2.5 (a) above) on an '*intimation only*' basis and discontinue the current process of seeking unnecessary information and documents in the application process.

3. **What should be the period of validity of OSP registration? Further, what should be validity period for the renewal of OSP registration?**

- 3.1 The validity period of the OSP registration as currently prescribed is apt in our view. However, the period of the renewal may also be extended to 20 years.

4. **Do you agree that the documents listed above are adequate to meet the information requirements for OSP registration? If not, please state the documents which should be added or removed along with justification for the same.**

- 4.1 We have the following comments in respect of the documents which are required to be submitted along with an application for obtaining an OSP registration:

- (a) At present, several documents are required to be submitted along with the application, even though there is no necessity to do so. Documents such as note on the nature of business, board resolution (**BR**) or notarised power of attorney (**PoA**) in favour of the authorised etc. are not necessary in our view. Information regarding nature of business does not necessitate a separate document to be provided, as that information is in any case set out in the application form. Additionally, DoT should offer flexibility by accepting a letter of authorisation in favour of authorised person from the applicant entity instead of a PoA or BR.
- (b) Another challenge relates to the manner in which documents are required to be certified/verified and attested prior to submission. Despite the introduction of Saral Sanchar, which is designed to be an entirely paperless process, the OSP Guidelines still require that the documents must be verified and certified by a director, company secretary or statutory auditor of the company or a public notary. Further, the name and designation of the person attesting the documents needs to be set out and company seal needs to be affixed. In our view, if the authorised representative of the applicant is digitally signing the documents in the prescribed form, there is no reason for physical verification of documents in the complex manner as currently mandated. It also negates the very purpose for which Saral Sanchar has been introduced.
- (c) Further, as far as '*list of directors*' is concerned, there should be no requirement to have specimen signatures of all directors/partners (as the case may be) on the document setting out all directors of a company or partners of an LLP.
- (d) As far as payment of processing fee is concerned, it is paid through '*Bharatkosh*' portal and a challan is not made available in real time. Therefore, DoT should accept a transaction receipt generated in real time as a valid document evidencing payment of fee, rather than a 'challan' which is required to be uploaded at a later stage in the application process.
- (e) As far as network diagram is concerned, there are no specific details provided in the OSP Guidelines regarding its constituents. Further, different requirements are stipulated by different TERM Cells. Therefore, DoT should set out the exact requirements/specifications that are required to be reflected in a network diagram. This results in a lot of back and forth between the applicant and the relevant TERM Cell. The situation is aggravated because the TSP (i.e. a third party) has to be approached every time that the network diagram has to be revised, resulting in delay.

4.2 In our view, it is critical to address the issues identified in paragraph 4.1 above to facilitate the application process and to avoid unnecessary delays.

5. **Do you agree with the fee of Rs. 1000/- for registration of each OSP centre. If not, please suggest suitable fee with justification.**

5.1 We believe that the application processing fee of INR 1,000 (Indian Rupees one thousand) is appropriate and does not require a reassessment.

6. **Do you agree with the existing procedure of OSP registration for single/ multiple OSP centres? If not, please suggest suitable changes with justification.**

6.1 In our view, the current procedure of OSP registration for multiple OSP centres needs to be reconsidered and further streamlined. The OSP Guidelines provides that OSP registration is *location specific*, however no clarity on the meaning of location is provided. Due to lack of clarity, confusion arises in several cases as to number of OSP registration applications that are required to be made. As an example, whether an entity having two offices in (a) the same building but on different floors, or (b) adjacent buildings and connected through a common passage, will require two registrations or a single registration indicating both locations would suffice.

6.2 Further, it is important to highlight that the provisions related to registration of multiple OSP centres under the OSP Guidelines are not being practically followed by TERM Cells of DoT. In our practical experience, an independent application (with complete set of documents and information) is required to be individually furnished for *each* location, even if a new location is added by the entity within a period of one year from the date of grant of registration in respect of the first location, as prescribed.

6.3 In our view, a simpler approach would be one where only one registration is granted in the name of an entity, and all locations (from where provisioning of Application Services is undertaken) can be intimated to DoT subsequently, as and when a location is added.

7. **Do you agree with the existing provisions of determination of dormant OSPs and cancellation of their registration? If not, please suggest suitable changes with justification.**

7.1 The provisions related to determination of dormant OSPs appears to be largely fine. We understand that the primary purpose is to identify those OSPs which are not providing Application Services, so that an accurate statistical database can be maintained.

7.2 Moreover, the 'Annual Return' ("**Annual Return**") seeks revenue details of OSPs as a part of the Annual Return which is not consistent with the purpose, i.e. to check whether an OSP centre is active or dormant (refer to paragraph 7.1 above). Besides, unlike TSPs, OSPs are not required to pay a license fee to DoT on the basis of their revenue and therefore in our view, revenue details should not be sought under the Annual Return.

8. Do you agree with the terms and conditions related to network diagram and network resources in the OSP guidelines? If not, please suggest suitable changes with justification.

8.1 We have the following observations in respect of the terms and conditions relating to network diagram:

- (a) The particulars and details that are required to be depicted in a network diagram must be clarified (please refer to paragraph 4.1 (e) above).
- (b) In our view, the network diagram should not be required to be mandatorily submitted along with the application for OSP registration. It is important to note that a network diagram can be submitted within a specific time period (as an example, six months) after the date of commencement of operations.
- (c) Most applicants face delays and issues in having network diagrams attested by TSPs, which protracts the entire application process. As an alternative, DoT may allow the OSP itself to certify the diagram. In the event that any irregularity is discovered at a later stage, appropriate action can be taken against the OSP in any case. However, we believe that this will certainly reduce dependencies on third parties (i.e. TSPs) as far as the application process is concerned.

8.2 As far as requirement to logically separate telecom resources for OSP and non-OSP purposes is concerned, there is no guidance provided signifying the manner in which telecom resources need to be logically separated. Not only does this condition make compliance difficult, it also disables an OSP from using common telecom resources for cost efficiency purposes. Practically speaking, companies often find it difficult to segregate internet bandwidth for OSP and non-OSP purposes and maintain logical separation between them. Consequently, two separate internet connections are required to be obtained in respect of each OSP centre.

9. Do you agree with the provisions of internet connectivity to OSP mentioned in the OSP guidelines? If not, please suggest suitable changes with justification.

9.1 We note that terms relating to internet connectivity for OSPs in the OSP Guidelines are essential in view of the security concerns. However, the requirement that each OSP centre must have independent internet connectivity is a costly proposition for the industry. Several entities intend to procure internet connectivity at the centralised location in India at one of their offices or at a third-party data centre and thereafter connecting each of its OSP centres to such locations.

9.2 In our view, procuring an internet connectivity at a centralised location is not currently envisaged under the OSP Guidelines, while non-OSPs may have the liberty to do so. If OSPs are permitted to take telecom resources (like internet) at a central location and thereafter share it with other OSP centres, as long as it is procured from an Indian TSP

and the IP address is traceable to a location within India, it will be a respite for the industry.

10. Do you agree with the provisions related to Hot Sites for disaster management mentioned in the OSP guidelines? If not, please suggest suitable changes with justification.

10.1 In our view, the provisions relating to Hot-sites under the OSP Guidelines are unclear to a large extent. Considering that the primary purpose of a Hot-site is to ensure business continuity, the requirement to register it as an OSP centre is not relevant in our view. During a natural disaster, OSPs should have the flexibility to work from *any* location/establishment or a place within India. An intimation to DoT in such a case should be sufficient.

10.2 Further, a domestic and an international OSP should be accorded the flexibility of working from a common location/premises to the extent required by such OSPs using the infrastructure and telecom resources (procured from authorized TSPs) which are readily available.

11. Do you agree with the provisions of logical separation of PSTN and PLMN network resources with that of leased line/ VPN resources for domestic OSP mentioned in the OSP guidelines? If not, please suggest suitable changes with justification.

11.1 We understand that interconnection between public and private network is a concern for DoT as it may lead to toll bypass and security concerns. In our view, this discussion transcends the present consultation process and has a much wider impact.

11.2 Having said that, we would like to humbly submit that toll by-pass concerns may not be relevant in the Indian context in present day as PSTN/PLMN tariffs have significantly plummeted over time. The concerns pertaining to toll bypass may not be relevant in today's world and India should adopt the global practices of allowing sufficient flexibility configuration of networks as long as it does not lead to any security issue.

12. Do you agree with the provisions of PSTN connectivity/ interconnection of International OSP mentioned in the OSP guidelines? If not, please suggest suitable changes with justification.

12.1 The restriction on PSTN connectivity at Indian end in an international OSP is not rational in the present day and age. In our understanding, such a restriction does not exist for any other sector or entity in India and it is irrational not to allow such PSTN connectivity for international OSPs.

12.2 In any case, even if such a restriction was incorporated to prevent a toll by pass scenario or to facilitate usage of leased circuits for voice call purposes when PSTN tolls were significantly high, it does not necessitate complete restriction on installation of PSTN connectivity at international OSPs and only instruction regarding prohibition on

interconnectivity would have sufficed. A complete restriction on usage of PSTN is a discriminatory practice given that any other sector does not have such blanket prohibition. The non-OSPs can use PSTN phones as long as there is no interconnection between private connectivity and PSTN in their offices and same should be extended to international OSPs. Even if international OSPs use PSTN for calling purposes, it will be making payment of appropriate toll charges to TSPs. Further, in any case, toll bypass related concerns are no longer relevant in the present day (refer to paragraph 11.2 above).

13. Please provide your views as to how the compliance of terms and conditions may be ensured including security compliance in case the OSP centre and other resources (data centre, PABX, telecom resources) of OSP are at different locations.

13.1 We understand that TRAI has noted that *“inspection of such infrastructure to check compliance of terms and conditions of OSP registration would be difficult”* in cases where infrastructure (such as telecom resources, EPABX, etc.) are placed outside the OSP centre. In our experience, entities having multiple OSP locations prefer to deploy a centralised EPABX, telecom resources including internet, routers and servers at a centralised location. DoT can also be permitted to inspect any such centralised location and OSPs can ensure (e.g. through contractual obligations placed on the service provider/ owner of the third-party location) that inspection rights are extended to DoT. Even otherwise, the usage records such as call details records, usage detail records and system logs can help DoT ascertain compliance without an actual need to physically visit locations.

14. Please provide your views whether extended OSP of existing registered OSP may be allowed without any additional telecom resource. If yes, then what should be the geographical limitation for the extended OSP centre; same building/ same campus/ same city?

14.1 Yes, the new OSPs should be allowed to commence operations by using the telecom resources procured by other OSP centre or if such resources have been deployed at any centralised location. In our view, OSPs should be permitted to operate without any requirement to install new telecom resources at a new location as it leads to cost savings and efficient utilisation of existing resources.

14.2 Therefore, a new OSP centre should be permitted to use telecom resources of an existing OSP centre. As far as the geographical limitation for the extended OSP is concerned, we suggest that there should not be any geographical limitations which will facilitate setting up of new OSP centres by entities in India without facing any hardship.

15. Please provide your views as to how the compliance of terms and conditions may be ensured including security compliance in case of the extended OSP centre.

- 15.1 In our view, to ensure compliance with terms and conditions, the TSPs may be entrusted with the responsibility to check bona fide use of telecom resources and additionally, OSP centre at which the telecom resources are procured can be inspected by the DoT. This will enable DoT in verifying whether the connectivity between OSP centres is compliant with the OSP Guidelines, or not.
- 15.2 In essence, the primary responsibility of ensuring security compliance should be TSPs responsibility which is part of their license conditions agreed with DoT. Based on any concerns raised by TSPs, DoT take necessary steps to ensure security compliances are adhered to by the entities.
16. **Do you agree with the provisions of general conditions for sharing of infrastructure between International OSP and Domestic OSP mentioned in the OSP guidelines? If not, please suggest suitable changes with justification.**

16.1 With regard to the general conditions set out in OSP Guidelines pertaining to sharing of infrastructure between International OSP and Domestic OSP under the OSP Guidelines, we would like to make the following submissions:

- (a) No requirement for separate registration: At the outset, there should be no separate application process seeking prior permission of DoT for sharing of infrastructure and an intimation to DoT should suffice as long as OSPs are complying the requirements/principles notified by DoT in this regard.
- (b) Validity period: The three-year validity period (extendable for a further period of 3 years) applicable to permission for sharing of infrastructure is insufficient, when compared to the validity of OSP registration which is twenty years. The OSP should be permitted to use the sharing of infrastructure facility for the entire duration of its OSP registration. Even renewal of sharing of infrastructure is permitted for a subsequent period of three years which is not based on any rationale. There is no reason for providing such permissions and requiring renewals at such short period causing hardship to the OSP entities.
- (c) Bank guarantee: Most importantly, the amounts of bank guarantee prescribed for availing such permission is excessively high and acts as deterrent for OSPs intending to share the infrastructure. Therefore, DoT should consider removing such bank guarantee requirements and a separate registration requirement to enable OSPs to function with more ease and without casting any unnecessary financial burden.
- (d) Manual submission: Despite the fact that the application process for obtaining an OSP registration has migrated to Saral Sanchar, the application process for submission of application for sharing of infrastructure continues to be through physical means. In this light, DoT should consider an online

process for submission of information and documents for this purpose, or as set out in paragraph 16.1 (a) above, discontinue the process of registration in case of sharing of infrastructure.

17. Do you agree with the provisions of Technical Conditions under option -1 & 2 for sharing of infrastructure between International OSP and Domestic OSP mentioned in the OSP guidelines? If not, please suggest suitable changes with justification.

17.1 As noted in response to question 16 above (refer to paragraph 16.1 above), the registration requirement and terms and conditions applicable to sharing of infrastructure should not be done away with. Accordingly, the technical conditions for Option 1 and Option 2 under sharing of infrastructure should also not be required to be complied.

17.2 An undertaking or intimation provided by the OSP itself can suffice and the DoT during an inspection can verify whether or not the general principles pertaining to sharing of infrastructure are being complied or not. The requirement to submit a certificate of the vendor (stating that software is capable of logically bifurcating the infrastructure in two or three (as applicable) different environments) under Option 2 can also be discontinued as obtaining a certificate from third party vendor can delay the process or act as an impediment. Besides, it is possible that in many cases, the logical partitioning solution is implemented by the OSP itself. An OSP cannot be precluded from availing this facility merely because no third party is involved.

18. In case of distributed network of OSP, please comment about the geographical limit i.e. city, LSA, country, if any, should be imposed. In case, no geographical limit is imposed, the provisions required to ensure compliance of security conditions and avoid infringement to scope of authorized TSPs.

18.1 The centralised EPABX model has been helpful in aiding OSPs to make effective use of infrastructure placed at a central location. However, the requirement to install media gateways at each individual OSP centre results in significant costs for OSP centres. Further, centralised EPABX model falls under sharing of infrastructure and therefore, our comments provided above in question 16 and 17 above will also be applicable in this case. In our view, the centralised EPABX model should not require prior permission or submission of bank guarantee.

18.2 Additionally, no geographical limits should be imposed for such a model as it does not serve any purpose. If geographical limits are imposed, this will act as an impairment for OSPs who may wish to bring in innovative models that are not confined to a particular jurisdiction.

18.3 If a centralised location having EPABX is situated within the jurisdiction of a TERM Cell, the compliance can be checked by the relevant TERM Cell in whose jurisdiction

such centralised location falls. The TERM Cell in whose jurisdiction the centralised EPABX is placed can be provided unhindered access to the location/ premises where the centralised EPABX is hosted for inspection or periodic checks.

- 18.4 In recent times, we have witnessed that certain TERM Cells of DoT have been advocating that the location where centralised EPABX is placed (e.g. a third-party data centre) should also be registered as an OSP centre. Importantly, the OSP Guidelines do not expressly set out any such requirement and no reasonable explanation is provided by TERM Cells as to why such location should be registered as an OSP. In our view, this requirement is bereft of any basis because an OSP registration is only granted in respect of a location where Application Services are being provided. This may not hold true for a data centre where the centralised EPABX is hosted. We humbly submit that many clients face hardship on this account of such requirements and therefore, DoT should clarify this aspect. Further, even if it is agreed that OSP registration is required for a centralised location like data centre, it may be impractical to provide details of number of seats, nature of activities undertaken at OSP centre (i.e. data centre in this case), telecom resources procured in the process of applying for OSP registration.
19. **Do you agree with the provisions including of logical partitioning mentioned in the OSP guidelines for distributed architecture of EPABX? If not, please suggest suitable changes with justification.**
- 19.1 The provisions related to logical partitioning of EPABX can be implemented by OSP centres however, there is no requirement to incorporate stringent conditions or specific requirements around it. DoT should consider incorporating flexible provisions or principles which may help OSP implementing centralised EPABX model in an effective manner.
20. **Do you agree with the monitoring provisions of mentioned in the OSP guidelines for distributed architecture of EPABX? If not, please suggest suitable changes with justification.**
- 20.1 We understand that the DoT's requirement, as far as monitoring of centralised EPABX model is concerned, is as follows:
- (a) The DoT should have unhindered access to the premises where the centralised EPABX is hosted and to the OSP centres where the facility is being availed; and
 - (b) DoT should be provided facilities to inter alia *“the routing/ partitioning table/ CDRs and to check “call trace in the EPABX for extensions”.*
- 20.2 To achieve the objectives mentioned above, we understand that DoT requires unhindered access to the premises. The OSPs in general do not have any reservations against providing access to the OSP centres or to the location where centralised EPABX

is placed and as long as access to DoT is granted, DoT can satisfy itself to check for compliances and monitor the network/manner in which OSPs connect to centralised location. However, as stated above, the requirement to install a media gateway, should be done away with and DoT should consider incorporating simplistic and clear-cut principles to ensure security related provisions are complied with.

21. Please comment on the scope of services under CCSP/HCCSP, checks required / conditions imposed on the CCSP/ HCCSP including regulating under any license/ registration so that the full potential of the technology available could be exploited for both domestic and international OSP, and there is no infringement of the scope of services of authorized TSPs.

21.1 It is important to mention that there are several models under which services can be provided by CCSP/ HCCSP and therefore a there should not be any requirement for CCSP/ HCCSP to register or obtain a license from the DoT, merely on account of the fact that they are providing services to OSPs. The rationale for which OSP registration is sought, i.e. provisioning of Application Services, should be the governing principle and should apply to all entities without differentiating between the type of service providers.

21.2 Please note that CCSP/ HCCSP are not subject to regulation when they are providing services to other entities and therefore, in our humble submission, DoT should not introduce such registration requirements simply because services are being provided to OSPs.

22. Please provide your comments on monitoring of compliance in case interconnection of data and voice path is allowed for domestic operations.

22.1 We note that DoT acknowledges the monitoring of voice and data flow in a domestic OSP centre is a challenging task. Moreover, such provisions act as impediment in functioning of OSPs and there is no information available on the practical ways in which segregation is required to be maintained by an OSP.

22.2 Therefore, it would suffice if the primary requirement of DoT i.e. interconnection between public and private networks is avoided to prevent flow of voice traffic and data traffic should be carved out of such requirements as, in our view, it is not a major concern or security concern for DoT. Moreover, without any practical way of monitoring such an obligation, it is rather impractical to have such compliance requirements in place.

23. Do you agree with the provisions for use of CUG for internal communications of OSP as mentioned in the OSP guidelines? If not, please suggest suitable changes with justification.

23.1 At the outset, we would like to submit that the OSP Guidelines does not provide any definition for CUG or guidance on what constitutes CUG. Ideally speaking, a clear

definition and few examples of what may be deemed as a CUG can be provided. Notwithstanding the above, in our view, there should not be any restrictions or qualifications for use of CUG for OSP purposes as it is permitted for internal communications for an OSP entity as well as to non-OSPs. In case CUG is permitted for others and only restricted for OSP centres, the reason for such restriction is unclear and appears to be unjustified.

23.2 Further, an OSP provides Application Services to group companies (i.e. for captive use) and usage of CUG becomes very convenient and quick option in resolving queries or providing real time assistance. Therefore, such a restriction only acts as a hardship for OSP centres and establishing a separate network along with procuring telecom resources are an expensive proposition for OSP centres.

24. **Do you agree with the monitoring provisions for use of CUG for internal communications of OSP mentioned in the OSP guidelines? If not, please suggest suitable changes with justification.**

24.1 For sake of brevity, please refer to our comments in paragraphs 23.1 and 23.2 above as it will be applicable in this case also.

25. **Do you agree with the provisions of 'Work from Home' mentioned in the OSP guidelines? If not, please suggest suitable changes with justification.**

25.1 The current provisions relating to work from home (**WFH**) are impractical, stringent and unnecessarily rigid. It would not be incorrect to suggest that these conditions have prevented the adoption of the WFH model in its truest sense. Please refer to our comments below which provides justifications for our disagreement with the current provisions:

(a) Meaning of PPVPN: The OSP Guidelines fail to define the meaning of PPVPN and does not provide examples of connectivity which may be construed as PPVPN. It is extremely difficult for an OSP to understand the requisite secured connectivity that is required to be established for this purpose. DoT should permit usage of internet connectivity for provision of Application Services.

(b) Expensive proposition: The requirement to use PPVPN is needless for OSPs and it is unreasonably expensive for an OSP to procure such connectivity from the location of *each* employee to the OSP centre for use of WFH facility.

(c) Pre-defined location: WFH is permitted only if it is being provided from a pre-defined location, details of which have been provided to DoT. This is a prohibitive provision which does not allow agents or employees of OSP centres to work while they are travelling or are on a holiday or from a

location which is not in the records of DoT. In our view, WFH should be permitted to be undertaken from any location using any telecom resources available without use of PPVPN.

- (d) Bank guarantee and execution of agreement: The bank guarantee requirement for availing WFH facility is extremely high and the process of seeking prior permission, execution of standard agreement should be done away with. DoT should permit WFH without any restrictions or conditions in place.

26. Whether domestic operations by International OSPs for serving their customers in India may be allowed? If yes, please suggest suitable terms and conditions to ensure that the scope of authorized TSP is not infringed and security requirements are met.

26.1 We note that several International OSPs are requesting for permission to provide Application Services to their customers/ clients within India. This is absolutely the requirement in today's world as agents and employees of international OSP provide Application Services to its customers around the world, including India. It must also be appreciated that the lines between Domestic OSP and International OSP are gradually diminishing and therefore, such restrictions should not be continued.

26.2 Due to the current set of terms and conditions in the OSP Guidelines, this is only possible if calls relating to domestic customers are also routed through the foreign PoP. In our view, DoT should permit such OSPs to make calls to domestic customers using the telecom resources of their choice and the manner in which the calls can be routed (as long as it does not breach the requirements under the telecom regulatory framework). In any case, the volume of such instances (i.e. where an International OSP provides services within India) are likely to be few, and therefore it would be unreasonable to require OSPs to obtain a separate Domestic OSP registration for this purpose. It would suffice if the relevant CDRs are produced when required by DoT and an intimation of provision of Application Services to Indian customers is provided by OSPs.

27. Whether use of EPABX at foreign location in case of International OSPs may be allowed? If yes, please suggest suitable terms and conditions to ensure that the scope of authorized TSP is not infringed and security requirements are met.

27.1 Yes, in our view, the use of EPABX at a foreign location should be permitted for International OSPs. We agree with TRAI's views in the CP that companies with global footprints cannot be subjected to deployment of local EPABX in countries as these companies may have adopted a centralised EPABX model on a global level.

27.2 Further, deployment of local EPABX is a costly proposition for OSPs and also require them to adopt separate practices and infrastructure only for their India operations.

Such requirements only discourage the global entities from choosing India as their outsourcing destination. We are given to understand that few TERM Cells have been granting provisional registration to OSPs if an EPABX is located at a foreign location without requiring them to deploy a local EPABX and as such, it is an encouraging trend and should be formally adopted by DoT.

28. Do you agree with the Security Conditions mentioned in the Chapter V of the OSP guidelines? If not, please suggest suitable changes with justification.

28.1 As far as terms and conditions set out under Chapter V of the OSP Guidelines are concerned, we do not have any comments in this regard. National security is of paramount importance and DoT may assess the essential compliances are required to be adhered to by OSPs.

29. Do you agree with the provisions of penalty mentioned in the OSP guidelines? If not, please suggest suitable changes with justification.

29.1 In our view, the present penalty framework set out in the OSP Guidelines is heavily lopsided against OSPs. According to the existing provisions, a contravention of the terms and conditions can lead to encashment of the bank guarantee as well as cancellation of the registration. However, *the quantum of penalty corresponding to a specific breach has not been provided, which gives rise to confusion and ambiguity*. In other words, whether a minor breach can lead to invocation of the entire amount of bank guarantee is unclear and, in any case, is disproportionate. Therefore, it is particularly severe in cases where the OSP has availed additional facilities, such as sharing of infrastructure or WFH, and furnished bank guarantees in the form of security deposits.

29.2 Even otherwise, the current provisions under the OSP Guidelines need reconsideration for the following reasons:

- (a) In our view, the instances of breach need to be specifically provided and corresponding penalty (monetary or otherwise) which is proportionate to the default on part of the OSP, needs to be incorporated.
- (b) Absence of express and clear provisions is a matter of hardship for OSP and they are unable to carry out a thorough risk assessment on account of this reason. Such provisions impact confidence of OSP and global players as they are unable to make any risk assessments in case of any unfortunate breach committed.
- (c) The OSP Guidelines provide that DoT has rights to take punitive action against an OSP for violation of conditions. The word '*punitive*' may have different interpretations under law and therefore, it is desirable that DoT clearly re-

frames the exact nature of penalty or action that may be undertaken based on the degrees of breach committed by OSPs.

- (d) OSPs should be given adequate opportunity of being heard before DoT initiates any action against OSP so that business continuity is not affected.

30. Whether OSP to OSP interconnectivity (not belonging to same company/ LLP/ group of companies) providing similar services should be allowed? If yes, should it be allowed between domestic OSPs only or between international and domestic OSPs also.

30.1 The restrictions on interconnectivity do not exist for non-OSP centres and there is no reason to complicate the legal framework for OSPs alone. DoT should ensure level playing field for OSPs and non-OSP in every manner possible be it interconnection, usage of telecom resources or any other similar privileges granted to non-OSP.

30.2 As far as interconnectivity between two OSPs not belonging to the same entity or group companies is concerned, the same should also be allowed by DoT as this will *inter alia* enable an OSPs to subcontract a part of the activities to another third party OSP and utilise each other's facilities in a manner to achieve cost savings.

31. In case OSP interconnectivity is allowed, what safeguards should be provisioned to prevent infringement upon the scope of licensed TSPs.

31.1 At present, it is largely unclear as to how interconnectivity of OSP centres of different entities may lead to infringement of jurisdiction of the TSPs. In case non-OSP centres connect to each other, similar concerns would prevail however there is no such restriction for non-OSP.

31.2 In any case, the TSPs have been empowered to conduct inspection at customer's sites (which includes OSPs as well as non-OSP) and to safeguard their interest, the TSPs should adopt reasonable measures and safeguards to protect their interest.

32. Do you agree with the miscellaneous provisions mentioned in the Chapter VI of the OSP guidelines? If not, please suggest suitable changes with justification.

32.1 As far as arbitration related provisions in Chapter VI is concerned, an appointment of arbitrator by DoT is prescribed in case of any dispute. However, in our view, the provisions can be suitably amended to ensure that both to dispute parties to the dispute, i.e. DoT and the OSP, can each nominate an arbitrator. Such arbitrators can then decide on appointment of presiding arbitrator.

33. What provisions in the terms and conditions of OSP registration may be made to ensure OSPs to adhere to the provisions of the TCCCPR, 2018.

33.1 In our view, there is no requirement to incorporate terms and conditions pertaining to TCCPR 2018 in the OSP Guidelines. The TCCPR, 2018 is a separate regulation and would apply to OSPs who fall within the ambit of a telemarketer, in any case. The incorporation of these terms in the OSP Guidelines would only culminate in duplication, without fulfilling any justifiable purpose.

34. Stakeholders may also provide their comments on any other issue relevant to the present consultation.

34.1 We would like to once again express our gratitude to TRAI for providing this forum to raise our inhibitions and provide suggestions to overcome some prevalent issues in the existing framework. In addition to our comments set out above, we would like to provide the following suggestions:

(a) Timeline for grant of OSP registration: As of now, the OSP Guidelines do not provide the express timeline within which an OSP registration may be granted to an OSP applicant. This is further aggravated because different TERM Cells have different turnaround times with respect to applications. In a situation where an OSP wishes to simultaneously commence operations in different cities, the lack of uniformity in timelines can lead to a series of complications for them. Therefore, it is essential for DoT to stipulate the specific timelines which will be undertaken to process an OSP application.

(b) Allow proliferation of new technologies and welcome innovation: The technology around us is everchanging and entities will come up with new technologies and make innovative use of resources. Apart from make sweeping changes to the current framework applicable to OSPs, Government should consider permitting new technologies like software defined wide area network (SDWAN) to be used in provision of Application Services. At present, due to the restriction on the use of internet for carriage of voice traffic, any technology that is based on internet is not permitted to be used, irrespective of its benefits, characteristics and features. Many countries around the world are already using the innovative technologies like SDWAN and DoT's reluctance in adopting these technologies may seriously impact growth of outsourcing sector in India.

(c) Permissibility of internet and internet telephony for voice calls in international OSP: The restriction in an international OSP centre regarding internet connectivity for voice calls is utterly surprising and is a regressive step at best. Non-OSPs use internet telephony and internet connectivity to make voice and receive voice calls and there is no reason as to why an OSP centre should be devoid of this benefit which is more commercially feasible than using leased circuits. Ironically, TRAI and DoT have themselves advocated for the adoption and proliferation of internet telephony and therefore it is not clear why this

benefit it not made available to OSPs alone. To reiterate, there is a need to create a level playing field for OSPs and non-OSPs.

- (d) Interconnectivity: The provisions related to restrictions on interconnectivity significantly impact the network models of businesses. We would like to humbly submit that DoT may consider doing away with such restrictions in order to permit OSPs to adopt more flexibility and cost savings by connecting to locations such as data centres and leveraging common pool of resources for their operations.
- (e) Cloud based servers and EPABX: As part of evolving technology, entities have moved to utilise cloud-based services for their business. Even Government of India has ambitious projects which relate to usage of cloud-based servers for storage of data and other purposes. In such a scenario, it would be prudent on part of DoT to permit connectivity of OSP centres to cloud based EPABX.

34.2 We note that most of the issues highlighted in our responses above are aggravated by the fact that the interpretation of the OSP Guidelines has been inconsistent across different TERM Cells. Therefore, in our view, it is equally important that following measures are implemented:

- (a) Issuance of explanatory statement/ notes: It will be extremely beneficial to every stakeholder involved in this ecosystem if the provisions of the OSP Guidelines are accompanied with an explanatory statement or notes that provide guidance on the meaning and intent of each provision.
- (b) Consultation with industry on a regular basis: If regular interaction takes place between members of the TERM Cells and the industry, it will provide a platform for the industry to voice their concerns and also allow TERM Cells to take cognizance of issues being faced by OSPs at the ground level. We believe that DoT should organise such sessions and meetings at regular intervals.
- (c) Training of TERM Cell officers: As an administrative step, DoT may consider arranging training sessions for TERM Cell officers on a regular basis so that they can be acquainted with the current trends in the industry. Many innovative models are disapproved by TERM Cells merely because they do not have a complete understanding of such models. It is important to keep pace with time and it would be very unfortunate if the growth of the industry is stifled due to such reasons.

We are hopeful that TRAI and DoT will appreciate the concerns raised by us and take a favourable view in respect of our submissions. The focus of the current Government is to create a hospitable environment for industry to prosper, and a reconsideration of the OSP Guidelines and its provisions

will certainly further this cause. This also appears to be commensurate with the objectives enshrined in the NDCP.

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The views expressed above are views of the authors and not the professional views of Khaitan & Co LLP.