

16th October, 2024

**Shri Jaipal Singh Tomar,
Advisor (QoS-II),
Telecom Regulatory Authority of India,
New Delhi.**

**Sub: BIF's Counter-Comments on Consultation Paper on Review of the
Telecom Commercial Communications Customer Preference Regulations,
2018 dated 28th August 2024**

Dear Sir,

With reference to the above, please find enclosed BIF's counter-comments to the above mentioned Consultation Paper.

We earnestly request your kind consideration in this regard.

Best Regards,



T.V. Ramachandran,
President,
Broadband India Forum.

BIF's Counter Comments on the Consultation Paper on Review of the Telecom Commercial Communications Customer Preference Regulations, 2018 dated 28th August 2024

Broadband India Forum (BIF) welcomes the opportunity to present its counter comments based on the submissions that have emerged in respect of the Telecom Regulatory Authority of India (TRAI) Consultation Paper (CP) on 'Review of the Telecom Commercial Communications Customer Preference Regulations (TCCCPR), 2018.

We rely on our comments given earlier.

The counter comments are provided in response to some of the comments submitted by a few stakeholders, who are the Telecom Service Providers (TSPs).

A few stakeholders who are the Telecom Service Providers (TSPs), have stated that there is disparity in regulatory frameworks as regards the OTT platforms as they do not face the same scrutiny or accountability for spam generation as TSPs. They have sought the inclusion of over-the-top (OTT) platforms under the Unsolicited Commercial Communication (UCC) framework on a level-playing field and sought horizontal application of norms on commercial communications on OTT players as well.

BIF's counter comments to the above are as follows:

BIF strongly opposes the above comments and submits that the contentions made are misplaced, legally untenable, and devoid of merit for the reasons stated in our counter comments below.

I. Jurisdictional Concerns with Extending TCCCPR to OTTs

- The TCCCPR 2018 was formulated under the Telecom Regulatory Authority of India Act, 1997 (TRAI Act) [Section 11(1)(b)(v) and (1)(c)] which empower the Authority to ensure “standards of quality of services to be provided by service providers.....to protect the interest of the consumers of telecommunication services.”¹ We note that the TRAI Act defines a “service provider” to include a “licensee,” and a “licensee” under the [Telecommunications Act, 2023](#) (Telecom Act), is an authorized entity providing telecommunication services. Therefore,

¹ Please see Section 36 r/w Section 11(1)(b)(v) and Section 11(1)(c) of the TRAI Act.

the TRAI has the power to only regulate entities which provide telecommunication services (such as TSPs) – and not OTT platforms.

- This is further supported by the clear objective of TCCCPR, which is regulation of “commercial communication” made using “telecommunication services.” Regulation 2(i) of TCCCPR states:
*“commercial communication” means any **voice call or message using telecommunication services**, where the primary purpose is to inform about or advertise or solicit business for*
 - (A) goods or services; or*
 - (B) a supplier or prospective supplier of offered goods or services; or*
 - (C) a business or investment opportunity; or*
 - (D) a provider or prospective provider of such an opportunity*

The above definitions make it amply clear that the TCCCPR applies solely to telecommunication services, not to OTT services.

- Any attempt to extend the ambit of TRAI Act or TCCCPR to include OTTs is legally impermissible, illegal and beyond the scope of the existing regulatory and legal framework. **OTT platforms are neither covered under the TRAI Act nor the TCCCPR.** As noted above, OTTs are also outside the ambit of Telecom Act which provides for Central Government to take measures to protect users of telecommunication services with respect to “specified messages”.
- It is pertinent to note that the present CP does not deal with the issue of OTT regulation. Several other stakeholders including some consumer protection organizations have not mentioned anything about OTT regulation under the UCC framework and rightly so, as the argument on OTT regulation is completely unrelated and misplaced. The stakeholders have rightly confined themselves to the issues of spam and UCC in the context of calls and SMS to which the TCCCPR apply.
- That is also aligned with the position of the Government – that OTT platforms are not going to be regulated under the telecom laws. To elaborate, Ministry of Communications had [clarified](#) during the enactment of the Telecom Act in 2023, that “OTT has been regulated by the IT Act of 2000 and continues to be regulated by the IT Act. There is no coverage of OTT in the new telecom bill passed by the Parliament.” The position adopted by the Government is also in line with the [Allocation of Business Rules, 1961](#).² Therefore, even though TSP

² The Ministry of Communication / Department of Telecommunication’s powers are limited to policy and allied matters relating to telegraphs / telephones / wireless / and even administration of the

stakeholders have argued for the regulation of OTT platforms under the TCCCPR, the same is based on unfounded arguments.

- It is hence brought to the attention of TRAI that the above-mentioned stakeholders are merely repeating the same argument of bringing OTTs within the ambit of TRAI regulations or the Telecom Act 2023, which has been rejected time and again by the Ministry of Communication as well as TRAI. In fact, in the most recent consultation on the framework of service authorization, the issue of OTT regulation was raised again by these stakeholders, and the same was rightly not considered by TRAI. Thus, given that the scope of services under the Telecom Act and the TRAI Act is limited to telecommunication services and networks only - we submit that a robust anti-spam framework under the TCCCPR should be limited to voice calls and SMSs.

II. Unfounded Requirement to Create a “Level Playing Field”

- **We emphasize that the demand to regulate OTTs under the TCCCPR on a “level playing field” with telecom services is not relevant to the present CP.** Please note that the Government has already addressed this issue during the enactment of the Telecom Act – by stating that OTT platforms are beyond the regulatory purview of the telecom laws and fall within the purview of the Information Technology Act, 2000 (IT Act) alone. The two services are in fact completely unequal, distinct and not comparable in this context, which accordingly warrants distinct regulatory frameworks (*i.e.*, telecom laws for TSPs on one hand, and information technology laws for OTTs on the other). To elaborate upon some of these fundamental differences:
 1. **Technical Difference:** While TSPs operate on the network layer, OTT platforms operate on top of the network layer – *i.e.*, they operate on the application layer. This means that TSPs operate and control physical and network infrastructure and provide services such as broadband, internet, and network access, whereas OTT platforms provide online services and applications (including messaging and internet calling services) over the internet. OTTs are dependent on the internet services provided by the TSPs – and not the other way around.
 2. **Operational Difference:** There are a limited number of TSPs in India who operate in an exclusive market. By virtue of this, TSPs are granted a set of rights and privileges such as: (a) acquiring spectrum; (b) numbering resources; (c) interconnecting with public switched

TRAI Act. On the other hand, the MEITY that is empowered to regulate matters relating to the internet (which can include services operated / offered on the internet – such as OTT services) and the IT Act.

telephone networks (PSTN); etc. Given that TSPs hold such rights, TSPs are subject to obligations and requirements under the TRAI Act and the Telecom Act. However, we note that OTT platforms do not enjoy such rights – as their operations are limited to providing certain services to end-users on the internet. Therefore, TSPs and OTT platforms are regulated (and should continue to be regulated) under different regulatory frameworks.

3. **Functional Difference:** While TSPs provide telecom services such as: (a) internet access; (b) voice calls; and (c) SMSs, OTT platforms offer services in addition to internet calling and online messaging such as: (a) social media; (b) streaming content; and (c) video conferencing. Therefore, it must be noted that the services offered by OTT platforms are not “substitutable channels” to services provided by TSPs – as OTT platforms cannot replace or substitute the aforementioned core telecom services.

III. Measures undertaken by OTTs

- **Without prejudice to the above, we also submit that OTT platforms have already implemented various effective measures and policies to address spam on their platform to protect their users.** There are also laws such as the IT Act and Consumer Protection Act, 2019, which contain obligations that can be used to tackle spam on free and paid OTT platforms respectively. We have detailed such measures, policies, etc., below.
- While the above-mentioned stakeholders have argued that OTT platforms are exempt from complying with obligations under the TCCCPR relating to: (a) customer consent; (b) complaint resolution; (c) spam control (including in relation to bulk messaging); (d) telemarketer registration; and (e) financial disincentives,³ we note that OTT platforms have – on their own - adopted effective measures to address spam and tackle it on their platforms. Moreover, OTT platforms are also subject to certain due diligence obligations under the IT Act which may be extended to spam communications. To further substantiate:
 1. **Consent of the Consumer:** Various leading OTT platforms have implemented user-friendly mechanisms to ensure commercial communications only occurs with the consent of an end-user and that such communications are in line with user preferences. End-users are generally

³ We note that industry stakeholders have also provided tabular representations highlighting the regulatory burden on TSPs.

able to determine: (a) if at all whether they wish to receive commercial communications; and (b) the time period for which they would like to receive such communications. For example, [Google](#) obtains from its business users representations and warranties on complying with applicable legal requirements such as the opt-in and opt-out choice for end-users / customers. WhatsApp requires its business users to obtain an opt-in consent vis-à-vis SMS, WhatsApp, or phone from end-users / customers prior to sharing commercial communications with them. Moreover, OTT platforms offering communication services (such as [Telegram](#), [Viber](#), [Google](#) and [Apple](#)) provide users who have opted-in to receive commercial communications with the ability to eventually delete, block, report and opt-out of receiving such communications. [Snapchat](#), [ShareChat](#) and [Apple iMessage](#) have similar mechanisms as well.

- 2. Control of Spam:** OTT platforms are regulated as “intermediaries” under the IT Act and its rules, *i.e.*, the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (IG Rules). The IG Rules require intermediaries (such as OTT communication platforms) to comply with certain due diligence obligations regarding content that is uploaded, hosted or published on such platforms. As part of this, every intermediary is required to undertake reasonable efforts by both itself and cause its end-users not to transmit specific types of prohibited content – including content which (a) “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”, and (b) “violates any law currently in force”.

We submit that spam may fall within the purview of the aforementioned prohibited content – thereby triggering the due diligence obligations on OTT platforms. Moreover, the due diligence obligation on OTT platforms would also play a vital role in combatting communication that is used to perpetrate financial frauds or cybercrimes.

In any case, OTT platforms have already implemented their own internal measures to address spam on their platform. For example, [Telegram](#) allows users to report both accounts and content as spam and limits / blocks accounts which have been reported by users for broadcasting spam repeatedly. Similarly, [WhatsApp](#) relies on AI/ML classifiers to identify, tackle and curb spam. In addition, [ShareChat](#) allows its users that receive unsolicited communication in a chatroom to report the

same, [Apple iMessage](#) empowers its users to silence notifications / filter messages from unknown senders, [LinkedIn](#) permits businesses / advertisers to send the same message to users once in 45 days, and [X](#) enables its users to determine if they want to receive messages from accounts (which can include business accounts) that they do not follow.

3. **Complaint Resolution:** While industry stakeholders have argued that OTT platforms do not have any obligation to implement a complaint resolution process similar to one provided under the TCCCPR, we disagree with this argument. We submit that the IG Rules require intermediaries (including OTT platforms) to establish a grievance redressal mechanism, and appoint a grievance officer⁴ who is required to resolve user complaints within specified timeframes.⁵ Therefore, end-users / customers have the ability to make a complaint regarding the prohibited categories of content under the IG Rules – which may include UCCs, spam or fraudulent messages being transmitted on any given OTT platform.
4. **Telemarketer Registration and Scrubbing:** The TRAI has time and again attempted to address and curb UCC by telemarketers – including by way of introducing scrubbing requirements. In this regard, the TRAI recently [directed](#) TSPs to migrate telemarketing calls starting with 140 series to an online DLT platform for effective monitoring UCC. While UCC by telemarketers is a widespread issue that TSPs continue to face, OTT platforms have, *suo moto*, implemented deterrents against spam by granting users the necessary means and ability to easily block and report spam which they receive.
5. **Financial Disincentives / Penalties:** As a means to incentivize the TSPs to comply with their obligations under the TCCCPR, the TRAI introduced certain financial penalties. These get triggered if TSPs fail to appropriately curb UCC. We note that TSPs in their submissions have argued that such financial disincentives should be extended to OTT platforms as well. However, several OTT platforms already implement anti-spam measures in furtherance of their obligations under the IG Rules. Thus, OTT platforms are already incentivized to implement the necessary measures to address spam, as failure to do so may result in the OTT platforms losing the safe harbor protection provided to them under the IT Act read with the IG Rules.

⁴ Please note that as per the IG Rules, intermediaries are required to publish the details and contact information of the grievance officer on their platform(s).

⁵ Please note that as per the IG Rules, intermediaries are required to acknowledging the complaint within 24 hours and redressing such complaint within a period of 15 days.

In conclusion, for the reasons mentioned above, and given that the TCCCPR has been implemented for maintaining the quality-of-service aspects associated with telecommunication services, we submit that OTT platforms cannot be regulated under the TCCCPR.