



Representing the ecosystem of Internet -Bharat Model

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Sub: CCAOI's response to TRAI's consultation paper on Regulating Converged Digital Technologies and Services - Enabling Convergence of Carriage of Broadcasting and Telecommunication services.

Dear Sir,

We thank the TRAI for providing us the opportunity to provide our comments on the consultation paper on Regulating Converged Digital Technologies and Services - Enabling Convergence of Carriage of Broadcasting and Telecommunication services.

CCAIOI is a trust, engaged in capacity building, research and advocacy mostly in India especially related to Internet and digital policies. We represent the interest of different stakeholders of the Internet ecosystem in India, including connected and unconnected users. For over a decade CCAIOI has been advocating, organising capacity building initiatives, webinars, conferences, events and conducting research on issues related to internet governance telecom and digital policies.

We submit that while the Converged Digital Technologies and Services is well intended, it may not serve to achieve these objectives, and potentially raise new concerns. Please find enclosed our submission on questions raised in the Consultation Paper.

Thanking you and looking forward to favorable consideration of our suggestions in the interest of growth of the digital ecosystem in the country.

With Regards,

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CCAOI's Responses to TRAI's Questions

Q1. Whether the present laws are adequate to deal with convergence of carriage of broadcasting services and telecommunication services? If yes, please explain how?

OR

Whether the existing laws need to be amended to bring in synergies amongst different acts to deal with convergence of carriage of broadcasting services and telecommunication services? If yes, please explain with reasons and what amendments are required?

OR

Whether there is a need for having a comprehensive/converged legal framework (separate Comprehensive Code) to deal with convergence of carriage of broadcasting services and telecommunication services? If yes, provide details of the suggested comprehensive code.

CCAOI's response:

In our view, we prefer the first option i.e., that the present laws are sufficiently equipped to deal with the convergence of carriage of broadcasting services and telecommunication services. With respect to the current gaps or deficiencies that have been pointed out by the TRAI's Consultation Paper Regulating Converged Digital Technologies and Services – Enabling Convergence of Carriage of Broadcasting and Telecommunication services (*hereinafter 'Consultation Paper'*), we note that sectoral discussions are already in progress. We would like to reiterate that the creation of a separate legal regulation or significant amendment is not required to address the convergence of telecommunications and broadcasting at this juncture. Herein are the detailed reasons for the same.

A. Consultations in advanced stage for several sectoral regulatory reforms:

The Consultation Paper notes that the distribution of similar functions across multiple Ministries/Government Departments leads to inconsistencies in the development of policy approach, and consequently increases regulatory burden¹ as well as the fact that existing statutes co-exist, work in silos, some overlap in their scope/mandate, and still do not cover existing or future tech-based communications. However, it acknowledges the fact that the Central Government is currently formulating principle-based sectoral reforms in order to remedy the same. These include:

- a) The consolidation of multiple legislations regulating one sector and consolidating the same into one regulation. This is visible by the introduction of the Indian Telecommunications Bill, 2022 (*hereinafter 'Telecom Bill'*), which intends to replace legislations governing the telecommunication sector, such as the Indian Telegraph Act, 1885 as well as the Indian Wireless Telegraphy Act, 1933. Furthermore, MIB also

¹ Consultation Paper, Para 1.12.

intends to introduce amendments to the Cable Television Networks (Regulation) Act, 1995; and (ii) a National Broadcasting Policy. These reforms as mentioned by the MIB are likely to “*cover all broadcasting carriage platforms within its ambit and address all institutional, legal and regulatory aspects of broadcasting services under a unified Act*”.

- b) An overhaul of existing legislations to introduce new regulations which are equipped and agile to address issues generated due to convergence, visible in the Telecom Bill.
- c) Considering the recent developments surrounding the introduction of the Digital India Act/Bill (hereinafter DIA), we anticipate that the same will regulate stakeholders in the IT and ITeS sector, as well as disruptive technologies that are currently outside regulatory purview.

Although the above outlined developments are not in the nature of a converged law, they address the gap with respect to converging technologies sufficiently. They equip experts in their respective sectors to regulate the issues in a manner which they understand best. Significant progress has been made with respect to the upcoming changes as underlined above, and therefore we do not find it prudent that the same be intervened with at this juncture, and interfering with the same cannot be deemed fit keeping in consideration the valuable time and effort already spent.

B. Whether regulation of convergence is the solution is yet to be fully assessed:

A unified regulatory structure to address issues related to convergence may not necessarily be the solution required at this point in time. Rather, we suggest that inter-regulatory cooperation and coordination to govern convergence is the urgent need. Any significant changes to regulation should only be introduced subsequent to assessing whether the long-term consequences of the same aid the immediate disruption these may create. The need of the hour is not to disturb the processes already in place, but rather address any regulatory gaps when they are identified in order to meet the needs of the hour. The regulation of convergence should be founded on ‘minimum government, maximum governance’.

C. Lack of Uniformity in Global Practices and distinguishing India’s needs:

In addition to the same, it is also observed that Global Practices related to Governance of Convergence have been varied. Although it is suggested that India be on par with the same, there are other surrounding developments that must be taken into consideration. These include criticism being levelled against converged regulators being divided internally based on the technology(ies) and, the modalities of such convergence being sketched based on the unique peculiarities and necessities as felt in that jurisdiction and economy. Hence, the approach of ‘one-sized fits all’ formula being administered by a converged regulatory authority through a separate converged code cannot suddenly resolve pre-existing sectoral

regulatory challenges. Thus, we are of the opinion that an approach towards convergence should be tailored based on the heterogeneity that Indian digital economy and its stakeholders represent.

D. Regulatory Convergence cannot be the way forward for certain aspects which are specialized in nature:

Time and again it has been emphasized that certain regulatory functions cannot be converged and should remain vested with their respective specialized regulators. This was also taken note of by the Apex Court in the judgement of *Competition Commission of India v. Bharti Airtel Limited and Ors.*², wherein while adjudicating on the jurisdictional conflict between TRAI and CCI, the court emphasized the need for sectoral regulators being allowed to undertake their regulatory functions in their specialized domains. In case a converged regulatory authority is created, this may foster uncertainty and consequently generate overlaps which need judicial intervention. We suggest that complementarity in separate legislations could potentially solve this dilemma much more seamlessly.

E. The Consultation Paper does clarify what kind of regulatory approach should be proceeded with:

The Consultation Paper raises certain pertinent questions with respect to convergence, however it does not communicate what kind of regulatory thinking should be supplemented with the same. Since policy details around these questions are not addressed within the Consultation Paper, whether the envisaged proposed regulatory structure will aid stakeholders remains nebulous.

F. Content regulation should be beyond the scope of review:

Content regulation is complex and needs a regulatory approach that is nuanced and sensitive to multi-layered perspectives (such as sectoral expertise and skillsets that take into account creativity and expression) which, *inter alia*, exists in sectoral regulators housed under MeitY and MIB, which have developed over the years. Further, several aspects of content regulation need to be governed under dedicated frameworks and cannot be subsumed within a converged law or regulation, or as such administered by a single converged regulator.

Additionally, in recent years, several regulatory changes have been made by the sectoral regulators for content management and therefore at this stage there does not require any significant re-examination. Moreover, TRAI does not have the expertise or experience of regulating content. Considering the above, we request the TRAI to reconsider including content regulation within the ambit of the current consultation and instead, limiting the scope of the Consultation Paper to issues pertaining to carriage.

² Civil Appeal No(S). 11843 of 2018 (Arising Out of SLP (C) No. 35574 of 2017)

Q2. Whether the present regime of separate licenses and distinct administrative establishments under different ministries for processing and taking decisions on licensing issues, are able to adequately handle convergence of carriage of broadcasting services and telecommunication services? If yes, please explain how?

If no, what should be the suggested alternative licensing and administrative framework/architecture/establishment that facilitates the orderly growth of telecom and broadcasting sectors while handling challenges being posed by convergence? Please provide details.

CCAIOI's response:

We believe that the first solution proposed i.e., the present regime of separate licenses and distinct administrative establishments under different ministries for processing and taking decisions on licensing issues, can adequately handle convergence of carriage of broadcasting services and telecommunication services. We do not suggest the creation of an alternative licensing mechanism/system, rather simplification of existing administrative processes and creating harmony between them, would aid in reducing regulatory burden.

- The Consultation Paper points out the fact that the inefficiencies in the present mechanism have arisen because of the administrative licensing processes being vested in different nodal ministries i.e., DoT and the MIB. However, the same has occurred due to their domain expertise, as well as the existence of standards and procedures to deal with a complex process such as that of licensing. Rather than vesting these responsibilities in a single unified regulator, streamlining of processes (which are foreseen in the future due to the impending sectoral reforms) alongside coordination in the decision making, clear regulatory structure with respect to business and freedom to operate, is the sustainable solution.
- The creation of a single window clearance system is currently being contemplated, and this National Single Window System (NSWS) will allow a “single window” approvals/licenses clearance system on a single digital platform. Rather than overhauling the entire structure of licensing framework, the respective licenses can be onboarded on this platform (including the ones routed through ‘Broadcast Seva’ and ‘Gatishakti Sanchar’), and the introduction of strict timelines to process these licenses.

Q3. How various institutional establishment dealing with –

(a) Standardization, testing and certification.

(b) Training and Skilling.

(c) Research & Development; and

(d) Promotion of industries

under different ministries can be synergized effectively to serve in the converged era. Please provide institution wise details along with justification.

CCAOI's response:

We propose the following solutions with respect to how various institutional establishments can effectively synergize to serve in this converged era:

(a) Standardization, testing and certification

The Consultation Paper highlights that initially the standards, testing, and certification oversight policies for a specific technology were established independently. They were not necessarily developed with merging or interoperability in mind. In a converged era where the same equipment is being used in versatile ways, several overlapping agencies such as the MeitY's Standardization, Testing and Quality Certification (STQC), Directorate and Controller of Certifying Authorities (CCA) and Bureau of Indian Standards (BIS) lead to multiplicity of standards, testing and certification requirements. A way to cure this defect will be to undertake a regulatory mapping exercise to identify these overlaps, and maybe consult relevant stakeholders in case any new standards are being considered. Consultation can also be conducted with respect to whether industry practices can be formulated, keeping ease of business at helm.

(b) Training and Skilling.

The Consultation Paper mentions the need to create synergies between the different training and skilling institutions operating under the DoT and MIB respectively. In this respect, we note the Union Ministry of Skill-Development and Entrepreneurship has released reports titled 'Human Resources and Skill Requirements in the Telecommunications Sector' and 'Human Resources and Skill Requirements in the Media and Entertainment Sector', which suggest that the Government should develop PPP models in training for infrastructure sharing, include telecommunications and related specializations as an option in Engineering and MBA, introduce funding schemes to create a skilled workforce with respect to the same. Further, civil society organizations should be invited to be involved in such skilling and training activities.

(c) Research & Development

To encourage research and development, we recommend encouraging public-private partnership models initiated by the coordinating departments/ministries. This will enable academic, research institutions and civil society organizations working in that field to be adequately funded to conduct specialized research.

(d) Promotion of industries

We note from the Consultation Paper that it refers to different schemes and initiatives already undertaken for the promotion of industries in different ways and there is a need to create synergies between them. However, looking at the innovative steps that other regulators have undertaken, one can take inspiration from the financial regulators and

their creation of regulatory sandboxes. A regulatory sandbox coordinated by the relevant agencies will be conducive in understanding the first-hand effects of emerging technologies, thus guiding regulatory development to take into consideration the needs and demands posed by these industries. It will further cultivate a repository of data for new entrants to rely on, in order to better integrate their USPs with such new technologies. In the future, this is also anticipated to accelerate the pace of innovation.

Q4. What steps are required to be taken for establishing a unified policy framework and spectrum management regime for the carriage of broadcasting services and telecommunication services? Kindly provide details with justification.

CCAOI's response:

Since the telecom and broadcasting arena is dynamic and ever evolving, a unified policy framework applicable may not necessarily be the prudent path ahead, owing to the lack of consideration for issues that may arise in the future because of new technological developments. Rather, it may be prudent to wait until the different sectoral regulations (such as the Digital Personal Data Protection Bill, Competition Bill, etc), the Telecom Bill and Digital India Act are implemented and then examine if there are any gaps in regulation and then if required examine any allied issues arising on a case-by-case basis weighing relevant costs and benefits to stakeholders. This will enable a deeper analysis of the developments and more precise regulatory response for new technological developments.

With regards to spectrum management, it must be noted that the Telecom Bill states that the Union Government may assign spectrum for telecommunication through, *inter alia*, any other manner as prescribed. In addition to the same, it can, by notification – exempt specific usages within specified frequencies and parameters from requirements mentioned therein, if it determines that same is necessary keeping the interests of public in mind. While we understand that there may be reluctance in allocating or administratively assigning natural resources like spectrum bands due to legacy issues, we believe that the imposition of a light-touch framework (including delicensing) of those spectrum bands that are not as valuable as access spectrum bands to telecom service providers is crucial.

Q5. Beyond restructuring of legal, licensing, and regulatory frameworks of carriage of broadcasting services and telecommunication services, whether other issues also need to be addressed for reaping the benefits of convergence holistically? What other issues would need addressing? Please provide full details with suggested changes, if any.

CCAOI's response:

According to the Consultation Paper, ITeS, including cloud service providers, is a sector which has witnessed convergence at an extremely rapid pace, which has consequently necessitated some form of regulatory framework to keep pace with the same. However, we note that as reiterated by the Hon'ble MoS, MeitY in the first public consultation held on 9 March 2023 for DIA, it was explicitly stated that the DIA is considering a category-wise classification of intermediaries based on functions/services which they deliver. In our view, we feel that the



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same will be sufficient to address the allied issues attached to the same, an exception to understand issues related to IT and ITeS sector may not be necessary. Since extensive stakeholder consultations are underway, specific issues with respect to the same are expected to be raised.