

## Vodafone Idea Response to TRAI Consultation Paper on 'Regulatory Framework for Over-The-Top (OTT) Communication Services' dated 12<sup>th</sup> November, 2018

### EXECUTIVE SUMMARY:

1. It is a fact that across the entire mobile ecosystem, the power and the growth is shifting away from the mobile networks and services to other segments – including OTT apps, platforms, devices etc. Further, the future of mobile networks and services is becoming increasingly uncertain as despite being required to pump in the huge investments in the establishment of the networks, they have a diminishing part of the mobile value chain, mostly on account of OTT services, which are being offered in competition to the services offered by mobile service providers.
2. There is a clear recognition amongst policy makers and regulators worldwide that the OTT communications services compete with the traditional telecommunications services that currently permitted under license.
3. However, the rules applicable to the provisions of these services are completely different for the TSPs and the OTTs. The TSPs are subject to stringent licensing and regulatory framework, whilst OTT services are offered without any such restriction – at best being subject to some general horizontal regulation, which also, because of the global, multi-jurisdiction nature of the service are not very easy to apply or enforce. The result is that consumers do not receive the same protection for services which are fully substitutable. This also means that there is a lack of a level playing field for providers of these services.
4. This is particularly important in relation to the following key areas;
  - a. **Authorization** and licensing of providers of communications services, including contributions towards the cost of regulation. All players providing substitutable communications services should be regulated in the same way and contribute equally to the cost of such regulation.
  - b. **Privacy** – consumers should be protected by the same privacy requirements, particularly when using a data funded communications services and at least at the same level as when using a traditional communications service.
  - c. **Security** – the same level of security obligations should apply to OTT communications services as to traditional services, including requirements relating to lawful intercept & cooperation with law enforcement agencies.
  - d. **Consumer protection** – consumers should receive the same information and protection, whether relating to cost of the service, use of data, ability to switch or redress rights for both traditional services and OTT services funded by data. Compliance to tariff regulation – regulatory principles, transparency needs to be updated for the digital communications services funded by data.
  - e. **Subscriber verification/KYC requirements**

- f. **Taxation and contribution to USO funds**
  - g. **Net neutrality obligations**
  - h. **Sector specific taxation**, viz. license fee, spectrum usage charges etc.
  - i. **Stringent penalty provisions** in case of any non-compliance
5. In addition, those providers who are already fully regulated in relation to traditional communications services are also subject to network related regulation, including, inter alia, :
- a. Cost of acquisition of spectrum and establishment of networks
  - b. Rollout obligations
  - c. Cost of establishing maintaining and augmenting interconnection
  - d. Emergency number calling
  - e. Network security and integrity requirements
  - f. Ensuring quality of services
  - g. Stringent penalty provisions in case of any non-compliance
6. The absence of a uniform regulatory framework gives rise to an uneven regulation as different entities are presently subjected to different rules. The larger the 'regulatory gap' between new and traditional operators, the greater the potential market fairness problem.
7. The principle of "Same Service, Same Rules/Protection" relating to the Over-The-Top (OTT) services, needs to be applied so as to address the glaring licensing, regulatory and security asymmetries between the two sets of services. We are of the firm view that bringing parity between the licensed telecom players and the OTT players offering any services that are permissible to the former, is essential, not only for fair business but also for addressing various national security concerns in terms of access to data/records and ensuring security, safety and privacy of the consumer data.
8. There is a growing need to address these regulatory imbalances so that all services are able to compete on a level playing field. We would like to submit that these rules need not be the rules that exist today. The rules applicable to communication services need to be drastically overhauled and a future fit framework needs to be formulated that encompasses both traditional telecom services and OTT services. There is a need to ensure regulation is fit for the Digital Age and a concept of regulatory neutrality needs to be introduced and adopted.
9. The Digital Single Market strategy published by the European Commission on 6 May 2015, includes a statement that "telecoms operators compete with services which are increasingly used by end-users as substitutes for traditional electronic communications services such as voice telephony, but which are not subject to the same regulatory regime. The review of the telecoms rules will look at ways of ensuring a level playing field for players to the extent that they provide competing services and also of meeting the long term connectivity needs of the EU."

The EU review has since been finalised and OTT communications providers now fall within the scope of the telecoms regulation. At the same time, outdated regulations have been removed, such as a number of USO requirements, exclusion of IoT services from various consumer protection requirements and other regulations have been improved, such as ensuring comparison sites are independent.

10. The issue of a harmonized approach is also enunciated in the National Digital Communications Policy 2018. This watershed document clearly indicates the commitment of the Government
  - To promote and protect fair competition
  - Attract long term high quality and sustainable investments
  - To pursue regulatory reforms to ensure that the regulatory structures remain relevant, transparent, accountable and forward looking
  - Remove regulatory barriers and reduce regulatory burden that hampers investments, innovation and consumer interest
  - To strengthen the sectors institutional mechanism & legislative framework
  - Secure India's digital sovereignty encompassing data privacy choice & security of its citizens

The Policy also states its intent to ensure a holistic and harmonised approach for harnessing Emerging Technologies, under which one key element/strategy is to promote innovation in the creation of Communication services and network infrastructure by developing a policy framework for 'Over The Top' services.

The Policy further states its intent to enable Infrastructure Convergence of IT, telecom and broadcasting, including by restructuring of legal, licensing and regulatory frameworks for reaping the benefits of convergence.

11. We submit that the Consultation Paper on Regulatory Framework for Over-The-Top (OTT) Communication Services, must be looked at against the context and framework that has been enunciated in the National Digital Communications Policy 2018.
12. In respect of the Regulatory and licensing framework, the first and most important imperative is that it should be uniform, i.e. the same type of services should be governed by the same set of rules/protection. One option could be to apply the TSP rules to the OTT players; alternatively, a more desirable approach would be that the regulations on TSPs be reviewed to bring them at par with the OTT players. Each element of regulatory asymmetry needs to be assessed and an approach should be adopted that will deliver high societal benefits.
13. To the extent possible, the players should be governed by horizontal regulations that are applicable across sector and are uniformly applicable to all – this would include a national data protection and privacy law, a National Encryption policy etc.

14. In our view, the key elements of the new framework should be as below:

- a. It should be light touch
  - b. It should encompass all communication services
  - c. It should adopt a technology neutral approach
  - d. It should encourage innovation
  - e. It should encourage investments
  - f. All providers should meet minimum commitments for consumers in relation to transparency, data protection, security, accessibility, pricing and contracting and disputes whether those services are funded by money or data; these requirements should be light touch but the same for all services in order to build trust in Digital India.
  - g. There should also be a clear commitment to address legacy issues through devising of appropriate migration scheme for existing TSPs wherever required.
15. Whilst the new framework is being formulated, there is an urgent need to address the key regulatory imbalances that exist in the digital eco-system between licensed telecom operators and OTT players and ensure Regulatory Neutrality i.e. "SAME SERVICE SAME RULES/PROTECTION" so that there is a level playing field for all the players that exist and operate in the same eco-system.
16. Allowing TSPs to offer OTT services does not serve the purpose or ensure level playing field as these OTT services of TSPs would be subject to existing license and regulatory conditions because (i) they may be provided in the same package of services, (ii) other revenue based models such as advertising etc. would still be subject to license fee and other charges, and (iii) network security/ integrity breaches would still apply to OTT services provided by TSPs. Importantly, the regulatory imbalance will still remain between OTT services and services being provided by TSPs and the economic and regulatory imbalances related thereto, which will continue as such.
17. We submit that as a first step, any commercial and regulatory restrictions presently applicable on TSPs that restrict them from competing on services which are being offered by OTT players, should immediately be addressed – either by removal of such barriers or by applying the same in an even handed manner applicable to both TSPs and OTTs.
18. In this regard, we would like to make the following key submissions
- a. **Tax neutrality**
    - i) We believe that given the onset of convergence and the exponential increase envisaged in the number of players offering communication /connectivity services, it will be impossible for the Government to apply and enforce the traditional license fee and regulatory regime. It is therefore eminently **desirable that the licensing and regulatory regime be light touch for all.**
    - ii) The concept of sector specific taxes should thus be reviewed. Apart from the impracticality of enforcing a traditional license fee regime across all players offering communications/connectivity services, a recent report of the GSMA has also stated

that sector-specific taxes on mobile economy hinder connectivity and development of the mobile industry and also highlight that there are significant economic and social benefits from reducing sector specific taxation and fees.

- iii) In view of the above, we believe a simple future fit and practical solution would be to **subsume the license fee and spectrum usage charges into the GST regime**. This will provide a simple and implementable solution that will ensure level playing field between TSPs and the OTT players.

**b. Consumer protection neutrality**

- i) Apply the same consumer protection, data protection and privacy rules to both TSPs and OTTs, whether those services are funded by payment or data.
- ii) Allow cross border transfer of data on same terms to both TSPs and OTTs
- iii) The discussions on a national data protection and privacy law are already underway and we believe that the provisions under that law should/would apply to both OTT players as well as TSPs. The specific provisions under license pertaining to privacy and data protection should therefore be reviewed and replaced with the data protection law, as and when announced.

**c. Security Neutrality**

- i) The same security requirements should apply to TSPs and OTTs in relation to communications services.
- ii) There should be the same norms for lawful interception and encryption for TSPs and OTTs.
- iii) OTTs should be required to have a physical nodal presence in India to facilitate lawful interception requirements

**d. Commercial Neutrality**

- i) In respect of commercial conditions, we believe that for OTT communication services, TSPs should be allowed to offer OTT packs – this will not only give desirable commercial flexibility to the TSPs but will support the investments in the telecom networks especially required from time to time for network capacity expansions and technology upgradations.
- ii) At the same time, OTT platforms which act as digital bottlenecks should be prohibited from imposing unfair commercial practices on their business users and should be transparent towards consumers. In the EU, the proposed Platform to Business Regulation<sup>1</sup> and the New Deal for Consumers<sup>2</sup> both start to address these issues, which can otherwise create new issues in terms of lack of neutrality and lack of fairness.

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<sup>1</sup> [https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-5222469\\_en](https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-5222469_en)

<sup>2</sup> [http://europa.eu/rapid/press-release\\_IP-18-3041\\_en.htm](http://europa.eu/rapid/press-release_IP-18-3041_en.htm)

**e. Reduction in Regulatory Burden for TSPs**

- i) Regulatory Obligations and Costs linked with Quality of Service, Rollouts, Customer Protection, Subscriber Verification, Enhanced Security, Obligation of Interoperability on TSPs etc. reduce competitive ability of the TSPs in many ways including market access, innovation, investment, etc. thereby impacting consumer choice between OTT and services of TSPs. The cost of compliance, therefore, needs to be brought down significantly for this reason also. The penalty regime also needs to be reviewed. At the same time, the requirements need to be reviewed for the digital age. For example, requirements such as subscriber verification are not appropriate for M2M services.

**f. Net Neutrality**

- i) Net neutrality principles applied only TSPs restrict their ability to compete with OTTs. The net neutrality principles should be the same for TSPs and OTTs. TSPs should also be allowed to differentiate (QoS) and monetize services.

**g. Incentivize Investments in Networks**

- i) TSPs should be provided the incentives to invest in their networks; this may be by way of reducing spectrum costs.
- ii) OTTs, which use the network of the TSPs to offer their services, should be required to contribute to the USO fund as they are under the new EU communications framework.

19. We believe that the above measures will address the key regulatory imbalances and ensure fair competition, even while an overhaul of the present licensing and regulatory framework is being considered.

**ISSUE-WISE RESPONSE:**

**Q1. Which service(s) when provided by the OTT service provider(s) should be regarded as the same or similar to service(s) being provided by the TSPs. Please list all such OTT services with descriptions comparing it with services being provided by TSPs.**

- a. We submit that all services provided through/by OTT service providers that are permitted under scope of various telecom licenses/authorizations [UL(access)/UAS, NLD, ILD, ISP, and in particular, voice, audio/video conferencing and messaging] should be regarded as same or similar services. In this respect, we support the definition in the EU framework of “interpersonal communications services” which is defined as “direct interpersonal and interactive exchange of information via electronic communications networks between a finite number of persons, whereby the persons initiating or participating in the communication determine its recipient(s)”
  - UASL/UL (access) - collection, carriage, transmission and delivery of voice and/or non-voice MESSAGES (over Licensee’s network in the designated Service Area). Internet Telephony, Internet Services including IPTV, Broadband Services and triple play i.e. voice,

video and data. Voice Mail/Audiotex/Unified Messaging services, Video Conferencing, Cell broadcast. Value added services and supplementary services.

- NLD/ILD - switched bearer telecommunication traffic within/outside India (as applicable) [where bearer service can be of all types so that end-to-end teleservices such as voice, data, fax, video, multi-media etc.], VPN service, Calling card service.
- b. Further, the same/similar services should cover not only the services presently/currently being provided by TSPs, but also services that will potentially be provided by TSPs (in the future). Thus, the definition of OTT needs to be finalized to cover it as any service that may substitute or supplement telecom services as permitted to licensed telecom operators under license conditions from time to time. For example, in advanced 4G and in 5G network deployments, services will be provided in the form of applications riding on the underlying networks using technologies such as Network slicing, NFV and SDN, similar to OTT services.
  - c. Further, while our response is limited to the overlap of services offered by OTTs and licensed TSPs (holding our current set of licenses) – but we understand that OTT players could also be competing vis-a-vis the broadcasting, IPTV licenses also.
  - d. Sample descriptions of such OTT service providers offering services that are permitted under various telecom licenses/authorizations or registrations are given in Annexure-1.

**Q2. Should substitutability be treated as the primary criterion for comparison of regulatory or licensing norms applicable to TSPs and OTT service providers? Please suggest factors or aspects, with justification, which should be considered to identify and discover the extent of substitutability.**

- a. Yes, interchangeability/substitutability (from the point of the consumer and/or consumer usage) should be the primary criteria. This is supported by the European approach which makes it clear that if a product is substitutable it should be treated in the same way, whether funded by money or data. Recital 15<sup>3</sup> provides that “End-users increasingly substitute traditional voice telephony, text messages (SMS) and electronic mail conveyance services by functionally equivalent online services such as Voice over IP, messaging services and web-based e-mail services. In order to ensure that end-users and their rights are effectively and equally protected when using functionally equivalent services, a future-oriented definition of electronic communications services should not be purely based on technical parameters but rather build on a functional approach. The scope of necessary regulation should be appropriate to achieve its public interest objectives.”
- b. It may please be noted that substitutability of existing TSP services alone should not be treated as the primary criterion, for comparison. Potential new service areas such as digital content and

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<sup>3</sup> <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2018-0453+0+DOC+PDF+V0//EN>

advertising should also be considered. Some additional factors that may need to be considered are :

- i). **Product benefits:** If the benefits offered by the OTT service are same or similar to those offered by the TSP. For example: WhatsApp Voice features are similar to PSTN/PLMN Voice call including Call initiation from Contact list, Calling party identification, Voice Quality (which is now similar to those offered by TSP basis their deployment of high speed mobile broadband networks) and Call Logs.
- ii). **Product Price:** The charges of OTT Communication services to consumers are substantially lesser than TSP rates and often funded by data. For example: Most Communication based OTT services do not charge subscription fee to customers and monetize their services through Advertising or leveraging Customer Data.
- iii). **Switching Cost:** It determines how easy or difficult is it to move to the OTT substitute. There are no portability requirements or barriers to adoption of OTT services despite the fact that customers may be locked in by network effects and the difficulty of porting their data which needs to be addressed via new legislation.
- iii) **Entry barrier:** TSP entry in to traditional OTT revenue streams such as Advertising are constrained by Licensing and Data Privacy guidelines. For example: Revenue from such streams is not counted under pass-through and hence impacts profitability/ability to compete.

**Q3. Whether regulatory or licensing imbalance is impacting infusion of investments in the telecom networks especially required from time to time for network capacity expansions and technology upgradations? If yes, how OTT service providers may participate in infusing investment in the telecom networks? Please justify your answer with reasons.**

- a. Yes, regulatory and licensing imbalances are impacting infusion of investments in the telecom networks.
- b. On the one hand, licensed telecom operators are required to bear the prohibitive costs of spectrum acquisition for deployment of high speed telecom networks, and high licensing and taxation regime with heavily regulated business operations w.r.t provision of telecom services, on the other hand, the unlicensed OTT players have no such restrictions, barriers or costs.
- c. The licensed telecom operators are faced with continuing demands for investments to improve their services (in particular, to install broadband, increase network capacity and network quality, particularly w.r.t data to the high growth of data traffic) to cater to growing OTT traffic.
- d. It may be appreciated that unless the TSPs are able to rollout their networks to reach out and connect the unconnected to enjoy the benefits of the data revolution, the OTT players will also not be able to flourish and grow. For the TSPs to invest in broadband infrastructure, they must have a sustainable business case, which would not be possible if OTT players are able to

compete on non-level playing field and are subject to a different set of rules. We submit that the principle of Same Service Same Rules/Protection is imperative to ensure a level playing field and conducive growth environment. We once again emphasize that the rules need not be the same rules that exist today; new rules may be formulated that are fit for the digital world.

- e. The methods in which OTT players can participate in infusing investment in telecom networks include OTT players sharing the USO fund requirements and the cost of licensing. As stated above, in the EU regulation all electronic communications services providers, including OTTs, may be required by member states to fund the USO obligations.

**Q4. Would inter-operability among OTT services and also inter-operability of their services with TSP services promote competition and benefit the users? What measures may be taken, if any, to promote such competition? Please justify your answer with reasons.**

- a. Inter-operability among OTT services or inter-operability of their services with TSP services is not currently necessary to promote competition.
- b. Consumers can “multi-home”, using several OTTs at the same time. However, in order to enable new communications services to thrive, the real barriers to switching between OTT services need to be addressed. As set out in Arcep’s report on device neutrality<sup>4</sup>, switching between services is restricted not by interoperability, but by the operating system and device used. As stated in this report, *“First, making it easier to switch system or device would enable users to penalise device manufacturers whose behaviour towards internet openness is not to their liking. Second, the existence of alternatives would encourage device manufacturers and OS providers to offer their customers more attractive services, and so to provide a richer array of content and services to users and, ultimately, better uphold the internet’s openness”* . .
- c. Further the OTT players often have proprietary technologies or protocols and are not subject to common standards. Trying to mandate inter-operability may neither be practical nor desirable.
- d. Further, in our view, inter-operability i.e. interconnection is only mandated amongst networks, i.e. licensed telecom operators having telecom networks and we believe that this should be the only mandate. In our view, inter-operability of OTT to OTT and OTT to TSP services should be left to mutual agreement and market forces.
- e. However, should OTT services substantially replace TSP services, this question should be addressed again. In the European framework, both interoperability and emergency services obligations can be reviewed in the event that end-to-end connectivity between end-users is at threat as a result of the level of coverage of number-independent interpersonal communications services.

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<sup>4</sup> [https://www.arcep.fr/uploads/tx\\_gspublication/rapport-terminaux-fev2018-ENG.pdf](https://www.arcep.fr/uploads/tx_gspublication/rapport-terminaux-fev2018-ENG.pdf)

**Q5. Are there issues related to lawful interception of OTT communication that are required to be resolved in the interest of national security or any other safeguards that need to be instituted? Should the responsibilities of OTT service providers and TSPs be separated? Please provide suggestions with justifications.**

- a. We believe that national security requirements are paramount and that there can be no compromises on this account. Similar security requirements now apply to OTTs in Europe, both within The Directive on security of network and information systems (the NIS Directive<sup>5</sup>) which applies to operators of essential services and within the telecoms framework itself, which now also applies to OTT players providing communications services<sup>6</sup>.

Lawful interception requirements should be applied to both TSPs as well as OTTs to enable security agencies to get the required information. Since the OTT players are having their own switching and encryption, the onus of details on messaging through OTT should be on OTT players.

- b. The TSPs as a part of the security conditions under license are required to ensure that no user information is sent outside India. The OTT services on the other hand store the customer data and information on servers hosted outside India. This creates an anomaly between competitors and is an area that needs urgent clarity to provide level playing field to TSPs.
- c. We believe that the license condition needs to be reviewed especially in this day and age of global computing. The Authority has elsewhere, in its recommendations on Cloud Computing recommended a review of the cross border restrictions under license.
- d. Restrictions on the free flow of data should be removed while at the same time ensuring that interception requirements may be imposed on OTT services in addition to TSP services.

**Q6. Should there be provisions for emergency services to be made accessible via OTT platforms at par with the requirements prescribed for telecom service providers? Please provide suggestions with justification.**

- a. Under the existing licensing framework, TSPs are mandated to provide Emergency services to their subscribers. Such mandate is not there on the OTT players.
- b. We do however note that in the Authority's Internet telephony recommendations [which have been accepted by the Government], it is provided that

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<sup>5</sup> <https://ec.europa.eu/digital-single-market/en/network-and-information-security-nis-directive>

<sup>6</sup> See Article 40, 41, EECC - [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2018.321.01.0036.01.ENG&toc=OJ:L:2018:321:FULL](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2018.321.01.0036.01.ENG&toc=OJ:L:2018:321:FULL)

*The Licensees providing Internet Telephony service may facilitate access to emergency number calls using location services; however it is not mandated to provide such services at present. The subscribers may be informed about the limitation of providing access to emergency services to internet Telephony subscribers in unambiguous terms*

- c. We suggest that a similar approach may be adopted in the case of OTT as well. We thus suggest that provision of emergency services by OTT players may be desirable but may not be mandated at this stage.
- d. There should however be complete transparency to the consumer with regard to emergency number calling. OTT services which are offered as substitutes for traditional services should be required to inform subscribers whether or not emergency calling is possible and if not provided, should inform users how to use traditional services to make emergency calls.

**Q7. Is there an issue of non-level playing field between OTT providers and TSPs providing same or similar services? In case the answer is yes, should any regulatory or licensing norms be made applicable to OTT service providers to make it a level playing field? List all such regulation(s) and license(s), with justifications.**

- a. Yes, there admittedly exists a non-level playing field – TSPs are heavily regulated while OTTs are completely un-regulated w.r.t provision of same/similar services.
- b. Under the present Licensing framework which has been laid down pursuant to Section 4 of the Telegraph Act, voice, data, messages, video calls, etc can be offered only by a licensee. Further the licensee is subject to several onerous license conditions, as given in the Table below:

Types of Messages	Who can send/transmit?	License Required (Y/N)	Security Obligation	Revenue Share Obligation
Voice – PSTN/PLMN/ Packet	Licensee	Y	Y	Y
Data –All kinds of Data Packets (including video)	Licensee	Y	Y	Y
Messaging	Licensee	Y	Y	Y

- c. However, the OTT players are not subject to same/similar rules. The extent of non-parity between the licensed TSPs vis-à-vis the OTT players can be assessed from the following illustrative table :

	Licensees	OTT
Privileged parted by Government	Yes	No

Restrictions/Conditions in operation	Yes	No
Financial Conditions:		
• Consideration to Government	Yes	No
• USO fund levy	Yes	No
Mandatory interconnection	Yes	No
Emergency number calling	Yes	No
Lawful Interception requirements	Yes	No
Ensuring quality of service	Yes	No
Encryption Restrictions	Yes	No
Cross border restrictions	Yes	No
Consumer protection,	Yes	No
Grievance Redressal	Yes	No
Switching /portability costs	Yes	No
Compliance to Tariff Regulations	Yes	No
Data Protection & Privacy obligations	Yes	No
Penalties	Yes	No
Subscriber verification /KYC Requirements	Yes	No
Net Neutrality obligations	Yes	No

d. The differences between TSPs and OTTs broadly exist in terms of financial conditions [license Fee, SUC, etc], security conditions, consumer protection conditions and commercial conditions [tariff related conditions under license]. This non-parity needs to be addressed. Our key submissions in this regard are as below:

- i) **USOF** – TSPs, apart from completing roll-out obligations, are required to pay 5% of AGR as Universal Service Obligation. While OTTs benefit from the provision of telecom and information services in rural area, they are not required to contribute to the USO fund. Our suggestion above is that **a USO levy may be applied on OTTs and the TSPs should be exempted from the same as they are already investing in their networks through the acquisition of spectrum and meeting rollout obligations.**
- ii) **License Fee** – Currently TSPs are liable to pay 8% license fee [including the above mentioned USO contribution] on AGR. OTTs are not required to pay any such license fee on same /similar Messaging, Voice and Video services offered by them. Under the OTT business model, revenues accrue from advertising/monetization of customer data and from their end customers whose data is used as funding. Similar model, even if adopted by TSPs will not exempt them from paying license fees. Further, even where TSPs enter new territories such as Digital content, carrier billing, etc., these do not form a part of pass-through revenues. So TSPs are at a significant tax disadvantage in these growth areas compared to OTTs. **Either the licensing costs of TSPs including license fee [and spectrum fee] must be equally applicable to OTTs or alternatively and more**

preferably, this tax should be removed and instead subsumed with GST (which will be equally applicable to OTT players). This is particularly important as the regulatory regime widens to include OTT players, which increases the enforcement burden and costs on the regulatory authorities and which will otherwise be funded by TSPs alone.

- iii) **Data Localisation** – For TSPs, user information cannot cross the borders of the country. This requires TSPs to host all infra-structure within the country and often within their premises. TSPs are unable to utilize any shared global infrastructure even in a secured environment. This impacts time to market and costs of deploying services. In case of OTTs, the same infrastructure is leveraged globally giving them huge synergies of scale, allowing them to expand rapidly. **Restrictions on cross border data flows should be removed.**
- iv) **Lawful Interception** – the OTT players must be brought under the ambit of National security and public interest regulations (including lawful interception, access to data/records etc). As suggested above, OTTs could be required to set up a nodal office in India to ensure better enforcement.
- v) **KYC, MNP, UCC, QOS** requirements – compliance to these requirements under license and regulation places an onerous burden on TSPs while no such regulation is applicable to OTT services. The OTT players must be brought under the ambit of consumer protection regulations. The stringent QOS obligations on TSPs should be reviewed and lightened.
- vi) **Telecom Tariff Orders** (TTOs) – The TTOs currently apply to TSPs but not to OTTs offering the same services of Voice and Messaging. As mentioned above, the OTT monetization business model is different but consumers should still benefit from protection in relation to transparency, redress and other areas. **TSPs should be allowed to offer OTT tariff packs in the market.**
- vii) **Net neutrality** – recently the licenses of the TSPs have been amended to introduce strong net neutrality obligations on TSPs. Further, TSPs have also been restricted from offering differential tariffs based on content. No such obligations of restrictions apply to OTTs even though they offer the same /similar services as TSPs. These obligations /restrictions must be reviewed and be harmoniously applied – TSPs should also be allowed to offer differential QOS and monetize their services. **This is a key area where India is out of lock-step with Europe, where differential tariffs are permitted within the net neutrality framework unless they have a materially detrimental effect on consumer choice. In addition, additional guidance is being provided in Europe to ensure that net neutrality rules do not inadvertently hold back the development of 5G services<sup>7</sup>.**

<sup>7</sup> [https://bereg.europa.eu/eng/document\\_register/subject\\_matter/bereg/opinions/8317-bereg-opinion-for-the-evaluation-of-the-application-of-regulation-eu-20152120-and-the-bereg-net-neutrality-guidelines](https://bereg.europa.eu/eng/document_register/subject_matter/bereg/opinions/8317-bereg-opinion-for-the-evaluation-of-the-application-of-regulation-eu-20152120-and-the-bereg-net-neutrality-guidelines)

- e. One facet of parity is under consideration by the Government viz the proposed Data Protection and Privacy Bill. It may also be noted that in this context, TRAI has already recommended that the OTT players need to be brought under the same rules as licensed TSPs w.r.t data protection and privacy. TRAI in its recommendations dated 16<sup>th</sup> July 2018 on 'Privacy, Security and Ownership of the Data in the Telecom Sector' has noted that :

*'Till such time a general data protection law is notified by the Government, the existing Rules/ License conditions applicable to TSPs for protection of users' privacy be made applicable to all the entities in the digital ecosystem. For this purpose, the Government should notify the policy framework for regulation of Devices, Operating Systems, Browsers and Applications.'*

*'DoT should re-examine the encryption standards, stipulated in the license conditions for the TSPs, to align them with the requirements of other sectors'. 'To ensure the privacy of users, National Policy for encryption of personal data, generated and collected in the digital eco-system, should be notified by the Government at the earliest.'*

The Authority needs to address the other elements of discrimination /differential treatment on an urgent basis. Our submissions in this regard are reiterated

**a. Tax neutrality**

- i) We believe that given the onset of convergence and the exponential increase envisaged in the number of players offering communication /connectivity services, it will be impossible for the Government to apply and enforce the traditional license fee and regulatory regime. It is therefore eminently **desirable that the licensing and regulatory regime be light touch for all.**
- ii) The concept of sector specific taxes should thus be reviewed. Apart from the impracticality of enforcing a traditional license fee regime across all players offering communications/connectivity services, a recent report of the GSMA<sup>8</sup> has also stated that sector-specific taxes on mobile economy hinder connectivity and development of the mobile industry and also highlight that there are significant economic and social benefits from reducing sector specific taxation and fees.
- iii) In view of the above, we believe a simple future fit and practical solution would be to **subsume the license fee and spectrum usage charges into the GST regime.** This will provide a simple and implementable solution that will ensure level playing field between TSPs and the OTT players.

**b. Consumer protection neutrality**

- i) Apply the same consumer protection, data protection and privacy rules to both TSPs and OTTs, whether those services are funded by payment or data.
- ii) Allow cross border transfer of data on same terms to both TSPs and OTTs

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<sup>8</sup> <https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2016/07/Digital-Inclusion-and-Mobile-Sector-Taxation-2016.pdf>

- iii) The discussions on a national data protection and privacy law are already underway and we believe that the provisions under that law should/would apply to both OTT players as well as TSPs. The specific provisions under license pertaining to privacy and data protection should be reviewed and be replaced with a cross reference to the data protection law, as and when announced.

**c. Security Neutrality**

- i) The same security requirements should apply to TSPs and OTTs in relation to communications services
- ii) There should be the same norms for lawful interception and encryption for TSPs and OTTs.
- iii) OTTs should be required to have a physical nodal presence in India to facilitate lawful interception requirements

**d. Commercial Neutrality**

- i) In respect of commercial conditions, we believe that for OTT communication services, TSPs should be allowed to offer OTT packs – this will not only give desirable commercial flexibility to the TSPs but will support the investments in the telecom networks especially required from time to time for network capacity expansions and technology upgradations.
- ii) At the same time, OTT platforms which act as digital bottlenecks should be prohibited from imposing unfair commercial practices on their business users and should be transparent towards consumers. In the EU, the proposed Platform to Business Regulation and the New Deal for Consumers both start to address these issues, which can otherwise create new issues in terms of lack of neutrality and lack of fairness.

**e. Reduction in Regulatory Burden for TSPs**

- i) Regulatory Obligations and Costs linked with Quality of Service, Rollouts Customer Protection, subscriber Verification, Enhanced Security, Obligation of Interoperability on TSPs etc. reduce competitive ability of the TSPs in many ways including market access, innovation, investment etc. thereby impacting consumer choice between OTT and services of TSPs. The cost of compliance, therefore, needs to be brought down significantly for this reason also. The penalty regime also needs to be reviewed. At the same time, the requirements need to be reviewed for the digital age. For example, requirements such as subscriber verification are not appropriate for M2M services.

**f. Net Neutrality**

- i) Net neutrality principles applied only TSPs restrict their ability to compete with OTTs. The net neutrality principles should be the same for TSPs and OTTs. TSPs should also be allowed to differentiate (QoS) and monetize services.

**g. Incentivize Investments in Networks**

- i) TSPs should be provided the incentives to invest in their networks; this may be by way of reducing spectrum costs.
- ii) OTTS, which use the network of the TSPs to offer their services, should be required to contribute to the USO fund as they are under the new EU communications framework.

**Q8. In case, any regulation or licensing condition is suggested to be made applicable to OTT service providers in response to Q.7 then whether such regulations or licensing conditions are required to be reviewed or redefined in context of OTT services or these may be applicable in the present form itself? If review or redefinition is suggested then propose or suggest the changes needed with justifications.**

- a. While we seek level playing field in the regulatory/licensing framework for OTT players and licensed telecom operators, we should like to emphasize that the rules need to be reviewed and lightened to be uniformly applicable to all, so that the two competing sets of players operate under a balanced and uniform regulatory framework/ regime.
- b. The licensing framework needs to be overhauled to make it future-fit and to encompass the new set of players of the digital eco-system (viz OTT players) that compete with the licensed telecom operators.
- c. The Government needs to evolve a framework which ensures level playing field and addresses the regulatory asymmetries identified above.

**Q9. Are there any other issues that you would like to bring to the attention of the Authority?**

- a. In addition to our above submissions, we suggest that **OTTs should be required to constantly re-engineer their Applications to minimize capacity demands on networks:**
  - i) Video is expected to contribute to 80% of Internet traffic in the next couple of years<sup>9</sup>. OTT Video service providers should be mandated to adopt latest CODECs/standards (such as AV1) to allow high resolution content to play at lower bit rates.
  - ii) There should be a reporting and optimization process for applications generating needless signaling load on the telecom networks.
- b. **Build adaptability in Apps for Geographical/Time specific nuances:** Currently most application parameters are global and do not allow for geographical and time-specific needs for traffic engineering.

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<sup>9</sup> **Globally, IP video traffic will be 82 percent of all IP traffic (both business and consumer) by 2022, up from 75 percent in 2017.** Global IP video traffic will grow four-fold from 2017 to 2022, a CAGR of 29 percent. Internet video traffic will grow fourfold from 2017 to 2022, a CAGR of 33 percent – Cisco  
<https://www.cisco.com/c/en/us/solutions/collateral/service-provider/visual-networking-index-vni/white-paper-c11-741490.html>

- c. **Investment in Big Data infrastructure for Network Insights:** Since operators' network investments are forced by OTT traffic growth, it is fair that they get reports on regional traffic and User forecasts in order to plan network investments for any surge in traffic.
- d. Address the lack of competition caused by global digital bottlenecks, enabling local services to flourish. We need a **new digital rights framework that creates a healthy ecosystem** and encourages new entrants, competition and diversity through principles of fairness, openness and non-discrimination. This can be achieved by:
- Ensuring there is a right for competent authorities to request information from platform providers in order to monitor/review the market
  - Platforms which enable business users to provide services to consumers should be required to be more transparent and unfair commercial practices and blocking of competing services should be prohibited. These additional requirements can be imposed on platforms over specific thresholds (users/revenue/cross border services).
- e. Finally, it is essential to **ensure a trusted framework for consumers** in the new digital India
- Increasing transparency in relation to areas such as ranking, search, consumer rights when dealing with platforms.
  - Ensuring consumers have the same rights, whether the service is funded by money or data.
  - Simplifying redress options – more online, regional redress (requiring more harmonised consumer obligations across Europe)
  - Ensuring openness – addressing barriers to switching and free choice within closed ecosystems, such as apps stores and operating systems.

**New Delhi**  
**7 January 2019**

**Annexure-1**

Company	Service name	Voice services				Video services					Messaging services				
		VoIP	Voice / HD voice	Voice mail/ messages/ notes	Voice conference calls	Video chat	Video calling	Video conference calls	Live video-streaming	Video-mail/ messages	Messaging	Group messaging	SMS fall back	Message backup	Ephemeral messaging
Apple	iMessage	No	No	No	No	No	No	No	No	Yes	Yes	Yes	Yes	Yes	No
BlackBerry	BlackBerry Messenger	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes	No	No	Yes
Facebook	Facebook Messenger	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
Facebook	Instagram	No	No	No	No	Yes	No	No	Yes	Yes	Yes	Yes	No	No	Yes
Facebook	WhatsApp	Yes	No	Yes	No	Yes	Yes	No	Yes	No	Yes	Yes	No	Yes	No
Google	Allo	No	No	No	No	No	No	No	No	No	Yes	No	No	No	Yes
Google	Duo	Yes	Yes	No	No	Yes	Yes	No	No	No	No	No	No	No	No
Google	Hangouts	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	No	No
KakaoTalk	KakaoTalk	Yes	No	No	Yes	Yes	Yes	No	No	No	Yes	Yes	No	No	No
Kik	Kik Messenger	No	No	No	No	No	Yes	Yes	No	Yes	Yes	Yes	No	No	No
Line Japan	Line	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes
Microsoft	Skype	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	No
Nimbuzz	Nimbuzz	Yes	No	Yes	No	Yes	Yes	No	No	Yes	Yes	Yes	No	No	No
ooVoo	ooVoo	Yes	Yes	No	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	No	No	No
Rebtel	Rebtel	Yes	Yes	No	No	No	No	No	No	No	No	No	No	No	No
Snapchat	Snapchat	No	No	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	No	No	Yes
Tango	Tango	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No
Telegram	Telegram	Yes	Yes	No	Yes	No	No	No	Yes	Yes	Yes	Yes	No	Yes	Yes

Tencent	WeChat (Weixin)	Yes	No	Yes	Yes										
Viber Media	Viber	Yes	Yes	Yes	No	Yes	Yes	No	No	Yes	Yes	Yes	No	Yes	Yes
Imo	Imo free video calls and chat	Yes	Yes	No	Yes	Yes	Yes	Yes	No	No	Yes	Yes	No	Yes	No
IndyCall	IndyCall - Free calls to India	Yes	No												
Azar	Azar	No	No	No	No	Yes	No	No	No						
Live Talk	Live Talk - free video chat	No	No	No	No	Yes	Yes	Yes	Yes	Yes	No	No	No	No	No
Jio	JioChat	Yes	No	Yes	Yes	No	Yes	No							
Jio	Jio4GVoice	Yes	No	Yes	Yes	Yes	Yes	No							
Hike	Hike messenger	Yes	No	Yes	Yes	Yes	Yes	No							