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Ref: **ACTO's Counter Response to TRAI's Consultation Paper dated November 12, 2018 on Regulatory Framework for Over-the-Top (OTT) Communication Services**

Dear Sir,

With reference to the *Consultation Paper on the Regulatory Framework for Over the Top Communication Services* issued by Hon'ble Authority, Association of Competitive Telecom Operators (ACTO), is pleased to provide its counter comments.

We hope that our counter comments (enclosed as Annexure - I) will merit the kind consideration of the Hon'ble Authority.

Respectfully submitted,

Yours sincerely,

for Association of Competitive Telecom Operator

Tapan K. Patra
Director

Encl: As above

ANNEXURE-I

ACTO Counter Response to TRAI Consultation Paper
on
Regulatory Framework for Over-the-top (OTT) communication services

Some of the responses of this consultation paper have over emphasised to impose all kinds of regulations/rules on OTTs by following principle of same service same rule. Although our response is more balanced one but we do have some counter comments on the responses given by some stake holders on the few questions of the consultation paper.

Q.7 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.

and.

Q.8 In case, any regulation or licensing condition is suggested to 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.

Across the globe, regulations are moving towards light touch in nature and it means reducing the regulations. Nature of service and mode of service delivery is changing very fast. It will be very difficult for any regulator to change the rule every now and then. Innovation of new services is happening on daily basis. The deployment of SDN will further enhance proliferation of new services. It is no more in the control of either TSPs or Regulators.

We request TRAI to look at the current rules/regulations as mentioned in the new digital communication policy 2018 to review the current licensing regime. Removal of rules/regulations which are not suitable with the present context may be removed and security aspects which are not covered in the OTT segments may be introduced. This way it will remove the imbalance between TSPs and OTTs. It is much more positive and constructive approach to address the issue.

There is an urgent need to review the current licensing framework to align it with emerging technology trends and remove the artificial restrictions that are imposed on the service offerings of the TSP's.

ACTO members don't support for any additional regulation. The imbalance can be addressed in many ways without putting additional regulation. Strong market competition offers the most level playing field for all stakeholders. Indeed, the TSPs could be encouraged to expand broadband capabilities if one of the benefits was the ability to offer unregulated or lightly regulated OTT services. A light touch regulatory environment will contribute to a robust, pro-consumer playing field for OTTs and TSPs alike.

Q.5 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.

ACTO recognizes that government have a legitimate interest in addressing important objectives such as national security, public safety, law enforcement, and preventing harm to children. It is a concern for all of us.

The Telegraph Act permits lawful interception of all data traffic (including OTT traffic) by licensed TSPs and ISPs. Further, interception of all data traffic is already happening at international landing stations and does not require additional intervention from the regulator.

While encryption policies in the country are well stated in the IT ACT and its amendments, however we believe that encryption framework should support technological innovations and support new technologies. Further, strong encryption policies by OTT service providers and its social benefits must be weighed against the perceived costs to law enforcement access.

Encryption is key to ensure security of networks, and TSPs also need to have the flexibility to deploy strong encryption policies on par with OTTs, especially in wake of new services like SDWAN. Similarly, the responsibility to decrypt traffic encrypted by OTT applications running on TSPs' networks should be directed to the OTT players for their service and encryption. OTTs should also be responsible to provide assistance to law enforcement, if they are encrypting the data channels.
