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Advisor (QoS)

Telecom Regulatory Authority of India

Mahanagar Door Sanchar Bhawan,

Jawahar Lal Nehru Marg,

New Delhi-110002

**Subject: ACTO's response to TRAI Consultation Paper dated 23rd October 2019 on
Cloud Services and counter response**

Dear Sir,

Association of Competitive Telecom Operators (ACTO) is pleased to submit its response to TRAI Consultation Paper on Cloud Services and counter response.

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

Thanking you,
Respectfully submitted

Yours sincerely,
for Association of Competitive Telecom Operators

Tapan K. Patra

Director

Encl: As above

Annexure-I

ACTO's response on TRAI Consultation Paper on Cloud Services and counter response

We thank TRAI for providing us an opportunity to comment on Consultation exercise on Cloud services. We had also participated in the last consultation exercise of year 2016 on Cloud services and had submitted for light touch framework for cloud service providers in the country which was in line with majority of the stakeholders view in the industry. We therefore do not support TRAI view to form an industry body to regulate the cloud service providers.

The Cloud services is increasingly being adopted by businesses, including SME's and large enterprises, to benefit from the adoption of technology which is scalable, flexible, cost efficient and enhances the end user experience. Cloud computing has been recognized as an important emerging technologies and services format under the National Digital Communications Policy 2018 (NDCP-2018). The Government's prestigious Digital India Program can be realized with the widespread adoption of cloud computing. It should be noted that emerging IoT/M2M services also too depend on cloud computing, particularly to store and manage data collected from sensors and machines in a secured manner.

Cloud computing can play an important role for achieving economic development goals in emerging markets like India by furthering public welfare, reducing access costs, and enabling more efficient service delivery. The adoption of these technologies / services will help provide the much needed push to the growth of data and broadband services principally by reducing computing costs for end users.

Impetus to Cloud Computing under National Digital Communications Policy 2018

National Digital Communications Policy-2018 envisages establishment of India as a global hub for cloud computing, content hosting and delivery, and data communication systems and services by evolving the enabling regulatory frameworks.

NDCP-18

Mission:

2. Propel India: *Enabling Next Generation Technologies and Services through Investments, Innovation and IPR generation*

To harness the power of emerging digital technologies, including 5G, AI, IoT, Cloud and Big Data to enable provision of future ready products and services; and to catalyse the fourth industrial revolution (Industry 4.0) by promoting Investments, Innovation and IPR.

Strategies:

2.2 Ensuring a holistic and harmonised approach for harnessing Emerging Technologies

(a) Synergising deployment and adoption of new and emerging technologies by:

i. Creating a roadmap for emerging technologies and its use in the communications sector, such as 5G, Artificial Intelligence, Robotics, Internet of Things, Cloud Computing and M2M

(f) Establishing India as a global hub for cloud computing, content hosting and delivery, and data communication systems and services

ii. Enabling a light touch regulation for the proliferation of cloud based systems

iii. Facilitating Cloud Service Providers to establish captive fibre networks.

The advent of technologies like cloud computing present a historic opportunity to catapult India's vaunted service delivery capabilities to a new level domestically as well globally. The NDCCP-18 recommends to make India global hub for cloud computing and enabling light touch regulation for proliferation of cloud based systems.

In the earlier consultation paper on cloud computing issued by TRAI on 10th June 2016, 37 stakeholders had given responses and 3 Counter comments. Majority of the stakeholder have asked for light tough regulation and no one have suggested for Industry body to regulate the cloud services. Only 1-2 stakeholders had suggested for creation of a regulatory body to be set up to govern the activities of cloud services provider.

The relevant clause of the TRAI recommendation on setting up industry body to regulate the cloud services in India is as below:

“3.8 Proposed regulatory framework for Cloud Services in India: *As discussed earlier, Cloud service providers are still at nascent stage in the country. While stakeholders have raised the concerns relating to implementation of Quality of service standards, prescription and enforcement of SLA, transparent billing and metering of Cloud Services (CS), data protection, security, and well-defined framework for redressal of the grievances of the CS users, most of the stakeholders have opined that licensing/registration of CSPs is not required at this stage as it may be counterproductive and restrict inventions. Further they emphasised that adoption of light touch regulations with minimum regulatory burden will on one hand address the concerns of CS users. It will also provide policy clarity and certainty and create a climate of maximum investment in infrastructure and push the growth. Therefore, there is a need to have fine balance to address the concerns of the consumers while providing complete flexibility to the CS industry to grow and adopt business models that are most appropriate to meet customer demand. After analysing the various approaches adopted by different countries and considering the status and growth of Cloud Services market in India, the Authority is of the view that light touch regulatory approach should be adopted to regulate Cloud Services at present. Various available options have been explored. It is felt that regulation of the CSPs through their industry body is most appropriate framework as it will create an environment to speed-up investments and growth and it would also have capability to effectively control restrictive and anti-consumer practices simultaneously ensuring a code of conduct in the sector. A well-shaped and well nurtured growth of CSPs will not only be good to meet consumer demands but will also catalyse digitization drive in the country. This approach would be with minimum intervention and such a framework will also protect the interests of the users of cloud services while ensuring that the technological and business advancements in the cloud sector are not hindered by any form of strict regulation.*

3.9 *Accordingly, the Authority recommends that DOT may prescribe a framework for registration of CSPs industry bod(y)(ies). The terms and condition of registration of Industry led body, Eligibility, entry fee, period of registration, and governance structure etc. would be recommended by TRAI once the recommendations are accepted by the Government in principle. Under this approach, CSPs operating in India would collaborate to form “industry body for Cloud Services in India”. No restrictions on number of such industry body is being imposed to ensure that there is freedom on functioning of such industry body and such body should not become monopoly of few big entities. Further, the Government including TRAI may reserve the right to seek any information from such industry body, investigate the conduct to ensure transparency and fair treatment to all its members, issue directions or orders or guide lines, as and when needed.”*

We don't find appropriate justification or any perceived advantages to set up industry body to be registered with DoT to regulate the cloud services in India either during consultation

process or in the recommendation itself. We support for light touch regulation for cloud services but do not support the concept of setting up industry body to regulate the cloud services in India. We are restricting our response as to why TRAI should review the clause no. 38 & 39 of the recommendation on cloud dated 16th August, 2017 including the issues raised in the current consultation. We would like to bring to notice of the Authority about the reasons of our reservations on setting up industry body to regulate the cloud services in India. This goes against the principle of light touch regulation.

1. There is no precedent of an industry body to be registered with DoT in India. All industry bodies are registered under the ambit of Societies Registration Act and have their own charter as defined under their memorandum which acts as its guiding force.
2. The formation of industry body and register with DoT to regulate the cloud services in India, cannot be justified under the Indian Telegraph Act.
3. There are many Acts in place which may keep a check on cloud service providers like The Information Technology Act, 2000 (IT Act), Consumer Protection Act (CPA) 2019, intermediary guidelines under the IT Act.
4. The connectivity is not provided by cloud service provider.
5. Currently participation in the industry association is voluntary. The paper will ensure mandatory participation which may have financial implications for CSPs in the form of subscription payment.
6. Registering of industry bodies with DoT will entail indirect regulation of CSPs.
7. Setting up industry body and to register the same for regulation of cloud service is not a light touch regulation. Moreover, it will be more complex task as cloud services are not restricted to telecom. The questions in the current TRAI consultation paper indicate the complexity like single body or multi body etc.
8. Moreover data security is not in purview of TRAI/DOT. As per draft Personal Data Protection Bill-2018, Data Protection Authority (DPO) has the authority for data security which is under IT ministry.
9. Currently cloud services are governed under MeitY. With the current approach i.e. setting up an industry body under DOT, there will be overlapping area of control between the two ministries.
10. The financial health of the sector is in very bad state therefore the proposed regulatory framework would pose additional compliances and cost which will be detrimental to the cloud industry.

Moreover, the cloud computing services are not covered under the definition of telegraph under the Telegraph Act, 1885. We do not believe that this correctly states the correct legal position in this area. In this regard, we reproduce and cite in approval the legal position provided to the Department of Telecom by the Centre for Communication Governance,

National Law University, in the course of the study by the former's committee on net neutrality in 2015:

“...highlight at the outset that several kinds of online content providers would not fall within the scope of the Telegraph Act, and the statute cannot therefore be used to create a licensing regime to regulate them. All the regulatory power emerging from the Telegraph Act, 1885 pertains to the licensing and regulation of telegraphs in India. Section 3(1)(AA) of the Indian Telegraph Act defines ‘Telegraph’ as “telephone or any other instrument, appliance, material or apparatus used or capable of use for transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature by wire, visual or other electro-magnetic emissions, radio waves or Hertzian waves, galvanic, electric optical or magnetic means.” Therefore the statute cannot be used to regulate online content that does not emerge from such a telegraph. This is what distinguishes online content from the Value Added Services(VAS) provided by telecommunications companies – the latter are provided by Indian telegraphs and can therefore be regulated....”.

Given the clear language of the Telegraphy Act and the legal position which flows from that, we believe that the assertion by TRAI on the Telegraph Act extending to cover cloud computing services - beyond those directly offered by licensed providers - is incorrect and should not form the basis of any policy discussions or specific regulatory proposals.

ACTO does not support the concept of setting up industry body for Cloud Services in India to be registered with DoT. We had suggested for light touch regulation but it can be implemented in many ways without the requirement of industry body getting registered with DoT. Globally there is no such practice. We suggest for the review of the clause no. 38 &39 of the recommendation on cloud dated 16th August, 2017.
