

**Asia Internet Coalition (AIC) Submission: Counter Comments On TRAI Consultation
Paper Issued On 28 August 2024 Titled 'Review Of The Telecom Commercial
Communications Customer Preference Regulations, 2018'**

17 October 2024

To,

Mr. Jaipal Singh Tomar, Advisor,
Telecom Regulatory Authority of India,
New Delhi, India.

Respected Mr. Tomar,

We, the [Asia Internet Coalition](#) (AIC) would like to begin with expressing our gratitude to the Telecom Regulatory Authority of India (**TRAI**) for this opportunity to set forth our counter comments on the Consultation Paper issued on 28 August 2024, titled Review of the Telecom Commercial Communications Customer Preference Regulations, 2018 (**Paper**). AIC wholeheartedly welcomes the TRAI's efforts to revisit the scope of the Telecom Commercial Communications Customer Preference Regulations, 2018 (**TCCCPR**), as issued by the TRAI in exercise of its authority as laid down in the TRAI Act, 1997.

Given the increasing incidence of unsolicited / spam communication through voice calls and SMS, we believe that this Paper is coming at a crucial time. We are also cognizant of and applaud the TRAI's past efforts in combatting the issue on a variety of fronts, ranging from caller name display services,¹ acquiring digital consent,² spam reporting,³ as well as latest measures on message tracing⁴ and blacklisting unregistered senders or telemarketers.⁵

Having reviewed industry feedback via comments on the Paper, we find it relevant to express our views regarding certain stakeholders' inputs on regulating over-the-top communication (**OTT**) under the TCCCPR. Accordingly, please find in the **Annexure below**, our comments under the followings sub-heads:

- Application of TCCCPR to OTT channels – jurisdictional concerns.
- OTT platform measures – curbing spam.

¹ Please refer to <https://economictimes.indiatimes.com/tech/technology/battling-the-spam-goliath-inside-trais-plan-to-clamp-down-on-unwanted-calls-spammers/articleshow/108354766.cms?from=mdr> for more information.

² Please refer to https://www.business-standard.com/industry/news/trai-seeks-help-from-rbi-sectoral-regulators-to-push-via-anti-spam-process-124100301011_1.html for more information.

³ Please refer to <https://www.thehindu.com/incoming/trai-orders-telcos-to-make-spam-reporting-convenient/article68328854.ece> for more information.

⁴ Please refer to https://www.trai.gov.in/sites/default/files/PR_No.53of2024.pdf for more information.

⁵ Please refer to https://traigov.in/sites/default/files/PR_No.51of2024.pdf for more information.

- TSPs and OTT – not a level-playing field.

We look forward to discussing these views with the TRAI and working together to resolve the issue of unsolicited / spam communication in a holistic manner.

Should you have any questions or need clarification on any of the recommendations, please do not hesitate to contact our Secretariat at Secretariat@aicasia.org.

Thank you for your time and consideration.

Sincerely,

Secretariat

Asia Internet Coalition (AIC)

Secretariat@aicasia.org

The Asia Internet Coalition (AIC) is an industry association of leading Internet and technology companies that promotes the understanding and resolution of Internet policy issues in the Asia Pacific region. Our mission is to represent the Internet industry and participate in and promote stakeholder dialogue between the public and private sectors, sharing best practices and ideas on Internet technology and the digital economy.

ANNEXURE

Summary: Industry Feedback

- **Cellular Operators Association of India (COAI):**⁶ The COAI, in its introductory comments, contends that OTT platforms being outside the purview of the TCCCPR, remain unchecked by regulatory efforts to curb unsolicited communication. The COAI attributes a shift in a 'significant' quantum of unsolicited communication to such OTT platforms, and resultant financial cybercrimes, as a consequence of this exclusion. The COAI believes the TRAI's efforts in tackling commercial communication will prove to be ineffective, unless extended to OTT platforms. It further states that as opposed to telecom service providers (**TSPs**) who remain governed under the TCCCPR, OTT platforms are not subject to obligations relating to: (a) obtaining customer consent, (b) resolving complaints (c) investing in infrastructure to curb spam, (d) registering of telemarketers and scrubbing content, and (e) paying financial disincentives in case of non-compliance. These compliance aspects, in addition to the 'disparity' in cost to service (i.e., fees / revenue paid by TSPs to the Government), the COAI claims, undermine the effectiveness of regulating commercial communications.
- **Bharti Airtel Limited (Airtel):**⁷ Airtel's preliminary remarks are along the same lines as above. It attributes the differential treatment of unsolicited / spam communication across medium which it originates (particularly, the lack of regulatory oversight across OTT channels / communication apps) as one of the causes behind increasing generation of spam. Accordingly, Airtel calls for a level playing field between TSPs and OTTs, in terms of uniform applicability of the regulatory framework. Specifically, Airtel believes that when commercial communication takes place on OTT platforms, the same should be subject to obligations relating to: (a) requiring businesses and telemarketers sending unsolicited messages, to obtaining users' prior approval, (b) OTT platforms cooperating with regulatory authorities to hold businesses or advertisers accountable, for spam through mandatory registration of businesses with the OTTs, and (c) spam reporting by OTTs for the sake of appropriate oversight and enforcement action.
- **Vodafone Idea Limited (Vodafone):**⁸ Similar to the other stakeholders, Vodafone also prefaces its comments by seeking a 'level playing field' in the regulation of TSPs and OTT platforms. Vodafone claims that efforts to the contrary are likely to result in "regulatory arbitrage and shift of unsolicited and even genuine commercial communications from TSPs to OTT platforms". As a result, Vodafone requests for the 'horizontal application' of rules (likely including the TCCCPR) on commercial communications on OTT players as well. It also requests for a level-playing field with TSPs in terms of cost of providing services, by requiring OTT communication service providers to pay a share of revenue to the Government. Finally, Vodafone also requests the TRAI to also issue working advisories/guidelines for the OTT

⁶ For more information, https://www.trai.gov.in/sites/default/files/coai_10102024.pdf

⁷For more information, https://www.trai.gov.in/sites/default/files/Airtel_10102024.pdf

⁸For more information, https://www.trai.gov.in/sites/default/files/Vodafone_10102024.pdf

players and coordinate with the Ministry of Electronics and Information Technology for strict implementation of aforementioned norms by OTT players.

- **Reliance Jio Infocomm Limited (Jio):**⁹ Jio, in its preliminary comments, argues that OTT platforms serve as ‘alternate’ and ‘substitutable’ channels for a ‘parallel spam market’ as a result of the continued lack of regulatory scrutiny (unlike in the case of TSPs). Jio, like other stakeholders, also asserts that unscrutinized channels (such as OTT platforms) provide the means for commission of financial fraud.
- **Tata Communications Limited (Tata):**¹⁰ Tata as well, in its responses to the Paper, brings forth arguments of similar nature, as stated above.

AIC’s COUNTER COMMENTS

A. APPLICATION OF TCCCPR TO OTT CHANNELS – JURISDICTION ISSUES

- Some stakeholders, as noted above, believe that bringing OTT communication platforms within the purview of the TCCCPR is the need of the hour. However, and while we appreciate that the TRAI’s effort to revamp the TCCCPR is a part of its renewed efforts to curb unsolicited / spam communication across all platforms, it is imperative to give due regard to the legislative authority as conferred to the TRAI under the TRAI Act, 1997. TRAI’s authority includes prescribing standards of “quality of service to be provided by service providers”,¹¹ whereby a ‘service provider’ is defined to include a ‘licensee’, further defined as entities who, for example, have obtained authorisation under the Telecommunications Act, 2023 (**Telecom Act**). Considering that the TRAI’s authority is limited to regulating entities that have obtained / will obtain authorisation (such as TSPs) under the Telecom Act, OTT platforms fall outside the TRAI’s jurisdiction (and, as a corollary, outside the TCCCPR as well).
- Further, the TRAI itself, in the Paper, does not envisage or delve into the aspect of regulating of OTT platforms under the TCCCPR - possibly given its position that OTT platforms remain outside the purview of telecommunication laws. This view has been supported by the TRAI in previous consultation papers as well. More recently, the Government has also confirmed that OTT platforms do not fall within the purview of telecommunication laws – specifically the Telecom Act. This is consistent with the division of responsibilities between the Ministry of Communications / Department of Telecommunications and Ministry of Electronics and Information Technology under the Allocation of Business Rules, 1961, as well as Shri Ashwini Vishnaw’s (the then Hon’ble Minister of Communications) statement when the Telecom Act was introduced in the Parliament for enactment¹² that “OTT has been regulated by the IT Act

⁹ For more information, https://www.trai.gov.in/sites/default/files/RJIL_10102024.pdf

¹⁰ For more information, please refer to https://www.trai.gov.in/sites/default/files/Tata_Teleservices_10102024.pdf

¹¹ Section 36 read with Section 11(1)(b)(v) and Section 11(1)(c), TRAI Act, 1997

¹² Please refer to <https://economictimes.indiatimes.com/industry/telecom/telecom-news/ott-not-under-ambit-of-telecom-bill-ashwini-vaishnaw/articleshow/106224226.cms?from=mdr> for more information.

of 2000 and continues to be regulated by the IT Act and that there is no coverage of OTT in the new telecom bill passed by the Parliament”.

- In this light, we believe that regulation of unsolicited / spam regulation over traditional telecom resources (such as voice calls and SMSs) would be best served by the TRAI’s efforts on strengthening the TCCCPR, as applicable to conventional telecommunication resources. Accordingly, we request that the TRAI refrain from extending these efforts to OTT platforms. To the extent that the Government intends to regulate OTT platforms with respect to unsolicited / spam communication, we would like to highlight that laws such as the Information Technology Act, 2000 (**IT Act**) and rules thereunder already contain applicable obligations. The Consumer Protection Act, 2019 also becomes relevant in case of paid OTT platforms. In any case, it should be noted that OTT platforms have and continue to maintain robust checks and balances to address unsolicited / spam communication on the internet and ensure user protection. Please refer to the section below for more information.

B. OTT PLATFORM MEASURES – CURBING SPAM

- As noted above, some industry stakeholders have submitted that as opposed to TSPs, OTT platforms are not mandated to obtain customer consent, resolve complaints, invest in infrastructure to curb spam including in relation to bulk messaging, etc. Their submissions contrast the responsibilities of the TSPs in this regard under the TCCCPR, to those of OTT platforms. However, we respectfully rebut these submissions because we believe that OTT platforms do not need to be regulated by TCCCPR to curb unsolicited / spam communication, as the platforms already employ sufficient mechanisms. Over and above this, they are bound by a host of obligations under the IT Act and its rules that can be used to tackle spam communication on the internet. To that end, please note the following:
 - (a) **Obtaining customer consent:** OTT platforms generally operate basis end-user consent and respect the preferences registered by them. To elaborate, since OTT platforms are invested in enhancing the user experience, they take into account the users’ preferences regarding whether they want to obtain commercial communication, and if so, the duration as well. For example, leading OTT platforms have been known to take the following measures:
 - Requiring businesses to obtain opt-in consent – through the platform itself, or SMS, or phone – from end-users prior to contacting them; i.e., end-users are required to approve business’ communication with them, prior to any contact.
 - Obtaining representations and warranties from businesses regarding their compliance with legal obligations such as opt-in or opt-out consent requirements.
 - Providing users with further options to delete, report, block or opt out of receiving communication from businesses, even if they have chosen to opt in, in the first place.
 - (b) **Mechanisms to curb spam:** As noted above, the IT Act imposes due diligence obligations upon ‘intermediaries’ (which include OTT platforms). These obligations, as set

out under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (**IT Rules**), include requiring intermediaries to make reasonable efforts to prevent users from sharing content that deceives or misleads recipients or violates any law currently in force. Such prohibited content is worded broadly enough to cover unsolicited / spam commercial communication. The same can also be relied on to take action against financial fraud or cybercrimes. Over and above this, many OTT platforms have implemented internal measures to address spam effectively. This includes:

- Allowing users to report accounts or chats as spam, in case they received unsolicited advertisements. Accounts that repeatedly engage in such communication may be limited or blocked as well.
- Permitting business to message users, but limiting to the same message to be sent once in 45 days, to prevent repeated spam / user fatigue.
- Implementing AI or ML classifiers to tag messages that may be spam. Efforts in this vein also intend to make easier the process of identifying and blocking spam (including blocking from lock screen).
- Enabling users to filter messages from unknown senders in the manner that ensures they do not receive notifications about such messages, or block / report unsolicited messages when received in a chatroom.
- Allowing users to decide whether they would like to receive messages from accounts they do not follow – which may include businesses.

(c) **Resolving complaints:** The IT Rules require intermediaries to establish robust grievance redressal mechanisms, including appointing a grievance officer, publishing their contact details and resolving complaints within strict timelines (i.e., acknowledging within 24 hours and resolving within 15 days). This empowers users to report issues relating to prohibited content, including where such content is in the nature of unsolicited / spam commercial communications or fraudulent online content.

(d) **Registering telemarketers and scrubbing:** We understand that the issue of unsolicited / spam commercial communication by telemarketers has remained a key concern for TRAI, that it continues to strive to tackle – including, by way of recent efforts including direct TSPs “telemarketing calls starting with 140 series to an online DLT platform latest for better monitoring and control”.¹³ In contrast, we would like to highlight the fact that OTT platforms have empowered and educated their users to easily block or report spam messages / calls on such platforms through easy-to-implement and user-friendly mechanisms (as highlighted above).

(e) **Financial disincentives for non-compliance:** TSPs are subject to financial penalties / disincentives under the TCCPR for not adequately curbing unsolicited / spam commercial communication. However, such measures are not necessary with respect to OTT platforms. This is because OTT platforms have adopted a self-regulatory approach

¹³ For more information, please refer to https://www.trai.gov.in/sites/default/files/PR_No.53of2024.pdf

and implemented effective anti-spam measures – as highlighted above. These measures have been implemented by OTTs on their own accord given that spam on their platforms is likely to act as a disincentive in and of itself because users – if they encounter spam on one OTT platform – can switch to another competing OTT platform. The ease with which such switching can take place is primarily due to the fact that there are low entry barriers in the OTT ecosystem and high competition. Users can also multi-home OTT platforms with ease. This is – however - not the case in the telecom sector which is a restricted market with limited players – as noted above. In any case, and additionally, under the IT Act and IT Rules, OTT platforms risk losing safe harbour protection in case of failure to comply with their obligations to tackle prohibited categories of content (which may include spam and fraudulent messages) and resolve user grievances, which automatically serves as a strong disincentive for spam. In all, these are sufficient to address issues of unsolicited spam communication.

C. TSPs AND OTT – NOT A LEVEL-PLAYING FIELD

- As noted earlier in our submission, industry stakeholders have called for a ‘level-playing field’ in the regulation of TSPs and OTT platforms regarding unsolicited / spam commercial communication regulations. They have also suggested that OTT platforms should share a portion of their revenue with the Government (in a manner like TSPs). The demand to regulate OTT communication platforms under telecommunication laws, such as the TCCCPR, etc., in order to level the playing field between TSPs and OTT platforms has been a longstanding demand of TSPs. During the enactment of the Telecom Act, the Government expressly clarified that the same does not regulate OTTs. Unfortunately, this demand for uniform regulation has resurfaced in this Paper as well. We would like to emphasize that there are fundamental differences between TSPs and OTT platforms, and they should not be subject to the same laws or regulated in the same manner, as explained below:
 - (a) **Technical differences:** TSPs operate at the network layer, managing physical infrastructure that is necessary for broadband and network access and providing internet connectivity to users. Whereas, OTT platforms, operate at the application layer, offering services (including messaging applications) over the internet. These services depend on the internet access provided by TSPs. OTTs do not control any network infrastructure themselves.
 - (b) **Operational Differences:** TSPs have always functioned in a restricted market with a limited pool of players that are entitled to specific privileges. This includes spectrum acquisition, obtaining numbering resources, and interconnection with public switched telephone networks (**PSTN**). In order to obtain these privileges, TSPs are subject to stringent regulatory frameworks under the Telecom Act and TRAI Act, 1997, including the TCCCPR. OTT platforms do not have these privileges and are therefore governed by a different set of regulations.

- (c) **Functional Differences:** While commercial communication can be transmitted over internet, OTT communication platform should not be regarded as “substitutable channels” to traditional telecom services. This is because OTT services are not substitutes for traditional telecom services. TSPs provide essential services such as internet access, voice calls, and SMS, while OTT platforms offer additional services like internet messaging, video conferencing, and social media. These services are broader than basic communication and are not direct replacements for traditional telecom services.
- In conclusion, we believe that OTT communication services should not fall under telecommunication laws, like the TCCCPR, as these regulations are designed keeping in mind telecom services. Imposing such regulations on OTT platforms could hinder their business operations in India (especially of small start-ups) and potentially reduce their investment in technological innovation due to increased cost of compliance and regulatory burden. We would like to take this opportunity to highlight that several OTT platforms have released beneficial features and functionalities on their respect platforms to allow businesses to communicate with users for end-to-end product / service delivery (ranging from online shopping to order tracking to flight bookings to customer support). It is accordingly important that such innovation should be promoted further and be allowed to flourish. We humbly request the TRAI to consider these aspects and avoid issuing any recommendations on regulating OTT communication platforms under the TCCCPR.
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