

Bharti Airtel Ltd.

India & South Asia
Airtel Center, Plot No. 16,
Udyog Vihar, Phase - IV,
Gurugram - 122 015

www.airtel.in
Call +91 124 4222222
Fax +91 124 4248063



Ref No: RP/ FY 18 – 19/ 062/ 570

Dated: January 7, 2019

To,
Shri. Asit Kadayan,
Advisor (QoS),
Telecom Regulatory Authority of India,
Mahanagar Door Sanchar Bhawan,
Jawahar Lal Nehru Marg, Old Minto Road,
New Delhi – 110002.

Subject: Consultation Paper on 'Regulatory Framework for Over-The-Top (OTT) communication Services'.

Dear Sir,

This is with reference to your above mentioned consultation paper. In this regard, please find enclosed our response for your kind consideration.

Thanking You,

Yours' Sincerely

For **Bharti Airtel Limited**

A handwritten signature in blue ink, appearing to read 'Ravi P. Gandhi', is written over a horizontal line.

Ravi P. Gandhi
Chief Regulatory Officer

Encl: a.a.

Bharti Airtel's Response to TRAI's Consultation Paper on Regulatory Framework for Over The-Top (OTT) Communication Services

At the outset, we thank TRAI for initiating this consultation on 'Regulatory Framework for Over The-Top (OTT) Communication Services' and express our sincere appreciation for an objective as well as progressive consultation paper. We sincerely hope that this exercise will culminate in forward-looking recommendations, which will enable the TSPs and OTT service providers to co-exist and flourish in this dynamic environment. In this backdrop, please find below our detailed submission on the issues raised in the consultation paper.

- Q.1 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.**
- &**
- Q.2 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.**

Bharti Airtel's Response:

1. We agree that the substitutability of services should be treated as the primary criterion for comparison of regulatory and licensing framework between TSPs and OTT service providers. Historically, the voice/video calling and messaging services have been provided only by the TSPs. However, the widespread deployment of high speed mobile broadband networks (3G/LTE) has made it possible for independent third parties, known as OTT service providers, to also provide the above mentioned services over the Internet.
2. On the demand side i.e. for the end consumer, any voice/video call or a message exchange done via the TSP's network or through an OTT application serves the same purpose. Thus, we believe that substitutability should be the main parameter for defining any service as an OTT communication service.
3. For declaring any service as a substitutable OTT communication service, the Authority may check if a person can communicate with another individual or a group of target people, through the application created by the OTT service provider, using broadband/Internet instead of the standard application for voice/video calling or messaging services provided by the TSPs.
4. In this context, EU has proposed the following definition of OTT communication services:-

"EU proposes to expand the definition of electronic communication services to inter alia include 'interpersonal communication services' meaning a service that allows direct interactive interpersonal exchange of information via an electronic communications network between a finite number of people, where the persons initiating/participating in the interaction determine its recipients. This definition would therefore exclude broadcasting, general websites, content, web-hosting, gaming and unidirectional information services (such as Twitter), while it would

include VoIP services, video calls, text messaging (WhatsApp, SMS, Facebook Messenger, etc.) and emails. Aggregated platforms would be classified based on whether they constitute a “minor ancillary feature that is intrinsically linked to another service”.

5. We propose that the above definition of electronic communication services may be adopted in the Indian context as well.
6. As argued in the consultation paper, many social media and gaming applications also provide communication services but only in a limited manner. Since the purpose of these applications is not to create a substitutable voice/video calling or messaging services, these applications should not fall in the category of OTT communication services. The Authority may decide the category of such services on a case-by-case basis.
7. The definition of OTT communication services should be flexible enough to bring in more substitutable services under its ambit without stifling any technological innovation. We also recommend that the Authority should periodically review this definition on the basis of evolution of market structure, technological developments, innovations and the extent of substitutability created by such services.

Q.3 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.

Bharti Airtel’s Response:

1. The OTT communication services are evidently leading to higher consumption and network capacity utilization. Further, the popularity of OTT services is also bringing more and more customers to the telecom network.
2. The deployment of high speed mobile broadband network by the TSPs has facilitated the proliferation of OTTs requiring high speed and low latency network. The TSPs have been augmenting their network capacities for catering to huge traffic being generated by the OTT service providers.
3. The increased use of OTT services has resulted in higher network utilization and is contributing towards the increased revenues, which in turn would lead to higher investments in the TSPs’ networks.

Q.4 Would inter-operability among OTT services and also inter-operability of their services with TSPs services promote competition and benefit the users? What measures may be taken, if any, to promote such competition? Please justify your answer with reasons.

Bharti Airtel's Response:

1. OTT services are a product of innovation. The customers are free to choose from various OTTs available and the present environment doesn't inhibit them from using multiple OTTs at the same time. Hence, there should not be any mandate for interoperability among the OTT services providers and interoperability of their services with the TSPs. Any such proposal may hinder innovations in the OTT space.
2. We recommend that any interoperability between the OTT service providers or between OTT service providers and TSPs should be left to the market forces and technological innovations/developments.

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.

Bharti Airtel's Response:

1. National Security and Consumer Privacy are of paramount importance and we see no reason why OTT service providers providing communication services should be exempt from contributing to the same requirements.
2. To adhere to the above, the TSPs have been required to ensure the following:-
 - a. Lawful Interception
 - b. Provision of CDR/ IPDR
 - c. KYC verification
 - d. Deployment of Network Nodes in India
 - e. Domestic Traffic to be kept within India and not to be routed outside India
3. While the OTT service providers use the network of TSPs, all of the above requirements cannot be fulfilled through the existing systems deployed by TSPs due to the following reasons:-
 - a. Almost all OTT service providers deploy strong encryption. Therefore, the system deployed by TSPs cannot decrypt the content and meet the requirement of national security.
 - b. Due to switching and other infrastructure installed outside the country, the unencrypted content can only be intercepted in the switching systems installed outside the country and the encrypted content can only be decrypted outside the country.
 - c. This means that Users' personal and sensitive data, such as their calling pattern, message content etc. is available in the servers installed outside the country.
 - d. The KYC details are also maintained outside the country or are not at all obtained in some cases by the OTT service providers. Due to the untethered nature of the OTT communication services, the KYC details obtained by the TSPs may not match with the actual users in a number of cases.

- e. The untethered nature of the OTT communication services, high level of encryption and non-availability of switching servers in India, makes it extremely difficult for the Government agencies to ensure lawful interception or protect consumer privacy.
4. We strongly believe that a regulatory mechanism needs to be implemented, which will ensure national security and consumer privacy. The regulatory framework for OTT communication services must include the fulfilment of requirement of LIM and protection of customer privacy & sensitive data. Therefore, we would like to propose the following requirements to be met by the OTT service providers:
- (i) Provisioning of LIM
 - (ii) Compliance with Data Privacy requirements
 - (iii) Compliance with the security requirements stipulated in the Unified License such as installation of switching nodes within India, maintenance of all critical and sensitive data within India
 - (iv) Maintenance of commercial records/Call Detail Record (CDR)/ Exchange Detail Record (EDR)/ IP Detail Record (IPDR)
 - (v) Meeting all requirements related to traceability of subscribers
 - (vi) Procedures for sharing customer details with the Law Enforcement Agencies (LEAs)
 - (vii) Compliance to the TRAI Act and Directions issued from time to time
 - (viii) Compliance to Information Technology Act, 2000
 - (ix) Compliance to the proposed data privacy law

Q.6 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.

Bharti Airtel's Response:

1. The OTT Service Providers cannot be subjected to provision of Emergency Services as mandated to the TSPs because they are not interconnected to the PSTN network.
2. However, it may be feasible to have a centralized emergency response centre by the OTT service providers, which can be connected to 112 deployed by various states. The OTT service providers can be provided an option to route the traffic directly to the response centres deployed by security agencies without making it mandatory.

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.
&

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.

Bharti Airtel's Response:

1. To ensure a level playing field and to protect competition, it is extremely important to have the Same Service Same Rule policy. The TSPs (through their license) are allowed to build the telecommunication network, which can be used to provide native communication services i.e. voice/video calling and messaging, and also to provide data/Internet services. On the other hand, the OTT service providers provide the same services by only using the Internet/broadband services provided by TSPs.
2. Therefore, to ensure Same Service Same Rule, the regulatory requirements for OTT service providers should be limited to provisioning of services and should not include the regulatory requirement for building the network.
3. At present, the TSPs are largely required to comply with following requirement:-
 - Lawful Interception
 - Data Localization
 - Privacy & Security
 - Installation of Network nodes within the country
 - Roll-out obligations
 - Subscriber Verification/KYC
 - Billing & Metering
 - Tariff Protection
 - Quality of Services
 - Unsolicited Customer Communication
 - Mobile Number Portability
 - SACFA clearances
 - RoW approvals
 - Payment of License Fee, Spectrum Usage Charge, USO Levy
4. Since the OTT service providers are not building any communication network and are only providing services using the data/broadband network installed by the TSPs, their regulatory requirements should also be limited to the extent of provisioning of services.
5. Therefore, we would recommend that the OTT service providers be brought under a light licensing regime, which should meet only the critical compliance requirement while providing sufficient flexibility for innovation and technological developments. The OTT regulatory regime should mandate compliance to following requirements:-
 - a. **Lawful Interception** - Lawful Interception in case of OTT communication services cannot be done in TSPs network due to use of high level of encryption. Therefore, OTT service providers should be responsible for establishing the technical infrastructure required in India for lawful interception.
 - b. **Localization of consumer sensitive data** - To protect the interest of Indian customers, all the sensitive data should be stored locally.

- c. **Consumer Privacy & Security** - The OTT service providers should be subjected to Standard Operating Process (SOPs) to ensure protection of Indian customers from any illegal interception or misuse of sensitive data. They should be held liable in case of any data breach at their end.
 - d. **Subscriber Verification/KYC** - While the mobile/broadband customers are verified by TSPs, the OTT communications services are offered in an untethered manner in which the identity of the OTT customer may be different from the identity of the mobile/broadband customer. Therefore, the OTT service providers should be required to ensure proper KYC verification of their customers for meeting the requirement of national security. These providers should also make sure that the users are discouraged from using fake/false identity, which not only can cause threat to the national security but can also disturb peace and harmony in the society.
 - e. **Traceable Identity of Users:** OTT service providers should be responsible for developing a mechanism for collecting and storing authentic identification of all users so that the security agencies can track the end user in case of any violation of rules and regulations prevalent in the country.
 - f. **Maintenance of Records:** OTT service providers should maintain commercial records/Call Detail Record (CDR)/ Exchange Detail Record (EDR)/ IP Detail Record (IPDR) for all users.
 - g. **SPAM and Unsolicited Communication:** OTT service providers should comply with the regulatory requirements to protect consumers from SPAM and unsolicited communications.
 - h. **Compliance to TRAI Act and Directions:** OTT services should comply with the TRAI act and other directions issued from time to time.
 - i. **Compliance to Information Technology Act, 2000:** OTT service providers must carry out monitoring of unlawful content on their platforms and report the same to the respective LEAs to help the Government curb its ill-effects.
 - j. **Compliance to data privacy law:** OTT service providers must comply with the proposed data privacy law at any point of time.
6. With this background, the OTT service providers providing communication services should be brought under light licensing & regulatory norms e.g. the OTT Communication authorization under the Unified License. Under this authorization, the licensees may be required to comply with the requirements mentioned in para '5' above.

Q.9 Are there any other issues that you would like to bring to the attention of the Authority?

Bharti Airtel's Response:

No comments