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To: "Akhilesh Kumar Trivedi" <advmn@traigov.in>

Cc: "V Raghunandan" <secretary@traigov.in>, "Shri Rajiv Sinha" <pradvnsl@traigov.in>

Sent: Wednesday, September 27, 2023 12:30:05 PM

Subject: COAI counter comments to TRAI Consultation Paper on Regulatory Mechanism for OTT Communication Services and Selective Banning of OTT Services

Dear Sir,

Please find the enclosed COAI's counter comments to the TRAI Consultation Paper on "Regulatory Mechanism for OTT Communication Services and Selective Banning of OTT Services".

This is for your kind consideration and support.

Thanks & Regards,

Lt. Gen. Dr. S P Kochhar

Director General

COAI

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DG/COAI/2023/439
September 27, 2023

Shri Akhilesh Kumar Trivedi,
Advisor (NSL) - II
Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan,
Jawaharlal Nehru Marg
New Delhi- 110002

Subject: COAI counter comments to the TRAI CP on “Regulatory Mechanism for Over-The-Top (OTT) Communication Services, and Selective Banning of OTT Services.

Dear Sir,

This is with reference to the TRAI Consultation Paper on “Regulatory Mechanism for Over-The-Top (OTT) Communication Services and Selective Banning of OTT Services” issued on 7th July 2023.

The counter comments for the said Consultation Paper is to be submitted by 29th September 2023.

In this regard, please find enclosed COAI’s counter comments to the said Consultation Paper.

We hope that our submissions will merit your kind consideration and support.

With Regards,

Yours Faithfully

Digitally signed by Lt.
Gen Dr. SP Kochhar
Date: 2023.09.27
12:16:18 +05'30'

Lt. Gen. Dr. SP Kochhar
Director General

Copy To:

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COAI counter comments on Consultation Paper on Regulatory Mechanism for Over-The-Top (OTT) Communication Services and Selective Banning of OTT Services.

We thank the Authority for providing us with the opportunity to share the counter comments to this Consultation Paper on Regulatory Mechanism for Over-The-Top (OTT) Communication Services and Selective Banning of OTT Services.

A. Definition of OTT Services and OTT Communication Services

- 1. Some entities have argued against defining OTT services, citing the lack of a universally accepted definition. These entities have stated that there is no need to define OTT. OTTs should be seen as Digital Business. The phrase OTT is misleading and is a telecom creation. These are Internet services that users access through telcos & ISPs and are services running on computers and high-capacity computers called servers, which a user access directly.***

COAI Response

- In the past decade, there has been a rapid increase in internet subscribers globally, driven by broadband adoption and the growing use of OTT (Over-The-Top) services. These services have benefited from easy access to a worldwide audience through the internet, becoming major players in the global and Indian economies. Given these developments, there is a pressing need to establish a clear and comprehensive definition of OTT services for regulatory purposes.
 - The term 'OTT' is far from misleading; it accurately conveys the essence of these services as being delivered 'Over-the-Top' of established data network connections**, be it fixed broadband or wireless. This term aptly emphasizes the functional and operational nature of these services as they rely on existing network setups of TSPs to provide services directly to users' devices.
 - While there may not be a universally accepted definition, there is a consensus on the above principle of identifying OTT services by the way they are provided to consumers, i.e. over the top of TSP networks – as is evident from the various definitions used in different jurisdictions.
 - Considering OTT services are considerably evolved now, having an all-pervasive on the economy and the society, regulating them at this stage is a must – for ensuring structured growth. This necessitates that they are defined and further classified into categories for sector-specific regulation.
- 2. These entities have further stated that it is not essential to delve into sub-categories of OTT services. There is no clear definition of OTT Communication services, given that there is no such thing as an OTT service. Person-to-person communication via audio, video or text is an integral part of many Internet businesses. There are games that integrate messaging. Thus, everything is a remix on the Internet. Classifying OTT services will restrict their evolution.***

COAI Response



- a. Voice and SMS communication services are multifaceted, as they can be transmitted through traditional methods like text messaging and circuit-switched (CS) voice, as well as modern packet-switched (IP) voice/SMS over a Telco network or standalone applications employing packet-switched VoIP/messenger technology.
- b. OTT Communication Services, encompasses VoIP, video calls, and text messaging, utilize Telecom Service Providers' networks, which makes it a direct substitute for the Traditional Communication Services. This leads to the creation of substitutability between the Service providers which is more towards the demand side. Therefore, the primary criterion for defining OTT Communication Services should be their demand-side substitutability, reflecting the evolving dynamics of modern communication landscapes.

B. Need to Create Licensing/Regulatory Framework for OTT Communication Services – Level Playing Field.

1. ***Some entities “are against bringing OTT Communication Service Providers under new regulations. They argue that existing laws, such as the IT Act, DPDP Act, and the proposed Digital India Act, already ensure consumer safety, security, and data protection for OTT services. These associations believe that further regulation would increase compliance costs and create business uncertainty, indirectly impacting consumers.” They have tried to justify the differential framework for licensed TSPs on the ground that they have exclusive right over spectrum.***

COAI Response

- a. We fully acknowledge that the existing set of laws – IT Act, DPDP Act, Consumer Protection Act, Competition Act, Companies Act etc. – are applicable to OTT Communication Service Providers. However, these laws are equally on licensed TSPs as well as to businesses in any other sector. The existence of these generic laws cannot be a ground to argue that there should not be any sector-specific regulation.
- b. The respective statutes and legal frameworks have been established to cater to specific requirements. Like CERT-IN directions will relate to cyber security, the DPDP Act will deal with the personal data information and its protection and similarly, there is IT Act and its rules which apply to different types of intermediaries, including both the OTT players as well as the telecom operators.
- c. It is reiterated that the above rules and frameworks apply equally to all those entities who have been licensed under Section 4 of Indian Telegraph Act, like licensed TSPs. Having been licensed under Indian Telegraph Act, 1885 does not mean that the licensees are not required to follow all laws of the land. Every entity doing business in India are supposed to follow all relevant laws/regulation and cannot seek exemption on the ground of applicability of some other law/regulation for different purpose.
- d. Further, the telecom sector-specific requirements under the license and the TRAI regulations are stringent obligations regarding critical aspects like national security, data privacy, consumer protection etc. – which are over and above the requirements under the said generic laws. While we firmly believe that the regulatory burden on TSPs should be eased, we do not wish to downplay the requirement of sector-specific regulation. We submit that any framework must be applicable uniformly on all players, providing communication services, in the sector.



- e. As far as rights over spectrum are concerned, stating that TSPs have an exclusive right is a misnomer, as spectrum auctions are held every year and any entity with the appropriate license, including the OTT Communication Service Providers, can participate and acquire spectrum for providing services.
- f. The reliance placed on these distorted arguments is only an attempt to preserve the uneven playing field that currently exists between licensed TSPs and OTT Communication Service Providers. We re-iterate that the principle of 'same service – same rules' needs to be applied and the regulatory disparity needs to be addressed immediately.

2. *Economic Aspects: Online services operate in a market with infinite competition, TSPs don't. Online messaging is fragmented and competitive. Online services have no barrier to entry, while TSPs have exclusivity.*

COAI Response:

- a. TSPs (Telecom Service Providers) indeed operate in an intensely competitive market in India and there has been significant competition among them to acquire and retain customers. The low Average Revenue Per User (ARPU) in India is a testament to this intense competition, as telecom companies often offer affordable plans to attract subscribers.
- b. Hence it would be inaccurate to claim that Over-The-Top (OTT) service providers face a more competitive environment than TSPs in India.

3. *National Security and Privacy: With regard to the Security Aspect some entities have stated that that OTT services must adhere to are already covered by existing legislation like the IT Act. Regarding the Privacy Aspects some entities have stated that SPDI Rules apply to OTT service providers with respect to collecting and processing PI and SPDI. Online messaging services are decidedly more safe and secure than their alternatives in PSTN calling and messaging. You can't make people secure by making them more vulnerable. Online services/OTTs are in a market where privacy is a competitive advantage.*

COAI Response:

- a. Licensed Telecom service providers adhere to:
 - i. Robust security measures for equipment and software.
 - ii. Clear procedures for cooperation with law enforcement agencies.
 - iii. Lawful interception compliance as a prerequisite for service.
 - iv. Regulations regarding encrypted services.
 - v. Strict adherence to DoT's KYC requirements.



The conditions outlined primarily pertain to licensed Telecommunications Service Providers (TSPs) and do not extend to Over-The-Top Service providers. A significant concern arises with the widespread adoption of encrypted OTT services, as they introduce potential national security risks. This heightened level of encryption, specifically end-to-end encryption, complicates the ability to monitor and track internet traffic effectively. Consequently, this limited visibility poses a considerable challenge to legal monitoring efforts, creating an environment where it becomes difficult to detect and address various issues, such as the transmission of illegal content or the presence of malicious intent within these encrypted communication channels.

- b. TSPs have invested heavily in setting up the infrastructure for Lawful interception and monitoring. Designated Nodal officers have been appointed to ensure compliance with the requirement of lawful interception and monitoring.
 - c. However, OTT Players do not have such huge network infrastructure required by the TSPs nor are they subjected to the conditions as laid down in the unified License for lawful interception and monitoring for TSPs. This is a big security threat to the nation as all communications made over the OTT network do not get intercepted or monitored.
 - d. Many OTT services use end-to-end encryption to protect user communications. This encryption can make it very challenging for law enforcement agencies to access critical information for national security purposes, such as preventing terrorism or investigating criminal activities.
 - e. Indian Telegraph Act and license agreements protect telecom users' privacy. On the other hand, Internet sector has privacy vulnerabilities from devices, networks, and content providers.
 - f. Moreover, OTT services typically collect user data on viewing habits, personal info, and location, raising privacy concerns about invasive data collection, potential breaches, and misuse of data. There is a need to have a Regulatory framework address these issues, emphasizing the need for user consent and transparency in data handling by OTT platforms.
 - g. It is pertinent to note that in the absence of any Regulatory Framework and a reasonable level of accountability, this data can fall into the wrong hands, and it could be exploited for malicious purposes, such as tracking Government officials OR conducting cyberattacks.
- 4. *Quality-of-Service: Some entities have stated that OTT service providers maintain high service quality due to market dynamics. They regularly gather customer feedback to enhance their services.***

COAI Response:

- a. OTTs, although not obligated to maintain Quality of Service (QoS), can lead to degradation of the QoS of Telecom Service Providers (TSPs) due to increased network congestion caused by the high data traffic associated with OTT services. Congestion caused by OTT services can adversely impact network performance at the time of natural disasters.



- b. Moreover, instances of downtime in certain OTT services have occurred in the recent past, causing substantial disruptions for users. These incidents emphasize the need for bringing OTT services under a licencing framework to make them accountable for QoS.
 - c. OTT services offering high-quality streaming content can consume substantial bandwidth. During national emergencies like natural disasters or security crises, the resulting network congestion from heavy OTT usage can impede effective communication and response efforts, potentially hindering the ability to address these critical situations promptly and efficiently.
- 5. *UCC: Some entities have stated that OTT services offering communication features have implemented tools for users to report or block unsolicited messages and calls. The DPDP Act restricts personal data processing, contributing to the reduction of unsolicited communication.***

COAI Response:

- a. The proliferation of Over-The-Top (OTT) platforms has led to the problematic issue of their exploitation of unwanted communications. Services such as WhatsApp, Skype, and Viber are increasingly being utilized for unsolicited marketing, spam, fraudulent messages, and unwanted calls, posing challenges for users and regulators alike.
- b. The anonymity and accessibility afforded by OTT communication platforms have empowered telemarketers and scammers to reach a broad audience with impunity. On the other hand, TSPs follow due diligence and compliance as per the Telecom Commercial Communication Customer Preference Regulation (TCCCPR), 2018. This underscores the urgency for robust regulatory measures to address the misuse of OTT platforms for unsolicited calls and frauds, ensuring a safer and more secure digital environment for users.
- c. TSPs are obligated to follow the TCCCP Regulation issued by TRAI wherein every access provider shall ensure that any commercial communication using its network only takes place using registered header(s) assigned to the sender(s) for the purpose of commercial communication. Further, no subscriber who is not registered with any access provider for the purpose of commercial communication under these regulations shall make any commercial communication and in case any subscriber is sending commercial communication, telecom resources of the sender may be put under usage cap. Every access provider shall develop an ecosystem to regulate the delivery of commercial communications as provided in the regulations. TSPs have to go through a process of scrubbing before sending any commercial communication to the subscriber thereby eliminating any spam or unsolicited commercial communications get delivered.
- d. **TSPs have invested substantially in setting up their systems to prevent unsolicited communications as required by the TRAI Regulations.** Further, there exists a mechanism wherein customers can lodge complaints. Further, the consumers are provided with the resolution timelines for their complaints. Necessary tracking mechanism is available for the customers to check the progress of their complaints.
- e. **While there are strict procedures laid down by the Regulator on the TSPs for sending any commercial communication by the subscribers, the subscribers of OTT Players enjoy an uninterrupted and unregulated environment for sending all communications including commercial communications. This has not only paved**



the way for a non-level playing field but is also a serious security issue where there is no control mechanism over the increasing frauds/cybercrimes.

C. Fair Share Charge and Net Neutrality

Some entities have argued that OTTs should not pay the Fair Share charge because TSPs already generate more revenue from increased network utilization. They also point out that data traffic accounts for only a small portion of providers' costs, which is offset by the investments made by Content Application Providers (CAPs) in internet infrastructure. According to them, the Network Usage Fee is an attempt to extract monopolistic rents and hinder innovation by OTTs. They state that the Network Usage Fee may harm competition, especially for smaller players who may not afford it, thus favouring larger players. They state that online services are not “free riding”; the fact is that Internet is a network of networks, and every user pays for Internet access.

COAI Response

Before we counter the specific arguments put forward by few stakeholders, it is imperative to note that telecom infrastructure is the basis of the economy and the digital ecosystem. Having the right connectivity infrastructure not only for the present, but also for the future, is essential for realizing the Hon'ble PM's vision of Digital India. TSPs alone cannot shoulder the massive connectivity infrastructure investments needed to reach those targets and close the digital divide. This is a problem that needs to be addressed and solved.

To substantiate the above position, our submissions are as follows:

- a. Telecom Service Providers (TSPs) obtain spectrum through DoT auctions, which is crucial for their telecommunication services. They invest significantly in spectrum to enable connectivity services, upgrade networks, and introduce new technologies. For example, the contribution by TSPs in the last auction held in 2022 was Rs. 1.50 Lakh Crores.
- b. OTT (Over-The-Top) players leverage the network provided by the TSPs to do business and earn revenue directly or indirectly. All of them rely on the TSPs ability to reach users in every nook and corner of India, and provide high speed connectivity to as many users as possible. Dark spots or poor speeds are detrimental to an OTT's growth and success.
- c. Despite this reality, OTT (Over-The-Top) players do not contribute to Telecom Service Providers (TSPs) for the services they use over the network. This absence of financial contribution highlights a significant disparity in the telecommunications landscape.
- d. We are also cognizant of the fact that not all OTTs are equal. Large Traffic Originators (LTOs) are a handful of companies who contribute to a large portion of the global internet traffic today. The LTOs generate disproportionately high traffic and monetize this through advertising or subscription revenues from subscribers.
- e. To support the needs of these LTOs, TSPs have little option but to invest in infrastructure in the pockets where there is heavy usage of OTT services. Contrary to popular belief, customer pricing for telco services is not elastic basis the data usage. The industry has high competitive forces that disallows any one operator to raise prices for data consumption.



- f. The investment by LTOs into the network infrastructure will not only remove the strangle of high usage of bandwidth, but also allow TSPs to focus on faster roll-out of networks and improving quality which it set out to do in the first place.
- g. **While initiating the discussion on ‘Fair Share’ in India, the expectation was that the discourse would focus on identifying the best solution to attract the needed investments to create a robust digital infrastructure. However, some of the stakeholders have wrongfully geared away from a solution-oriented discourse. Instead, they have denied the existence of the financial problem in the first place or discussing issues that would make it impossible to address the investment gap. Several additional topics have been used to divert the discussion and sought to prevent addressing the real issues at the heart of the debate.**
- h. Thus, there is a need for the Government to provide a legal framework which ensures that LTOs pay a fair and proportionate share to TSPs for the services provided by them, to incentivize them to deliver the traffic in a more efficient way and to ensure economic sustainability of network deployments.

We will address specific arguments put forth by a few stakeholders against fair share contribution by LTOs.

1. Some entities have stated that imposing a Network Usage Fee could violate the principles of net neutrality and undermine the open and free nature of the Internet.

COAI Response

In this regard, our submissions are as follows:

- a. Certain entities have been misleading the debate on the requirement for LTOs to pay fair share charges to TSPs by conflating it with the concept of Net Neutrality.
- b. It is necessary to recognize that Net Neutrality concerns the unbiased treatment of content and is completely unrelated to the fair share charge to be paid by LTOs to TSPs. It is worthwhile to emphasize here that our member TSPs are committed to follow the Net Neutrality principle as per their licencing conditions.
- c. The fair share proposal is fully compliant with net neutrality obligations. This red herring is only distorting the debate and distracting from the crucial issue. Any collaborative framework for fair contribution between OTT and licensed TSPs will not affect access to an open and free Internet.
- d. Need for systemic traffic generators/ large traffic originators to contribute fairly to network deployment does not involve anyhow a differentiated traffic management or unequal treatment of LTOs traffic for the end user.
- e. Net Neutrality does not prohibit charging LTOs for the service they receive, provided that such agreements and commercial practices do not limit the exercise of the rights provided for in the license.



- f. Content and services will remain fully accessible with no traffic management/differentiation implemented. There will be no throttling, no blocking, and no paid prioritization.
 - g. The price for the traffic paid by end users will not change depending on whether the traffic originator is subject to fair share payments or not.
 - h. Therefore, we submit that the fair share proposal is fully compliant with net neutrality obligations and any collaborative framework for fair contribution between OTT and licensed TSPs will not affect access to an open and free Internet.
- 2. *Some entities have also cited the TRAI's order on "Prohibition of Discriminatory Tariffs" for Data Services Regulations, 2016", and state that a fair share charge would militate against the very basis on which the internet has developed and transformed the way we connect with one another.***

COAI Response

In this regard, our submissions are as follows:

- a. The order on "Prohibition of Discriminatory Tariffs" is not relevant here and is being quoted out of context by other parties. Payment of "*Fair Share Charge*" is a B2B settlement.
 - b. There is no violation of net neutrality if a peering charge is applied at an interconnection point between two networks to compensate for an imbalance of data traffic. This charge is applied in relation to the volume of the traffic and not for certain data from certain OTT.
 - c. Such interconnection peering charge has no influence on the access of end customers to any content. Thus, network neutrality would not be at stake in this situation.
 - d. As stated above we reiterate that our member TSPs are committed to follow the Net Neutrality principle as per their licensing conditions.
- 3. *Some entities have stated such charges payable to TSPs could raise operating costs for OTTs, leading to increased costs for users, and negatively affecting consumer welfare.***

COAI Response:

In this regard, we reiterate as follows:

- a. A collaborative framework for fair share will benefit all – end customers, TSPs and OTT service providers, by ensuring the deployment of faster high-capacity networks with the required quality and with innovative services.
- b. Fair Share seeks to ensure advanced connectivity and benefits for citizens and businesses, with the aim of improving the future quality of life.



- c. A fairer allocation of network costs can relieve the pressure on consumer prices for communication services as the only way to meet investment needs.
- d. An efficient and fair cost-sharing policy restricted to only largest traffic originators will ensure a better quality of service for users and a faster roll-out of networks.
- e. This will be a better deal for consumers, as today their internet bills effectively cross-subsidize the revenue models of large traffic generators.
- f. Gains in network quality, would also result in improved user online experience. Telehealth, online education, expansion of hybrid working, new applications, such as the Metaverse, and mission critical services all require reliable internet connections. Therefore, it is essential to maintain the pace of network investment.

4. *Some entities have stated imposing network usage fees may drive smaller players out of the market, reducing competition and limiting choices for consumers.*

COAI Response:

In this regard, we reiterate as follows:

- a. This is a flawed argument, as direct contribution would help ensure the creation of robust and sustainable digital infrastructure.
- b. Large OTT platforms have created this false narrative, because they have nothing to lose, and everything to gain by not contributing towards the sustainability of networks. They have created fallacious concern as they believe, smaller OTTs would benefit from the infrastructure upgrade financed by large traffic originators for free.
- c. In our response, we stated that only Large Traffic Originators, who are a handful of companies and contribute to a large portion of the global internet traffic today, to pay for the fair share fee as they generate disproportionate network costs. By defining a threshold, only the biggest traffic generators will have to enter direct collaborative framework with telcos.
- d. LTOs can be designated on quantifiable criteria like - size, volume of traffic, turnover threshold, number of users or other criteria. Direct collaboration is the most credible and practicable solution, which requires only a few LTOs to share the cost of delivering the traffic.
- e. Further, in our response we have also stated that to encourage innovation and nurture start-ups/ smaller OTT players we propose that such players should not be required to pay the “fair share fee”. In this way, innovation and entrepreneurship will not be impacted. Thus, the concern expressed by some entities that a levy of fair share charge will stifle innovation is misplaced and does not hold merit.
- f. Thus, proposing this fair share charge for select LTOs clearly wipes out the concern of the various stakeholders regarding the negative impact of such financial contribution being imposed on smaller players.



5. *Some of the stakeholders have argued that any revenue sharing demands to OTTs would essentially mean charging twice for the same service.*

COAI Response:

In this regard, we reiterate as follows:

- a. Fair Share is not double charging. In fact, it is an efficient policy which will lead to faster and wider network roll-out. This may eventually lead to reduction in consumer prices and digital divide.
- b. The solution that the large traffic originators advocate to bridge the network investment gap is to increase prices to the end users. However, internet access is a two-sided market in which only one side, that of the users, is paying for the service, but the other side, that of the large traffic originators, is not.
- c. The analogy could be the acceptance of taxes and tolls for highways. Big trucks carry goods ordered by consumers and businesses, who pay shipping and transport costs. Part of that money goes toward paying taxes and tolls. Big trucks pay more than smaller vehicles because they are a greater burden to the infrastructure. The money goes into the building and maintaining the roadway, ensuring a smooth and enjoyable ride for everyone, as opposed to an experience full of jarring potholes. While ISPs and Big Tech share the same customers, it's ultimately the ISPs that are held accountable for end-user experiences.
- d. Raising data prices uniformly for all users, as suggested by large traffic originators to avoid the fair share, will disproportionately impact users who do not consume such large traffic originators' services.

6. *Some of the stakeholders have argued that the traffic of the TSPs is due to its own customers wanting the OTT apps to be made available for their use. The OTTs are not responsible for pushing the apps or services down the TSPs network.*

COAI Response:

In this regard, we reiterate as follows:

- a. This is a flawed argument. LTOs decide without user control and knowledge, the traffic volumes delivered. They decide on compression techniques i.e. whether to transmit standard definition, high definition or ultra-high definition and how to proceed in case of network congestion.
- b. Features such as auto-play, continuous-play or advertising generate revenue for LTOs, even though they are not requested by end users. These result in large traffic volumes, and resultantly significant network costs.



7. ***Some of the stakeholders have argued that OTTs already contribute towards network costs through the development of Content Delivery Networks (CDNs) and projects to lay deep-sea cables, amongst others.***

COAI Response:

In this regard, we reiterate as follows:

- a. Although, we agree that the OTTs contribute towards network costs via investments in delivery (i.e. peering and caching), transport (e.g. subsea cables) and hosting (e.g. local data centres), but these investments do not replace neither complement the investments on national core, aggregation and access networks, made solely by telcos.
- b. OTTs have only invested in submarine cables, CDNs and caching to cope with increasing traffic demand in international transport routes. But these investments are marginal and the effects on data traffic are insignificant.

D. Selective Banning of OTT Services

1. ***Some entities have stated “that selective banning of OTT services might not withstand scrutiny when it comes to fundamental rights.”***

COAI Response:

In this regard, our submission is as follows:

- a. Freedom of Speech, as enshrined in Article 19(1)(a) of the Indian Constitution, is a fundamental right, but it is not absolute. This cherished liberty is subject to "reasonable restrictions" in the interest of national security and sovereignty as mentioned in Article 19(2) of the Constitution of India.
 - b. It is also pertinent to note, that selective banning of apps is not referring to the permanent banning of the applications, but rather to be put under ban for a specific period under Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017. **Thus, the need to suspend the services under the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017 will withstand scrutiny when it comes to Fundamental Rights.**
2. ***Some entities have also stated that “Bad actors will use other apps. If, for example, the purpose of selective banning of apps is to prevent bad actors such as terrorists from using a particular app to communicate, this exercise is flawed. Today, anyone can pick up open-sourced code and create a messaging app.”***

COAI Response:

In this regard, our submission is as follows:

- a. Selective banning aims to curtail actions or expressions that could exacerbate existing tensions, particularly if they pose a threat to a nation's security or sovereignty. This process strives to maintain a delicate balance between individual rights and the broader



well-being of the nation by restricting content or activities that could potentially harm its stability and integrity.

- b. Moreover, the entities are considering “selective banning of OTT Services for a specific period” as permanent banning. Thus, these entities are mixing two different issues into one which is grossly incorrect.
 - c. These entities should realize that implementation of selective banning is being considered to ensure that financial services, health, education, and various other essential routine services can continue to operate for business as usual thereby minimizing inconvenience and suffering to the general public and will also help in controlling spreading of misinformation during unrest.
- 3. *Some entities have stated “An act of banning an app selectively amounts to discrimination against a single app or a category of apps, and such selective banning can be challenged in courts under Article 21 of the Indian constitution.”***

COAI Response:

In this regard, our submission is as follows:

- a. Challenging the selective banning of an app under Article 21 of the Indian Constitution, which safeguards the right to life and personal liberty, is rooted in the principle that individuals should not be deprived of their fundamental rights without due process of law. However, in cases of app bans for national security reasons, Article 21 remains intact.
- b. **The temporary shutdown of internet services is a preventive measure aimed at ensuring the safety of citizens and the integrity of the nation.** It does not infringe upon personal liberty but rather seeks to strike a balance between individual rights and the collective interest of maintaining security and sovereignty. This nuanced approach highlights the importance of security measures in safeguarding a democratic society while respecting constitutional principles.
- c. Moreover, **it should be noted that Article 21 is available for people, both citizens as well as foreigners and not for mobile phone software/ Apps or non-living beings.**
