

RJIL/TRAI/2023-24/159

1st September 2023

To,

Shri Akhilesh Kumar Trivedi,
Advisor (Networks, Spectrum and Licensing),

Telecom Regulatory Authority of India

Mahanagar Doorsanchar Bhawan

Jawaharlal Nehru Marg, New Delhi - 110002

Subject: RJIL's comments on TRAI's Consultation Paper dated 07.07.2023 on "Regulatory Mechanism for Over-The-Top (OTT) Communication Services, and Selective Banning of OTT Services".

Dear Sir,

Please find enclosed the comments of Reliance Jio Infocomm Limited (RJIL) on the Consultation Paper dated 07.07.2023 on **"Regulatory Mechanism for Over-The-Top (OTT) Communication Services, and Selective Banning of OTT Services"**.

Thanking you,

Yours Sincerely,

For **Reliance Jio Infocomm Limited**

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Enclosure: As above

**Reliance Jio Infocomm Limited's Comments on TRAI's
Consultation Paper on "Regulatory Mechanism for Over-The-Top (OTT) Communication
Services, and Selective Banning of OTT Services"**

1. At the outset, Reliance Jio Infocomm Limited (RJIL) thanks the Authority for issuing this Consultation Paper ('CP') on 'Regulatory Mechanism for Over-The-Top (OTT) Communication Services, and Selective Banning of OTT Services', as this important part of governance of Information Communication Technologies remains to be addressed despite various steps being taken in this direction in past few years.
2. The Authority and Government are aware of the growth and influence of the OTT services, especially OTT communication services, in the country since the previous consultations on the subject in years 2015 and 2018. From the current Consultation Paper and the draft Indian Telecommunication Bill, we understand that the Government and the Authority has finally realized the need to regulate OTT Communication services.
3. OTT services include Communication Services, Media and Entertainment Services and Gaming Services along with services like Cloud services, Marketplace services and many more. We believe that the authorities will make a clear distinction in various types of OTT services and will classify OTT communications that directly compete with the Telecommunication Services such as Voice/Video Calls and Text/Voice/Video Messaging.
4. For the purpose of regulation, the OTT services should be broadly categorized into.
 - a. **OTT Communication Services**
 - b. **Other OTT Services**
5. Such communication services are already covered under the provisions of the Indian Telegraph Act,1885 ("Act") and are also covered in the scope of the Unified License ("UL") granted under the Act. Any service provider, including OTT service provider, whose primary business is to provide the **services which allow sending of messages (in any form viz. voice, video or messaging) from one terminal to another needs to be regulated as per the provisions of the Act and UL.**
6. In our response to draft Indian Telecommunication Bill, we had suggested adoption of any of the following definitions for OTT communication services: -
 - (a) the definition already used by TRAI in its Consultation Paper on Regulatory Framework for Over-The-Top (OTT) Communication Services dated 12th November 2018.

“OTT communication services (VoIP) providing real-time person to person telecommunication services using the network infrastructure of the telecommunication service provider and competing with them”

(b) Definition used by DoT committee on Net Neutrality;

“These services (e.g. VoIP) provide real-time person to person telecommunication services. These services are similar to the telecommunication services provided by the licensed telecom service providers (TSPs) but are provided to the users as applications carried over the internet using the network infrastructure of TSPs. Essentially OTT communications services compete with the services provided by TSPs riding on the infrastructure created by TSPs.”

7. In addition to above definitions, European Union in its draft Electronics Communication Code released by EU Commission in September 2016 (ECC) proposed the following definition;

“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”.

8. Further, **all other OTT services that do not have communication as their main business should be defined as Other OTT services**, this will also include the services where some level of in-app communication is incidental to the main service. For instance, communication between driver and client in a cab-hailing application or gaming conversation in gaming apps or delivery information in food delivery apps etc.

A. Regulatory Framework for OTT Communication Services

9. The OTT Communication Services are fully substitutable to the Voice, Video and Messaging services that require a license under Section 4 of Indian Telegraph Act and for which the TSPs have been granted the license. Therefore, in order to have a level playing field between the two set of entities providing such substitutable services, it is essential to implement the principle of ‘**Same Service Same Rules**’. Therefore, there is an urgent need

to regulate the OTT communication Services providers at par with the Telecommunication Services providers licensed under the Act.

10. Any OTT service that enables one-to-one communication, whether voice based, or video based, or messaging based or through file transfer, can be used by consumers in place of regular communication services offered by licensed TSPs and therefore have potential exposure related to National Security and/or data privacy. **Hence, in public interest, such OTT Communication Services should be brought under the licensing and regulatory framework by introducing a new chapter in Unified License as UL (OTT Communication) through which such** service providers are required to comply with the security and data privacy requirements prescribed in Unified License.
11. **Unified License granted under the Telegraph Act is required for both installation/maintenance of telecommunication network as well as provisioning of communication services using such network. Therefore, the UL is required for providing any or all layers of telecommunication which include the network layers such as physical network/internet and services layers such as voice, video and messaging.** Therefore, the argument often used by OTT communication service providers that principle of Same Service Same Rules does not apply because they operate in a different layer as compared to the licensed telecom service providers is invalid.
12. It has already accepted that equality in the context of Article 14 comes from being in the same situation as opposed to operating in same layers. This is applicable for **OTT Services Providers and licensed TSPs, as both offer voice/video/messaging communication services to same customers and operate in the same situation and in fact in the same layers of communication and are therefore clearly equal.**
13. **In fact, the inequality between OTT Communication Providers and TSPs exists for not making comparable investments in networks and not complying with national security requirements, nor taking permissions to offer services and not comply to other regulations applicable for providing the communication services. Therefore, such anomalies need to be corrected.**
14. Most importantly, by virtue of being outside licensing regime, the OTT Communication providers do not have any obligation towards security requirements including lawful interception, furnishing call details, providing traceable identity of the user of the communication, data / server localization etc. Further, there is no obligation on OTT providers to offer comparable consumer grievances redressal mechanism and maintenance of the required quality of services similar to TSPs. With ever increasing use of OTT services for communication, this is a great risk to national security. Therefore, we

are of firm view that all the Communication OTT players should meet the requirements of National Security and Consumer Rights.

15. Thus, the optimum mode of Regulating the OTT communication services is by bringing these services under the Unified License framework by introducing a new chapter in Unified License. Taking note of nature and character of these services, it is essential to bring them in regulatory regime to ensure orderly growth of telecom sector, as mentioned in preamble of TRAI Act 1997 and serve public interest on national security.
16. It would not be out of place to mention here that the Authority in **its Recommendations on License Fee and Policy Matters of DTH Services dated 23rd August 2023**, has opined that **there is a need for equal treatment to all service providers to ensure level playing field. The Authority has also recommended that there is a need to bring in parity and establish level playing field between same services.** We submit that the same principle needs to be extended to communication services as well. The extracts of the relevant portions of the Recommendations are as below:

*2.127 The Authority is of the view that DTH sector should be treated similar to other distribution platforms in terms of license fees. **This may also, in addition to bringing parity and establishing level playing field, which is the core issue of the MIB reference,.....***

*2.128 Taking cognizance of the fact that no license fee exists for both the regulated (MSOs, HITS Operators and IPTV providers) as well as unregulated distribution operators (DD Free Dish and Content Based OTT services) **delivering the same broadcasting services, the Authority is of the view that there should be equal treatment to all the service providers to ensure level playing field. The Authority feels that this anomaly requires to be removed at the earliest.***

17. In view of the above, we request the Authority to implement the same principle for communication services and therefore the licensing and financial obligations for TSPs and OTT Communication services should be made equal. **This can be achieved by either completely removing the financial obligations on TSPs or bringing the OTT communication services under Unified License regime and levy of the same License fee and other charges, which is optimum solution, as submitted above.**
18. It is also worthwhile to mention here that the need to bring the Big Tech companies including the OTT communication service providers under Regulatory framework has been felt from other aspects as well. For instance, the Parliamentary Standing Committee on Finance in its 59th report on **'Cyber security and rising incidence of cyber/white collar crimes'** found that these companies refuse to cooperate with Indian regulators like

Reserve Bank of India, on measures to ensure security for Indian customers. The committee has consequently recommended for enhanced overseeing and regulatory powers over such companies. The relevant extract of the report is reproduced below.

(i) Regulation of Service Providers: Enhance regulatory powers to oversee and control third-party service providers, including Big Tech and Telecom companies, by implementing comprehensive guidelines and standards. This includes ensuring stringent security controls, thorough vetting processes, better eKYC verification, and regular audits of their cyber security practices. During the Committee hearings, RBI provided evidence that Big Tech companies have refused to make various modifications to their mobile operating systems to make the OTP based two factor authentication protocol even more secure. Such invaluable input from key regulators should not be disregarded by Big Tech companies...

B. Contribution to Building Digital India

19. We also bring the Authority's kind attention to a major anomaly that needs to be addressed. The investing party i.e. TSPs, that invest heavily in spectrum and building the digital backbone of the country, end up paying over 30% revenue to taxes. On the contrary, the non-investing OTTs enjoy huge direct/indirect benefits and revenues by utilizing the TSPs' networks and do not pay any comparable taxes and levies, thus causing loss to the Government exchequer as well as TSPs.
20. It is no secret that OTT Players consume humongous amounts of bandwidth, which puts tremendous pressure on the network infrastructure established by the TSPs, without contributing an iota to this cost. At the same time OTT Players gain massive direct / indirect benefits. Thus, it would be all the more fitting that both Communication and Other OTT players contribute towards the cost of this infrastructure development, through direct compensation to TSPs.
21. Thus, it is imperative that the entities that cause the traffic and cost on networks (such as OTTs- Communication, streaming, gaming and social media companies) with little or no economic contribution to the development of national telecom networks, who now account for major chunk of all network traffic should contribute to the TSPs who are engaged in digitizing India.
22. **Contribution of OTTs to network costs can be based on assessable criteria like volume of traffic generated by OTT player, turnover threshold, number of users and other criteria. Further, in case the Authority and the Government feel that this levy on all the OTTs may not be conducive for the Indian start-up ecosystem's aspirations, then this levy can be restricted to significant OTT players only.**

23. We submit that the legal precedence exists of defining the significantly large OTTs in Indian jurisprudence. For instance, the Central Government vide a gazette notification dated 25th February 2021 defined the threshold for significant social media intermediary under Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. In similar vein, the Central Government reserves the right to notify the Significant Data Fiduciaries under the Digital Personal Data Protection Act 2023, based on relevant factors that also includes the volume and sensitivity of personal data processed.
24. Thus, if required the Authority can propose the Significant OTT players that will be required to contribute to network costs entirely being borne by TSPs. The costs may be decided basis mutual arrangement between the OTT Providers and TSPs. However, both parties should ensure that the OTT services on TSP network are made available to the subscribers in full compliance with guiding principles of Net Neutrality ("NN") and there should be no discrimination, restriction, or interference in the treatment of content including practices like blocking, degrading, slowing down or granting preferential speeds or treatment to any content.
25. In order to appreciate the demand by TSPs, it is important to recognize the disproportionate economics of networks; a handful of global players dominate network traffic and revenue while TSPs struggle to recover costs for next generation broadband investment and close the gaping digital divide. **Therefore, there is a legitimate and expanding interest in broadband cost recovery to ensure that the digital dividend is available to all at reasonable service charges.**
26. We submit that Fair Contribution towards network costs to be paid by OTT service providers to compensate for the network costs caused by their excessive data is being discussed globally. An attempt in this direction was made by SK Broadband Korea. It is reported that as the Netflix traffic had exploded to 26-fold on SK Broadband's network in 2 years, it sought cost recovery for Netflix. In return, Netflix sued SK Broadband over usage charge demand in 2020. **The court rejected Netflix's arguments of not paying the network fee on the ground of NN and ruled that such arguments are not relevant to the dispute. Court had accepted the argument that internet is a two-sided market in which broadband and content providers can engage in business-to-business transactions where payment is exchanged.** The ruling was challenged, while SK Broadband also countersued Netflix. The dispute is now in its 3rd year. The latest uptake being that the court only agreed on the need to assess unjust enrichment by Netflix at the expense of SK Broadband and will appoint an assessment organization.

27. Meanwhile, the Government of South Korea, introduced a section on securing service stability in the Telecommunications Business Act to address this issue. The extract to this section is as below:

Article 22-7 (Securing Service Stability by Value-Added Telecommunications Business Operators)

A value-added telecommunications business operator who meets the standards prescribed by Presidential Decree, such as the number of users and the volume of traffic, shall take necessary measures prescribed by Presidential Decree, such as securing the means of service stability and dealing with user requests, in order to provide users with convenient and stable telecommunications services.

28. This law (also known as **Netflix law**) required the content providers with at least 1 million users per day and comprising at least 1% of South Korea's traffic to **negotiate with the carriers and come to an agreement on usage charge payable to secure the service stability and ensure QoS for the content**. As per the publicly available data, basis these threshold limits the law became applicable to five largest content providers: Google, Netflix, Meta, Naver, and Kakao, (together comprising over 41% of all South Korean traffic)

29. Other Global efforts include:

- a. US Senate, the bipartisan Funding Affordable Internet with Reliable Contributions Act or the FAIR Contributions Act (S. 2427) would require the Federal Communications Commission (FCC) to study and report on the feasibility of funding the Universal Service Fund (USF) through contributions from online content and service providers.
- b. European Commission senior officials have called for an investigation of fair contribution by Big Tech to broadband networks.
- c. European Parliament recently proposed that the economic sustainability of telecom networks is essential to achieving the 2030 Digital Compass connectivity targets and high-performance connectivity for all citizens within the EU without jeopardising competition rules. It urged the Commission to address and mitigate persistent asymmetries in bargaining power as set out by the European Declaration on Digital Rights and Principles for the Digital Decade and called for the establishment of a policy framework where large traffic generators contribute fairly to the adequate funding of telecom networks without prejudice to net neutrality.
- d. In March 2023, Brazil's National Telecom Agency (ANATEL) initiated a consultative process seeking comments to address a future regulation of digital platforms and the need for fair share. The Request for Comments includes following queries

- *The impact of new business models and players on the digital ecosystem of telecommunication networks and services, as well as any evidence that networks are struggling to process consumers' data demand.*
- *The contribution of OTT platforms to the improvement, expansion and maintenance of the network infrastructure that supports their services and needs, as well as the pros and cons of implementing a regulation that establishes the remuneration for the use of telecommunication networks ("network fee"/"fair share").*

30. It is irrefutable that the consumer prices are not very elastic, especially as the new technologies generally lead to the cost of upgrading the devices, thus, increasing the consumer cost for internet simultaneously may lead to a negative effect. Accordingly, only sustainable mode of cost recovery is Fair Contribution towards network costs by significantly large content providers, that are anyways making large profits using the broadband proliferation. **We understand from reports that US firms Alphabet and Meta and Korean firms Naver and Kakao already pay usage fees in South Korea.**

31. An intervention at this time is relevant because the traffic on telecom networks will continue to grow at an exponential rate as 5G matures and we move to 6G. The users alone will not be able to contribute towards the huge investment required in building such networks. Non-participation in funding the network costs by businesses and content providers can scuttle the entire process, consequently, there is a need for a big push to big technology to contribute, as 5G and 6G are ideal for their bandwidth-heavy applications like video streaming and online games.

C. Different Rules for Different Services

32. We note that OTT applications generally offer capabilities that tend to go well beyond the traditional services. For instance, select Instant messaging services can provide far richer services than the traditional SMS services that they are to some extent supplanting. Few OTT video services provide not only access to professionally produced content, but also to user-generated content, thus simplifying and enriching interactions for end-users.

33. We understand that online and OTT services are a vast and diverse collection of businesses. For instance, a search engine is not the same as an app-store or a subscription movie service is not the same as a social network. **Hence it will not be advisable to have a uniform regulation for all the online and OTT services.**

34. However, it is imperative that online and OTT services should be made to own the responsibility to address the challenges that arise with the emergence of OTTs in the context of their relevant ecosystem. For instance,

- a. OTTs in communication ecosystem pose various challenges, that use of such services for cybercrime, fraud, harmful content and fake news, potential for data breaches, among others. Thus, these set of OTTs need to be governed under a license under section 4 of the Indian Telegraph Act 1885.
- b. OTTs in content ecosystem pose challenge of content which is harmful and not suitable for social fabric of the country, pornography, child abuse, among others. This set of OTTs are governed by MeitY / MIB guidelines and other relevant sectoral Regulations.
- c. OTTs in e-commerce ecosystem pose challenge of harming interest of small retailers in the country, price control, among others. These need to be governed under relevant sectoral Regulations.

D. Selective barring of OTT Applications

35. We submit that while the service barring or internet is a legitimate tool for law enforcement, the current implementation leaves a lot to be desired. The powers are being exercised for flimsiest of reasons and pretexts including and not limited to prevent cheating in exams, completely ignoring public convenience aspect of such orders. Service barring orders need to be issued for most necessary cases and massive service disruptions and impact on all other genuine users should be avoided. Therefore, we submit that uniform instructions should be issued to all concerned authorities to use service barring powers judiciously and only for security related concerns and other methods should be used for non-critical requirements.
36. Further, the concept of selective barring of OTT applications and urls instead of blanket ban on the internet services is a preferable solution. As blanket ban on data services has a debilitating effect on economy as all critical governance and utility services are also barred. Therefore, the Authority should recommend measures for selective barring.
37. However, there are many issues in selective barring at network level. In many cases the websites have dynamic IP addresses and are hosted in Clouds and are difficult to bar using conventional methods. To handle such situations, DNS blocking is implemented. This technology creates a gateway between web and access server and ensures that the browser does not recognize blocked IPs. This was developed primarily to prevent phishing activities and online gambling; however, it is an effective Internet filtering control.
38. However, there are many scenarios where the targeted websites are using Hypertext Transfer Protocol Secure (https) protocol and it is not possible to block content on these

sites. Further there are extensions like abc.com/xyz etc. that cannot be blocked at service provider level and the security agencies take help of intermediaries like OTT providers to bar such content. Further, the help of App stores is also used to take down malicious and violating apps.

39. Further, in the URL barring solutions, it is not possible to bar/shutdown/ban certain services/ websites/ URLs/ OTT applications, selectively, in specific parts of the country.

40. **The objective of selective barring can be best achieved through OTT service providers, Search engines, browsers, and App Stores. Government has sufficient powers under the Indian Telegraph Act, 1885 and IT Act to ensure compliance with such orders. As these OTT providers have the location of their customers to provide location-based services, they can easily block their application in a particular geographic location. Therefore, we submit that the Authority should recommend that selective data barring should be implemented at App level only.**

41. To Summarize

1. There is an urgent need to regulate OTT services.
2. OTT services can be classified into two categories.
 - OTT Communication Services
 - Other OTT Services
3. The OTT communication services are those that have communication as their main service.
4. The OTT communication services should be brought under the framework of Unified License.
5. The compliance with financial, security and data privacy conditions including payment of License fee and other levies should be absolute for ensuring level playing field.
6. Both OTT Communication and Other OTT services should be mandated to contribute towards Digitizing India by direct contribution to TSPs.
7. Contribution of OTTs to network costs should be mutually negotiated and can be based on assessable criteria like volume of traffic, turnover threshold, number of users and other criteria.
8. The selective barring of Apps should be implemented at Application level, instead of at network layer.

Issue wise Comments

Q1: What should be the definition of over-the-top (OTT) services? Kindly provide a detailed response with justification.

AND

Q2: What could be the reasonable classification of OTT services based on an intelligible differentia? Please provide a list of the categories of OTT services based on such classification. Kindly provide a detailed response with justification.

1. We submit that OTT service can be defined as content, service or an application that is provided to the end user over the public Internet. When looked as a part of internet value chain, OTT is a part of broader value chain with each segment having its own business models, risks and opportunities and requiring different level and nature of legislation.
2. From the perspective of this CP, we believe that OTT services classification should be based on level and nature of regulatory oversight required for the suggested categories of OTT services. Hence, OTT services may be categorised as follows:
 - a. **OTT communications services** –These services provide person to person communication like telecommunication services provided by the licensed TSPs. The services are provided to the users as applications carried over the internet using the network infrastructure of TSPs. This is especially relevant to telecom operators since these services operate in a similar space as traditional voice and messaging services. These should fall under regulatory framework prescribed by TRAI and DoT.
 - b. **Other OTT services** – This would include the OTT services with main product beyond the OTT communication space. This category would include media service with video and audio content being streamed, shared and/ or downloaded over the internet, Gaming e-commerce, Banking, other trade and commerce, internet services, among others. These sectors should be suitably regulated by financial, consumer protection and respective domain regulators. These fall under regulatory ambit of other agencies like MeitY / MIB and need not be regulated under the Telecommunication Regulations.
3. **Both, the aforementioned service categories will be required to contribute to digitizing India and would be required to pay their fair share in telecom network infrastructure development.**

Q3: What should be the definition of OTT communication services? Please provide a list of features which may comprehensively characterize OTT communication services. Kindly provide a detailed response with justification.

AND

Q4: What could be the reasonable classification of OTT communication services based on an intelligible differentia? Please provide a list of the categories of OTT communication services based on such classification. Kindly provide a detailed response with justification.

1. We submit that the Authority and the DoT have, at different times attempted to define the OTT communication services. On a basic level these are the services where the sending of messages (in any form viz. voice, video, instant messaging) from one terminal to another is the primary business. We reiterate our proposal to use any of the following definitions of OTT communication services:-

(a) the definition used by TRAI in its Consultation Paper on Regulatory Framework for Over-The-Top (OTT) communication Services dated 12th November 2018;

“OTT communication services (VoIP) providing real-time person to person telecommunication services using the network infrastructure of the telecommunication service provider and competing with them”

(b) definition used by DoT committee on Net Neutrality;

These services (e.g. VoIP) provide real-time person to person telecommunication services. These services are similar to the telecommunication services provided by the licensed telecom service providers (TSPs) but are provided to the users as applications carried over the internet using the network infrastructure of TSPs. Essentially OTT communications services compete with the services provided by TSPs riding on the infrastructure created by TSPs.

(c) European Union’s definition for Electronic Communication Services may be used for deriving a suitable definition of OTT communication services;

“The draft Electronics Communication Code released by the EU Commission in September 2016 (ECC),² 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”.

2. These definitions would therefore exclude broadcasting, general websites, content, gaming, and unidirectional information services, while it would include VoIP services,

video calls, text messaging and emails or any platform that allows one-to-one directed communication in any form or manner.

3. We reiterate that substitutability, especially demand side substitutability, should be treated as primary criterion for defining the OTT communication services to be regulated. Based on the above, any OTT platform that enables direct one-to-one communication using any of the communication means should be classified as OTT communication services. It should include all communication applications accessed and delivered over the public Internet that may be a direct functional substitute for traditional telecommunication services, irrespective of the underlying technical layer.
4. OTT communication services can be divided into number based and number independent interpersonal communication services.
 - a. Number-based interpersonal communications service means an interpersonal communications service which uses the publicly assigned numbering resources as their identity, or which enables communication with a number or numbers in national or international numbering plans.
 - b. Number-independent interpersonal communications service means an interpersonal communications service which does not connect with publicly assigned numbering resources or which does not enable communication with a number or numbers in national or international numbering plans.
5. We submit that from regulatory perspective focus needs to be brought on not only on the number based but also on number independent interpersonal communication services. Both Number dependent and number independent interpersonal communications services should be placed on an equal footing with communications services provided by TSPs.
6. Though not exhaustive, but the following list include some of the areas which requires to be regulated for OTT Communication Service Providers:
 - a. Issues related to National and user security and integrity – empower LEAs to get required access to preserve security of country and individuals and maintenance of law and order.
 - b. Critical Communication required for **Disaster Management**.
 - c. Like licensed TSPs, having an SOP with LEAs and other Government Agencies for timely provisioning of data.
 - d. Need of well-defined KYC norms for OTT communication services- At present the OTT communication providers do not carry out their own KYC and rely on the KYC

done by TSPs. But their services can be subscribed and used by someone with whom the user shares her/his OTP accidentally. Therefore, their services have huge risk of misuse by unknown persons and need to devise the mechanism to protect the users from such misuse.

- e. Many OTT players like “Telegram” allows use of fictitious identities leading to misuse of such platform for illegal activities. They must keep the record of all such identities and provide it to LEAs within the prescribed timelines to protect the users from financial and non-financial crimes.
 - f. **Quality of Service** – while the quality of service at network layers is controlled by the TSPs, but the QoS at the service layers such as Quality of Service for Voice, deliver of messages, Quality of Video etc is controlled by the OTT Providers. The authority needs to prescribe the QoS framework for OTT services and they must comply with such guidelines failing which there should be financial disincentive like the licensed TSPs.
 - g. **Interoperability** – to overcome network effect.
 - h. **Universal service fund** – to contribute towards network development even in rural and remote parts of country. Even the MVNO/VNOs who are providing services without building network are contributing for USO fund. So, OTT communication service provides cannot be any exception.
 - i. **Customer grievance redressal procedures-** Appointment of Nodal Officer, Grievance Officer as per the TRAI’s regulation on Consumer Protection and a routine audit by TRAI empanelled auditors.
 - j. Adherence to the norms to protect consumers from spam and phishing calls/messaging.
 - k. **Tariff Orders** -to ensure transparent, non-discriminatory, non-predatory tariffs by OTT Communications Service Providers.
 - l. **Location of the Routing and Authentication Infrastructure-** Each TSP and VNO/MVNO is required to install its authentication infrastructure as well as routing infrastructure within the licensed service area. For example, location of Voice/Video Switches, SMSC, HLR, VLR etc. Similarly, the OTT communication providers must also be mandated to install their voice and video switches, instant messaging servers etc within the license area situated in India.
7. **While TSPs are licensed and regulated for both (i) building the networks e.g. assignment of spectrum and QoS at network layer; and (ii) provisioning of services as mentioned in above paragraph, the OTT Communication Service Providers also need to be regulated in the same way as licensed TSPs without any relaxation. The same rule for same service is essential to meet the objective of Article 14 of constitution.**

Q6. Whether there is a need to bring OTT communication services under any licensing/regulatory framework to promote a competitive landscape for the benefit of consumers and service innovation? Kindly provide a detailed response with justification.

1. Under the Indian Telegraph Act 1885, an entity desirous of offering telecommunication services such as voice, video, and messaging to its customers in the country is required to obtain a suitable service license from the Government and then establish a telecommunication network to provide voice, video, and messaging services to its customers.
2. However, **with the advent of broadband wireless services, a new type of service providers emerged, that do not obtain a license, do not build a network, do not verify a customer, but operate on the service layer.** These players, initially delved in P2P messaging, followed by group messaging that further evolved into voice and video communication. **Currently, they account for as many active subscribers as a regular TSP and offer communication services directly substitutable with TSP services Furthermore, rather than offering simple substitutions for voice, video and SMS, OTT applications offer a range of features over and above the traditional telecommunication services.**
3. The OTT communication services have penetrated all areas and sections of our society, with active base of a leading OTT communication service provider in the country being comparable to same of a major TSP. These communication applications have got great traction as besides providing voice, video, and messaging on a single platform, these are also a source for sharing content. Thus, clearly the OTT communication service providers are major and influential players in the country's communication space and need to be regulated for ensuring an efficient eco-system.
4. As these services have reached a matured stage in the country, **there is a need to holistically look into specific aspects of these services including regulatory, economic, lawful interception, data security, user privacy and safety aspects.**
5. One key concern being that our LEAs have little leverage over the OTT communications service providers which are registered abroad and thus out of their jurisdictional reach; thus endangering our data sovereignty. Additionally, features such as time bound storage facility of messages offered by these OTT communication service providers to its users are posing new challenges to content regulation.
6. To promote a competitive landscape for the benefit of consumers and innovation, we suggest that appropriate level of regulations should be examined for OTT providers and the services provided by licensed telecommunication providers, which may include

reducing the regulatory burden of TSPs to bring them at par with OTT communication service providers.

7. Since the removal of regulatory licensing burden on TSPs is unlikely, the Same Service Same Rules can be achieved by bringing the OTT Communications services under the scope of Unified License. **The Authority is requested to recommend a new chapter under Unified License for OTT Communication Services Provider (“OCSP”). This chapter may ensure full and absolute compliance with financial conditions, Security conditions, Proper KYC of their subscribers, Location of the switching infrastructure for voice/video and messaging applications, Data Privacy, Quality of Services, Consumer Protection, Tariff Orders, Protection of users from SPAMs, blocking/restriction on website/app from National Security perspective, providing support during disaster relief and messaging required during management of disaster, appointment of Nodal Officer and Consumer Grievance Officer who shall co-ordinate with DoT and TRAI on provision of services. Though such nodal officer can be same as appointed under the IT act from user data protection perspective.**
8. It is further submitted that while the telecom regulatory framework may not be suitable for all OTT services, **it is recommended that all of the OTT players should monetarily contribute in building the digital backbone of the country, as they are the major beneficiaries of the proliferation of broadband services across the country.**

Q5. Please provide your views on the following aspects of OTT communication services vis-à-vis licensed telecommunication services in India:

- (a) regulatory aspects;**
- (b) economic aspects;**
- (c) security aspects;**
- (d) privacy aspects;**
- (e) safety aspects;**
- (f) quality of service aspects;**
- (g) consumer grievance redressal aspects; and**
- (h) any other aspects (please specify).**

Kindly provide a detailed response with justification.

The following tables illustrates the difference between OTT services with licensed telecom services in the country, with respect to mentioned aspects.

	OTT Communication Services	Licensed Telecommunication Services
regulatory aspects	<p>No well-defined regulatory framework. Work under the general IT Act and MeitY requirements which are equally applicable for TSPs.</p> <p>Communication Service layer regulation as explained in response to previous questions not governed under the IT Act or Data protection act as those fall under the Indian Telegraph Act and TRAI Act.</p> <p>No audit or compliance requirements related to communication services.</p>	<p>Well defined regulatory framework for both (i) Building of network and (ii) for provisioning of services.</p> <p>Services are governed through both License as well as Regulations framed by TRAI.</p> <p>Even the MVNO/VNO who provide the services without building network (provision of services by OTT is very close to the services provide by VNO/MVNO) are required to obtain license and comply with TRAI's regulations.</p> <p>Licensed TSP are also governed by IT act, intermediary guidelines and Data Protection Act for the limited purpose of IT Act and Data protection.</p> <p>Plethora of periodic audits and compliances</p>
economic aspects	<p>No economic implications</p> <p>No network set-up cost</p> <p>No spectrum cost</p> <p>No Regulatory levies</p>	<p>Expensive spectrum costs</p> <p>Massive network set-up costs</p> <p>Over 30% of all revenue goes in servicing regulatory levies</p> <p>License fee spectrum usage fee is not limited to revenue from network but also</p>

	OTT Communication Services	Licensed Telecommunication Services
		applicable on the revenue from services.
security aspects	<p>No sector specific security requirements</p> <p>Not obligated to co-operate with Law enforcement agencies</p> <p>No Lawful Interception provisions</p> <p>Use encrypted services</p> <p>Regularly deny decryption keys</p> <p>No KYC done by the OTT Communication service providers and rely on the KYC done by TSPs though OTP without sharing the cost of KYC with the underlying TSPs.</p> <p>Huge risk through misuse of OTP by fraudulent means. The OTT communication service providers to build their own KYC mechanism like banking services.</p>	<p>Extensive security requirements encompassing all aspects including equipment, software etc.</p> <p>Well defined process to co-operate with Law enforcement agencies</p> <p>No service without Lawful Interception compliance</p> <p>Restrictions on encrypted services</p> <p>Follow all KYC requirements mandated by DoT.</p>
privacy aspects	<p>No sector specific privacy requirements.</p> <p>No specific regulation on prohibition on sharing of consumer and sharing data with third parties</p>	License provisions and TRAI Directions, over and above the data privacy law.
safety aspects	No sector specific privacy requirements	License provisions to ensure network safety

	OTT Communication Services	Licensed Telecommunication Services
quality of service aspects	Self-governed QoS with no reporting and obligations	Defined parameters for QoS. Regular compliance and audits on QoS including Financial Disincentives
consumer grievance redressal aspects	Self-governed Consumer grievance and redressal	Well defined process with regular monitoring and compliances

Q7. In case it is decided to bring OTT communication services under a licensing/ regulatory framework, what licensing/ regulatory framework(s) would be appropriate for the various classes of OTT communication services as envisaged in the question number 4 above? Specifically, what should be the provisions in the licensing/ regulatory framework(s) for OTT Communication services in respect of the following aspects:

- (a) lawful interception;**
- (b) privacy and security;**
- (c) emergency services;**
- (d) unsolicited commercial communication;**
- (e) customer verification;**
- (f) quality of service;**
- (g) consumer grievance redressal;**
- (h) eligibility conditions;**
- (i) financial conditions (such as application processing fee, entry fee, license fee, bank guarantees etc.); and**
- (j) any other aspects (please specify).**

Kindly provide a detailed response in respect of each class of OTT communication services with justification.

1. We submit that OTT communication services have reached a mature stage and play a significant role in communication between users. As stated earlier, from active subscriber perspective one of the OTT communication service providers is as big as a major TSP, stressing the impact of such players in our country.
2. We submit that from the licensing, Same Service Same Rule, end-user protection or public safety perspective, it is imperative that the Unified License with issue-based exemptions from specific obligations for OTTs, should be applicable to OTT communication service providers. **We reiterate that the Authority should recommend an authorization for OTT communication service providers under the Unified License framework.**

3. We submit that **Lawful Interception (LI)** of every message is a legal and critical mean provided to the security agencies for investigation of criminal, anti-national and anti-social activities. This along with **Data Privacy** is a license requirement for TSPs and similar obligations should be extended to OTT communication service providers for safety of nation and individuals.
4. Majority of OTT communication service providers have their servers outside the country, which leaves the Indian security agencies powerless to exercise their rights. Further, all communication on these applications is generally encrypted and the encryption keys are not stored within country's geographical boundaries. Thus, even if the security agencies attempt to intercept information and communication on OTT applications with the help of service providers, they get only the raw data, as the OTT communication is heavily encrypted, and it is extremely difficult for the Government and service providers to obtain decryption keys.
5. We submit that the **following broad requirements related to LI and data privacy should be extended to OTT communication service providers under Unified License framework.**
 - a. Setting up Lawful Interception and Monitoring (LIM) systems to enable authorised security agencies to monitor / intercept the messages transmitted over the platform.
 - b. The Switching servers, authentication servers (such as HLR/AAA or equivalent) must be installed within India.
 - c. Restriction on sending user information abroad and mandatory local hosting of all critical subscriber data.
 - d. Right to inspect the source code, network or technology layer used for extending the service, by the licensor.
 - e. Providing necessary facilities for continuous monitoring of the systems.
 - f. Sharing of decryption keys with the Licensor for all bulk encryption deployed in the country.
 - g. Maintaining CDR/IPDR for a minimum period of two years, as per defined parameters.
 - h. Responsibility for ensuring protection of privacy of communication and confidentiality of subscriber information.
 - i. Applicability of Indian Telegraph Act, Indian Telegraph Rules, The Code of Criminal Procedure, and the Information Technology Act and its different rules pertaining to intermediaries and interception.
6. We submit that OTT communication service providers should be mandated not to transmit any message or class of messages to or from any person or class of persons, or relating to any particular subject, brought for transmission by or transmitted or received by any

telegraph, if directed by authorised officer of Government in writing. Such prohibition to transmit should be limited to messages which can have detrimental impact on public safety, interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States or public order or can cause incitement to the commission of an offence.

7. Communication OTT service providers should also be required to comply with the financial obligations i.e. license fee obligations including USO levy as percentage of AGR and other levies, as per the Access services authorization under the Unified License, as part of the Same Service Same Rules regime and in order to maintain a level playing field, as the Authority has already recommended for the broadcasting services under its **Recommendations on License Fee and Policy Matters of DTH Services dated 23rd August 2023**.
8. At present, most OTT Communication service providers in the country rely on indirect methods to carry out verification of their subscribers to meet such requirement. However, concerns pertaining to fake identity or use under false identity continues to have serious and far-reaching implications on national security. Correct identification of subscribers of OTT communication apps is critical to ensure that such platforms are not used to disturb peace and harmony in the society. Fake news and rumours to instigate violence, influence decisions, create bias in our society and should be addressed.
9. We recommend that the obligation of identity verification should be extended to all communication service providers, TSPs and OTT alike, for security purposes of user and country. We recommend that **OTT Communication service providers should be responsible for developing a mechanism for collecting and storing the identification and authentication carried out by them** for all users so that security agencies can track the end user in case of any violation of rules and regulations prevalent in the country. Needless to state that all such data should be stored in India.
10. We note that the IT Rules 2021 already provides that “significant social media intermediary shall enable users who register for their services in India, to voluntarily verify their accounts by using any appropriate mechanism” and recognize it as a step to instil trust among internet users on the veracity of the account.
11. OTT Communication service providers should be responsible for maintaining the security of subscriber information/ communication being transmitted on its platform. It should be held liable in case of any data breach from OTT service provider’s end. **OTT Communication service providers should be responsible for monitoring the unlawful content on its platform** and take it down, as per instructions by LEAs, to help Government curb its ill-effects.

12. **OTT communication service providers should be required to develop systems for addressing unsolicited commercial communication (UCC) related issues and integrate with the DLT architecture to prevent UCC on their network.** The provisions of the Telecom Commercial Communications Customer Preference Regulations, 2018 should be equally applicable on the OTT Communication service providers.
13. Subscribers of any OTT communication services find it difficult to switch to another service provider owing to lack of means and method to transfer the message history from one OTT communication service provider to another. To enable choice of OTT communication service provider for the user, **we suggest that service providers should be mandated to facilitate switch from one OTT communication service provider to another** by easily porting user's data as and when they desire, where technically feasible. Interoperability between applications will foster competition. OTT communication service providers should consider data protection and security requirements in designing tools to enable portability and deciding with whom to interoperate, with guidance from regulators.
14. We submit that **OTT communication service providers should publish comprehensive, comparable, reliable, user-friendly and up-to-date information for end users on the quality of their services**, to the extent that they control at least some elements of the network either directly or by virtue of a service level agreement to that effect. They should provide details as appropriate if the quality of the services they provide depends on any external factors, such as control of signal transmission or network connectivity.
15. It has been recognized that a complementary relationship exists between OTT services and network services. OTTs provide the content that drives demand for telecommunication operator services while TSPs provide the connectivity and coverage that enable access to OTT applications. We have elaborated on this in our inputs to subsequent questions.
16. Hence, we suggest **that TRAI should recommend for OTT providers contributing in the network development and building a broadband backbone for the country.** In this effort, the Other OTT service providers should also be required to pay their fair share.
17. The contribution by all OTTs will help restore a level playing field; and ensuring all market players benefiting from the digital transformation make a fair and proportionate contribution towards digital infrastructure. **Contribution of OTTs to network costs can be based on assessable criteria like volume of traffic, turnover threshold, number of users and other criteria.**

18. It is pertinent to note that since the fruits of telecom and broadband connectivity have been reaped equally, if not more, by providers of such services e.g. streaming and social media platforms / companies who are also the biggest drivers of traffic on network today. We suggest that regulator can introduce a mechanism to compensate the network provider for the determined costs for network expansion throughout the country under transparent conditions from public funds. **The thought of fair and equitable contributions from all such stakeholders who contribute towards creating traffic and thus impact network investments and capacities; is gaining currency every day, e.g., in Europe, USA and South Korea.**
19. As submitted in the preamble, we submit that in case it is felt that such levy on all OTTs may not be conducive for the Indian start-up ecosystem's aspirations, then this levy can be restricted to significant OTT players only. We reiterate that there is legal precedence to define the significantly large OTTs in Indian jurisprudence. **As mentioned before, the Central Government has already defined the threshold for significant social media intermediary under Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 and it reserved the right to notify the Significant Data Fiduciaries under the Digital Personal Data Protection Act 2023, based on relevant factors that also includes the volume and sensitivity of personal data processed. In addition, the thresholds used in South Korea can also be a reference point.**
20. Thus, if required the Authority can propose the Significant OTT players that will be required to contribute to network costs borne by TSPs. **The costs may be decided basis mutual arrangement between the OTT and TSP, however, both parties should ensure that the OTT services on TSP network are made available to the subscribers in full compliance with guiding principles of Net Neutrality and there should be no discrimination, restriction, or interference in the treatment of content including practices like blocking, degrading, slowing down or granting preferential speeds or treatment to any content.**
21. It is further submitted that the consumer centric requirements of maintaining a level of Quality of Service (QoS) and Net Neutrality implies that the TSPs need to continue investing in all new and upcoming technologies and continuously expand data capacities across board to ensure a quality access to all content to all users. **However, the corresponding investments and the return on investment is not possible without adding another revenue stream and cutting the costs for the TSPs. The only available avenue is to charge the other end of the network i.e. content providers for Fair Contribution towards network costs and a framework for the same should be recommended.**

22. Furthermore, in case the Authority feels a need for further deliberations on framework and modalities for OTTs financial contribution to TSPs network costs then it may carry out a separate consultation for the same.

Q8. Whether there is a need for a collaborative framework between OTT communication service providers and the licensed telecommunication service providers? If yes, what should be the provisions of such a collaborative framework? Kindly provide a detailed response with justification.

AND

Q9. What could be the potential challenges arising out of the collaborative framework between OTT communication service providers and the licensed telecommunication service providers? How will it impact the aspects of net neutrality, consumer access and consumer choice etc.? What measures can be taken to address such challenges? Kindly provide a detailed response with justification.

1. It has been recognized that a complementary relationship exists between OTT services and network services. OTTs are one of the means of providing the content that drives demand for data services while OTTs exist only because of the network connectivity and coverage provided by TSPs.
2. However, another aspect of this is as the consumer demand for OTT increases, TSPs have to face the pressure to increase investment in spectrum and network infrastructure to enhance the data capacities and speeds in the country. **Evidently, a large portion of this demand is generated by the data demand spurred by consumer use of OTT applications and services, a non-paying partner in telecom growth story.**
3. It is also worthwhile to mention that **despite flourishing on the spectrum and network investments by TSPs, OTT players are also cannibalising the TSP revenues that started with SMS and ILD voice substitution and is now visible in all TSP services, without committing capital required to build, manage, and upgrade such large networks.**
4. Given the high data use of their customers, OTT providers have a growing vested interest in supporting the availability of high-speed broadband for users around the world. More affordable and better broadband access is, the easier it is for people to use their services, however, OTT providers are always shying of direct investments in telecom infrastructure.
5. Therefore, it is important for the Authority to intervene in order to maintain the right commercial balance between the TSPs and the OTT service providers. This can be done with two pronged approach with first step being **reduction in levies or fees for the TSPs to encourage investment, while simultaneously permitting bi-lateral commercial deals**

between the TSPs and OTT players for enhancing the network infrastructure without compromising on principles of Net Neutrality.

6. We understand that some OTT service providers will need and prefer differentiated service so that their users get the desired experience. We believe that the same can be provided under existing regulatory ambit and can create a **win-win situation for TSP and OTT service provider with user being the ultimate beneficiary through better network infrastructure**. Consumers also benefit from differentiated services aligned as per their preferences. We believe that aggregate consumption tends to be higher with differentiated quality and pricing, thus benefitting the broader society.
7. In this regard, the Authority is also requested to approach a pragmatic implementation approach towards Net Neutrality. **The basic principles of NN i.e. restriction on discriminatory charging of data basis the content and the principles of non-discriminatory treatment are already a part of Unified License.**
8. In a streaming led era, investments in high-capacity networks will be critical to cater to increasingly growing demands for data. TSPs globally have responded to this increased demand by investing heavily in augmenting the capacity of their networks. And while this market is clearly two sided, TSPs are only recovering network rollout costs from end users, making services costlier for the public. The above has prompted global sector regulators, notably from the UK and South Korea – two highly mature internet markets, to re-evaluate their prior positions on NN and on the Fair Contribution towards network costs by the OTTs. We have already discussed the Korean law in the preamble.
9. A large amount of data traffic is currently concentrated in the hands of a few global entities and asymmetries in traffic flows continue to persist. **A “beneficiary pays” approach is a typical characteristic of successful infrastructure markets and is equally relevant for the two-sided internet access market.**
10. However, the issue is complicated by the prevailing Internet pricing model, which is one-sided, with only the end-user of the service pays to TSP, while the content provider freely makes content available on the world wide web. **This model is rooted in the era when the killer app of Internet was the e-mail with no signs of streaming and advertisement-based revenue models.** Nobody knew that over 20-30 years of time, entertainment will be the key driver on Internet connectivity and would propel proliferation.
11. There is a near consensus in TSPs globally that they should be permitted to pass on some of the cost to the biggest drivers of the data growth. However, for this demand to actualize, there needs a paradigm shift in how the regulators view this whole arrangement. There is a need to adopt a bottom up, market-based cost recovery models

basis the property rights and user pays for upkeep principles. **The TSP's property rights over the network created by them need to be restored in somewhat a manner which the Big Tech protects its intellectual property rights for instance Netflix restricting account sharing or password sharing.**

12. The reality that the content providers may have to contribute to service delivery is not a new or novel concept. Reports indicate that some content providers already pay carriers in US and Japan to ensure content delivery.
13. **Therefore, we submit that a flexible approach that allows TSPs to increase their investments in infrastructure and help OTT players benefit from the rollout of additional infrastructure depending on the optimization of their traffic volumes will ensure the public internet remains affordable and equally available for everyone.**
14. **We submit that such an approach will be within the principles of Net Neutrality and there will be no impact on prevention of unreasonable discrimination of internet traffic based on content, nature of service etc. Further it will help deliver on the promise of Universal access, will help India meet its Broadband proliferation objectives and will help bridge the digital divide.**

Q10. What are the technical challenges in selective banning of specific OTT services and websites in specific regions of the country for a specific period? Please elaborate your response and suggest technical solutions to mitigate the challenges.

1. We agree that complete shutdown of telecom services/ internet affects the people in many ways, and technically feasibility should be assessed to shut down only those services in regions/areas likely to be used by terrorist/anti-social elements rather than shutting down the internet as a whole.
2. We have been interacting with various Government entities and abiding by the directions for blocking internet in interest of national security and public welfare, as and when asked to. We have been assessing the possibility of selective banning of OTT services at network layer and we foresee that there are challenges in doing the same.
3. Websites that use dynamic IP addresses and are hosted on cloud servers can pose a challenge to conventional methods of blocking. In such situations, alternative methods may be necessary to effectively control internet filtering. Advanced techniques can be employed to identify and block access to such websites.
4. Further, there may be scenarios where the targeted websites use Hypertext Transfer Protocol Secure (https) protocol. HTTPS protocol provides encryption and security for

websites, making it difficult for service providers to block content on these sites. However, there are still ways to block or filter content at a network level, such as using a firewall or content filtering software. As far as area specific barring is concerned, it also needs to be carried out at network level, for which effective methods are required to be worked out.

5. Regarding blocking specific URLs / applications, we submit that it can be done based on signature development on Deep Packet Inspection (DPI), however, SLA will depend on complexity of signature development basis DPI. Further, as the smarter websites can change signatures, thus, complete and longtime barring will not be possible. This is further complicated by the fact that such barring can be easily circumvented by customers using VPN applications. There are unlimited number of VPN applications on the internet that easily available to the customers. Every VPN is like a URL to our Gateway and signature development for any VPN will take similar lead time for ensuring blocking of such VPN.
6. Regarding whitelisting specific websites, i.e. permitting access only to the notified websites while rest of the internet is blocked, we submit that while It is feasible for few websites, however, the VPN related issues as detailed earlier remain. It has also been observed in past that VPNs are riding on the allowed sites to make a tunnel that gives access to general internet to its users, thereby opening the channels of blocked websites to users. Further, under the current architecture of websites, a single URL invokes multiple plug-ins and there are sub links within the websites. Therefore whitelisting only the main URL may not help in loading the website fully and may not be useful for the customers effectivity.
7. Overall, the outcome is that while selective blocking is possible (which any way requires DPI deployment and needs certain lead time for signature development), it can be circumvented by use of VPN. Therefore, there is no assurance of selective blocking for all notified apps in totality. Therefore, most of the time, all TSPs tend to bar data services completely – instead of risking non-compliance in case of selective barring.
8. On the contrary, we believe that selective blocking can be done accurately and precisely by OTT service providers. **These OTT service providers can provide a solution to disable their apps/services in a particular geography, as they are anyways providing location-based services and generally take permission to capture users' location.**
9. **In view of the above, we submit that the Authority should bring these OTT service providers under licensing framework and implement such selective banning from OTT service provider end. This barring at the source itself will be more effective than trying to block the same in the pipe, i.e. at network layer.**

Q11. Whether there is a need to put in place a regulatory framework for selective banning of OTT services under the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017 or any other law, in force? Please provide a detailed response with justification.

AND

Q12. In case it is decided to put in place a regulatory framework for selective banning of OTT services in the country, -

(a) Which class(es) of OTT services should be covered under selective banning of OTT services? Please provide a detailed response with justification and illustrations.

(b) What should be the provisions and mechanism for such a regulatory framework? Kindly provide a detailed response with justification.

AND

Q13. Whether there is a need to selectively ban specific websites apart from OTT services to meet the purposes? If yes, which class(es) of websites should be included for this purpose? Kindly provide a detailed response with justification.

1. Shutdown of telecommunications or the internet can have significant ramifications for a country's economy. It also disrupts critical services such as education and healthcare. Consequently, such shutdown affects the life and livelihood of the citizens of the country.
2. Selective banning of OTT services, which are liable to be used by the terrorists or anti-national element/forces of ferment trouble in the specified regions during period of unrest/crisis, will allow rest of the essential services like banking, financial services, health, education, and various other services that are not relevant for such misuse, function normally. This will permit enterprises to continue to operate for business as usual thereby minimizing inconvenience and suffering to the public and help in controlling spreading of misinformation during unrest.
3. We therefore agree that **there is a need to explore options of selective banning of OTT services instead of blanket banning of internet in specified regions. As detailed earlier, it is important to explore such options at OTT service provider end itself to ensure effective and fool-proof content control in interest of national security and public welfare.**
4. **Notwithstanding the same, in case the selective barring is to be done at TSPs end then the OTT providers should be required provide the specific IP address of the selective content destination to ensure the barring. Further, the OTTs should be mandated to maintain the same IP and not change the destination IP address of the content during the barring process.**

5. Therefore, necessary amendments may be carried out in the **Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017**, so as to put in place required regulatory framework for OTT services for such selective banning. The classes of OTT services or specific websites that should be covered under such selective banning can be decided by security agencies with inputs from local administration, within the framework of the temporary suspension rules, as amended.
6. Additionally, we reiterate our submissions that uniform instructions should be issued to ensure judicious use of service barring powers. These powers should only be exercised for security concerns and other methods should be used for non-critical requirements.
7. We agree that freedom of speech and expression and the freedom to practice any profession or carry on any trade, business, or occupation over the medium of internet enjoys constitutional protection. Any order suspending internet is also utilized for temporary duration only inline with this principal. Therefore, selective banning of OTT service will allow to overcome this constraint of blanket internet ban while effectively combatting the harmful effect of select OTT services.
8. Additionally, certain websites or online platforms may be blocked or filtered to prevent access to illegal or harmful content, such as websites involved in the distribution of child pornography or extremist materials or Pirated content.

Q14. Are there any other relevant issues or suggestions related to regulatory mechanism for OTT communication services, and selective banning of OTT services? Please provide a detailed explanation and justification for any such concerns or suggestions.

None