



**Response by TUG (Telecom User Group) India regarding
TRAI Consultation Paper on Cloud Service Providers**

**Date of Submission: 4th December, 2019
New Delhi**

TUGI RESPONSES TO TRAI'S CONSULTATION PAPER ON CLOUD SERVICE PROVIDERS

In today's data driven economy, cloud services have become essential to small, medium, and large enterprises storing and processing large quantities of data. Over the years, India has witnessed a gradual surge in the adoption of cloud and recent studies indicate that the cloud market is expected to grow rapidly to USD 7.1 billion by 2022. While the cloud services market in India is still at a nascent stage, any regulation thereof ought to be light touch so as to foster innovation. It is important that cloud service providers (**CSPs**) comply with existing applicable laws that are consistent with industry practices.

In light of the above, we would like to submit our comments to the issues presented in the Consultation Paper on Cloud Services (**Consultation Paper**) issued by the Telecom Regulatory Authority of India (**TRAI**).

Issue I – Need for Regulatory Framework for CSPs through Industry Body

Firstly, the Telecom Regulatory Authority of India Act, 1997 (**TRAI Act**) establishes TRAI as a regulator and prescribes a set of powers and functions for the TRAI. Under Section 11 of the TRAI Act, the functions of TRAI include making recommendations to terms and conditions of telecom licenses, issuing regulations to ensure compliance of the terms and conditions of telecom licenses, and levying fees and charges. These functions specifically regulate 'service providers' in India that include either a government service provider, or a licensee under Section 4 of the Telegraph Act, 1885 (**Telegraph Act**). Such service providers include access services, internet services, and other connectivity services, which are currently licensed by the Department of Telecom (**DoT**). However, unlike traditional service providers, CSPs do not fall within the same category of service providers as defined in the TRAI Act owing to the fact that CSPs *merely use* the existing connectivity provided by service providers and do not constitute service providers in itself. Since CSPs cannot be classified as a service provider under the current definition, TRAI is not empowered to create a regulatory framework for CSPs as per the powers prescribed to it under the TRAI Act.

Secondly, over the years, the Indian market has successfully adopted cloud across sectors including banking and finance, telecom, and public sector. At present, while there is no specific legislation governing the regulation of cloud services in India, existing legal frameworks that are applicable to CSPs include the following –

- **Information Technology Act, 2000 (IT Act) and rules framed thereunder** – The IT Act and the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 (**SPDI Rules**) obligate body corporates including CSPs to comply with data privacy requirements such as obtaining user consent for collection, disclosure, retention, and transfer of sensitive personal information. Additionally, the Government of India is currently in the process of adopting a new data protection regime. It has recently released the Draft Personal Data

Protection Bill that will replace the existing SPDI Rules in its entirety. The PDP Bill sets out obligations to be complied with by data controllers and processors. Since CSPs are likely to be classified as data processors under the proposed regime, the PDP Bill would adequately impose data security requirements for CSPs.

Further, the Information Technology (Intermediary Guidelines) Rules, 2011 (*IG Rules*) issued under the IT Act would classify CSPs as ‘intermediaries’. Therefore, law enforcement access obligations under the IG Rules are applicable to CSPs.

- Unified License – The telecom sector is governed by the terms and conditions prescribed in the Unified License, which impose conditions to be adhered to by CSPs during the course of the provision of its services to telecom service providers.
- Financial Sector – Among other regulators in the banking and finance sector, the Reserve Bank of India (*RBI*) and Insurance Regulatory and Development Authority of India (*IRDAI*) have issued guidelines applicable to third-party service providers to banks, financial institutions, and intermediaries. Such entities are required to comply with several data privacy, cyber-security, and localisation requirements. Since CSPs may be classified as intermediaries under the abovementioned guidelines depending on the nature of services provided by them, CSPs are covered in such sector-specific regulations as well.
- Public Cloud – Pursuant to its objective of providing a unified strategy for adoption of cloud computing, the Government has launched its own Cloud called “MeghRaj”. As part of this initiative, the Ministry of Electronics and Information Technology (*MeiTY*) has issued several guidance documents for the Central/State Government and Government agencies and departments that are seeking to adopt or migrate to MeghRaj.

Given that the cloud sector is already regulated by the existing general and sector-specific legal frameworks, there is no need for a separate regulatory framework for CSPs. Since CSPs provide services of varied nature to different sectors, classifying CSPs under a unified regime would hinder the flexibility, which currently exists within the sector and allows CSPs to provide diverse services.

On the question of whether a single or multiple industry body is required, it is recommended that the very concept of registering industry bodies must be further deliberated upon. Since a light touch regulatory framework is necessary to ensure flexibility in the cloud sector, the imposition of any registration requirements would lead to further concerns of classification of CSPs, regulation of industry bodies set up for CSPs, standards, codes of conduct, etc. As indicated in the CP, too many industry bodies may adversely impact the flexibility of the sector and cause confusion in the minds of the customers.

As elaborated in Issue I, at present, the cloud sector is already regulated by a set of legal and regulatory frameworks, which have facilitated growth in the sector without any regulatory overlap. Therefore, it is recommended that CSPs do not require a unified regulatory model through industry bodies.

Issue II – Registration of Industry Body for CSPs with DoT

TRAI's earlier recommendations on cloud services highlighted various issues that the cloud sector is currently dealing with, such as quality of service, data privacy, etc., that need to be addressed so as to ensure proper functioning and growth of the sector. Since a light touch approach in this regard will assist the sector in addressing the said concerns, there is no apparent benefit from registration of industry bodies with the DoT.

The CP proposes several mechanisms whereby the DoT will exercise control over CSPs including compliance with orders issued by the DoT, furnishing of information sought by the DoT or TRAI, code of conduct for the industry body, etc. Such regulation appears to be a departure from TRAI's initial recommendation for a light touch regulatory framework for CSPs and will only act as a barrier to the growth of CSPs and the cloud sector.

Since CSPs require an enabling environment to provide innovative solutions and services in India, they should not be subjected to any further regulation (in addition to the existing legal frameworks) through an industry body or regulator that may be burdensome or restrict their ability to innovate. Rather, CSPs must be treated as corporate entities that are required to comply with the existing legal and regulatory framework applicable to them in India.

Issue III – Membership Requirements

Any regulation of CSPs based on parameters such as volume of business, revenue, number of customers, etc. would not be accurate as such parameters are subject to constant changes. Such parameters would be unreliable and result in exclusion of small and medium enterprises or monopoly by a few large players. Therefore, it is recommended that no such membership requirements or industry body registration be made mandatory for CSPs.

Issue IV – Entry Fee and Recurring Fee

While the DoT enjoys specific powers under the Telegraph Act, there is no such defined power under the law to determine the fees required to be paid by CSPs for joining industry bodies. Therefore, DoT should not fix any such entry or recurring fee for CSPs and allow industry bodies to determine such fees. Imposing different fees based on type of members may hinder the working of existing industry bodies by causing regulatory confusion among its members and hence, any fees for membership may be based on the services provided by the industry bodies to its members. However, in the event that such industry body is formed, the fees for membership should be nil or left to the discretion of the industry body.

Issue V – Guiding principles for governance by an Industry Body

The CP cites several industry bodies such as the Cloud Computing Innovation Council of India and National Association of Software and Services Companies promote innovation in the cloud sector. These industry bodies have adopted a voluntary governance structure and regulatory framework based on their different membership and objectives. These industry bodies bridge

the gap between the various stakeholders and the Government, thereby accelerating innovation and transformation in the sector. Therefore, to ensure that such functioning of the industry bodies is not hindered due to regulation, it is recommended that no structure should be prescribed and industry bodies be allowed to function autonomously.

Issue VI – Policy for initial foundation of Industry Body for CSPs

The CP has suggested several options for the initial foundation of an industry body for CSPs like nominating an existing body, allowing CSPs to form their own industry body, recognizing a non-profit organisation to enable it to function towards the objectives outlined in the CP, and allowing DoT to establish an ad-hoc industry body. However, to protect the best interests of the CSPs, it is recommended that CSPs be allowed to form a body and adopt their own code of conduct. This will not only ensure that the needs of the CSPs are addressed by all members but also act as an impetus to the growth of the industry. A Cloud Service Advisory Group (CSAG) to be created to function as oversight body to periodically review the progress of Cloud services and suggest the Government actions required to be taken. This Advisory Group may consist of

- a. Representatives of state IT departments,
- b. MSME associations,
- c. Consumer advocacy groups,
- d. Industry experts and
- e. Representatives of Law Enforcement agencies.

Issue VII – Need of Legal Framework for Data Protection

A data protection framework is required to incorporate the following:

- a. Adequate protection to sensitive personal information;
- b. Adopt globally accepted data protection principles as reiterated by Planning Commission's Report of Group of Experts on Privacy 2012;
- c. Provisions governing the cross-border transfer of data

Issue VIII – Global orientation of CSPs

The Cloud Service Providers can be situated anywhere across the world and may not necessarily fall within the geographic regulatory boundary of TRAI or the DOTs jurisdiction. While, as per present recommendation of bringing CSPs under TRAI purview, the domestic CSPs will be under a regulatory regime having its own ramifications in terms of investments, compliances, etc., the global CSPs could still continue offering services from anywhere in the world and exploit the non-feasibility of regulating them. This will give global CSPs competitive advantage over the domestic CSPs.

For these main reasons, it is submitted that CSPs be kept outside the purview of TRAI's regulatory regime.

About Telecom Users Group of India www.tugi.org.in

Telecom Users Group of India (TUG India) formed in 1997, is a non-profit non-governmental membership organisation registered as a society under Society Act 1860, in NCR Delhi. It caters to the needs of telecom users in India and works closely in association with International Telecom Users Group (INTUG)

INTUG is an international association of business users of telecommunications. With members and contacts in all five continents it has a global presence. Founded in 1974, INTUG has contributed significantly towards the opening up of telecommunications markets to competition.

The group uses its influence to actively promote professional customers' interests at the international level and ensures that the voice of the business user is clearly heard. The long-term focus of INTUG is to bring down all barriers companies and public institutions face when developing their ICT strategies. For more please visit <http://intug.org/>.