



**COAI Response to TRAI Consultation Paper
On
Regulatory Framework for Over-the-top (OTT) services**

Released on March 27, 2015

PREAMBLE

1. COAI is committed towards connecting the 1 Billion Unconnected Citizens of India and we welcome TRAI's Consultation Paper on Regulatory Framework for Over-the-top (OTT) services.
2. COAI fully supports the digital India vision of the government and suggests adoption of policies and promoting ecosystem which enables fulfillment of this vision. It is important that the Regulatory framework adopted is pro choice, pro poor, pro innovation and is hence pro India.
3. In this regard, we wish to submit that while we acknowledge the role of OTT players, however, it is pertinent to note that some of the services that are offered by the OTT players such as messaging/instant messaging and VOIP telephony are perfect substitutes of the services that are being offered by the TSPs under UASL/UL.
4. There is thus a need to address the various regulatory imbalances and ensure **Regulatory Neutrality**. For this, the Authority should apply the principle of, "Same services, Same rules". Only under such an environment, the TSPs will get a fair chance to compete with OTTs on similar pricing and terms.
5. We, therefore, believe that companies should be free to pursue commercial agreements which offer consumers innovative new content and services underpinned by new business models.
6. The issue of net neutrality is a complex issue that is being debated in several countries all over the world and administrations are looking for the right solution to ensure the continued growth of the internet whilst managing the unique challenges of a mobile environment, where capacity is finite due to limited availability of spectrum and huge investments are required to sustain the growth of internet traffic. Operators have to manage their resources and capacity to ensure the best possible customer experience.

7. **We hereby state that the Industry Supports Net Neutrality and seeks for Net Equality. We support free and open internet for all.**

8. Net Neutrality should be looked at from the holistic framework of Internet Governance. There are multiple approaches to look at net neutrality and there are various definitions of the subject depending on:

- a. Whether they reflect what the consumer is supposed to do versus what the providers of the network are prohibited from doing, and
- b. Whether they seek to broadly limit differentiated treatment in general versus a more limited restriction on harmful or anticompetitive discrimination.

9. Keeping in view the great complexity of technical, economic and policy-related issues that Net Neutrality involves, pinning down a precise definition of net neutrality is difficult. One of the most balanced perspective in defining Net Neutrality is as given below:

"No denial of access and absence of unreasonable discrimination on the part of network operators in transmitting internet traffic."

10. India is a market where the complete country still does not have the benefit of mobile or broadband coverage. **The immediate priority in India, where 80% of the population has no data connectivity, is for rolling out broadband networks, rather than continue to debate on the concepts and issues of Net Neutrality which are only beginning to be defined globally. It is high time we prioritize the connectivity for all the villages of India as envisaged in the Digital India programme.**

11. The Government is targeting to connect all village local bodies (Panchayats) by broadband internet and phones, promote e-governance, WiFi connectivity in 250K schools, universities; public hotspots for citizens. We understand that a budget of INR 70,000 crores till 2019 has also been approved for telecom & IT covering:

- a. Enhanced expenditure on broadband network of INR 320 bn to connect 250k Village Panchayats.
- b. INR 160 bn to provide mobile connectivity by 2018 to ~42,300 villages that presently have no network coverage.

12. Further, as per Planning Commission's 12th Five Year plan projections, the total investment in the Telecom sector, which is an infrastructure sector, is expected to be **Rs. 943,899 Cr** during the five year period and 93% of the total investment is expected to come from the private sector.

Projected Investment (in INR crore) in Telecommunications under 12 th Five Year Plan							
	2012-13	2013-14	2014-15	2015-16	2016-17	Total	%
Centre	15203	14827	14446	14023	13611	72110	7
Private	90746	121263	162042	216535	281203	871789	93

Total	105949	136090	176489	230557	294814	943899	100
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13. Thus, we are of the view that our objective today is to connect a billion Indians who are not connected today. In order to achieve this, the internet must be made affordable. So, if the industry innovates to make the internet affordable for the millions of customers by getting businesses to pay for it – what better way to bridge the digital divide through business arrangements that subsidize end usage.
14. **The debate should therefore shift from net neutrality to – net equality and Internet for all.**
15. COAI therefore advocates connecting the 1 Billion Unconnected Citizens of India, under the **“Sabka Internet, Sabka Vikas”** initiative.
16. Further, in order to achieve Regulatory Neutrality, COAI advocates the principle of, “Same services, Same rules”. Only under such an environment, the TSPs will get a fair chance to compete with OTTs on similar pricing and terms.
17. **The Industry is committed to an Open Internet, i.e.**
- a. Net neutrality - access should be made available to all.
 - b. Bringing everyone on the internet – not just the privileged few.
 - c. Freedom for end users to send or receive information and to use the services of their choice
 - d. Access to all content and applications without discrimination
 - e. No blocking of competing services
 - f. Transparency - about what traffic management is taking place, to enable consumers to choose the type of service they want
 - g. A level playing field – Net Neutrality and Net Equality
 - h. Same regulatory and governing rules to be applied to all those offering the same service

Summary Submission:

Thus, we support Net Neutrality and seek Net Equality. **Net Equality means:**

- a. **Access to all content and applications without discrimination.**
- b. **To bring everyone on the internet – not just the privileged few.**
- c. **“Same services, Same rules”.**

ISSUE WISE SUBMISSIONS

Q1: Is it too early to establish a regulatory framework for OTT services, since internet penetration is still evolving, access speeds are generally low and there is limited coverage of high-speed broadband in the country? Or, should some beginning be made now with a regulatory framework that could be adapted to changes in the future? Please comment with justifications.

COAI Response

1. At the outset, we would like to submit that the **Sustainable OTT services are good for the telecom sector** and the Digital India Story. We would hereby like to submit that any policy which is framed by the government /regulator needs to create open and enabling Environment for both operators and OTTs to co-exist and grow.
2. While it is right to say that internet penetration is still evolving and is less than 20%, access speeds are generally low and there is limited coverage of high-speed broadband in the country, we need to acknowledge that the TSPs are already facing challenges due to the increased take-up and growth of OTT services.
3. While we welcome the entry of OTT players and believe that they play an important role and offer many new services; however, it is pertinent to note that some of the services that are offered by the OTT players such as messaging/instant messaging and VOIP telephony are perfect substitutes of the services that can be offered by the telcos under UASL/UL. These OTT players have rightly been classified by the Authority as “OTT Communication Services” players and their services are in direct competition with the licensed communication services offered by the TSPs. These services are cannibalizing the revenues of the licensed TSPs and this trend is expected to further accelerate in the coming years.
4. We would like to further submit that though the data network utilization due to these services increases the data revenue of the service operators, however the increase in data revenue is insufficient to compensate for the loss in revenues due to OTT services
5. It has been correctly pointed out by TRAI in its consultation paper that there are following repercussions due to the OTT services:
 - a. Regulatory Imbalances
 - b. Impact on the economy
 - c. Security Issues

6. The extensive and stringent security conditions laid down and required to be met by the licensed TSPs are not applicable to the OTT Communication players. The OTT players are not subject to the significant investment or any of the regulatory costs/taxes that have to be borne by the telcos.
7. The various regulatory imbalances between the TSPs and the OTT Communication players have been comprehensively brought out by the Authority in Para 3.4 of its Consultation Paper. The Authority has rightly noted that despite TSPs and OTTs providing similar services to consumers, the TSPs bear the cost of infrastructure, spectrum, and payment of license fees and spectrum usage charges, which are not applicable to the OTT Communication players. The TSPs also have the obligations related to rollout, meeting quality of service parameters and security related obligations. Many of these do not apply to OTT communication players, which results in an arbitrage opportunity.
8. Further, India needs substantial investment in infrastructure, particularly for the development of our broadband infrastructure. Without a parallel revenue stream to support these investments, the investment capability of the Telcos may suffer in India which is extremely undesirable. **This in turn is also resulting in a loss of revenues to the Government Exchequer, which forces them to continue to extract revenue from licensed TSPs.**
9. **Recommendation: In view of the above, we submit that the time is ripe for a comprehensive review to build a Regulatory Neutral, Forward Looking and Transparent framework under which both TSPs and OTT players thrive and which ensures “Same rules for Same services”.**

Q2: Should the OTT players offering communication services (voice, messaging and video call services) through applications (resident either in the country or outside) be brought under the licensing regime? Please comment with justifications.

COAI Response

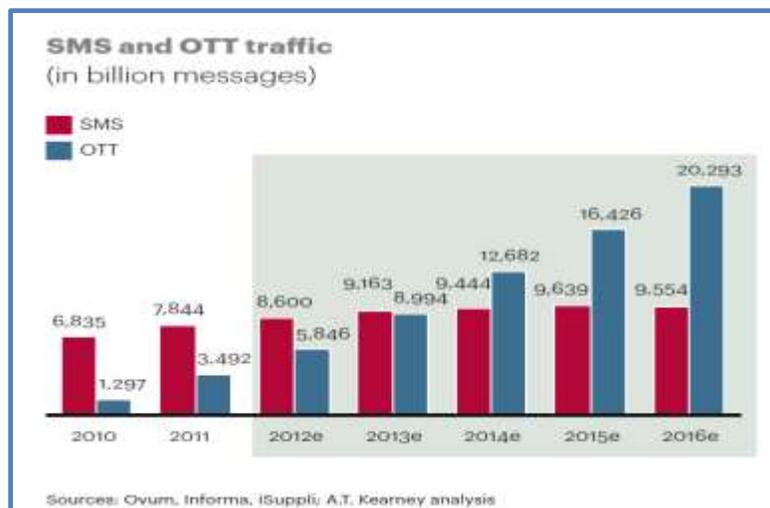
1. As highlighted by us in the preamble, we would like to submit that there is a need to ensure Regulatory Neutrality so that there is a level playing field for all the players that exist in the eco-system.
2. The Authority should apply the principle of, “Same services, same rules”. We believe that only under such an environment, the TSPs will get a fair chance to compete with OTTs on similar pricing and terms.

3. **Recommendation: There is a need to build a Regulatory Neutral, Forward Looking and Transparent framework under which both TSPs and OTT players thrive and which ensures “Same rules for same services”.**

Q3: Is the growth of OTT impacting the traditional revenue stream of TSPs? If so, is the increase in data revenues of the TSPs sufficient to compensate for this impact? Please comment with the reasons.

COAI Response

1. The growth of OTT communication services is impacting the traditional revenue streams of the TSPs. The growth in data revenues is insufficient to address this erosion. Going forward, with the increasing penetration of Smartphones, this trend will only accelerate, thus further adversely impacting the financial viability and business sustainability of the TSPs.
2. **The implication of the revenue will be largely due to substitution of voice and messaging service.**
 - a. **Messaging substitution**
 - i. Instant messaging services and other social networking tools are affecting SMS revenues, and SMS is becoming less important for many consumers. In comparison to SMS traffic, which is likely to witness limited growth, OTT is expected to grow rapidly to 20.2 trillion messages. The success of the standalone messaging app is remarkable due to one simple factor: it is ‘free’. The attraction of such services is bound to grow as integration improves.



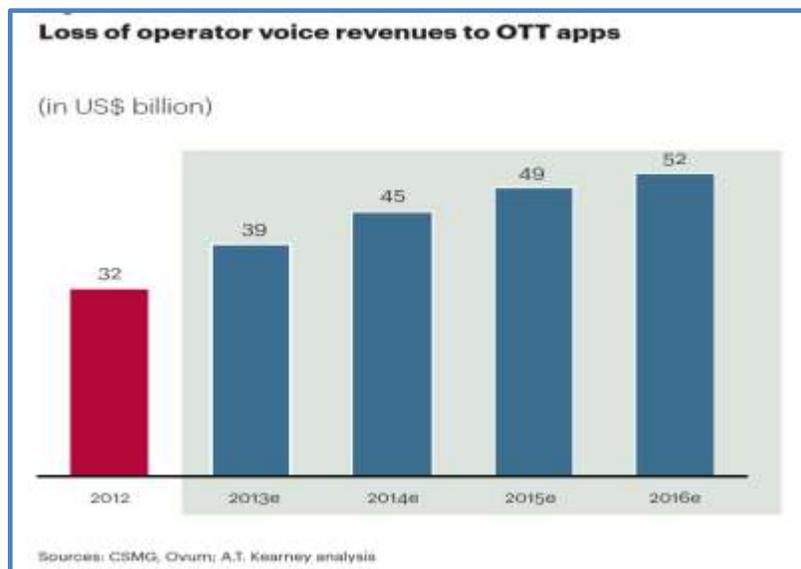


Source: Ovum, Informa, iSuppli, A.T. Kearney analysis

- ii. As mobile Internet is steadily growing as a key revenue generator, SMS is slowly declining as a significant revenue opportunity. According to research firm Ovum, the Indian telecom industry lost close to USD 781 million in 2012 in SMS revenues due to the emergence of social messaging apps and OTT. Indian telecom operators may lose USD 3.1 billion in SMS revenues by 2016.

b. **Voice Substitution**

- i. Voice revenues are expected to suffer because of VoIP-based OTT offerings. Several OTT players have already had an impact on mobile VoIP growth and on the total voice market.



- ii. In India, 81.9% of revenues are generated by voice. So far, the impact of the stand-alone 'free' voice apps has been limited due to poor convenience and poor integration into the rest of the communications platform; within the next 2-4 years both would improve. Adoption will be further spurred by improvements in network quality that will support the user experience of these services.

3. Data revenues do not compensate for fall in revenues from OTT services

According to an industry research, the number of mobile operators generating revenues from OTT services by charging for data is falling year-on-year. In 2013, this figure was one-fifth, down from 26% the previous year, and 50% in 2011. TRAI has itself highlighted the fact increased data usage fails to compensate for loss of revenues to TSPs arising due to OTT services. Further, these services also put strain on the network, thus requiring further investments.

Q4: Should the OTT players pay for use of the TSPs network over and above data charges paid by consumers? If yes, what pricing options can be adopted? Could such options include prices based on bandwidth consumption? Can prices be used as a means of product/service differentiation? Please comment with justifications.

COAI Response

1. As highlighted above, increased data usage fails to compensate for loss of revenues to TSPs arising due to OTT services. Further, these services demand high speed networks that require substantial investment in infrastructure, particularly for the development of our broadband infrastructure both from the fixed and mobile perspective.
2. It may also be noted that India is a market where 80% of the population still does not have the benefit of broadband coverage and only 7% of the subscribers are availing mobile broadband services as of February 2015.
3. The immediate priority in India, thus is to roll out broadband networks and significant investments would be required to be made by the mobile operators on spectrum, network and IT infrastructure and development of platforms and services over the next several years. Without a parallel revenue stream to support these investments, the business model will become unsustainable for telcos in the long run. Thus, we are of the view that there is need for making the telecom industry financially sustainable. Industry should be able to invest in growth of networks for fulfilling the digital India dream.
4. COAI hereby advocates for the Open and Pro-innovation Environment wherein pricing flexibility is provided to the operators and the choice is provided to the customers.

5. Thus, TSPs should be given the freedom to negotiate commercial arrangements with OTT players. The operators should be allowed to engage with the OTT players to get into the bilateral arrangements providing adequate measures for consumer protection.
6. The same will not only provide sustainable environment for the TSP's and OTT players, but will also help government in its various Priorities and goals for Communication Services such as:
 - a. Digital India
 - b. Broadband for All
 - c. National Optic Fibre Network (NOFN)
 - d. 100 Smart Cities
 - e. M- Governance – Sabka Vikas
 - f. Make in India

Q5: Do you agree that imbalances exist in the regulatory environment in the operation of OTT players? If so, what should be the framework to address these issues? How can the prevailing laws and regulations be applied to OTT players (who operate in the virtual world) and compliance enforced? What could be the impact on the economy? Please comment with justifications.

COAI Response

1. As correctly highlighted by TRAI in its Consultation Paper, there are regulatory imbalances which need to be addressed and the same are highlighted in detail below.
2. **Level Playing Field:** The services that are offered by the OTT communication players such as messaging/instant messaging and VOIP telephony are near perfect substitutes of the services that can be offered by the telcos under UASL/UL. There is a need to ensure a level playing field for all the players in the eco-system offering communication services.
3. **Licensing Compliances:** Presently, for OTT communication players in India, in respect of VOIP services, Internet telephony in India is governed by the ISP license. The license does not allow having PSTN/PLMN connectivity in India. Voice communication to and from a telephone connected to the PSTN / PLMN and following E.164 numbering is prohibited in India. OTTs are not required to acquire a license or register in India and have no obligation to provide any LI facility, QoS and emergency calling. We understand that the Home Ministry has decided that any service provider, which provides communication services in India via any media through VoIP should be mandated to be registered in India, having its office, server located in the country and therefore subject

to Indian laws. Necessary provisions may be incorporated through amendment in the Indian Telegraph Act 1885 and IT ACT 2000.

4. **Telemarketing issues:** OTT apps are increasingly being used for tele-marketing activities flouting the guidelines and Regulations laid down by TRAI. TSPs have made significant investments in putting in place “Signature Verification” solutions to address the issue of telemarketing SMS. However, the telemarketers are now increasingly using OTT apps to send messages to subscribers. This is a clear breach of the TRAI Regulations and needs to be addressed.
5. **Regulatory Costs:** OTT communication players are not subject to any of the regulatory costs/taxes that have to be borne by the telcos. The telcos pay multiple levels, including regulatory levies, duties and taxes of over 30% of the Adjusted Gross Revenues as compared to just 5% for other Asian economies. The OTT players are able to ride on TSP’s network without being subject to any regulatory/license payments/restrictions. It is unclear what levies and taxes the OTT players pay, if any, in India, as compared to the licensed telecom players here.
6. **Quality of service norms:** Quality of services is becoming a major issue for OTTs as the network is choked with high bandwidth services such as HD videos, movie streaming, high quality web conferencing, etc. This is creating a challenge for both OTTs and operators, as operators are struggling to add capacity to their network and OTTs are falling short of user expectations on quality of service.
7. These regulatory imbalances need to be addressed on priority and the principle of same service same rules should be applied in respect of OTT communication services and traditional telephony services.
8. **Recommendation: In light of the above COAI advocates adoption of “Same rules for Same services”.**

Q6: How should the security concerns be addressed with regard to OTT players providing communication services? What security conditions such as maintaining data records, logs etc. need to be mandated for such OTT players? And, how can compliance with these conditions be ensured if the applications of such OTT players reside outside the country? Please comment with justifications.

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Q7: How should the OTT players offering app services ensure security, safety and privacy of the consumer? How should they ensure protection of consumer interest? Please comment with justifications.

COAI Response

1. **Security Compliances:** At present, there is a widely differing treatment accorded between telcos and OTT players as regards security compliance requirements on similar services. It should be noted that extensive and stringent security conditions are laid down and required to be met by the licensed telcos. These include:
 - a. Taking permission/approval of the licensor for any new service
 - b. Setting up Lawful Interception and Monitoring (LIM) systems
 - c. Restriction on switching of domestic calls/messages from outside the country
 - d. Restriction on sending user information abroad
 - e. Gives the Licensor the right to inspect the sites/network used for extending the service
 - f. Providing necessary facilities for continuous monitoring of the system, not employing any bulk encryption equipment; taking prior evaluation and approval of Licensor for any encryption equipment for specific requirements
 - g. Switching/Routing of voice/messages in P2P scenario
 - h. Responsibility for ensuring protection of privacy of communication and confidentiality of subscriber information
 - i. Quality of Service, Unsolicited Commercial communications, Complaint Redressal Mechanism, etc.
2. The OTT players who use data access channel of the telcos to reach the customer with similar voice and messaging services are not subject to the security restrictions imposed on the telcos. There is undoubtedly a need to ensure that these concerns are addressed and there is a level playing field between the TSPs and the OTT communication service providers.
3. This may be done by ensuring that the regulatory framework applicable to OTT communications services is the same as that applicable to the communications services provided by TSPs.

Q8: In what manner can the proposals for a regulatory framework for OTTs in India draw from those of ETNO, referred to in para 4.23 or the best practices summarised in para 4.29? And, what practices should be proscribed by regulatory fiat? Please comment with justifications.

COAI Response

1. At the outset, we submit that the “interconnection” framework proposed by ETNO is not suitable or relevant for OTT as interconnection, by its very nature entails peer-to-peer connectivity.

2. The OTT players are not peering with the TSPs, they are riding on the network created by the TSPs. Thus we believe that it will be wholly inappropriate to draw on the pricing proposals put forward by ETNO.
3. We are of the view that the approach of Regulatory Neutrality should be adopted in India; the simple guiding principle should be “Same service, Same rule”.
4. In the Indian context the following guiding principles need to be adopted:
 - a. We support a free and open Internet and believe that consumers should decide what to do online. Our endeavor is to enable consumers to benefit from the freedom of the internet
 - b. We offer choice and do not block or provide any preferential access to any website or app
 - c. Net Equality
 - d. Same service, same rules
 - e. Please refer to Paper titled - The FCC’s “Net Neutrality” rules are technically unworkable by Martin Geddes (enclosed as Annexure 3)
5. We believe that bilateral arrangements agreed on mutual terms will work the best in the Indian scenario.

Q9: What are your views on net-neutrality in the Indian context? How should the various principles discussed in para 5.47 be dealt with? Please comment with justifications.

COAI Response

1. The issue of net neutrality is a complex issue that is being debated in several countries all over the world and administrations are looking for the right solution to ensure the continued growth of the internet whilst managing the unique challenges of a mobile environment, where capacity is finite due to limited availability of spectrum and huge investments are required to sustain the growth of internet traffic. Operators have to manage their resources and capacity to ensure the best possible customer experience.
2. It may also be kept in mind that India is a market where where 80% of the population still does not have the benefit of broadband coverage and only 7% of the subscribers are availing mobile broadband services. Significant investments are required to meet the broadband targets of the nation. Further, the services need to be accessible as well as affordable and relevant to increase take up of services by the consumers. It is only then that will be able to meet the targets of Digital India program.

3. If Network Neutrality were to be implemented in its strictest sense, i.e. If all traffic is to be treated equally and no innovative commercial arrangements can be entered into by the TSPs to augment their revenues and ensure return on investments, this will necessarily mean an increase in data tariffs for consumers. This will directly impact the growth and take up of services, especially for the low end users and the bulk of the Indian population will remain deprived of the benefits of broadband due to affordability concerns.
4. Our ambition is to connect a billion Indians who are not connected today. The immediate priority before the country today is really about net equality and Internet for all.
5. As regards the principles stated in para 5.47:
 - a. We support and we believe that effective competition amongst TSPs and user choice is already there in the market.
 - b. We believe that traffic management is a technical and complex exercise and requiring the same to be declared may not be very useful for consumers. However, if at all, these are required to be declared, the principles published by Ofcom may be considered.
 - c. The switching costs and barriers are already very low.
 - d. The Authority has already issued QOS parameters for wireless data services and we believe that these provide the quality assurance mentioned by the authority and are adequate to protect consumer interest. It is further submitted that there is no basis for the concern that TSPs will degrade traffic to the detriment of any consumer.
6. Further, we believe that if there is enough choice, transparency and low barriers to switching provider, customers will be able to select the option that best suits their needs and Net Neutrality will be safeguarded.

Q10: What forms of discrimination or traffic management practices are reasonable and consistent with a pragmatic approach? What should or can be permitted? Please comment with justifications.

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Q11: Should the TSPs be mandated to publish various traffic management techniques used for different OTT applications? Is this a sufficient condition to ensure transparency and a fair regulatory regime?

COAI Response

1. Traffic management has long been an important tool in meeting the needs of users of internet services and will become more important with the development of new technologies such as LTE, as even voice is delivered over the data networks.

2. Traffic management describes a range of techniques used by network operators, ISPs to ensure the smooth flow of data traffic across the networks between the end users and content /service providers. Network operators and ISPs use traffic management to minimize the incidence and impacts of congestion, ensuring that as many users as possible get the best online experience possible. Examples of current and anticipated network management practices include:
 - a. Management of congestion
 - b. Blocking spam, malware, denial of service attacks and other security threats to the network or to user devices
 - c. Ensuring that time sensitive services such as voice, video, online gaming and enterprise services can be delivered in a way which ensures optimal performance of those applications (without the calls dropping, buffering videos and time lags in games)
 - d. Network Performance: Network Management practices
 - e. Peak Load Management
3. Mobile network operators face greater constraints in total capacity due to spectrum scarcity and the high costs of infrastructure investment and further because that capacity is then shared amongst users in the access network rather than being dedicated to each individual household. This suggests that any principles governing traffic management should take account of the challenges faced by mobile operators and should be sufficiently flexible to accommodate them. Please refer to Paper titled Net Neutrality and Technical Challenges of Mobile Broadband Networks by Dr. Jeffrey H. Reed and Dr. Nishith D. Tripathi for more details (enclosed as Annexure – 4).
4. Over the last few years, the amount of data traffic flowing across communications networks has increased dramatically. In addition to increased traffic volumes, network operators have to cope with an increased complexity in the composition of data traffic. While internet traffic was earlier dominated by email and web browsing, we now see a broader range of traffic types including video/music streaming, file transfer protocols, encrypted packets, online gaming, instant messaging and VOIP, etc. Some of these services have a high degree of sensitivity to packet delay, error and loss- undesirable consequence of higher levels of network congestion that follow from increasing traffic volumes.
5. **Traffic management is a tool for consumer benefit not consumer harm.** Traffic management provides a number of clear benefits to end users in terms of improved performance, innovation, consumer protection and efficiency.
6. It is to be noted that traffic management and prioritization has played a large role in the successful introduction of Voice over IP. Again, the use of public mobile internet services for machine-critical-applications is increasingly of interest. The police, fire, and emergency medical services (Public Protections and Disaster Relief i.e. PPDR services) have an

increasing need for broadband which have to function in a prioritized way during a natural or a man-made disaster.

7. **Recommendation: Traffic management is a highly technical and complex exercise. The information shared with the consumers must facilitate and empower the consumers to make informed decisions rather than add to their confusion. In view of the above, we submit that mandate to publish traffic management techniques may not be desirable.**
8. However, in the event that such a requirement is considered, TSPs should be given the freedom to communicate their traffic management practices to provide meaningful information and facilitate informed consumer choice. In this regard, we submit that the six principles published by OfCom – viz. appropriate, accessible, understandable, verifiable, comparable and current, may be adopted by the Authority to meet the requirements of transparency. It is essential to provide sufficient information to customers to be clear – too much technical information could be counterproductive.
9. Further, such a requirement may also be applied to other elements of the Internet value chain.

Q12: How should the conducive and balanced environment be created such that TSPs are able to invest in network infrastructure and CAPs are able to innovate and grow? Who should bear the network upgradation costs? Please comment with justifications.

COAI Response

1. The TSPs need a regulatory environment that fosters and incentivizes investments. As submitted above, the revenues from data alone are not sufficient to cover the costs of the TSPs.
2. The TSPs should have the freedom to create new business models and enter into mutual commercial arrangements with OTT players, providing adequate measures for consumer protection. This will support and supplement the significant investments required to increase the bandwidth and capacity to support the growth and take up of OTT services.
3. Such arrangements will be in the interests of all stakeholders – the consumers, the OTT players as well as the service providers.

Q13: Should TSPs be allowed to implement non-price based discrimination of services? If so, under what circumstances are such practices acceptable? What restrictions, if any, need to be placed so that such measures are not abused? What measures should be adopted to ensure transparency to consumers? Please comment with justifications.

COAI Response

1. In mobile networks, an over-congested or degraded network is in no one's interest. One way of ensuring a return on investments could be by recovering the total cost of network upgrades entirely from the consumers, by way of higher data tariffs. Alternatively, one could instead look at the internet as a two sided market, which involves the consumer and the content /app provider. The TSP is the platform that brings these two sides of the market together. Payment can come from either side of the market and a two-side payment approach **is a win-win solution – for a content/app provider, it will ensure a quality experience for its end user, which will fuel its growth and development; for the consumer, it will mean a more affordable service.**
2. Such arrangements increase social welfare by transferring the cost of internet access from consumers to content providers. Preemptive regulation should not come in the way of what can reasonably be defined as an evolution in service provisioning – i.e. we are today capable of entering into complex commercial agreements with the goal to decrease retail prices, and increase the usage of services.
3. In view of the above, we believe that the TSPs should be given the freedom to negotiate commercial arrangements with OTT players. These arrangements should be bilateral in nature, providing adequate measures for consumer protection.

Q14: Is there a justification for allowing differential pricing for data access and OTT communication services? If so, what changes need to be brought about in the present tariff and regulatory framework for telecommunication services in the country? Please comment with justifications.

COAI Response

1. Service Differentiation is a common business practice that is widely practiced across various industries. Take the examples of:
 - a. Tatkal rail tickets, first class, sleeper class, unreserved – differentiated products at different prices
 - b. First class, business class and economy class in airlines
 - c. National expressway or highway vs a regular road
 - d. Travel by bus, taxi or an auto

- e. Priority banking, personal banking
 - f. Regular water, mineral water
2. As per a Paper titled, "Network Neutrality or Internet Innovation?" by Mr. Christopher S. Yoo, University of Pennsylvania Law School, "Social welfare would be maximized if the network provider could price discriminate on both sides of the two-sided market (enclosed as Annexure – 2).
 3. Such differentiation is also permissible to TSPs. As noted by the Authority, the TTO 1999 provides that the TSP shall not discriminate between subscribers of the same class and such classification shall not be arbitrary. Thus, as long as there is a clear differentiation in the classification of subscribers, differential pricing is permitted even under the existing regime. In fact the growth of the market has been fuelled by the various innovative tariff plans that have been designed by the TSPs to meet the wide and varied requirements of their subscribers.
 4. In view of the above, we believe that even in the matter of OTT, TSPs should be allowed differential pricing for data access and OTT communication services as long as the TSP shall not discriminate between subscribers of the same class and such classification shall not be arbitrary.
 5. As per the provisions of the TTO, 1999 and its amendments, the tariff for data (Internet) is under forbearance. However, all TSPs have to comply with regulatory principles of inter-alia, non-discrimination and non-predation.

Q15: Should OTT communication service players be treated as Bulk User of Telecom Services (BuTS)? How should the framework be structured to prevent any discrimination and protect stakeholder interest? Please comment with justification.

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Q16: What framework should be adopted to encourage India specific OTT apps? Please comment with justifications.

COAI Response

1. We submit that OTT cannot be called Bulk User of Telecom Services (BuTS).
2. It may therefore not be appropriate to treat OTT communication services players Bulk User of Telecom Services or devise a regulatory framework based on such a premise.

Q17: If the OTT communication service players are to be licensed, should they be categorized as ASP or CSP? If so, what should be the framework? Please comment with justifications.

COAI Response

1. As submitted above, there is a need to ensure Regulatory Neutrality so that there is a level playing field in the eco-system.
2. The Authority should apply the principle of, “Same services, same rules”. Only under such an environment, the TSPs will get a fair chance to compete with OTTs on similar pricing and terms.

Q18: Is there a need to regulate subscription charges for OTT communication services? Please comment with justifications.

COAI Response

1. There is no need to regulate subscription charges for OTT communication services and the tariffs should continue to be under forbearance
2. The TSPs should be given the freedom to negotiate commercial arrangements with OTT players. These arrangements could be bilateral in nature, providing adequate measures for consumer protection.

Q19: What steps should be taken by the Government for regulation of non-communication OTT players? Please comment with justifications.

COAI Response

1. We believe that the Authority should look at which obligations should be extended to all internet services – these could be obligations around transparency, privacy, security and consumer protection, to encourage growth, create a resilient and safe internet and build consumer confidence and trust.
2. Then, the specific requirements needed for communications services should be considered, driven by clear policy requirements. The same rules should apply to the same services.

Q20: Are there any other issues that have a bearing on the subject discussed?

COAI Response

1. Please find enclosed:
 - a. Annexure 2 - Paper titled - Network Neutrality or Internet Innovation? by Mr. Christopher S. Yoo , University of Pennsylvania Law School.
 - b. Annexure 3 - Paper titled - The FCC's "Net Neutrality" rules are technically unworkable by Martin Geddes.
 - c. Annexure 4 - Paper titled Net Neutrality and Technical Challenges of Mobile Broadband Networks by Dr. Jeffrey H. Reed and Dr. Nishith D. Tripathi.
