

Telcos' demand for reasonable 'usage charge' from OTTs fair & rational

Misleading to state Net Neutrality principles will be violated

New Delhi, 27 Feb 2023: Cellular Operators Association of India (COAI), the apex industry body representing the digital communications sector in the country, has reiterated its position that the demand of Telcos for a reasonable 'usage fee' from OTT Communication service providers for leveraging their networks to provide profitable services is fair and rational, and would aid in developing the country's digital infrastructure, while contributing to the economy.

Lt. Gen. Dr. S.P. Kochhar, Director General, COAI, stated on the matter, "Certain entities with vested interests are misdirecting the issue of need for a regulatory framework for the communication OTTs and the need of usage charge to be paid by OTTs to the TSPs, by bringing in the aspect of Net Neutrality in a misleading manner, to make it a populist issue. We reiterate that all our member TSPs are committed to follow the Net Neutrality principles as per their licensing conditions".

There seems to be lack of appreciation of the fact that net neutrality pertains to non-discriminatory treatment of content which has no nexus to the usage fee issue. **Telecom Service Providers (TSPs) are committed to follow the Net Neutrality Principles, as per their license conditions**, as also all other regulatory and security compliances which the TSPs undertake to safeguard consumer interest and security - which OTTs presently do not.

The proposed usage charge is to justly meet the funding requirements for creating a robust telecom infrastructure in India, increased revenue for the exchequer, and continued innovation, as is the need of the hour for India's growing digital ecosystem. It has been proposed that OTT communication services pay a network usage charge to the concerned TSP in a fair and equitable manner for the actual traffic carried by these OTTs on TSPs' network based on measurable usage. This usage charge will contribute towards the development, maintenance and upgradation of the network infrastructure.

It is also pertinent to highlight the **European Commission's recent commitment in the Digital Decade Declaration to develop adequate frameworks so that "all market players benefiting from the digital transformation... make a fair and proportionate contribution to the costs of public goods, services and infrastructures..."**.

The revenue collected by TSPs from the OTTs will help the TSPs rollout and expand networks to meet the infrastructure requirements for OTT services. It may also be noted that the revenues thus collected will count towards the TSPs AGR calculations. Hence, the OTTs will effectively be contributing to the national exchequer through the TSPs.

Keeping in mind that a supportive framework needs to be provided to nurture startups, MSMEs and small enterprises in the OTT ecosystem, COAI has also proposed that such **smaller players with low usage need NOT be required to pay the usage charge. In this way, innovation and entrepreneurship would not get affected**. The concept of a significant

intermediary has been well recognized in various Government guidelines and rules for imposition of additional obligations on such intermediaries.

OTT platforms take a free ride on TSP funded networks without contributing to the setting up, operating and maintenance costs either directly or indirectly or for the expansion of networks through USOF. TSPs invest heavily in network infrastructure and acquiring spectrum, comply with quality-of-service norms, audit of accounts, and pay goods and services tax, licensing fees, facilitate lawful interception and monitoring systems whereas, in stark inequality, the OTT platforms owned and operated by huge foreign entities leverage the data to build a subscriber base which they use for substantial direct/indirect benefits – chiefly from advertisements based on data analytics and other monetising strategies of data collected from subscribers of its platforms. Since most of these OTT platforms are owned/operated by huge foreign entities, this Indian data is used for filling up the coffers of the owners and increasing the GDP of that country. **As these platforms are not under the Telecom law presently, their revenues do not contribute to our Economy or Telecom growth because there is no Indian taxation on these operations.**

In fact, lately, many OTT communication players are contemplating/already charging subscribers a significant fee for verified accounts, adding further lead to their revenues. ***“It is ironical that representatives of entities profiting themselves by levying charges on subscribers while riding free on the telcos’ network, are stating that paying for usage would effectively raise costs for users,”*** commented Lt. Gen. Dr. S.P. Kochhar, DG, COAI.

“The fact, though unfortunate, is that the proponents of such OTT service providers wish to continue to have free lunch at the expense of TSPs, while conveniently overlooking the fact that the TSPs continue to invest immensely towards building the nation’s digital infrastructure and delivering connectivity, access and opportunities for inclusive growth to the Indian citizens,” he added.

It is pertinent to note that any entity which creates a property or infrastructure by investing funds, is entitled to take usage charges (rent /lease charges, etc.) from someone who uses the same for commercial purposes. Hence, a legal framework enabling TSPs (who invest in establishing nation-wide telecom infrastructure) to charge any user that uses its service/infrastructure is fair and reasonable.

While effectively **both TSPs and OTTs provide similar communication services to the same Indian population in the same prevailing environment, in the same geography, engineered over the same application layer of the 7-layer OSI based IP networks set up by TSPs;** they presently operate under different rules which are disadvantageous to the TSPs and the nation.