

Same Service, Same Rules is the foundation for fair and healthy competition: COAI

- ***Level playing field needs to be maintained***
- ***Regulation on communications OTTs as well as OTTs consuming humongous bandwidth is a necessity***
- ***OTT Players should be brought under the ambit of the new Telecom Act***
- ***OTTs need to invest and contribute towards development of robust digital Network and Infrastructure in the country***

New Delhi, 25th October 2022: COAI, the leading representative body for the Indian telecommunications industry, has stated that there is a need to ensure a level playing field among all technologies, i.e. Same Service Same Rules with respect to OTT Communication Services, so that fair and healthy competition prevails in the industry. The industry welcomes adoption of new technologies and services by various players in the ecosystem; however, regulatory conditions and treatment must be made uniformly applicable for similarly placed players.

In view of this, COAI welcomes inclusion of OTT Communication Services in the draft Indian Telecommunication Bill 2022, recently released by DoT. However, in order to bring comprehensiveness and avoid any possible ambiguity, COAI is of the considered view that the OTT Communication services need to be defined in the draft Telecom Bill.

Certain quarters have opined that the principle of 'Same Service, Same Rules' may not be applicable for OTT Communication services, based on misinformed views. It has been erroneously suggested that Telecom Services and OTT Applications do not operate on the same layer, when in fact; services such as calls (voice/video) whether provided by the TSPs or the OTT Apps, operate on the same layer, essentially riding on the network layer.

It is also being argued that Article 14 of the Constitution of India guarantees equal treatment to only those who are equally situated, while incorrectly citing the case of Government of Andhra Pradesh vs Maharshi Publishers Pvt. Ltd. (AIR 2003 SC 296....) in this regard. The argument ignores the Hon'ble Supreme Court's observation treating a school and a publisher as equally situated even though they operate in different layers. It is clearly evident from the Hon'ble Supreme Court's judgment on the referred case that equality in the context of Article 14 comes from being in the same situation as opposed to operating in same layers. Since OTTs and TSPs provide the same voice/video/data communication services - they operate in the same situation, and hence should not be seen as un-equals.

Another flawed argument is that since TSPs have Right to Spectrum, numbering resources, interconnect with PSTN and Right of Way (RoW) for setting Infrastructure; there should not be any framework for regulating OTTs and bringing them on equal footing with the TSPs. It may be noted that TSPs undergo a government mandated process for allocation of right to use of spectrum, numbering resources, etc. by undertaking critical commitments in terms of deliverables defined by the license agreement and invest heavily in setting up networks. OTTs, on the other hand, are free from any of these obligations, but enjoy all the privileges of delivering the same services, without having to bear any of the regulatory obligations, security obligations, investment or network requirements. Further, it is important to note that it is not the case that OTTs are prevented from obtaining Right to Spectrum, numbering resources, interconnect with PSTN or ROW, etc.; but they have chosen not to opt for these privileges so as to avoid the associated obligations stated above.

In fact, regulatory disparities exist presently in provision of essentially same communication services between - TSPs who are subject to various regulatory obligations such as Security, QoS, Subscriber Verification, Anti-spam, Strict compliance required under Unified license provisions instructions, various audits, etc.; and OTT Communication Service Providers who are not subjected to any form of regulation. This seriously dents the level playing field in the market.

Apart from investing massive amounts in creating the network Infrastructure and incurring huge operational expenses in terms of meeting various Regulatory compliances, TSPs also pay exorbitant levies and taxes in terms of License Fee, SUC, GST, etc. On the other hand, OTT communication service providers, who are enjoying huge direct/indirect benefits and revenues by utilizing the TSPs' networks, are not subjected to such taxes and levies, thus causing loss to the Government exchequer. As applicable to all industries, such revenues gained from the Indian citizens, should be accrued back to the Government of India under a regulated regime and model. COAI is of the view that OTT communication service providers should be brought under the ambit of the Telecom Act and they should contribute to the development of network infrastructure in the country.

This is further justified by the fact that OTT Players consume humongous amounts of bandwidth, which puts tremendous pressure on the network infrastructure established by the TSPs. At the same time OTT Players gain massive direct/indirect benefits without incurring any additional costs. Thus it would be all the more fitting that they contribute towards the cost of this infrastructure development, which is presently borne by the TSPs alone.

COAI is of the firm view that all the OTT players (both Communication and non-Communication OTT providers) should meet the requirements of National Security and Consumer Rights.

With advent of new technologies and advancement of the telecom ecosystem to entail such services/products, it is only logical that the new Telecom Bill brings OTT Communication services under a proper regulatory framework, as required for any legitimate sector. In case communications OTTs as well as OTTs consuming humongous bandwidth are not brought under an appropriate regulatory regime, then the license conditions and regulatory obligations for the TSPs should be equally relaxed.

Moreover, OTT players need to invest and contribute towards the development of a robust Digital Network and Infrastructure in the country, along with meeting the critical requirements of National Security and Consumer Rights.
