

## **Broadband India forum states that OTTs are adequately regulated under the IT Act and is against selective banning of OTT services**

- *BIF further emphasises the success of OTTs in boosting India's app economy*

**New Delhi, September 2, 2023** Broadband India Forum (BIF), a leading independent think-tank and policy forum for Digital Communications in India, continues its commitment to enhancing the nation's broadband ecosystem. In response to the Telecom Regulatory Authority of India's (TRAI) consultation paper on the regulatory framework for over-the-top (OTT) communication services, and the selective banning of OTT services, BIF asserts that OTTs are adequately regulated under the existing IT Act, 2000, and other associated acts and rules.

BIF's recommendation stems from the belief that the current regulatory landscape has fostered a healthy app economy growth in India, marked by one of the world's highest annual app download rates. Additionally, any attempt to introduce new regulatory frameworks could disrupt the existing competitive landscape and compromise consumer benefits and innovation.

BIF argues that existing laws, including the IT Act and the Consumer Protection Act of 2019, sufficiently address the regulatory, economic, security, privacy, safety, and consumer grievance aspects of OTT services. Furthermore, government agencies possess the necessary powers under Section 69, 69A, and 69B of the IT Act for lawful interception, eliminating the need for additional regulatory burdens. BIF also firmly opposes any selective banning of OTT services, confident that such measures would not pass the scrutiny of fundamental rights.

BIF emphasises the distinction between Over-The-Top (OTT) services and Telecommunication Service Providers (TSPs), highlighting that they operate in different layers, with OTTs at the application layer and TSPs providing network infrastructure. Moreover, they do not enjoy equal rights; TSPs possess unique and exclusive rights, including the right to interference-free spectrum, right of way, a unique numbering plan, and interconnection rights, which OTTs do not have. These fundamental differences lead to the conclusion that OTT services and TSP services do not belong to the same relevant market.

**President T V Ramachandran, BIF**, commented on the same, *"OTTs have significantly enhanced accessibility to digital tools and amenities, enriching lives and empowering individuals by boosting productivity and socio-economic standing. This has resulted in massive economic spill-over effects, contributing to the nation's prosperity. We hope that the regulator and the Government will allow market forces to operate freely, incentivising growth and progress in this vital sector. TSPs can compete freely, and OTTs should not face restrictions in favour of TSPs."*

Consumers primarily use telecommunication services for basic voice and SMS, while OTT applications offer rich interactive content and multiple features. Additionally, consumer choice is limited in switching between telecommunication networks due to existing duopolies, whereas services on the application layer, such as OTTs, foster a highly competitive environment with low entry barriers, often providing cost-free options to customers and enabling the use of multiple services.

Furthermore, BIF draws attention to international precedents, including the International Telecommunication Union (ITU) and several EU nations, which have recognised the unique nature of OTT communication applications compared to traditional telecommunication services. They have opted for a differentiated approach to the regulation of OTTs and TSPs, acknowledging that they are not perfect substitutes.

In asserting the divergence between OTTs and Telecom Services, BIF quotes *"as per abundant case laws associated with Art. 14 of the Constitution, unequals are not only permitted to be treated unequally but they also have to be so treated so mandatorily. Importantly, equal treatment to unequals is nothing but inequality. To put both categories at par is wholly unjustified, arbitrary, unconstitutional, and violative of Art. 14."*

Quoting both TRAI and ITU, BIF remarks that OTTs and TSPs *"engender benefits for each other in a symbiotic, complementary, and mutually reinforcing manner"*. This acknowledgment underscores the presence of a well-developed and functional collaborative framework that already exists within the industry.

**About Broadband India Forum:** *Broadband India Forum (BIF) functions as an independent policy forum and knowledge-based think-tank that works for the development and enhancement of the entire broadband ecosystem in a holistic, technology- neutral and service-neutral manner. BIF has established itself as a thought leader and a credible and effective voice, to help propel the nation to achieve the country's ambitious vision of creating a Digital India. To achieve this, BIF works to promote the rapid*

*development of policies, so as to facilitate affordable and high-speed ubiquitous broadband throughout the country.*