

BIF's Counter Comments in the TRAI Consultation on Authorisation Framework

Trashes some Vested Interests' Deliberate Misinterpretation of the Telecom Act

New Delhi, August 19, 2024: In a strong rebuttal to a few stakeholder submissions to the TRAI Consultation Paper on the Framework for Service Authorization (**TRAI CP**) granted under the Telecom Act (**Act**), Broadband India Forum (**BIF**) has vehemently opposed the comments of those vested interests, stating that the latter's legally untenable proposals would irretrievably harm public good and undermine the foundational principles of India's diverse telecom ecosystem.

The above-mentioned vested interests, in their comments to the TRAI CP, have advocated a pan-India unified service authorization, the merger of satellite services with access services, the regulation of OTT services under the Telecom Act and the deplorable dismissal of the globally unique, prestigiously-branded UPI of telecom - PM WANI. **BIF firmly opposes these proposals, which are tantamount to a chilling, monopolistic takeover of the telecom sector.** The proposed 'super authorization' would create a monopoly that stifles Competition and Innovation. Moreover, attempts to monopolize spectrum and undermine the PM-WANI initiative are short-sighted and detrimental to the public interest. Finally, BIF reiterates its unequivocal support for the government's stance on OTT services, which are distinct from telecom services and should be treated accordingly. In case of OTT services, few stakeholders have mischievously sought to bring it into the ambit of the Telecom Act, a matter that had been unambiguously and publicly clarified by the Ministry as not being part of telecommunication services ([refer annexure 1](#)).

A brief summary of BIF's comments is below:

A. Pan India US Authorisation Could Become a Move to Create a Super-Operator Monopoly

- BIF pointed out that 'unified service authorization', would severely tilt the level of the playing field in favour of 'certain/large' corporations, leaving smaller players struggling to compete or even to exist.
- A completely different category of 'super authorisation' will change the definition of the market altogether as certain entities would then possess an unprecedented market advantage, stifling competition, innovation and consumer choice.
- BIF contends that small and medium sized players will not be in a position to compete against a unified, pan-India 'super' authorized entity with a combined portfolio of 22 services in 22 LSAs under one umbrella.

- The reality of the 'super authorisation proposal' will be a wolf in sheep's clothing – that would demolish the competitive landscape to erode consumer choice and would consolidate market power in the hands of a few significant market players. It would increase entry barriers and thereby, perpetuate their ambitions towards creation of either a monopoly or at best a duopoly.
- Lastly, BIF also contends that the pan-India unified service authorization violates the core principles of the Telecom Act which provides for different terms and conditions, including fees, and charges of authorisation for **different types of telecommunication services** [As per Section 3(2) of the Act].

B. Spectrum cannot be monopolised for a profit opportunity

- BIF states that spectrum is a critical public resource essential for the functioning of modern society, not merely a commodity for generating profits.
- Despite abundant clarity that **spectrum assignment is beyond the scope of the present consultation** (TRAI CP), some vested interests have persisted in making grossly unfounded claims about the method of assigning spectrum, by essentially asking for merging several unrelated services.
- The Act has clearly provided for cases under which spectrum would be administratively assigned (including all commercial satcom services) under Schedule 1 of the Act as a direct response to long-standing uncertainties and challenges faced by the satcom industry. The vested interests have deliberately misinterpreted Schedule 1 to state that administrative assignment of spectrum for certain use cases viz. satellite services are "*based on adhoc policy*". This is both misleading and inaccurate and an attempt to circumvent the carefully considered provisions of the Telecommunications Act itself.
- BIF reiterates that such deliberate misinterpretation is ostensibly a back door method to get the process of spectrum assignment amended to stifle competition and to help sustain the monopoly/duopoly in the market to their commercial and selfish advantage, with utter disregard for the democratic process of law making, given the fact that the Act has been passed by Parliament, has Presidential assent and also has been Gazette notified.

C. OTTs not telecom services: BIF rejects bid to bring them under Telecom Act and recalls Ministry's earlier public clarification that OTT not Telecom

- Despite Ministry having earlier clearly issued a public statement, shortly after the passing of the new Telecom Bill by Parliament, that **OTT services are not 'telecommunication services'** and hence, do not fall under the jurisdiction of the Telecom Act 2023 ([refer annexure 1](#)), certain vested interests continue to persistently

attempt to find ways to bring through the backdoor that OTT services continue to be covered under the Act.

- BIF reiterates that bringing OTT services under the Telecom Act is in complete violation of Article 14 of our Constitution, which guarantees equal treatment only to persons or entities who are similarly situated. **Importantly, equal treatment to unequals is nothing but inequality. To put both categories at par is wholly unjustified, unconstitutional and arbitrary, being violative of Art.14.** Comparing OTT services to telecom services of voice and SMS is completely erroneous and overlooks the vast and critical differences between the two categories.
- The two types of entities are placed in very different circumstances. TSPs which provide telecom services enjoy several exclusive and unique rights that include (1) the right to interference-free spectrum, (2) the right to numbering resources, (3) the right to interconnect with PSTN, and (4) the right of way to set up infrastructure. However, OTT players neither have these privileges listed above, nor do they own the network or control the access to telecom infrastructure. Hence the question of level playing field and similar treatment to both, simply does not arise.

D. PM WANI- A National Initiative to Bridge Digital Divide Cannot be Subverted by Commercial Interests; Vested interests jeopardizing PM-WANI's goal of Digital Inclusion.

- Launched in 2020 [by the Hon'ble PM Modi](#), the PM-WANI initiative intends to enhance the proliferation of public Wi-Fi hotspots to create robust digital communications infrastructure and bridge the digital divide in India, especially in Rural India.
- BIF argues that the sanctity of this initiative led by Hon'ble PM, is being immensely threatened and undermined by certain stakeholders who have incorrectly perceived Public WiFi as a threat to the incumbent mobile networks instead of viewing it as complementary.
- Given that access to the internet is required by Public Data Offices or PDOs who are largely small-time retailers/shopkeepers/teasellers/kiranastores, such access should not be constrained by unduly high tariffs for the same to PDOs. We verily believe that this matter has also been referred to the TRAI by DoT for their recommendation and that the TRAI is currently engaged in consultations.
- BIF reiterates that mobile internet services are inherently constrained by factors such as network topology, user density, spectrum propagation, device capabilities, and varying service quality. These limitations hinder mobile services from achieving the same level of quality, consistency and reliability as fixed broadband with Wi-Fi connections.

- Public Wi-Fi is not just a convenience; it is a necessity for bridging the digital divide and empowering millions of citizens. To achieve Hon'ble PM's vision of a 'Digital India' with full digital empowerment to all its citizens and to achieve inclusivity or the principle of 'Antyodaya', PM-WANI Public Wi-Fi hotspot proliferation is an absolute necessity.

TV Ramachandran, President, BIF said "BIF requests the regulatory and administrative authorities to dismiss these misguided and mischievous claims and uphold the integrity of the Telecom Act. This will ensure that the Act will continue to serve its intended purpose of fostering the development and expansion of telecommunication services and networks, without stifling competition, innovation and consumer choice. It is about placing the national priorities and public good ahead of commercial interest of a chosen few for the future of a competitive, diverse, and inclusive Viksit Bharat."

About Broadband India Forum: Broadband India Forum (BIF) is an independent policy forum and knowledge-based think-tank that works for the development and enhancement of the entire broadband & broadcasting 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.