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Broad definitions in Telecom Act pit telcos and OTTs against each other yet again

Telcos, OTTs differ on what a telecom service is

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FILE PHOTO: A Netflix logo is shown on a TV screen in this illustration taken May 9, 2022. (Image source: REUTERS/Denis Balibouse/File Photo)

A war over interpretation of what a telecommunication service is under the new Telecommunication Act has broken out between telecom operators and social media companies, with the former arguing that over-the-top (OTT) communications platforms like WhatsApp and Google Meet are indeed covered under the definition of a telecom service.

This points to the vague manner in which telecom services have been defined under the Act, and despite the government's clarification to the media earlier that OTTs don't fall under the definition, experts believe media statements do not have the same sanctity as the legal word – and see this as the key reason behind this new divergence in the interpretation.

In response to the Telecom Regulatory Authority of India's (TRAI's) ongoing consultations on service authorisations, all the three major telecom operators have made a case that OTT platforms fall under the definition of telecom services, and therefore, should require licensing from the government the same way telcos do.

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In the Act, telecom services have been defined as: “transmission, emission or reception of any messages, by wire, radio, optical or other electro-magnetic systems, whether or not such messages have been subjected to rearrangement, computation or other processes by any means in the course of their transmission, emission or reception”. And ‘messages’ has been further defined as “any sign, signal, writing, text, image, sound, video, data stream, intelligence or information sent through telecommunication”.

DIVERGENCE IN INTERPRETATION



File

IN RESPONSE to the TRAI’s ongoing consultations on service authorisations, all three major telecom operators have made a case that OTT platforms fall under the definition of telecom services, and therefore, should require licensing from government the same way telcos do

When the Act was tabled in Parliament last year, various stakeholders had raised concerns that this particular definition was broad enough to potentially include

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But telecom companies seemingly have a different interpretation, almost months after the Act was passed in Parliament.

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“As per our understanding, OTT communication services are covered under the new Telecom Act as an access service. To address the issues of non-level playing field and ensure adoption of principles of ‘same service, same rule’, these competing and substitutable services should be included under Access Services authorisation under the new framework,” the Cellular Operators Association of India (COAI), which represents the three telecom companies Jio, Airtel and Vi, said in a statement.

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To be sure, this is the interpretation of the telecom companies, and TRAI or the telecom department may or may not entertain them.



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