

IN THE HIGH COURT OF DELHI AT NEW DELHI  
EXTRAORDINARY CIVIL WRIT JURISDICTION

W.P. (C) NO. 11173 OF 2019

IN THE MATTER OF:  
WORLD PHONE INTERNET SERVICES ...PETITIONER  
PRIVATE LIMITED.

VERSUS

UNION OF INDIA AND ORS. ...RESPONDENT

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RESPONDENT NO. 2

THROUGH



(ASHEESH JAIN)

Advocate

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Enrol No.: D/1113/2003

PLACE: NEW DELHI

DATE: 25.11.2022

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**IN THE HIGH COURT OF DELHI AT NEW DELHI**  
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**IN THE MATTER OF:**  
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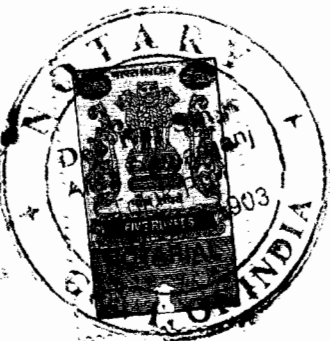
**VERSUS**

**UNION OF INDIA AND ORS. ...RESPONDENT**

**SHORT AFFIDAVIT ON BEHALF OF RESPONDENT NO. 2 IN COMPLIANCE OF ORDER DATED 08.09.2022.**

I, Jai Prakash, s/o Late Shri Shankar Lal, aged about 34 years, presently working as Assistant Director General in the Department of Communications, Ministry of Communication and Information Technology, having my office at Sanchar Bhawan, 20, Ashoka Road, New Delhi – 110001, do hereby solemnly affirm and state as under:

1. I am, in my official capacity as Assistant Director General in the Department of Communications, Ministry of Communication arrayed as Respondent No. 2 in the present Petition, well conversant with the facts and circumstances of the present case, as such competent to swear the present affidavit on behalf of Respondent No. 2.
2. That the present Affidavit is being filed on behalf of Respondent No. 2 in view of the directions passed by this Hon'ble Court vide Order dated 08.09.2022, thereby, directing Respondent No. 2, to state on affidavit the status



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of the recommendations made by Telecom Regulatory Authority of India (hereinafter referred to as "TRAI") to the Department of Telecommunication (hereinafter referred to as "DoT") regarding Regulatory Framework for Over-The-Top services. (hereinafter referred to as "OTT")

3. It is stated that TRAI vide its recommendations on Regulatory Framework for OTT Communication services dated 14.09.2020 suggested that it is not an opportune moment to recommend a comprehensive regulatory framework for OTT services, beyond the extant laws and regulations prescribed presently, and furthermore suggested that this matter should be looked into afresh when more clarity emerges in International Jurisdictions particularly the study undertaken by ITU (International Standardization Body).
4. It is stated that the recommendations of TRAI dated 14.09.2020 were considered by the Government of India in the 19<sup>th</sup> meeting of the Digital Communications Commission (hereinafter referred to as "DCC") held on 26.07.2022.
5. It is stated that the TRAI's recommendations dated 14.09.2020 have subsequently been referred back to TRAI for re-examination and reconsideration, so as to suggest a suitable regulatory mechanism for OTTs, including issues relating to 'Selective banning of OTT Services' as part of its recommendations in accordance with the provisions of Section 11 of TRAI Act, 1997.



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A Copy of the back reference dated 07.09.2022 is attached herewith and marked as Annexure -1.

*Jai Prakash*  
25/11/2022

**DEPONENT**

(जय प्रकारा)  
(JAI PRAKASH)  
सहायक महानिदेशक (डी.एस.)  
Asstt. Director General (DS)  
दूरसंचार विभाग, भारत सरकार  
Deptt. of Telecom, Govt. of India  
नई दिल्ली/New Delhi

**VERIFICATION:**

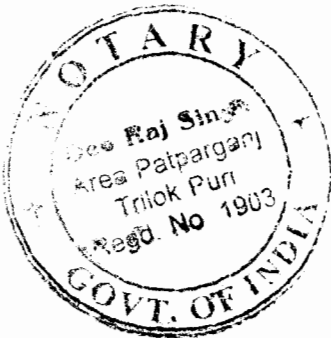
Verified at New Delhi, on this 25<sup>th</sup> day of November 2022 that the contents of the above affidavit are true and correct as per the official records maintained in my office and believed to be correct, no part of it is false and nothing material has been concealed there from.

*[Signature]*  
I am the Dependent.

*Jai Prakash*  
25/11/2022

**DEPONENT**

(जय प्रकारा)  
(JAI PRAKASH)  
सहायक महानिदेशक (डी.एस.)  
Asstt. Director General (DS)  
दूरसंचार विभाग, भारत सरकार  
Deptt. of Telecom, Govt. of India  
नई दिल्ली/New Delhi



**ATTESTED**

*[Signature]*  
**NOTARY PUBLIC**  
DELHI

**25 NOV 2022**

Government of India  
Ministry of Communications  
Department of Telecommunications  
Networks & Technologies (NT) Wing

Annexure 1

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No. 12-30/NT/2015/OTT (Pt)

Dated: 07 Sept, 22

To.  
The Secretary,  
Telecom Regulatory Authority of India  
Mahanagar Doorsanchar Bhawan,  
Jawaharlal Nehru Marg,  
New Delhi-110002

**Sub: Reference back on recommendations of TRAI on 'Regulatory Framework for Over-The-Top (OTT) Communication Services'– regarding**

This has reference to the recommendations of TRAI on 'Regulatory Framework for Over-The-Top (OTT) Communication Services' dated 14.09.2020. These recommendations have been considered by the Government and the following is submitted in this regard-

- i. Whereas TRAI has recommended that "*No regulatory interventions are required in respect of issues related with Privacy and security of OTT services at the moment*", it has not provided any detailed justification for recommending the same.
- ii. In view of the humongous growth of OTT services in the recent past and these services having reached a matured stage, there is a need to holistically look into the various aspects of these services including regulatory, economic, security, privacy and safety aspects. This is also in keeping with the para 2.2 of the National Digital Communications Policy-2018 which mentions about the policy goal for "*Ensuring a holistic and harmonized approach for harnessing Emerging Technologies*". It has been mentioned therein that a policy framework for 'Over The Top' services will be developed.
- iii. The above-said recommendations dated 14.09.2020 are based on the Consultation Paper of TRAI dated 12<sup>th</sup> November, 2018 on 'Regulatory Framework for Over-The-Top (OTT) Communication Services'. The consultation revolved mainly on the issue of imbalance between TSPs and OTT players providing services that can be regarded as same or similar to services offered by TSPs and issues relating to economic aspects of such OTT services. On the other hand, the Consultation Paper of 2015 titled 'Regulatory Framework for Over-The-Top (OTT) Service' focused on possible regulatory and licensing framework for OTT services along with related safety, security and privacy concerns in addition to Net Neutrality issues.
- iv. Further, recommendations dated 14.09.2020 are at variance to TRAI's earlier recommendations on Privacy, Security and Ownership of the Data in the Telecom Sector dated 16.07.2018 wherein it was concluded that "*since these entities are not governed by the license conditions, applicable for Telecom Service Providers, the need for regulation of*

*these entities of the digital eco-system to ensure protection of consumers' privacy and data security is urgent and inescapable."*


2. A kind reference is also invited to the recommendation no. 14 of the 26<sup>th</sup> report of the Parliament's Standing Committee on Communication and Information Technology on the subject 'Suspension of Telecom Services/Internet and its impact' (attached as Annexure-I), gist of which is as under-

*The Committee strongly recommended that the Department urgently examine the recommendation of TRAI and come out with a policy which will enable the selective banning of OTT services with suitable technological intervention, such as Facebook, Whatsapp, Telegram services during period of unrest/crisis that are liable to be used by the terrorists or antinational element/forces to ferment trouble in the specified regions. The Committee look forward to positive development in this regard.*

With respect to the abovementioned recommendation of the Parliament's Standing Committee, DoT replied that *it will explore the possibility of regulation of OTT services and banning the services on selective basis in consultation with TRAI, MeitY and MHA."*

3. In view of above, it is requested that TRAI may reconsider its recommendations on 'Regulatory Framework for Over-The-Top (OTT) Communication Services' dated 14.09.2020 and suggest a suitable regulatory mechanism for OTTs, including issues relating to "selective banning of OTT services" as part of its recommendations in accordance with the provisions of section 11 of TRAI Act 1997, as amended in 2000.

Encl. Annexure as above

  
(Dindyal Joshi)  
DDG (NT)

Ministry of Communications /Department of Telecommunications

**Selective Banning of Services**

14. Keeping in view the fact that complete shutdown of telecom services/internet affects the people in many ways, the Committee desired to know if it was technically possible to shutdown only those services in areas likely to be used by terrorist/anti-social elements rather than shutting down internet as a whole. The Department have informed that services hosted on cloud are difficult to ban selectively since they operate from multiple locations in multiple countries and continuously shift from one service to the other. However, websites operating through fixed URLs can be banned. The Department have also informed the Committee that Facebook, WhatsApp, Telegram etc. are basically categorised as over the top telecom services, OTT services in short. These OTT services are riding over the existing telecom service provider's network. The Committee note that recently, Department of Telecom have received a recommendation from TRAI on the OTT services and one of the major recommendations of the TRAI is that currently these OTT services are not required to be regulated. DoT are examining the recommendation and will take an appropriate decision on the recommendations. DoT would be in a position to provide answer to the Committee once the decision is taken whether they would be able to block the OTT services selectively or not.

The Committee feel that it will be of great relief if the Department can explore the option of banning of selective services, such as Facebook, WhatsApp, Telegram, etc. instead of banning the internet as a whole. This will allow financial services, health, education and various other services to continue to operate for business as usual thereby minimizing inconvenience and suffering to the general public and also help in controlling spreading of misinformation during unrest. Adoption of such less restrictive mechanisms will be a welcome


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initiative. The Committee strongly recommend that the Department urgently examine the recommendation of TRAI and come out with a policy which will enable the selective banning of OTT services with suitable technological intervention, such as Facebook, WhatsApp, Telegram services during period of unrest/crisis that are liable to be used by the terrorists or antinational element/forces to ferment trouble in the specified regions. The Committee look forward to positive development in this regard. Till such time every effort should be made to ensure that uninterrupted services are provided through the State broadband network which can be monitored easily for possible misuse.

Para 14 of 26th Report of the Standing Committee on Communications and Information Technology (17th Lok Sabha)

**Action Taken**

DoT will explore the possibility of regulation of OTT services and banning the services on selective basis in consultation with TRAI, MEITY and MHA.

  
**Deputy Director General (Access Service)**

Ministry of Communications (Department of Telecommunications)

O.M No. 800-15/2019-AS.II dated 25.02.2022