

## **COMMENTS ON TRAI'S PRE-CONSULTATION PAPER ON NET NEUTRALITY**

### **1) What should be regarded as the core principles of net neutrality in the Indian context? What are the key issues that are required to be considered so that the principles of net neutrality are ensured?**

India should not have a distinct definition of net-neutrality, as compared to other nations. Internet is not restricted to contents from India or likewise, a specific geography. Thus, to have a standard global definition of net-neutrality is advisable, not just for India, but all countries across globe. India can follow the footsteps of Federal Communications Commission (FCC) to start with, to define the core principles of net-neutrality as: a) No blocking; b) No throttling and; c) No paid-prioritisation.

India is highly indebted to neutral internet, which has not only boosted the economy, courtesy the rising startups, better communication and governance and knowledge exchange, but has also created numerous jobs. To keep the innovations on track and provide further robust to the economy, it is essential to keep internet the way it is. Severing any of the existing traits has scope to permanently cripple this realm forever. However, despite the benefits accrued over the years, the conventional deep pockets incumbents have always been trying to alter internet to their own benefits.

This quest for moulding internet had marked the rise of zero-rating plans, priority lanes, restricted internet, etc. The basis lies in the fact that the neutral internet has given rise to competition with new and innovative ways of communicating, doing commerce and executing governance. This has unsettled the incumbents, who desperately want to retain their strong market hold, not by innovating, but by impeding growth of the challengers.

There is no denying that there exist regulatory arbitrages, between the operators and OTT offering “near” same services, which includes calling and messaging. These arbitrages need to be addressed to make services better and more affordable, while ensuring healthy competition. In a country, where neither the telecommunication infrastructure is robust and nor has everybody boarded the telecommunication ship (digitally included), there is a need to push for uptake of telecom services. Thus, it is not a logical solution to restrict a 15-20p calling (offered by internet based OTTs) to save the operators offering 50p calling, just because of the existing licensing regime.

Rather, the regulator should ensure that all tariffs come down to 15-20p and there is a level playing ground for operators and OTTs. This might require the operators to learn from the improved technologies, to be inculcated into their systems and also for the regulator to relax some unwanted obligations imposed on the operators. Telecommunication is a sector which sees new and disruptive technologies being developed every now and then. The shelf life of one technology has gone from short to shorter. Thus, it is required for the telecom license holding operators to keep evolving and innovating with times, in order to compete with the new entrants.

Similarly, new technologies will also require continuous revisions of policies and guidelines, to keep pace with technological innovations. However, establishing regulatory hurdles for the new technologies shall prove to be detrimental to the economy. Thus, it is essential not to fiddle around with the state of internet and let it be the way it performs the best: being neutral.

The operators should not be controlling the way data flows in the internet pipeline. Operators are there to provide internet services and not provide disintegrated packages of internet. The data demand has risen exponentially over the years, which has seen the data revenues for the operators increasing multi-folds. For a country, where the minimum daily wages stand at Rs. 167<sup>1</sup> (monthly Rs. 5010), buying a 1 GB 3G data pack priced at Rs. 250 is still considerably expensive. If buying a data pack helps in making cheaper calls, it is still a win-win situation for operators, consumers and nation as a whole.

Thus, considering how internet has contributed to India's growth, it is important to follow the concept of net-neutrality (No Blocking; No Throttling and; Not Paid Prioritisation). The key principles of following this are to essentially stop operators on:

1. Gatekeeping the internet data (for all lawful content),
2. Restricting or differentiating between any data packed, irrespective of its type, source or destination,
3. Accessing user data packets
4. Incentivising/de-incentivising specific content
5. Free access to select content
6. Better QoS (Speed, latency, etc.) for certain content

**2) What are the reasonable traffic management practices that may need to be followed by TSPs while providing Internet access services and in what manner could these be misused? Are there any other current or potential practices in India that may give rise to concerns about net neutrality?**

It has been widespread thought that traffic management practice need to differentiate between the data. The pre-consultation paper also highlights the increasing "video" data traffic. It seems to be an assumption that the data should be prioritised for a better traffic management. Till the logic relies, differentiating on the basis of time sensitivity of data (**real-time and non-real time**), it is still acceptable, the moment it bases itself on the type of data, video, audio, text, messages, VoIP/VoLTE, etc., it becomes an issue.

Though, the pre-consultation tries to maintain a neutral approach towards video data by suggesting improvements in the infrastructure are required, but shouldn't infrastructure be capable enough to cater to all kind of data, irrespective of the type. It seems to stem from the idea (our assumption), that all video data is meant for entertainment, which is totally not the case. Thus, traffic management should not be based on type of data, but other parameters such as time-criticality and equal bandwidth to the users.

Video drives data demand (because of its data intensive behaviour), which means hefty and increased revenues for internet providers. Thus, if the revenues are increasing, ideally the infrastructure should improve enough to accommodate the increased traffic.

The moment TRAI will make ruling against net-neutrality it shall open a plethora of opportunities for operators. The operators would turn into gatekeepers, tracking every packet that flows to and fro from the user to the server. The operators would then be able to filter data, according to their strategy. They can de-incentivise use of certain content while promote the others. They would then also be able to see through user data, which in itself raises privacy concerns. This would essentially fragment the internet.

Some of the content providers would enter into MoU with operators to promote their content, which shall get a preferential access as compared to others. To quote an example, tomorrow "The Telegram" or "Huffington Post" enters into an MoU with Airtel and Airtel starts prioritising data for these two newspapers while other Indian newspaper are discriminated. This would mean Indian Newspapers would fall far behind the pecking order, in terms of demands. Similarly can be said about e-commerce, where the leader can contract with operator to get faster speed and low cost of access to their app, which results in more consumers flocking on to

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<sup>1</sup> <http://indianexpress.com/article/india/india-news-india/mgnrega-wages-states-in-a-quandary-over-new/>

one app and competitors would need to take a hit. This results in creating an unfair level playing field and thus, should be prohibited.

Gatekeeping, prioritising data for their revenue maximisation, promoting own content, etc. are all anti-competitive practices. The primary focus should be investing on the infrastructure to entertain effectively, all the demand. Despite this, if there is natural requirement of traffic management, it should only be done for the real time apps getting a priority, and in no other case should it apply. Also, the unlawful content may be filtered and blocked while in no case should be any differentiation happening for lawful content.

**3) What should be India's policy and/or regulatory approach in dealing with issues relating to net neutrality? Please comment with justifications.**

Reliance Jio has a telecom license, which enables it to make calls over the internet (VoLTE). This may see the call costs for Jio users at 15-20p, which for other operators is 50p, per call. This would be a big competition aspect in the market. However, the same services provided by Whatsapp and Skype are an issue because they do not have licences. But it is not hard to decipher that internet helps in offering cheaper services. Ideally, the existing operators should now try and make efforts to shift their existing platform to internet rather than placing obstacles for others.

Voice calling is being emphasised in the comments as, had it been no calling alternative, the operators wouldn't have resisted net-neutrality so much. They cannot stand their revenues specific to calling and messaging to be hurt, while at the same time they want to enjoy the increasing data driven revenues. What they do not understand is: today's digital world requires innovation and constant evolution, absence of which results in somebody else introducing a disruptive technology, which presents prowess to replace the older ones.

Talking only about licensing requirement of the operators to offer calling services which are not applicable to OTTs, it may be said that this is one condition that might be considered to be balanced. The Calling OTTs may register themselves to provide their services, and post that they should also be able to call on other network cellphones and landlines, etc. This would allay the national security concerns and also create a level playing ground for operators and OTTs. However, TRAI should not touch the tariff aspect of the services and should leave it to be determined by market forces. TRAI should also do away with charges which unnecessarily inflate the calling costs such as interconnect charges and leave it to operators to set their pricings.

Rest there seems no regulatory requirements for other kind of applications like messaging, video, games, etc. We should ideally move towards a regulatory light economy and should not set boundaries for innovations. Today there are number of startups and tomorrow the number should rise and not drop.

**4) What precautions must be taken with respect to the activities of TSPs and content providers to ensure that national security interests are preserved? Please comment with justification.**

Licensing of calling OTTs with minimal requirements and obligations, may be required. This will keep them competitive in the market and there would not be any regulatory imbalance between such OTT and telecom operators. The OTT based calls would flash with a number which may be used to track the callers and then shall allay the misuse concerns. Rest there are no major security concerns regarding other apps and contents on the internet.

**5) What precautions must be taken with respect to the activities of TSPs and content providers to maintain customer privacy? Please comment with justification.**

The operators should not be entitled to scan user data till it is from a lawful source heading to a lawful destination. Yes, this means that the operators should randomly check data destinations, only to track user usage on the unlawful activities. Rest, in no case the operators should be allowed to open the user data packet content.

Big Data is already a major concern. Misuse of crucial user data may have severe implications on the user. Thus, TRAI should not risk compromise of confidential user information at the hands of the operators.

**6) What further issues should be considered for a comprehensive policy framework for defining the relationship between TSPs and OTT content providers?**

1. Keep the principles of net-neutrality, enforce them
2. For only the calling apps (for now), include licensing with minimal obligations
3. No free data on the basis of usage of specific content, no Zero Rating Plans
4. No tracking of user data and no scanning of content from the data packed
5. No restriction or differentiation for the lawful data packets

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