

COUNTER COMMENTS FROM BIF ON TRAI CONSULTATION PAPER ON NET NEUTRALITY

Broadband India Forum welcomes the TRAI consultation process on Net Neutrality. The safeguarding of net neutrality, we believe, is crucial to the development of the internet and the delivery of increasing consumer value. TRAI's process of soliciting comments and counter-comments from all stakeholders allows for a robust and healthy debate in the development of policy directives. In this context we at BIF would like to offer a counter to some of the comments made on the TRAI consultation on Net Neutrality. There are comments made by some of the stakeholders for regulating OTT services which although not in the scope of net Neutrality consultation require to be countered with facts. We offer the following as counter comments in this respect.

The so-called "SameService, SameRules" argument is flawed

Comments from incumbents and others suggest that "Same Service, Same Rules" should apply on OTT communication service providers.

This is misleading on several counts. Referring to OTT and conventional telecom as the "same service" is flawed. Telecom operators control the underlying broadband access infrastructure, and are the gatekeepers to broadband internet access. A consumer cannot even get to OTT communications services without first purchasing internet access service from a network operator. By contrast, OTT services do not control the underlying broadband internet access points.

To suggest that there is a natural parity or similarity between OTT players and Telecom Service Providers (TSPs) is also erroneous. The latter enjoy several exclusive rights conferred on them through their licenses that are not enjoyed by online services. These include (i) the right to acquire spectrum, (ii) the right to obtain numbering resources, (iii) the right to interconnect with the PSTN, and (iv) the right of way to set up infrastructure.

On the other hand, no exclusive privilege is granted to OTT players. Further, since there are no entry barriers for providing OTT services, even TSPs can enter the OTT market without an additional license; whereas OTTs cannot enter the TSP market without a license. While TSPs can operate in both the network and application layers, OTTs are restricted to the application layer and cannot enter the network layer. OTT provides rich interactions beyond text and voice communication on the application layer and that's the innovation which should not be curbed. OTT communication services should not be seen as like for like with traditional telecommunications, but instead as innovative Rich interactions that are qualitatively and significantly different in terms of objectives and the richness of it, from conventional voice or text communications. This is a distinction that arises not from service providers but from consumers themselves. Further, any distinction, between OTT Communication services and other OTT services is artificial as most OTT services tend to develop platform characteristics that incorporate communication as only one aspect of the wider service provided. As a result, asking for regulatory parity on the basis of the "same service, same rules" argument is incorrect and does not justify a higher regulatory burden on Over-the-Top (OTT) players.

OTT regulation will fragment the internet

Increasing the regulatory burden of OTTs will hamper innovation and growth. A regulatory framework that requires OTTs to be “licensed” in the jurisdiction in which they operate will fragment the Internet along national boundaries and negatively impact the startup economy currently booming in India. If an Indian startup providing OTT services is required to take a license in other jurisdictions, it will not be able to compete with larger companies having the legal/regulatory resources to do so. Such a framework would undo the years of innovation that has happened on the Internet and fragment it irreversibly.

Further, as discussed above, the distinction between communication OTTs and non-communication OTTs is artificial and flawed, since applications cannot be compartmentalized in these two categories. For example, most gaming, health and e-commerce applications provide integrated communication channels. Creating such an artificial distinction would fragment the Internet into two categories - one that requires a license and a second that doesn't require any regulations. The big question would be how the millions of applications on the internet be regulated selectively. This arbitrage in regulatory obligations will give a reason to circumvent and fragment the internet across types of services. It will also stifle development of OTTs that provide integrated service offerings driven by consumer demand.

OTT regulation has little to do with Net Neutrality

We contest the assertion that *“The economic, privacy and security aspects of OTT Communication service providers need to be included in the discussion on Net Neutrality”*.

The concerns about privacy, data protection and safety have little to do with provisions relating to Net Neutrality. Most countries have adopted appropriate means to address the relevant concerns outside of the Net Neutrality framework. Even in India, the Information Technology Act and its underlying rules sufficiently address concerns related to privacy, security and safety in a nuanced and deliberated manner.

TRAI has rightly excluded OTT regulation from the scope of the present consultation, which focuses on network management principles. Any commentary on OTT regulation at this stage would divert from the focus and reduce the legitimacy of the present consultation on Net Neutrality that rightly focusses on network management and transparency.

Protection of operator revenues is not a regulatory goal

While viability of TSPs is an important concern, it is far-fetched to argue that

“Given the national imperative to rollout a ubiquitous broadband infrastructure in India, ensuring stable voice revenues for TSPs needs to be an absolute imperative for the Licensor /Regulator, who need to usher in suitable interventions to boost the steeply declining revenues and margins of the TSPs.”

A licensor or regulator cannot have a responsibility to “boost the steeply declining...margins of TSPs”. Were that to be the case, it would be impossible for TRAI to function as an effective market regulator to balance the concerns of the consumers with the health of the industry. TRAI should only seek to intervene to correct market failure and ensure the health of the sector inasmuch as it impacts consumer value. The TRAI Act of 1997 indicate that its recommendations are to be motivated by consumer benefit rather than by a need to protect the profitability of the TSPs – *“...measures to facilitate competition*

and promote efficiency in the operation of telecommunications services so as to facilitate growth in such services” (Chapter III, (a)(iv)).

There was a point being raised by some sections of industry that OTT applications are cannibalizing the voice revenue of TSPs due to the price arbitrage between voice tariffs and equivalent data tariffs for voice calls over the Internet. But this argument of loss of revenue lost its relevance overnight when a new TSP made voice calling free / as part of bundled data pack and others are also following the same path. In the present scenario, it is important to note that the market itself has shifted in a direction where voice revenues are no longer relevant. With the new tariff plans released by both new entrants and incumbents, the TSPs are clearly shifting to a data only model with unlimited voice calls.

[There should be consideration given to deregulating telecom providers](#)

Rather than attempting to increase the regulatory burden of OTTs by applying telecom regulations to online services, there should be consideration given to reducing the regulatory burden of TSPs. Towards this end, TRAI has already started a consultation on Ease of Doing Business, which aims to unshackle and rationalise the regulatory obligations of TSPs. We support this initiative as the right direction to resolve this issue. We argue that this would be a far better way to ensure the healthy development of the entire ecosystem and the maximisation of consumer value.