

Date: 5 July 2016

To  
Shri A. Robert. J. Ravi  
Advisor (QoS)  
Telecom Regulatory Authority of India  
Tel. No. +91-11-23230404,  
Email: advqos@traf.gov.in

**Subject: Comments by Novi Digital Entertainment Private Limited**

**Reference: Pre-Consultation Paper on Net Neutrality dated 30 May 2016**

Dear Sir,

At the outset, we thank you for this opportunity to offer our comments on the TRAI Pre-Consultation Paper on Net Neutrality ('Paper').

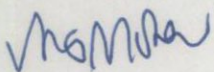
The Paper comes at a critical juncture for the internet and telecommunications sector in India. On one hand, the country has witnessed unprecedented growth in mobile and internet penetration in the preceding decade while, on the other, more than three-fourths of Indians remain unconnected even today. In addition to access to connectivity, affordability and quality of access remain significant obstacles to internet adoption. Despite these barriers, today India accounts for the second largest population of internet users and is developing into a key hub for technology, innovation and entrepreneurship.

Over-the-top services ("OTTs") have revolutionised a number of sectors like content, communications, education, retail commerce and e-governance that form key stakeholders in India's digital value chain. The growth of OTTs is closely linked to the conducive nature of the internet which has provided an open and egalitarian medium for innovation and entrepreneurship. This has largely been facilitated by the end-to-end and non-discrimination principles of 'net neutrality'.

We firmly believe that **free market forces, operating within the bounds of principles of net neutrality, should determine the commercial relationship between TSPs, OTTs and consumers in a manner that does not stifle innovation and growth.**

Please see our detailed responses attached herewith.

Yours Truly,  
For Novi Digital Entertainment Private Limited



Ajit Mohan  
Chief Executive Officer



## I. Responses to specific issues for consultation

- 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?**

### Novi Response:

India's digital economy thrives within a conducive framework driven by free market forces which has enabled the current state of innovation and growth. Given that the digital ecosystem is still at a very nascent stage, free market forces should continue to propel and shape its future. To ensure the growth and secure future of India's vibrant digital economy, any proposed net neutrality framework should comprise of the following principles:

- **No blocking:** TSPs / ISPs should be prohibited from blocking access to any lawful content, application or service (including OTTs).
- **No throttling:** TSPs / ISPs should be prohibited from 'throttling', slowing down access to or otherwise interfering with, degrading or impairing users' access to any lawful content, application or service (including OTTs).
- **No fast lanes / paid prioritisation:** TSPs / ISPs should be prohibited from speeding up or otherwise prioritising traffic (on the basis of type, origin or destination of content, or the means of its transmission) in return for any commercial consideration.
- **Transparency and public disclosure:** TSPs / ISPs should be required by TRAI to fully disclose and openly publish information about any practice which could affect QoS, affect subscriber charges, or otherwise affect subscriber experience.

- 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?**

### Novi Response:

We concur that traffic management practices vitiate the principles of net neutrality. At the same time we also fully appreciate the Authority's concern to address issues arising out of network congestion and network security through reasonable and regulated traffic management practices. We believe that the primary response to network congestion can only be by enhancing network capacity through additional investments. Additionally, in order to safeguard equal and non-discriminatory treatment of traffic which preserves the neutrality of the Internet, we recommend a



traffic management practice ('TMP') based on the criteria as set out in the EU's Open Internet Access Regulations.<sup>1</sup> The gist of the criteria has been summarised below for convenience:

- All TMPs must be implemented in a fully **transparent** manner and be **publicly disclosed**.
- TMPs must abide by the following qualitative criteria and must be implemented:
  - In pursuance of a purely **technical objective**.
  - In a **non-discriminatory** manner.
  - In a manner that **minimises harm** to users, OTTs, and competition.
  - In a manner that is **narrowly tailored** to achieve the specific technical objective.
  - Only on the basis of **objective data justifying the necessity** of such TMP.
- TMPs must not be implemented in pursuance of any commercial consideration or agreement.
- TMPs may be justified only in circumstances where they are required to ensure the **security** of the network or temporarily in cases of unexpected or exceptional **network congestion**.

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

**Novi Response:**

Given that net neutrality refers to the principle of TSPs/ISPs treating all Internet traffic on an equal basis, India's policy and/or regulatory approach should focus on creating a light touch regulatory framework for TSPs/ISPs (as enumerated below) that will translate into enabling an open and neutral Internet. Once the neutrality of the Internet is ensured, there will not be any need to regulate any other service providers, including OTTs.

We recommend the following broad principles for regulating TSPs/ISPs:

- a. Lay down primary rules for net neutrality i.e. no blocking, no throttling and no improper prioritization (paid or otherwise) should be enforced.
- b. TSPs/ISPs should be mandated to transparently disclose the following to the users to enable them to make an informed decision:
  - i. Traffic management techniques employed by them.
  - ii. Quality of service and performance including contention ratio, actual download speeds, data packet loss, data caps etc.
- c. The Authority should create an audit mechanism which will enable service providers through their industry associations to conduct periodic audits through independent technical auditors to ensure compliance of net neutrality principles by TSPs/ISPs.

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<sup>1</sup> Regulation (EU) 2015/2120 of The European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access.



- d. Clearly identify exceptions to the principles of net neutrality which could include:
- i. Enterprise/ managed services - It is recommended that enterprise and managed services should be exempted from net neutrality principles as they are specialized services governed by contractual arrangements.
  - ii. Positive discrimination/ government services – It is recommended that essential online government services be made available for free to all users. However, no discrimination be made between users as this is a basic principle of net neutrality.
  - iii. Limited promotional offers - It is recommended that limited promotional offers and other marketing practices be allowed to ensure online-offline parity.
  - iv. Unlawful websites
  - v. Preserving network security and integrity
  - vi. Emergency measures

Additionally, to fortify the principles of net neutrality, it is necessary to amend the licenses granted by DoT to TSPs/ISPs to include adherence to principles of net neutrality as one of the license conditions and impose corresponding stringent and dissuasive penalties like fines, license review/suspension/revocation for violation.

Lastly, to enable TSPs/ISPs to build and create additional network infrastructure, which will facilitate access to the Internet in consonance with the principles of net neutrality, the government should encourage and promote investments by TSPs/ISPs through subsidies and incentives.

- 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.**

**Novi Response:**

We firmly believe that national security is of critical importance, however, since it has no bearing on net neutrality, it is recommended that the matter be decided by way of an independent consultation or suitable legislation.

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

**Novi Response:**

Some prevalent network management techniques such as Deep Packet Inspection are considered to infringe privacy. However, privacy is a broader issue that covers both government surveillance and corporate data protection based on similar principles. In this regard, adequate privacy principles have been set forth by the Report of the Group of Experts on Privacy headed by Justice A.P. Shah in 2012. Further, a draft Privacy Law is being developed by the government through the Department of Personnel. In the absence of a comprehensive legislation on privacy, corporate data protection is



governed by the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011.

Privacy is a multifarious and complicated issue and it is recommended that the existing Rules be suitably updated by way of a separate consultation process in the absence of a comprehensive legislation.

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

**Novi Response:**

At the outset, it is recommended that OTTs should not be subject to licensing or separate regulatory frameworks because the OTT ecosystem is at a very nascent stage in India and any intervention is likely to throttle innovation, creativity or investments.

In order to form a comprehensive view of the issue of net neutrality and OTTs from a content provider point of view, we urge the TRAI to also consider the following issues:

- **Existing Law:** A robust framework of law (Copyright Act 1957, Information Technology Act 2000, etc.) already exists that governs the relationship between OTT content providers and TSPs/ISPs. The Copyright Act grants statutory recognition and protection to the copyright of OTT content providers, tackles infringement and secures the future growth of OTT content providers. In view of the extant law and regulations already in place, there is no need for a separate regulatory framework that will conflict with the existing framework.
- **Content Piracy:** Another issue critical to the content community not addressed by TRAI in its Paper relates to the rampant phenomenon of content piracy. In light of key developments such as the recent issue of the National Intellectual Property Rights Policy, 2016, there is a critical need to review existing enforcement mechanisms relating to IPR infringement cases. India continues to be named on the USTR's 301 Special Report as a 'Priority Watch' country *inter alia* for its consistently poor record of copyright enforcement.<sup>2</sup> In this regard, TRAI must issue a separate consultation in order to consider the manner in which TSPs/ISPs regulation can be modified in order to ease enforcement and ensure that the proliferation of illegal content is minimised. Potential issues to form part of this consultation exercises include:
  - Inclusion of IPR-enforcement provisions in telecom licences.
  - Blocking procedures for pirate sites
  - Liability for telecom operators failing to expeditiously process take-down orders.

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<sup>2</sup> United States Trade Representatives, Special 301 Reports, available at <https://ustr.gov/issue-areas/intellectual-property/Special-301>