



SONY PICTURES NETWORKS INDIA PRIVATE LIMITED
(Formerly known as Multi Screen Media Private Limited)
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By E-Mail
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June 21, 2016

Shri A. ROBERT J. RAVI
Advisor (QoS)
Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan
Jawahar Lal Nehru Marg
New Delhi – 110 002

Re: Pre-Consultation Paper on Net Neutrality dated May 30, 2016 – Submission of Comments on behalf of Sony Pictures Networks India Private Limited

Sir,

We are thankful to the Telecom Regulatory Authority of India for affording us an opportunity to submit our comments.

We hereby tender our comments on the Consultation Paper and request you to consider the same. We would also request a personal audience, before any final view is taken on the subject.

Should there any need for clarifications, please feel free to revert.

For **SONY PICTURES NETWORKS INDIA PRIVATE LIMITED**


Bishwarup Chakrabarti
AVP - Legal



**SONY PICTURES NETWORKS INDIA PRIVATE LIMITED's
Comments on
TRAI's Pre-Consultation Paper on Net Neutrality dated May 30, 2016**

In response to TRAI's Pre-Consultation Paper on Net Neutrality dated May 30, 2016, please find hereinbelow our comments to the same.

Question 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?

01. Debating the principles of net neutrality would merit an enquiry into issues *inter alia* determining the reasonableness of traffic management tools that may be adopted by Telecom Service Providers ("TSP"s); understanding the importance of unrestricted access to the internet; transparency and informed choice by consumers; customer privacy and national security amongst others. Other including TSPs seeking to gain economic advantages by favouring their own or affiliated content over other third-party sources; having the ability to block content in real time, allowing them to act on their financial incentives in order to cut costs or prefer certain types of content also assume significance. Data caps or allowances, which limit the amount and type of content users access online, can have a role in providing consumers options and differentiating services in the marketplace, but they also can negatively influence customer behavior and the development of new applications. Similarly, TSPs have incentives to charge for prioritized access to end users or degrade the level of service provided to non-prioritized content. When bandwidth is limited during peak hours, its scarcity can cause reliability and quality concerns, which increases TSP's ability to charge for prioritization. All such practices could affect net neutrality, leading thereby to reduced innovation, increased costs for end users, reducing consumer demand, and disruption of the existing internet ecosystem.
02. The core principles of net neutrality in India should be to prevent and/or regulate the three practices that are globally recognized to affect net neutrality — Blocking, Throttling, and Paid Prioritization. These practices tend to bestow TSPs with gate keeping functions, the very notion of which remains antithetical to the fundamental rationale of openness and equality and hence the very antitheses of net neutrality.
03. *No Blocking*: The rationale behind this principle is that consumers who subscribe to the internet must get what they have paid for i.e. access to the whole of the internet and not paid or prioritized parts of it. This essential and well-accepted principle has long been a tenet of net neutrality. TSPs should not block any lawful content, applications, services, irrespective of the content or the consumption of bandwidth. While increasing internet usage may require TSPs to adopt certain reasonable measures to protect the integrity of the network, there lies a fine line between correctly applying traffic management to ensure a



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Comments on
TRAI's Pre-Consultation Paper on Net Neutrality dated May 30, 2016**

high quality of service and interfering with the natural flow of internet traffic. Blocking should thus remain on the tabooed list.

04. *No Throttling*: TSPs should not impair or degrade lawful internet traffic on the basis of content, application, or service. The ban on throttling is necessary both to fulfill the reasonable expectations of a consumer who signs up for a broadband service that promises access to all of the internet, and to avoid gatekeeping functionalities of TSPs designed to avoid the no-blocking rule by, for example, rendering an application effectively, but not technically, unusable. Such a principle also prohibits the degrading of internet traffic based on source, destination, or content and specifically prohibits conduct that singles out content competing with a broadband provider's business model.
05. *No Paid Prioritization*: Paid prioritization occurs when a TSP accepts payment (monetary or otherwise) to manage its network in a way that benefits particular content, applications, services, or devices. To protect against "fast lanes", The Prohibition of Discriminatory Tariffs for Data Services Regulations, 2016 is already in place in India which mandates that no service provider shall offer or charge discriminatory tariff for data services on the basis of content, and also that no service provider shall enter into any arrangement, agreement or contract, by whatever name called, with any person, natural or legal, that has the effect of discriminatory tariffs for data services being offered or charged to the consumer on the basis of content.

Question 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?

06. Consumers who subscribe to the internet must get what they have paid for i.e. access to the whole of the internet and not parts of it. TSPs should not block any lawful content, applications, services, irrespective of the content or the consumption of bandwidth. While increasing internet usage may require TSPs to adopt certain reasonable measures to protect the integrity of the network, there lies a fine line between correctly applying traffic management to ensure a high quality of service and interfering with the natural flow of internet traffic. Any traffic management system ceases to be reasonable as soon as there are no prescribed standard methods to handle differentiation. In essence, differentiation in a traffic management system could only be justified if it is used to improve user experience; is service or content agnostic; and is required for prioritization of emergency services.



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Comments on
TRAI's Pre-Consultation Paper on Net Neutrality dated May 30, 2016**

07. To be successful and reasonable, any network management system must aim for precision in terms of the desired technical effect by operating within a set of bounds wherein success can be achieved by ensuring solutions adhere to the following best practices:

Legitimate and Demonstrable Technical Need: TSPs must have a legitimate and demonstrable technical need for the network management practice. The architectural strengths and weakness of various network access types provide the majority of the technical needs for network management. A network management practice that is unreasonable in one access network may well be reasonable in another. This context is crucial. Solutions fare best when they directly address the problem of a legitimate network problem such as congestion, and do so with proportional precision. To be successful, a traffic management practice must be described in such a way that both the technical need and the practice are clear and the traffic management practice seeks only to address this need and nothing more.

Narrowly-Tailored: All networks have variations in usage patterns, whether by time of day, by geography, by user demographics or other factors. A properly constructed network management plan takes this into account, and focuses as narrowly as possible on the problem to be solved. It does not try to force a one-size-fits-all solution into all areas at all times. A successful traffic management practice will narrowly-tailor itself to the situation at hand at the time it is needed and will not apply in a broad fashion across the broad average of a network.

Proportional and Reasonable Effect: The network management policy needs to take into account the concept of proportional effect and response. A 'reasonableness' test helps define the acceptability of network management. It has been proven that long-term heavy users are not the contributors to congestion when it occurs, which makes targeting long-term heavy users during times of congestion out of proportion, inaccurate, and therefore not reasonable. However, a reasonable argument for fair distribution can be made to reduce the priority of traffic of the top twenty-percentile of bandwidth users during times of congestion, which as a group typically constitute only 5% of subscribers but consume more than half the network's bandwidth at a given point in time. In reducing the traffic priority of this ever-changing minority during times of congestion, the latency and by extension the quality of experience of the majority of others remains good.

Transparent Disclosure: Transparency is a challenging concept. The subtle technical nuances of networks are difficult to describe in simple enough terms for the average consumer. Since we are relying on transparency as a means of supporting reasonableness, what's relevant to disclose is any aspect that would affect the actions or perceptions of the typical consumer. TSPs must make the material information publicly available to allow understanding of the network management policy by those impacted by it. The disclosure should be sufficient for



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TRAI's Pre-Consultation Paper on Net Neutrality dated May 30, 2016**

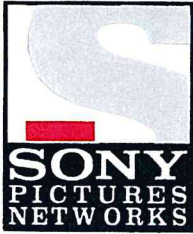
a consumer to form an informed opinion on whether the practice will affect them, which applications might be affected, when they might be affected, and what the impact might be, including impact to speed, latency and general experience. Similarly, consumers should be notified in advance of any planned changes to network management practices.

08. It is therefore submitted that network management policies based on traffic management must be technically legitimate, narrowly tailored, proportional and reasonable, transparently disclosed and auditable. Reasonable network management requires disclosure of the policy in such a way that the typical user can understand the impact to them, and reasonableness is framed entirely from the end-user perspective. Access-agnostic network policy control is required to create an internet management practice that spans multiple devices, and multiple access technologies.

Question 3:

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

09. India's approach to net neutrality should be a balance of both tentative refinement and active reform following a light handed approach with some refinements to the existing regulatory regime governing communication services on the one hand and prohibiting specific behavior on the other through the issuance of guidelines or other such non-statutory mechanisms, as in the past.
10. The core principles of net neutrality in India should be to prevent and/or regulate the three practices that are globally understood to affect net neutrality — Blocking, Throttling, and Paid Prioritization. These practices tend to bestow TSPs with gate keeping functions, the very notion of which remains antithetical to the fundamental rationale of openness and equality and hence the very antitheses of net neutrality.
11. *No Blocking:* The rationale behind this principle is that consumers who subscribe to the internet must get what they have paid for i.e. access to the whole of the internet and not paid or prioritized parts of it. This essential and well-accepted principle has long been a tenet of net neutrality. TSPs should not block any lawful content, applications, services, irrespective of the content or the consumption of bandwidth. While increasing internet usage may require TSPs to adopt certain reasonable measures to protect the integrity of the network, there lies a fine line between correctly applying traffic management to ensure a high quality of service and wrongly interfering with internet traffic and blocking remains on the tabooed list.



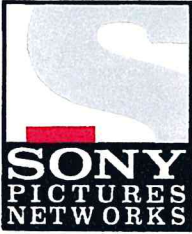
**SONY PICTURES NETWORKS INDIA PRIVATE LIMITED's
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TRAI's Pre-Consultation Paper on Net Neutrality dated May 30, 2016**

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Questions 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.

14. While security and privacy may be a significant issue in VoIP as an OTT service, it is submitted that the same may be addressed by targeting specific needs. On a more general front, local data center requirements in addition to enhancing security of data, could also reduce costs of accessing the internet. Local data center requirements mandate that enterprises establish a data center within a country as a condition of being permitted to provide certain digital services in that country. Such requirements prevent data from being produced, stored, and processed anywhere. Brazil, China, Indonesia, Malaysia, South Korea, Venezuela, and Vietnam are among the many countries that have imposed or are considering imposing local data center requirements. We could also consider having similar data center requirements in India, which would address any security concerns that may exist.



**SONY PICTURES NETWORKS INDIA PRIVATE LIMITED's
Comments on
TRAI's Pre-Consultation Paper on Net Neutrality dated May 30, 2016**

Question 5:

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

15. On the privacy front, it would not be out of place to make submissions on Big Data. Big Data is a broad term which is generally used to refer to the use of predictive analytics or certain other advanced methods to extract value from data. In a non-neutral internet regime, in light of the fact that TSPs would be acting as gatekeepers to certain packets of data, based on their business arrangement, they would also tend to obtain sensitive information of consumers such as their data usage patterns. Such data patterns in addition to raising issues of privacy would effectively make it easier for sellers to identify new customer segments and target those segments with customized marketing and pricing plans. Such an increased availability of behavioral data could also encourage practices like personalized pricing, which would certainly be undesirable.
16. Additionally, such privacy issues assume epic proportions in light of the fact that India does not have a comprehensive codified privacy law in place. While sensitive personal data or information is protected under the provisions of The Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011, most information which may be personal but not within the confines or scope of sensitive personal data are either not protected or regulated by law. In light of the same, imposing obligations on the TSPs to regulate their usage of personal data, which may or may not be sensitive in nature, assumes importance.

Question 6:

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

17. On a policy framework, it might make sense to consider broadband internet service as a utility, requiring regulation and hence greater protection for consumers, rather than treat it a service that does not need close government supervision.