

RESPONSE TO PRE-CONSULTATION PAPER ON “NET NEUTRALITY”

DATED 30TH MAY, 2016



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Introduction

The Internet has evolved over time and will continue to do so. To say, as the New York Times did in an editorial, that charging for higher quality-of-service assurances would endanger the democratic character of the Internet is a considerable overstatement. As the Washington Post stated in its own editorial on the subject, the Internet is a very democratic medium, but not one without advantages for the major players. Nonetheless, there is a reasonable concern that the changing nature of the Internet could threaten the development and deployment of new services and content offerings. Such changes, however, are not necessarily imminent, and the adoption of overly aggressive prophylactic rules could limit the opportunity for broadband providers to capture revenues to support their continuing infrastructure investments, as well as give rise to unintended consequences (such as costly and slow legal proceedings). Only a more focused and carefully tailored regulatory response will ensure that the Internet remains an open platform for innovation and a dynamic medium.

The present attempt to frame the network neutrality rules should aim to foster innovation in applications, protect users' ability to choose how they want to use the network, without interference from Service Providers, and preserve the Internet's ability to improve democratic discourse, facilitate political organization and action and to provide a decentralized environment for social, cultural and political interaction in which anyone can participate. The principles should be laid down that encourages market innovation without compromising on customer choice and interest. The Principles should envisage a tool in the hands of Authority to prevent conflict of interest / exploitation by market dominant players tying up with content providers/OTT application providers.

However, while doing so care should be taken to protect the investment made by the TSP/ISPs, sufficient opportunities/platforms available for such TSPs/ISPs to generate revenue out of their investments and ensure that content providers / OTT application providers should not exploit the network established by the TSPs/ISPs.

Regulatory framework/ net neutrality principles should be framed as sensible, centrist solution that would allow broadband providers to offer and charge for enhanced network services while providing for some form of regulatory oversight to ensure that the current broadband providers do not abuse their market power. This would also assure that a reasonably sized, open, and best-efforts Internet pipe is available for innovators. Such regulatory framework should have three prongs - ***effective consumer protection measures, sound competition policy oversight, and conditioned tax incentives***. The Net Neutrality principle restriction should not overly impinge on the ability of broadband carriers to earn a return from their infrastructure investments. Net Neutrality principle should not interfere with the special advantages that a service providers gains from building its own infrastructure.

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?

Response-It should preserve the factors that have allowed the Internet to serve as a platform for application innovation, free speech and decentralized economic, social, cultural and political interaction in the past: –

- User choice: Users independently choose which applications they want to use, without interference from Service Providers.
- Innovation without permission: Innovators independently choose which applications they want to pursue; they do not need support or “permission” from Service Providers in order to realize their ideas for an application.
- Application-blindness: The network is application-blind. An application-blind network is unable to distinguish among the applications on the network, and, as a result, is unable to make distinctions among data packets based on this information.
- Low costs of application innovation: The costs of application innovation are low.

However, it should not constrain the evolution of the network more than is necessary to reach the goals of network neutrality regulation. It should make it easy to determine which behaviour is and is not allowed to provide much needed certainty for industry participants. Nothing in the neutrality principle should prevent a broadband operator from being in the unique position to sell its services. The service providers should be allowed to charge for its enhanced quality of service to their own internet service customers for any differential treatment allowed by the non-discrimination rule. The regulatory framework may prescribe rules that allows the service providers charging for its enhanced quality of services as follows:

- It can charge only its internet service customers;
- Service provider is not allowed to charge anyone for the use of quality of service (though it can increase the general price for internet service);
- It can charge its own internet service customers and/or application and content providers, but is required to offer the service to application and content providers on a non-discriminatory basis;
- Service provider is allowed to charge for Quality of Service has an incentive to degrade the quality of the baseline, best-effort service to motivate users to pay for an enhanced type of service.
- The Rule should set minimum quality standards, if the quality of the baseline service drops below appropriate levels, the Regulator may take appropriate actions.

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?

Response-We submit that the traffic management is required to maintain, protect, and ensure the efficient operation of a network. The regulation should allow managing congestion or protecting the security of a network. The Service providers should be allowed to exercise the following method of traffic management:

- Application-agnostic congestion control being a legitimate requirement from the service providers.
- The measures taken by Service providers to prevent any kind of security attacks in order to maintain the security and integrity of the network.
- Delay of lower priority traffic in order to facilitate the higher priority traffic by way of Packet prioritization/de-prioritization.

- Any blocking and prevention of contents in accordance with the direction from the Authority / within the ambit of Law should be allowed.

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

Response-In view of the submissions made in introductory portion of this response, the Net Neutrality principle restriction should not overly impinge on the ability of broadband carriers to earn a return from their infrastructure investments. Net Neutrality principle should not interfere with the special advantages that a service providers gains from its own infrastructure.

Authority may look into the do's and don'ts by the service providers and prescribe either positive or negative list or both together. Further the Authority may also publish set of guidelines for the service providers to follows. Periodical discussion with service providers on violation of Net Neutrality Principles based on the prescribed reporting mechanism by the Service providers to the Authority.

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.*

Response-The present measures in the Information Technology Act 2000 and the Licensing terms & conditions will be sufficient on ISPs/TSPs to ensure the national security.

With regard to content/OTT application providers, it is up to Government and Authority to decide the modality.

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

Response-The present measures in the Information Technology Act 2000 and the Licensing terms & conditions will be sufficient on ISPs/TSPs to safe guard privacy and customer data protection.

With regard to content/OTT application providers, it is up to Government and Authority to decide the modality.

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

Response-There should be Regulatory/Licensing framework for OTT/content providers in equal line with Service providers. There should be reasonable benevolent supervision mechanism over OTT / content providers till the time market evolve that the consumer interest safeguarded by the market forces.

There is convergence of telecommunications, Information Technology and contents. TRAI is the regulator for the broadcasting sector. The broadcasters are essentially content providers. TRAI regulates the interconnection between the broadcasters and distributors. Also TRAI regulates the tariff of Television channels. May be there is need to examine if there is need to converge the regulatory regimes of telecom and broadcasting regimes in some aspects.
