

## EBG response to Consultation on Net Neutrality

### EBG Responses

Q.1	<b>What could be the principles for ensuring nondiscriminatory access to content on the Internet, in the Indian context? [See Chapter 4]</b>
A.1	The core principles may be as suggested by the DoT Committee which may include no blocking, no throttling and no improper prioritization by Internet Service Providers (ISPs) subject to clearly defined exceptions such as compliance with legal obligations; blocking spam, fair usage policies, integrity of the network; congestion management in exceptional and temporary situations, etc.
Q.2	<b>How should "Internet traffic" and providers of "Internet services" be understood in the NN context? [See Chapter 3]</b> <b>(a) Should certain types of specialised services, enterprise solutions, Internet of Things, etc be excluded from its scope? How should such terms be defined?</b> <b>(b) How should services provided by content delivery networks and direct interconnection arrangements be treated?</b> <b>Please provide reasons</b>
A.2	Internet traffic and internet services in the NN context should refer to the best effort internet services and data traffic being transmitted over the internet.  The Providers shall be free to offer specialised services, enterprise solutions, Internet of Things other than internet access services which are optimized for specific content, applications or services, or a combination thereof, where the optimization is necessary in order to meet requirements, applications or services for a specific level of quality should be excluded from the scope of NN;  Specialised services, with specific quality requirements, or real-time health services (e.g. remote surgery), have higher technical requirements that cannot be ensured by best effort open internet. They may receive prioritised treatment if that is objectively necessary for the service and is narrowly tailored.
Q.3	<b>In the Indian context, which of the following regulatory approaches would be preferable: [See Chapter 3]</b> <b>(a) Defining what constitutes reasonable TMPs (the broad approach), or</b> <b>(b) Identifying a negative list of non-reasonable TMPs (the narrow approach).</b> <b>Please provide reasons.</b>
A.3	EBG humbly opines that TRAI may follow a broad principles based approach. Any narrow approach would be based on the current state of technology and the eco-system and would not be future proof. Given the fast and dynamic nature of changing technology; any efforts by TRAI to restrict or follow a narrow approach could hamper innovation and investments. TRAI should thus advocate a broad principle based approach that provide the general framework within which reasonable network management should be done.
Q.4	<b>If a broad regulatory approach, as suggested in Q3, is to be followed: [See Chapter 3]</b> <b>(a) What should be regarded as reasonable TMPs and how should different categories of traffic, be objectively defined from a technical point of view for this purpose?</b> <b>(b) Should application-specific discrimination within a category of traffic be viewed</b>

	<p><b>more strictly than discrimination between categories?</b></p> <p><b>(c) How should preferential treatment of particular content, activated by a user’s choice and without any arrangement between a TSP and content provider, be treated?</b></p>
A.4	<p>Providers of Internet access should be permitted to perform reasonable traffic management activities, provided those activities are publicly disclosed in detail that help the consumer make an informed decision and are within the framework of existing competition law safeguards.</p> <p>Application specific differentiation within same category should not be permitted Differentiation between different categories of traffic maybe permitted on the basis of objectively different technical QoS requirements (for example, in terms of latency, jitter, packet loss, and bandwidth) of the specific classes/categories of traffic. Preferential treatment of particular content activated by a user’s choice should be permitted.</p> <p>Differential treatment of content is not inherently discriminatory. For example, it is non-discriminatory and consistent with net neutrality when a differential pricing offer includes any content that meets the same, uniformly applied technical requirements. Similarly, it is non-discriminatory and consistent with net neutrality when a non-exclusive arrangement between a TSP and content provider is available to all TSPs on the same terms and conditions, even if some TSPs or Content Providers choose not to participate.</p>
Q.5	<p><b>If a narrow approach, as suggested in Q3, is to be followed what should be regarded as Non-reasonable TMPs? [See Chapter 3]</b></p>
A.5	<p>Answered in 3</p>
Q.6	<p><b>Should the following be treated as exceptions to any regulation on TMPs? [See Chapter 3]</b></p> <ul style="list-style-type: none"> <li><b>(a) Emergency situations and services;</b></li> <li><b>(b) Restrictions on unlawful content;</b></li> <li><b>(c) Maintaining security and integrity of the network;</b></li> <li><b>(d) Services that may be notified in public interest by the Government/ Authority, based on certain criteria; or</b></li> <li><b>(e) Any other services.</b></li> </ul> <p><b>Please elaborate.</b></p>
A.6	<p>There should be no regulation on TMPs. Emergency situation and services, restrictions on unlawful content, maintaining security and integrity of the network should be considered as a part of legitimate TMPs.</p> <p>No government service, which is offered in a competitive market environment, should be entitled to any favourable treatment.</p>
Q.7	<p><b>How should the following practices be defined and what are the tests, thresholds and technical tools that can be adopted to detect their deployment: [See Chapter 4]</b></p> <ul style="list-style-type: none"> <li><b>(a) Blocking;</b></li> <li><b>(b) Throttling (for example, how can it be established that a particular application is being throttled?); and</b></li> <li><b>(a) Preferential treatment (for example, how can it be established that preferential treatment is being provided to a particular application?).</b></li> </ul>

A.7	<p>We once again recommend a broad principle based approach to the Core principles.</p> <p>We also believe that issue related to the tests, thresholds and technical tools is premature and first require a decision on the core principles before operational and implementation issues are discussed.</p> <p>Traffic management is an extremely complex exercise and is dependent on a variety of factors, some of which are outside the control of the service providers. Further even the aspects of blocking, throttling, preferential treatment cannot be absolute bright line rules but are also subject to a number of legitimate exceptions as elaborated above.</p>
Q.8	<p><b>Which of the following models of transparency would be preferred in the Indian context: [See Chapter 5]</b></p> <p><b>(a) Disclosures provided directly by a TSP to its consumers;</b></p> <p><b>(b) Disclosures to the regulator;</b></p> <p><b>(c) Disclosures to the general public; or</b></p> <p><b>(d) A combination of the above.</b></p> <p><b>Please provide reasons. What should be the mode, trigger and frequency to publish such information?</b></p>
A.8	<p>Transparency should be making available all information for the consumer to make an informed decision.</p> <p>Disclosure of technical details related to TMPs besides being difficult to convey in view of the several complex and inter related factors, may only serve to confuse rather than empower the consumer.</p>
Q.9	<p><b>Please provide comments or suggestions on the Information Disclosure Template at Table 5.1? Should this vary for each category of stakeholders identified above? Please provide reasons for any suggested changes. [See Chapter 5]</b></p>
A.9	<p>Included in Ans 8</p>
Q.10	<p><b>What would be the most effective legal/policy instrument for implementing a NN frame-work in India? [See Chapter 6]</b></p> <p><b>(a) Which body should be responsible for monitoring and supervision?</b></p> <p><b>(b) What actions should such body be empowered to take in case of any detected violation?</b></p> <p><b>(c) If the Authority opts for QoS regulation on this subject, what should be the scope of such regulations?</b></p>
A.10	<p>We believe that a view on this should be taken after a final decision is taken by the Government.</p> <p>The TRAI may be responsible for monitoring and supervision in respect of aspects that fall within the ambit of the TRAI Act such as tariffs for data, quality of service, etc.</p>
Q.11	<p><b>What could be the challenges in monitoring for violations of any NN framework? Please comment on the following or any other suggested mechanisms that may be used for such monitoring: [See Chapter 6]</b></p> <p><b>(a) Disclosures and information from TSPs;</b></p>

	<p><b>(b) Collection of information from users (complaints, user-experience apps, surveys, questionnaires); or</b></p> <p><b>(c) Collection of information from third parties and public domain (research studies, news articles, consumer advocacy reports).</b></p>
A.11	<p>We reiterate that that the implementation aspects should be discussed after a final decision is taken by the Government.</p> <p>We however suggest an ex post approach in case of any instance or evidence of any violation of the NN framework rather than a burdensome ex ante framework with no evidence of any market distortion or any competitive harm.</p>
<b>Q.12</b>	<p><b>Can we consider adopting a collaborative mechanism, with representation from TSPs, content providers, consumer groups and other stakeholders, for managing the operational aspects of any NN framework? [See Chapter 6]</b></p> <p><b>(a) What should be its design and functions?</b></p> <p><b>(b) What role should the Authority play in its functioning?</b></p>
A.12	<p>Preferably, no new structure should be created for monitoring of NN framework. The existing institutional mechanisms should be leveraged to the extent of their respective jurisdictions.</p>
<b>Q.13</b>	<p><b>What mechanisms could be deployed so that the NN policy/regulatory framework may be updated on account of evolution of technology and use cases? [See Chapter 6]</b></p>
A.13	<p>EBG humbly submits that countries with mature broadband markets have waited ten years or more to implement regulations while studying best possible guidelines. We believe that at the present nascent stage of development and reach of internet and broadband in the country, the TRAI should recommend a wait and watch approach for the present or at best a broad based principles based approach.</p> <p>Fast paced changes in the evolution of technology should be supported by a light touch approach that facilitates rather than hinders innovation and investments.</p> <p>India’s approach to net neutrality should allow operator innovation with specialized services, which will be a key for 5G, subject to transparency and other appropriate safeguards.</p>
<b>Q.14</b>	<p><b>The quality of Internet experienced by a user may also be impacted by factors such as the type of device, browser, operating system being used. How should these aspects be considered in the NN context? Please explain with reasons. [See Chapter 4]</b></p>
A.14	<p>This issue highlights the difficulties in defining and applying the principles of NN. Clearly TSP/ISP cannot be held responsible for factors outside their control.</p> <p>It is suggested, TMPs by operators can also entail optimizing the quality of internet experience for the end user to be appropriate for the type of device, browser, operating system being used. This also demonstrates the challenge of defining reasonable traffic management.</p>