



Dated February 27, 2020

To:

Shri Asit Kadayan,  
Advisor (QoS),  
Telecom Regulatory Authority of India,  
Mahanagar Doorsanchar Bhawan,  
Jawaharlal Nehru Marg,  
New Delhi - 110002.

CC:

Shri Sunil Bajpai,  
Pr. Advisor (CA, QoS, IT)  
Telecom Regulatory Authority of India.

**Subject:** Access Now consolidated inputs and counter-comments to TRAI consultation paper on Traffic Management Practices (TMPs) and Multi-Stakeholder Body for Net Neutrality.

I write to you in connection with the consultation paper which the Telecom Regulatory Authority of India (TRAI) published in January seeking public comments. This letter contains Access Now's consolidated comments to the paper and responses to the inputs of other stakeholders who have filed as part of this consultation.

Access Now is an international non-profit organisation which works to defend and extend the digital rights of users at risk globally. Through presence in 13 countries around the world, Access Now provides thought leadership and policy recommendations to the public and private sectors to ensure the internet's continued openness and the protection of fundamental rights. Access Now also engages with its global community of users, in addition to operating a 24/7 digital security helpline that provides real-time, direct technical assistance to users around the world. We coordinate as part of CiviCERT (Computer Incident Response Center for Civil Society) a Trusted Introducer accredited CERT, and are a member of the Forum for Incident Response (FiRST). We also have special consultative status at the United Nations.<sup>1</sup>

We have previously provided inputs to TRAI on issues relating to net neutrality via comments we filed in April 2017 to the TRAI consultation paper on net neutrality, which was preceded by the joint comments we filed with nine other organisations in January of that year. We have also actively engaged with many of the key global discussions on this issue. In the United States,

---

<sup>1</sup> Access Now, *About us*, <https://www.accessnow.org/about-us/>.

we provided comments to the FCC's "Protecting and Promoting the Open Internet" Notice for Proposed Rulemaking which were cited in its historic Open Internet Order of February 2015.<sup>2</sup> We also provided inputs to the European Union's Telecom Single Market regulations with respect to its provisions on net neutrality,<sup>3</sup> and have been called upon to testify and provide comments to the Body of European Regulators of Electronic Communication (BEREC) which developed the guidelines for implementing the EU law on the open internet for its 28 member telecoms regulators. Additionally, we have been asked to provide inputs to the Icelandic Parliament on its study of the net neutrality provisions of EU law,<sup>4</sup> developed technical policy commentary on the dangerous consequences of zero rating practices,<sup>5</sup> and submitted policy comments on the issue of zero rating in the context of Brazil's landmark Marco Civil Law.<sup>6</sup> We are members of the Dynamic Coalition on Network Neutrality at the UN Internet Governance Forum, and assist with coordinating the Global Net Neutrality Coalition.

We thank TRAI for this opportunity to provide inputs to this consultation on clarifying the issues of traffic management processes and a multi-stakeholder body to implement TRAI's earlier network neutrality recommendations, now largely incorporated into the license terms thanks to the initiative of the Department of Telecom. India demonstrated global leadership four years ago when it prohibited the harmful practice of "zero rating" by its Differential Data Pricing Regulations in 2017, followed by the strong recommendations against technical discrimination that are now part of the service provider licenses. The outputs of this consultation exercise must continue to advance this strong, user-centric approach, recognising the value of the open internet and how network neutrality helps further fundamental rights, including those of speech and expression, association, and access to information. The recommendations from this consultation exercise and their subsequent consideration and adoption by the Department of Telecom must protect and strengthen network neutrality - and in no way allow the dilution or undermining of the strong, principle focused standards that the TRAI and the Government of India have so far put in place.

---

<sup>2</sup> See Access Now, *Access tells the FCC to use its authority to reclassify broadband and protect net neutrality*, 18 July 2014, <https://www.accessnow.org/access-tells-the-fcc-to-use-its-authority-to-reclassify-broadband-and-protect-net-neutrality/>, and US Federal Communications Commission, Report and Order on Remand, Declaratory Ruling, and Order, Adopted: February 26, 2015 Released: March 12, 2015, [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-15-24A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-24A1.pdf)

<sup>3</sup> See Access Now, Q&A on Traffic Management in the Telecom Single Market Regulation, [https://www.accessnow.org/cms/assets/uploads/archive/docs/Traffic\\_management\\_in\\_the\\_Telecoms\\_Single\\_Market\\_Regulation.pdf](https://www.accessnow.org/cms/assets/uploads/archive/docs/Traffic_management_in_the_Telecoms_Single_Market_Regulation.pdf); Access Now, *Civil society groups urge European Parliament to take final steps to real Net Neutrality* 6 Oct 2015, <https://www.accessnow.org/civil-society-groups-urge-european-parliament-to-take-final-steps-to-real-net-neutrality/>.

<sup>4</sup> Access Now, *Iceland: on the path to Net Neutrality*, 22 March 2016, <https://www.accessnow.org/iceland-path-net-neutrality/>.

<sup>5</sup> Access Now, *Zero rating: a global threat to the open internet*, 4 June 2016, <https://www.accessnow.org/zero-rating-global-threat-open-internet/>

<sup>6</sup> Access Now, *Access submits comments on zero rating to government of Brazil*, 2 April 2015, <https://www.accessnow.org/access-submits-comments-on-zero-rating-to-government-of-brazil/>.

Below, we provide a summary of our top level recommendations to the main issues open for consultation:

- **Require licensee disclosure of traffic management practices (TMPs) coupled with the issue of a direction on the principles governing acceptable TMPs:**
  - All traffic management practices by licensed telecom providers must be disclosed to the TRAI and Department of Telecom, and also published online so consumers and other stakeholders can have direct access to this information.
  - The Department of Telecom should issue directions to help implement the license term provisions on technical discrimination and network neutrality, clarifying that traffic management practices should be proportionate, application agnostic, and cannot discriminate based on class of internet content, application, service, or device. The TRAI recommendations and subsequent Department of Telecom implementation should avoid whitelisting specific traffic management practices and instead provide principle and behaviour based guidance as an administrative direction.
  - The TRAI and Department of Telecom must be on the guard to avoid overbroad and harmful suggestions from some stakeholders that 5G should be an exception to network neutrality standards, somehow requiring standalone light touch traffic management practices or other exceptions to open internet principles.
  
- **Encourage a diverse measurement ecosystem to help enforce network neutrality:**
  - Measurement for the purpose of information gathering and regulatory enforcement should use a mix of case by case reporting and technical measurement tool usage by the government, supplemented by crowd sourced reporting to help generate leads.
  - Network neutrality technical measurement in India will benefit from the global, open source focused work in this area, including that of Measurement Lab (MLab) and the Open Observatory of Network Interference (OONI)
  - TRAI should encourage crowd-sourced reporting as a useful generator of leads/tip-offs from users and other network ecosystem stakeholder to the Department of Telecom. Existing crowdsourced efforts in India - including from the [savetheinternet.in](http://savetheinternet.in) initiative - have revealed potentially troubling behaviour impacting network neutrality rules by some firms.
  
- **Create an effective, truly multi-stakeholder advisory body that supplements enforcement mechanisms with the Department of Telecom and TRAI's own efforts:**
  - The Department of Telecom's earlier proposed approach should continue, namely that the multistakeholder body initially recommended by TRAI should be an advisory body. The multistakeholder body should not immediately be directly in charge of enforcement, since the Department of Telecom incorporated the

technical discrimination rules into the telco licenses, which current have the TERM cells as part of the enforcement mechanism.

- While enforcement of the technical discrimination related network neutrality license terms may be up to TERM cells, there is a need to recognise that the TERM cells are not approachable to most outside of the telecom industry ecosystem. For instance, no unified complaint site at the moment exists at the moment for users and other stakeholder who may wish to file an initial information report or initiate a complaint online. Additionally, TERM cells are not well designed to assist with network neutrality awareness raising at present, or help with policy development on net neutrality. An information collection, awareness, and lead-generation-for-complaints function is a useful key secondary objective for the multistakeholder advisory body, along with its primary objective of facilitating technology and policy expertise to the government and wider ecosystem, along with discussion of best practices and policy development. The multistakeholder advisory body would benefit from having at least one member who is specifically from the Department of Telecom to serve as a liaison/facilitator with the TERM cells.
- Comments made by some stakeholders suggesting that the multistakeholder advisory body should not be set up at all - and that any effort should only be comprised of the telecom industry - must be rejected. Proposals suggested that the advisory body should be “industry-led” are inconsistent with the multistakeholder model.
- The multistakeholder advisory body’s funding should not be only membership fee based. The advisory body should be supported by the Department of Telecom and/or TRAI. Membership fees should not be used to exclude members and expertise, particularly those outside large firms and industry in general. Proposals calling for potential additional funding via parliamentary authorisation of support from the Universal Service Obligation Fund should be considered.

We supplement our summarised inputs above, with our counter-comments to the stakeholder inputs received so far to the specific questions of the consultation paper below in sequence:

**Q.1** *What are the broad types of practices currently deployed by the Access Providers (APs) to manage traffic? Out of these practices, which ones can be considered as reasonable from perspective of Net Neutrality? Whether list of Traffic Management Practises (TMPs) can be prepared in advance or it would be required to update it from time to time? If later is yes, then what framework would be required to be established by Multi-Stakeholder Body to keep it up to date? Please suggest with justification.*

**Q.2** *Whether impact of TMPs on consumer’s experience can be interpreted from its name and short description about it or detailed technical description would be required to interpret it in*

*objective and unambiguous manner? In case of detail technical description, what framework need to be adopted by Multi-Stakeholder Body to document it. Please suggest with justification.*

**Response:**

At the outset, we support the comments made by the VNO Association that there are many other open internet harming practices seen in telecom provider behaviour which the regulator and government should be aware of.

We agree with the comments filed by Mozilla on the fact that - despite these technical discrimination terms being part of the telecom licenses - we do not know for certain that firms are not violating them.<sup>7</sup> We strongly disagree with the comments made by Airtel, and echoed by a limited set of other stakeholders (Broadband India Forum, COAI) trying to suggest that the existing approach to network neutrality is somehow “obsolete” or requiring rethinking, loosening because of 5G.<sup>8</sup> Even in 2016, experts and public interest groups have made clear that such thinking is flawed, and policymakers in the telecom space must resist such overbroad claims. The following points from the joint statement of over 30 non-profit organisations and civil liberties groups globally in response to the earlier “5G Manifesto” of certain telecom operators (that threatened to withhold investing in next-generation mobile network unless regulators water down rules for Net Neutrality) still holds true today:<sup>9</sup>

“Net neutrality is at the core of the internet’s functionality and is crucial in ensuring the protection of users’ rights to free expression and privacy online. Protecting the open nature of the internet is compatible with – if not an absolute prerequisite for – the availability and the development of the Internet of Things and the ever-increasing number of innovative products and services, such as connected cars and e-health. In fact, the principles on which net neutrality is based, including innovation without a need to obtain permission, end-to-end connectivity, transparency, and nondiscrimination, are essential for these innovative products and services. Since these products often rely on significant and constant bandwidth, regulation – rather than a “free pass” rule or blind inattention – will be needed.

---

<sup>7</sup> Mozilla comments (“Despite being a binding part of licence conditions for over 18 months as of this filing, there is no way to know whether access provider practices do not violate the core principles of net neutrality... Due to this lack of transparency and enforcement, there is currently negligible to non-existent visibility into the network management practices of access providers in India. It is imperative that TRAI creates strong regulation for traffic management that ensures the right to an open internet in India is a meaningful one”).

<sup>8</sup> For example, see Airtel comments (“Thus, ‘one size fits all’ approach has become obsolete in the context of 5G and the policy on NetNeutrality needs to be reconsidered and aligned with the principles and standards of technologies like 5G. In fact, the investments in newer technologies like 5G will depend on the enabling regulatory provisions which will help in unlocking the full potential/benefits of these technologies”).

<sup>9</sup> NGOS to lawmakers: “High-quality connectivity and Net Neutrality go hand in hand”, <https://www.accessnow.org/ngos-lawmakers-high-quality-connectivity-net-neutrality-go-hand-hand/> ;

Net neutrality rules will ensure that the number of innovative internet-based services and applications will continue to increase. With global demand for faster and better access to the internet on the rise, internet access providers will continue to have a strong incentive to develop and invest in enhanced network capacity. This so-called “virtuous circle” illustrates the long-term economic benefit for telecommunications companies to invest in infrastructure.

Users and, indeed, regulators and lawmakers should not have to endure hollow threats and blackmail everytime a new technical evolution appears... Clear and robust net neutrality and the deployment of high speed broadband must go hand in hand to respond to the technological challenges of the 21st century”

We do not agree with the comments made by certain stakeholders (including the GSMA and certain firms; as well as partly in the comments made by NASSCOM) that there should be a whitelist of acceptable traffic management practices. Instead, as noted in the comments of Koan Consulting and others, we believe that the Department of Telecom and TRAI should not adopt an approach of outlining TMPs that they permit. Instead, start with a minimum of mandating that telecom operators disclose all TMPs to the regulator and public (which several operators, including MTNL and Reliance Jio also support).

We do however believe that the TRAI and the Department of Telecom should go above this basic minimum step of requiring disclosure of telecom operator TMPs.

Certain telecom firms have emphasized in their comments that TMPs are not used for commercial considerations (Reliance Jio). Telecom providers therefore should not object to clearer guidance on this issued in directions for these license term provisions by the Department of Telecom, based on the recommendations of TRAI from this consultation.

We strongly support the comments made by the international telecom and network neutrality expert Barbara van Schewick from Stanford University around the issuance of further directions on the the principles governing what type of TMP behaviour is acceptable. We support her observation that TRAI’s recommendations for net neutrality already implicitly include the requirement for traffic management measures to be as application-agnostic as possible.

We believe that class-based TMPs should not be acceptable, as emphasized in the Barbara van Schewick comments. We agree with her submission that class based TMP discrimination has a range of economic, rights, innovation, and digital security harms. As her comments state:

“Class-based network management has the potential to create enormous social costs, even if it is based on the traffic’s objective different technical requirements. Such traffic management practices still allow ISPs to distort competition, stifles innovation, harms

users, and hurts providers who encrypt traffic by putting all encrypted traffic in the slow lane.”

We therefore also specifically support her recommendation that regulatory directions should be issued under these relevant license terms to mandate that traffic management practices should be proportionate, application agnostic, and cannot discriminate based on class of internet content, application, service, or device.<sup>10</sup>

**Q.3** *What set up need to be established to detect violations of Net Neutrality, whether it should be crowd source based, sample field measurements, probe based, audit of processes carried out by access providers or combination of above? How to avoid false positives and false negative while collecting samples and interpreting Net Neutrality violations? Please suggest with justification.*

**Response:**

We endorse the comments made by [Mozilla](#) which emphasise a mixed approach which uses a combination of those methods. Users and other stakeholders should be provided channels to provide qualitative information about their experiences, while putting into place technical formats for submitting relevant data about telecom provider practices.<sup>11</sup>

---

<sup>10</sup> Barbara van Schewick comments (“Explicitly codifying the well-established principle that network management should be as application-agnostic as possible creates certainty in the market, makes India’s net neutrality provisions easier to enforce, and protects Internet users and edge providers from unnecessary harm. Codifying the principle reduces uncertainty in the market and saves the entity enforcing net neutrality from having to re-litigate a decade of net neutrality precedents to conclude that this requirement should, indeed, be included. In the absence of the clarification that the requirement for traffic management to be proportionate also includes the requirement to be as application agnostic as possible, ISPs could try to argue that network management practices targeting specific applications or classes of applications are a tailored, and therefore permissible, approach to managing congestion, as long as the discrimination is limited to times of congestion. Not codifying the principle threatens to expose Internet users in India to avoidable harm. As the experience of the United States, Canada, and the United Kingdom has shown, ISPs have routinely blocked or discriminated against specific applications or types of applications to manage congestion when they were not required to manage their networks in an application agnostic manner. These practices harmed Internet users and edge providers and created significant collateral damage. For example, ISPs in the UK routinely managed congestion by singling out specific applications or classes of applications. These practices not only prevented users from using the Internet as they want during peak times (when everyone is watching the new Game of Thrones episode) and made it impossible for affected applications to reach their users, but also interfered with applications like online gaming that were inadvertently caught up in discriminatory network management practices not targeted at them. By contrast, Internet users in countries that require ISPs to manage their networks as application-agnostic as possible avoided these problems”).

<sup>11</sup> Mozilla comments (“Therefore, allowing consumers and other interested stakeholders to submit qualitative descriptions of experiences while also simultaneously creating detailed technical descriptions and formats for submitting such data would enhance effective monitoring of access provider (TSPs and ISPs) practices at scale”).

We also support the comments made by both [Mozilla](#) and the [Internet Freedom Foundation](#) about the value of cooperating and potentially adapting the open source technical measurement tools being developed for TRAI's regulatory colleagues overseas at BEREC.<sup>12</sup> TRAI already has collaborated with BEREC and several of its member regulators in the EU on network neutrality leadership, and also has the benefit of earlier inputs around measurement tools from groups such as Measurement-Lab (M-Lab), and the evolution of such work by initiatives such as the Open Observatory of Network Interference (OONI).

*Q.4 What should be the composition, functions, roles and responsibilities of Multi-stakeholder Body considering the decision of DoT that Multistakeholder body shall have an advisory role and formulation of TMPs and Monitoring & Enforcement (M&E) rest with DoT? Please suggest with justification.*

*Q.5 Whether entry fee, recurring fee etc for membership need to be uniform for all members or these may be on the basis of different type or category of membership? What may be these categories? What policy may be adopted for initial set up of Multi-stakeholder Body. Please suggest with justification.*

*Q.6 What mechanism may be prescribed to determine fee and other contributions from its members towards expenditure in a fair and nondiscriminatory manner? Please suggest with justification.*

*Q.7 What should be the guiding principles and structure of governance of Multi-stakeholder Body? What may be the roles and responsibilities of persons at different positions such as chairing the organisation or working groups, governing the functioning, steering the work etc. Please suggest with justification.*

## **Response:**

We do not agree with the set of industry stakeholders who have suggested that there is no need for any multistakeholder body, even one with an advisory role. We note that several other industry and technology development stakeholders have disputed such an approach and instead indicated the value of a multistakeholder body ([MTNL](#), [Mozilla](#), [Cisco](#)), in addition to Indian public interest groups ([Internet Freedom Foundation](#)). We agree with concerns expressed by some of these stakeholders that industry involvement and funding should not become a channel to allow commercial influence and lobbying to grow ([MTNL](#)), and that some of the models proposed by others or by TRAI itself - such as the Broadband Advisory Group or EU Cloud Code of Conduct - create tiered layers of members which are not effective and

---

<sup>12</sup> Internet Freedom Foundation comments ("As submitted by M-Lab in its counter-comments to TRAI's consultation on net neutrality (2017), academic researchers and other national authorities have monitored TMPs since the 2000s. Indeed, the adoption and endorsement of such tools would be aligned with regulatory practices of authorities like BEREC. Since TRAI already has signed an MoU with BEREC on cooperation in net neutrality enforcement, Indian authorities could leverage the partnership to understand how such tools have proven useful in monitoring and enforcement").



undermine true multistakeholder functioning (Mozilla).<sup>13</sup> The suggestions of a limited few that the multistakeholder advisory body should not be set up at all - and that any effort should only be comprised of the telecom industry - must be rejected. Proposals suggested that the advisory body should be “industry-led” are inconsistent with the multistakeholder model.

Therefore, we believe that the Department of Telecom’s earlier proposed approach should continue, namely that the multistakeholder body initially recommended by TRAI should be an advisory body. The multistakeholder body should not immediately be directly in charge of enforcement, since the Department of Telecom incorporated the technical discrimination rules into the telco licenses, which current have the TERM cells as part of the enforcement mechanism.

While enforcement of the technical discrimination related network neutrality license terms may be up to TERM cells, there is a need to recognise that the TERM cells are not approachable to most outside of the telecom industry ecosystem. For instance, no unified complaint site at the moment exists at the moment for users and other stakeholder who may wish to file an initial information report or initiate a complaint online. Additionally, TERM cells are not well designed to assist with network neutrality awareness raising at present, or help with policy development on net neutrality. An information collection, awareness, and lead-generation-for-complaints function is a useful key secondary objective for the multistakeholder advisory body, along with its primary objective of facilitating technology and policy expertise to the government and wider ecosystem, along with discussion of best practices and policy development. The multistakeholder advisory body would benefit from having at least one member who is specifically from the Department of Telecom to serve as a liaison/facilitator with the TERM cells.

The multistakeholder advisory body’s funding should not be only membership fee based. The advisory body should be supported by the Department of Telecom and/or TRAI. Membership fees should not be used to exclude members and expertise, particularly those outside large

---

<sup>13</sup> Mozilla comments (“The other models considered in the consultation paper, such as the Broadband Stakeholder Group and the EU Cloud Code of Conduct, in this case would be traditionally biased in favour of access providers and their interests. Technology companies that aren’t access providers, civil society, academics, and consumer groups usually become second-tier members in such models with no voting rights at the board level, insufficient powers of enforcement, and key governance roles being denied to them. The creation of such a model will lead to the creation of a quasi-industry association which will exclusively cater to the needs and models of access providers. Such models are also usually exclusively funded by “full members” (which in this case would be access providers) for their day to day operations which in turn can have a drastic impact on the independence and reliability of research, authenticity of enforcement investigations, and the general working agenda of such a body... The body should be funded by the Indian Government, with a provision for members and other interested parties to be able to donate funds to the body without any corresponding increase in their rights or privileges in the body. These operational funds could be provided by the DoT, the TRAI, or from other funds that focus on the telecom sector such as the Universal Service Obligation Fund (USOF). The USOF is currently transferred to the Consolidated Fund of India and parliamentary approval could be obtained for using a small fraction of the large pool to fund the multi-stakeholder body”).

firms and industry in general. Proposals calling for potential additional funding via parliamentary authorisation of support from the Universal Service Obligation Fund should be considered.

**In conclusion:**

We thank the TRAI for this consultation, and continuing its efforts to openly engage different stakeholders and advance the public interest goal of global leadership on the protection and enforcement of network neutrality. We are available to provide further inputs as needed, as well as assist with in-person participation at the open house discussion on this topic.

Yours sincerely,

Raman Jit Singh Chima  
Senior International Counsel and Asia Pacific Policy Director  
**Access Now** | <https://www.accessnow.org>